



**COALITION FOR
COMMUNITY
SOLAR
ACCESS**

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June 7, 2016

VIA ELECTRONIC SERVICE

Hon. Kathleen Burgess
Secretary
New York State Public Service Commission
Empire State Plaza
Agency Building Three – 14th Floor
Albany, New York 12223-1350

Re: Case 15-E-0082 - Order Establishing a Community Distributed Generation Program and Making Other Findings

Dear Secretary Burgess:

Enclosed please find the Petition for Declaratory Ruling filed on behalf of the Coalition for Community Solar Access (CCSA), New York Solar Energy Industries Association (NYSEIA), Pace Energy and Climate Center, Vote Solar, Alliance for Clean Energy NY (ACE NY), Solar One, Binghamton Regional Sustainability Coalition, and Sierra Club.

If you have any questions, please contact me at 202-524-8805, or via email at jeff@communitysolaraccess.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeff Cramer", is placed over a light gray rectangular background.

Coalition for Community Solar Access

Jeff Cramer
Executive Director

Attachment

CC: Service List (via e-mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the
Policies, Requirements and Conditions For
Implementing a Community Net Metering Program

Case 15-E-0082

PETITION FOR DECLARATORY RULING

PRELIMINARY STATEMENT

Pursuant to Rule 8.1(b) of the New York State Public Service Commission's ("Commission") Rules of Procedure, 16 NYCRR § 8.1(b), the Coalition for Community Solar Access (CCSA), New York Solar Energy Industries Association (NYSEIA), Pace Energy and Climate Center, Vote Solar, Solar One, Binghamton Regional Sustainability Coalition, and Sierra Club (hereinafter "Petitioners") hereby file this Petition for a Declaratory Ruling requesting the Commission to declare that as contemplated by the Commission's Order Establishing a Community Distributed Generation Program and Making Other Findings ("CDG Order") issued on July 17, 2015 in Case 15-E-0082 ("CDG proceeding")¹, projects that invest in substantial development activities under the current program rules will continue to be eligible for the current bill crediting methodology for the full lifetime of the project.

BACKGROUND

The parties to this Petition represent leading community distributed generation developers, solar advocates, environmental groups, environmental justice advocates and community organizations. Petitioners welcome the Commission's leadership in launching the Community Distributed Generation ("Community DG") program and look forward to helping the Community DG market take root in New York.

The Commission's CDG Order indicated that the bill crediting methodology for Community DG projects would be subject to future revision in other Reforming the Energy Vision ("REV") proceedings. However, the CDG Order and subsequent Commission rulings have not stated definitively whether any future revisions would apply to both existing and new Community DG projects, or whether future changes would affect only new projects while existing projects would be "grandfathered" under the current bill crediting methodology. The Petitioners here are not taking a position at this time on bill crediting or grandfathering for future projects, as those issues are under consideration in other proceedings.² However, to allow development to proceed in the near term, this Petition seeks a

¹ Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015) (hereinafter "CDG Order").

² In particular, bill crediting methodology for future Community DG and other distributed generation projects is being considered in Case 15-E-0751, In the Matter of Distributed Energy Resources.

declaratory ruling from the Commission so that projects that invest in substantial development activities under the current program rules will continue to be eligible for the current bill crediting methodology for the full lifetime of the project.

ARGUMENT

POINT I

Grandfathering is Good Public Policy and Consistent with Past Commission Orders

In past Commission orders on changes to net metering, the Commission has recognized the importance of grandfathering as a mechanism to protect customers and developers who made investments in good faith and to convey to investors that New York is a safe market to invest in renewable energy. The recent controversy over changes to net metering in Nevada that put customer investments at risk, and resulted in thousands of jobs lost and solar companies pulling out of Nevada³, provides a vivid counter-example of what can potentially occur in a market when there is regulatory and investment uncertainty.

In its December 2014 order modifying crediting for remote net metered projects, the Commission chose to grandfather projects that had met certain development milestones, stating, “Net metering developers that have pursued installation of their facilities in good faith should not find their financial expectations disrupted by a change in policy.”⁴ In subsequent orders in the same proceeding, the Commission extended grandfathering to include projects that submitted an interconnection application by June 1, 2015, and were placed in service by December 31, 2017, again stating, “... The modification of the rate design must be implemented without disrupting the plans of developers seeking in good faith to bring solar and other net metered generation projects on-line.”⁵

While the Commission has not yet ruled on grandfathering in this proceeding, prior Commission orders have suggested that developers should proceed under the current program design, which suggests that the Commission intended to grandfather Community DG projects currently being developed. In the CDG Order, the Commission explicitly rejected proposals to have the program “sunset” if and when new policies governing distributed energy resources (“DERs”) are implemented:

³ See, Las Vegas Review Journal. “Task force recommends grandfathering in rate for solar customers,” May 26, 2016, available at <http://www.reviewjournal.com/business/energy/task-force-recommends-grandfathering-rate-rooftop-solar-customers>.

⁴ Case 14-E-0151, *et al.*, Petition of Hudson Valley Clean Energy, Inc. for an Increase to the Net Metering Minimum Limitation at Central Hudson Gas & Electric Corporation, Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures (issued December 15, 2014), p. 27.

⁵ Case 14-E-0151, *et al.*, supra, Order Granting Rehearing in Part, Establishing Transition Plan, and Making Other Findings (issued April 17, 2015), p. 2.

The Community DG Program, the Joint Utilities recommend, should sunset after a three-year period or when successor tariffs are implemented once new DER policies are arrived at in REV, whichever is sooner. Sunsetting the Community DG Program, however, could disrupt its implementation by posing uncertainties that would discourage potential Community DG sponsors from participating or preventing the efficient and efficacious financing of projects. Moreover, requiring sunsetting now for Community DG projects would unduly distinguish them from other forms of net metered projects not subject to sunsetting.⁶

In the Commission's October 16, 2015 Order Granting Reconsideration in Part in response to a petition by the Joint Utilities in the CDG proceeding, the Commission instructed Community DG project sponsors to proceed under the existing program rules, even though future changes to the program were likely:

Finally, the crediting methodologies and the other details for structuring the Community DG program adopted in the CDG Order are necessarily experimental. While sponsors and other participants in Community DG are expected to adhere to the CDG Program as designed, it is likely that improvements and enhancements to the program can be made in light of experience.⁷

These statements suggest that the intent of the Commission was that an initial set of projects should be developed under the program rules as laid out in the CDG Order. However, neither the CDG Order nor subsequent rulings have explicitly stated that these projects would be grandfathered. The resulting uncertainty is posing a significant barrier to meaningful Community DG project development in New York.

POINT II

The Community DG Program Has Seen Little Project Development to Date

Phase 2 of the Community DG program began on May 1, 2016, and the Commission's orders in the CDG proceeding contemplated that project development would be well underway at this point. However, to our knowledge there is not a single Community DG project operating today, and very few projects are actively proceeding through the interconnection process. There are many factors slowing project development in New York, but uncertainty over bill crediting is a major barrier that will prevent projects from proceeding into construction and operation. Without knowing what bill crediting methodology will apply to a given project, project developers do not have a sufficient basis to price and sell subscriptions or secure long-term project financing. Without certainty on bill crediting for the first set of projects that are already under development today, the Community DG program will not be able

⁶ CDG Order at 28.

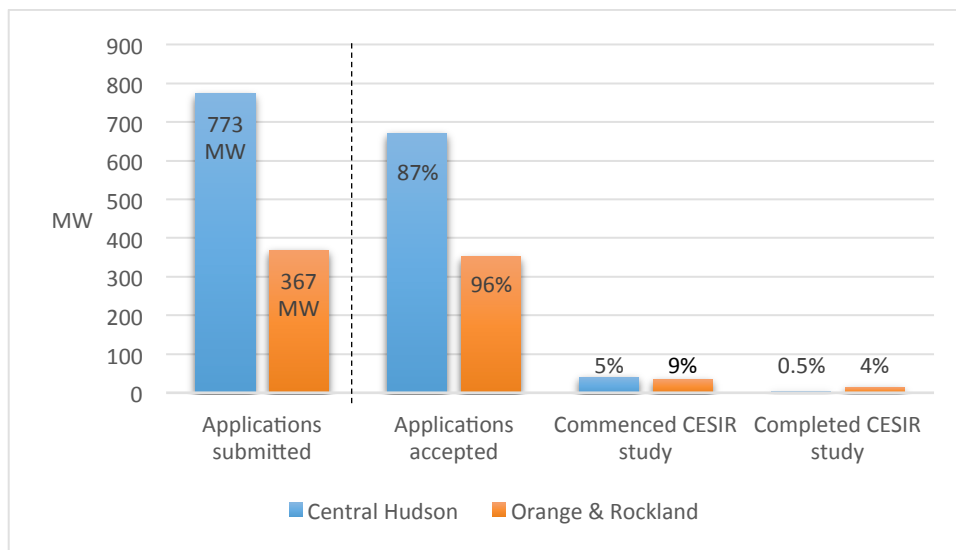
⁷ Case 15-E-0082, supra, Order Granting Reconsideration in Part (issued October 16, 2015), p. 10.

to achieve its intended goals of allowing more New Yorkers to directly participate in and benefit from solar deployment.

A review of the interconnection inventories published by the utilities shows that, although a large volume of interconnection applications have been submitted for Community DG projects, very few projects are actively moving through the development process. Submitting an interconnection application is an early stage in project development; a project with a submitted interconnection application must overcome many more development barriers before it can move into the construction and operation phases. Prior to the recent revision of the New York Standardized Interconnection Requirements (“SIR”), submitting an interconnection application was the only way for a developer to access information on the technical feasibility of siting a project at a given location. In many cases, an interconnection application may be submitted before the developer has site control or a system design. It is likely that developers submitted many more interconnection applications than projects they intend to develop, with the intent of narrowing down their site list based on the interconnection feasibility results. Yet, because there is no requirement to remove projects from the queue, those applications remain in the queue even if a developer has already received unfavorable results and decided to “pass” or move on from pursuing development of a given site.

In two utility territories with a high volume of Community DG applications – Orange and Rockland Utilities and Central Hudson Gas and Electric – the inventory data suggests that high initial interest has translated to a very low rate of project development (Figure 1 and Table 1).

Figure 1. CDG Projects in SIR Inventory as of April 2016: Interconnection Status⁸



⁸ Case 13-00205, *In the Matter of SIR Inventory*, reports submitted by Orange and Rockland Utilities, Inc., and Central Hudson Gas & Electric Corporation, May 16, 2016.

Table 1. CDG Projects in SIR Inventory as of April 2016: Interconnection Status⁹

	Central Hudson		Orange & Rockland	
	MW	%	MW	%
Applications submitted	773		367	
Applications accepted	671	87%	351	96%
Commenced CESIR study	42	5%	34	9%
Completed CESIR study	4	0.5%	14	4%

The large majority of CDG projects require a coordinated electric system interconnection review (“CESIR”) – an in-depth study requiring several months and thousands of dollars from the developer. Until a project completes its CESIR, the developer has no information on what it will cost to interconnect the project with the utility’s system. Only 9% of the CDG capacity in Orange & Rockland’s inventory and 5% in Central Hudson’s inventory represents projects that have paid to begin a CESIR study. The remaining projects – over 90% of the capacity in the inventories – are still at the preliminary review stage.

It is very likely that the majority of these applications will never become completed projects. Limits on circuit capacity will make it impossible for many of the projects in the inventories to be built. In O&R and Central Hudson service territories, over 75% of the total solar PV project capacity (not just CDG projects) in the queue represents projects that are applying to interconnect to circuits that have at least 4 megawatts (“MW”) in the queue, and at least 60% of the total solar project capacity being applied for is located on circuits that have over 8 MW in queue (Table 2). Although all of these projects remain in the inventories, the interconnection study results for many of them will likely indicate that it is infeasible or prohibitively expensive to interconnect.

Table 2. Solar PV Projects in SIR Inventory as of April 2016: MWs Applying on Congested Circuits¹⁰

	Central Hudson		Orange & Rockland	
	MW	% of All Projects in Inventory	MW	% of All Projects in Inventory
Total PV in inventory	802		449	
On circuits with < 4 MW	105	13%	70	16%
On circuits with > 4 MW	613	77%	373	83%
On circuits with > 6 MW	553	69%	343	76%
On circuits with > 8 MW	484	60%	277	62%
No information in inventory	83	10%	6	1%

⁹ Ibid.

¹⁰ Ibid.

Even for projects that are not applying to interconnect on circuits with many other MWs in queue, many will ultimately be canceled due to permitting, site conditions, or other factors. In other words, without any changes to the bill crediting methodology for projects in the queue, only a minority of the projects in the queue today will ever be built.

POINT III

Clarification on Grandfathering Will Allow the CDG Market to Develop

To allow Community DG development to proceed in the near term, we request that the Commission issue a ruling declaring projects that are actively under development today be grandfathered for the lifetime of the project. Concerns about potentially disruptive policy changes can dry up investment and business activities even in an established market, but this issue is particularly acute for Community DG projects because the market has not yet gotten off the ground. As the SIR inventory data demonstrates, there is clearly a great deal of interest in building Community DG projects in New York and developers have invested in early stage activities, but without clarity on the bill crediting methodology, developers will not be able to make major investments to advance projects through to construction and operation.

The process described in Appendix A provides an example of how eligibility for grandfathering could be structured, following past Commission decisions on grandfathering. Requiring projects to meet specified development milestones would place reasonable limits on the volume of projects that would be grandfathered. Interconnection, permitting, and other development hurdles will limit the number of projects and MWs that will be subject to grandfathering, as only a minority of projects that have submitted applications will be able to proceed to construction and operation. Just as importantly, this approach would allow the Community DG market in New York to begin to take root, allowing an initial set of Community DG projects to move forward with development and begin serving customers. It would further affirm the principle that changes in policy should be prospective, and that developers that have made good-faith efforts to develop projects under an existing policy framework should be allowed some protection from future policy changes.

CONCLUSION

For the reasons set forth herein, the Petitioners respectfully submit that in order to provide the necessary certainty to allow the Community DG market to develop in the near term, the Commission must issue a declaration that projects that invest in substantial development activities under the current CDG Program rules will continue to be eligible for the current bill crediting methodology for the full lifetime of the project.

Respectfully submitted,

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Appendix A: Example of Grandfathering Structure

The parties to this petition propose the following as an example of an approach to grandfathering for Community DG projects. We expect that decisions about grandfathering for projects not covered under this ruling would be made in other proceedings, and that the Commission would follow the same principle of protecting projects already under development from major policy changes. However, the scope of this petition is limited to projects under development today.

- **Defining Eligible Projects:** First, the Commission should define an initial set of projects that will be eligible for grandfathering under this ruling, based on the date on which projects submit interconnection applications. We propose that this date should be no more than one month following a Commission order on grandfathering or on a new bill crediting methodology for community solar projects. Following precedent from past Commission decisions on grandfathering, the period between the order and the cutoff date for submitting interconnection applications should be long enough for developers to complete and submit applications for projects already in development, but not long enough to begin the development process for entirely new projects.
- **Application Review:** Both new and existing applications in the SIR inventories should be reviewed for completeness. All projects should be required to provide evidence of site control (for example, a signed lease option or landowner consent form) and a single-line or three-line diagram of the specific project. If an application is missing any of these or other critical items, the developer should be provided the opportunity to provide missing items within 30 days. If the deficiencies are not cured at that point, the project should be deemed ineligible for grandfathering or removed from the SIR inventory entirely.
- **Development Milestones:**
 - **Funding CESIR:** To secure eligibility for grandfathering under this ruling, projects that have already received a CESIR cost estimate should be required to pay to commence the CESIR within 30 days of the Commission order or within 30 days of receiving the CESIR cost estimate, whichever is later. This deadline should be extended in two circumstances:
 - **Multiple Projects in Queue:** In locations where multiple applications have been submitted for interconnection on the same circuit, this deadline would apply to the first project in line. A developer with a project that is not first in line on a circuit should have additional time to decide whether to fund a CESIR, so that the decision can be made based on whether the project(s) in front of it proceeds. If a developer chooses not to fund the CESIR at that time, the project would not be removed from the SIR inventory but would not be eligible for grandfathering under this ruling; in addition, any projects behind it in the queue that do commit to CESIRs would be able to proceed first.
 - **Solar Moratoria:** A limited extension of these deadlines should also be available in cases where some or all projects that have applied to interconnect on a given circuit are located in a town that a) has imposed a temporary moratorium on

solar development, b) has initiated a zoning ordinance revision procedure for the purposes of solar development, or c) would require a zoning ordinance revision to provide for solar development.

- **Mechanical Completion:** Following completion of the CESIR, or following completion of preliminary review for projects that do not require a CESIR, all projects should be required to attain mechanical completion within 24 months to retain eligibility for grandfathering under this ruling.
- **Grandfathering:** Projects that successfully achieve these milestones should have the option to retain the current methodology of bill crediting for the lifetime of the project.