

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 18, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan, recusing

CASE 15-E-0751 - In the Matter of the Value of Distributed
Energy Resources.

CASE 15-E-0302 - Proceeding on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Program.

ORDER APPROVING UTILITY TRADING OF
RENEWABLE ENERGY CERTIFICATES

(Issued and Effective April 19, 2024)

BY THE COMMISSION:

INTRODUCTION

On November 14, 2023, the Joint Utilities filed a petition to enable the sale and transfer of banked Tier 1 Value of Distributed Energy Resources (VDER) Renewable Energy Certificates (RECs) amongst the Joint Utilities at the close of the Clean Energy Standard (CES) compliance years 2023 and 2024 to eliminate unnecessary costs to their respective customers

(Petition).¹ The upstate utilities, including National Grid, NYSEG, and RG&E, are seeking the ability to transfer and sell their excess 2023 and 2024 Tier 1 VDER RECs to assist downstate utilities, such as Con Edison and O&R, in meeting their 2023 and 2024 Tier 1 compliance obligations in order to avoid additional costs being borne by ratepayers. Specifically, the Joint Utilities are seeking a waiver of the directives in the VDER Phase One Order prohibiting utilities from selling or trading of their VDER RECs.² Additionally, the Joint Utilities request that the Commission direct the New York State Energy Research and Development Authority (NYSERDA) to purchase any remaining Tier 1 VDER RECs at the end of the 2024 compliance period.

In this Order, the Public Service Commission (Commission) approves the Joint Utilities' Petition for a partial waiver of the VDER Phase One Order, and permits the Joint Utilities to sell and trade Tier 1 VDER RECs amongst themselves for the 2023 and 2024 CES compliance years at the price the utility initially paid for the REC. Further, the Commission directs NYSERDA to purchase any remaining Tier 1 VDER RECs from the utilities, to be sold in future CES compliance years starting in 2025.

BACKGROUND

The Commission established the CES to increase the State's renewable energy supply and preserve New York's existing

¹ The Joint Utilities are Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange & Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E).

² Case 15-E-0751, Order on Net Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Issues (issued March 9, 2017) (VDER Phase One Order).

zero-emissions generation.³ The Renewable Energy Standard (RES), a component of the CES, includes a Tier 1 program designed to foster development of new renewable energy resources that obligates each Load Serving Entity (LSE) to serve its retail customers with new renewable resources, evidenced by the purchase of qualifying Tier 1 RECs from NYSERDA or other sources, or by making Alternative Compliance Payments (ACPs). Through a series of subsequent implementation plans, the Commission approved additional measures and processes for the sale and disposition of RECs to LSEs to meet their compliance obligations. As part of the CES Phase 2 Implementation Plan, the Commission determined that Tier 1 VDER RECs are non-transferable.⁴

Additionally, the VDER Phase One Order concluded that VDER RECs from distributed energy resources (DER) installed under the Phase One Value Stack tariffs are restricted from transferability (i.e., not tradable, sellable, and/or monetizable). The VDER Phase One Order directed the New York Generation Attribute Tracking System (NYGATS) to mint non-transferable certificates for deposit and retirement in the account of the interconnecting LSE. Further, the VDER Phase One Order states that if the generation attribute meets the RES Tier 1 requirements, NYGATS will indicate that the certificate is eligible to satisfy RES Tier 1 compliance requirements, and that it will be retired in the interconnecting LSE's account and counted towards the interconnecting LSE's RES compliance obligation.

³ Case 15-E-0302, Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

⁴ Case 15-E-0302, Order Approving Phase 2 Implementation Plan (issued November 17, 2017) (Phase 2 Implementation Plan).

The Commission recently approved another modification to the Tier 1 program related to the Tier 1 LSE obligation.⁵ The Tier 1 Transition Order, among other things, approved moving from a percentage obligation approach to a load share obligation method in which anticipated Tier 1 RECs available to NYSERDA in a given CES Compliance Year would be the basis for the Tier 1 REC charge levied on each LSE in that compliance year. More specifically, the LSE Tier 1 REC rate would be the cost to NYSERDA to procure Tier 1 RECs from the Large-Scale Renewable (LSR) resources it has contracted with, plus the cost of Tier 1 VDER RECs procured by the utilities, and plus approved NYSERDA administrative expenses. Through this modification, starting in 2025, NYSERDA will continue to purchase all available Tier 1 RECs under LSR contracts, and undertake a new process of purchasing all Tier 1 VDER RECs from the utilities. To lessen the final costs to LSEs and ratepayers, these Tier 1 RECs would be made available in pre-sale and post-sale auctions to market participants including the voluntary market comprised of Community Choice Aggregation (CCA) Administrators and Energy Service Companies (ESCOs). NYSERDA would enter into long term or shorter term one-year contracts with purchasers, depending on purchaser desired terms, and the resulting revenue would be used to offset the eventual cost of Tier 1 RECs charged by NYSERDA to LSEs, thereby resulting in a reduction of overall ratepayer costs. The final cost of the Tier 1 resources will be calculated in the corresponding annual reconciliation undertaken by NYSERDA. The Petition proposes to address an emergent issue with respect to the quantity of Tier 1 VDER RECs available at some utilities in the 2023 and 2024 CES compliance years until the new load share approach is implemented.

⁵ Case 15-E-0302, Order Modifying Clean Energy Standard Tier 1 Obligations (issued April 20, 2023) (Tier 1 Transition Order).

PETITION

The Joint Utilities request that the Commission permit the sale and transfer of Tier 1 VDER RECs amongst the Joint Utilities in order to satisfy Tier 1 LSE obligations in the most cost-effective way. Specifically, the Joint Utilities are seeking a waiver of the directives in the VDER Phase One Order prohibiting utilities from selling or trading of their VDER RECs. According to the Joint Utilities, granting this relief would enable the transfer of banked Tier 1 VDER RECs amongst the utilities to satisfy the CES compliance obligations for 2023 and 2024. This would also eliminate unnecessary costs to their respective customers through the avoidance of ACPs, which utilities and all LSEs must pay to the extent they are unable to meet their Tier 1 REC obligations.

The Joint Utilities estimate that over one million Tier 1 VDER RECs will be banked at the end of compliance year 2024, and that should they not be able to sell their Tier 1 VDER RECs to utilities with shortfalls, those RECs will be forfeited due to vintage constraints, resulting in over \$33 million in unnecessary charges to utility customers. Moreover, they note that the utilities without sufficient Tier 1 VDER RECs will have to pay ACPs for any Tier 1 REC shortfalls resulting in additional ratepayer costs. Alternatively, if the Commission declines to approve the sale and transfer of Tier 1 VDER RECs among the Joint Utilities, they propose that NYSERDA purchase all the banked Tier 1 VDER RECs that exceed compliance obligations and include these banked purchases in the load share ratio compliance methodology that will begin in 2025.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was

published in the State Register on December 20, 2023 [SAPA No. 15-E-0751SP52]. The time for submission of comments pursuant to the Notice expired on February 20, 2024. Comments were filed by the City of New York (the City) and are addressed below.

COMMENTS

The City of New York (City) supports the Joint Utilities' Petition which will allow the upstate utilities, namely NYSEG, RG&E, and National Grid, to sell and transfer excess VDER RECs to the downstate utilities, namely Con Edison and O&R, ultimately helping their customers to avoid additional Tier 1 costs. However, the City notes that the Petition is unclear as to the price the upstate utilities plan to sell the RECs to downstate utilities. The City argues that cost savings would only occur if the upstate utilities sell their banked Tier 1 VDER RECs at either the Tier 1 price or the price the upstate utility initially paid for the RECs, whichever is lower. The City asserts that the price on resale to the downstate utilities should be established to minimize costs to ratepayers.

The City also argues that there is an imbalance between upstate and downstate solar development due to the difficulty in developing solar and other DER projects downstate. The City states there should be more geographic equity in taking actions that further the goals of the Climate Leadership and Community Protection Act. The City suggests, therefore, that the Commission should revisit the incentives available to Con Edison's customers to develop renewable projects, as well as other outstanding issues related to renewable development. The City notes that Con Edison has historically had trouble with billing and crediting issues related to solar development.

LEGAL AUTHORITY

The Commission's authority derives from the New York State Public Service Law (PSL), through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of ... electricity." PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carryout long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying ... electricity ... and have power to order such reasonable improvements as well as promote the public interest, preserve the public health and protect those using such gas or electricity"

PSL §4(1) also expressly provides the Commission with "all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]" including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,⁶ environmental stewardship,

⁶ See International R. Co. v Public Service Com., 264 AD 506, 510 (1942).

and the conservation of resources.⁷ Further, PSL §65 provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." The Commission also has authority to prescribe the "safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public" whenever the Commission determines that the utility's existing equipment is "unsafe, inefficient or inadequate."⁸ In addition to the PSL, the New York State Energy Law §6-104(5)(b) requires that "[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update."

DISCUSSION

In seeking a partial waiver of the VDER Phase One Order to enable the transfer of banked Tier 1 VDER RECs between the utilities, the Joint Utilities seek to minimize ratepayer impacts, specifically by the downstate utilities avoiding the payment of ACPs. Doing so also reduces overall upstate VDER REC cost through reimbursement of the E-Value upon the sale. Additionally, the Joint Utilities request that the Commission direct NYSERDA to purchase any remaining Tier 1 VDER RECs at the

⁷ PSL §5(2); see also Consolidated Edison Co. v Public Service Commission, 47 N.Y.2d 94 (1979) (overturned on other grounds) (describing the broad delegation of authority to the Commission and the Legislature's unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5).

⁸ PSL §66(5).

end of the 2024 compliance period. In this context, NYSEDA should be considered the purchaser of last resort, with the expectation that the upstate utilities would sell/trade the entirety of their excess Tier 1 VDER RECs to the downstate utilities, leaving the upstate utilities with zero excess Tier 1 VDER RECs.

The City filed comments in support of the Joint Utilities' Petition. The City argues that the ability for the upstate utilities to sell their excess Tier 1 VDER RECs to Con Edison would not only help the upstate utilities by offsetting the costs associated with excess VDER REC purchases, but also help Con Edison avoid incurring additional costs, chiefly associated with purchasing the ACPs referenced above. The City recommends that the Commission review the Tier 1 program and DER project uptake across the State to address issues related to renewable development downstate.

The Joint Utilities' Petition is approved, as filed. The Joint Utilities' request for a waiver of the VDER Phase One Order's prohibition on the transferability of VDER RECs so that they can transfer excess 2023 and 2024 Tier 1 VDER RECs amongst themselves is a reasonable solution to avoid unnecessary impacts to ratepayers. Granting the Petition removes the prohibition on selling and transferring excess VDER RECs for the limited purpose of selling and transferring between the Joint Utilities and will permit the upstate utilities to sell excess VDER RECs to downstate utilities that are unable to meet their CES compliance obligations with their own VDER REC purchases. This modification will help to avoid the unintended financial consequences of the upstate utilities forfeiting approximately 1.1 million RECs by the end of compliance year 2024 at a cost of approximately \$33 million, assuming \$30 per REC. As the City points out in their comments, it will also help to mitigate the

payment of ACP fees by downstate utilities that are unable to meet their CES obligation with REC purchases. The process will begin with compliance year 2023 (which ends June 30, 2024) and conclude at the end of the 2024 compliance year (which ends June 30, 2025) to initiate the savings for both the upstate and downstate utilities immediately.

The City suggests that the banked Tier 1 VDER RECs should be sold at the initial price the utility paid for the REC, which is the environmental component contained in the Value Stack compensation mechanism, or the current Tier 1 price, whichever is lower. While the Commission agrees with the City in part, selling and transferring Tier 1 VDER RECs at the price the interconnecting utility paid for the REC is the preferred approach, because doing so would ensure that the upstate utilities receive reimbursement for the costs associated with purchasing these RECs from generators, so their ratepayers are made whole on the sale/transfer. Setting the sellable Tier 1 VDER REC price at the price the utility paid for the REC is a reasonable approach to ensure that upstate ratepayers are not negatively impacted by receiving a price which represents an underpayment for the Tier 1 VDER RECs. Additionally, given that the alternative to purchasing these excess Tier 1 VDER RECs for those utilities with a shortfall will be to purchase ACPs, and given that ACP prices are set at a 10% premium above Tier 1 RECs, the purchasing utilities will already receive a discounted compliance option compared to the ACP and would not be harmed by paying what the interconnecting utility paid for the REC in the first instance.

The Commission also directs NYSERDA to buy any 2024 vintage excess banked Tier 1 VDER RECs at the cost they were purchased by the utility, at the end of the 2024 compliance period. NYSERDA shall recover the cost of purchasing these

excess VDER Tier 1 RECs in future RES compliance years starting in 2025. However, NYSERDA shall only purchase 2024 vintage excess banked RECs at the end of the 2024 RES compliance year if none of the Joint Utilities purchased ACPs for that period. In other words, NYSERDA will only purchase 2024 vintage excess banked VDER RECs if they are truly "excess" and cannot be used for Tier 1 compliance. This will ensure that the Joint Utilities cost effectively exhaust the options to purchase banked 2023 and 2024 vintage RECs from another utility before purchasing ACPs.

While the transfer of RECs will help prevent negative financial and economic impacts on customers, the City argues that it will not solve the overarching issue of regional disparity in developing renewable projects. The City advocates that the Commission revisit the incentives available to Con Edison customers to increase development of renewable projects in the Con Edison service territory. The Commission acknowledges that DER solar development has been more prolific in the upstate region, but solar development has seen a recent uptick in installations in downstate. Since 2022, 214 megawatts (MW) of solar have been installed and 253 MW of solar projects are in the pipeline in the Con Edison service territory.⁹ In addition, several solar incentives are available for the Con Edison service territory through NYSERDA such as the Mega-Watt Block program for residential and small business customers, and the Community Adder, Inclusive Community Solar Adder, and a Multifamily Incentive for community distributed generation

⁹ Open NY, Energy and Environment, Solar Electric Programs Reported by NYSERDA: Beginning 2000, available at: https://data.ny.gov/Energy-Environment/Solar-Electric-Programs-Reported-by-NYSERDA-Beginn/3x8r-34rs/about_data.

projects.¹⁰ These changes in the solar development landscape downstate must first be evaluated before further revisions are made.

The Commission directs each of the Joint Utilities to file tariff amendments incorporating the directives of this Order, on not less than 30 days' notice, to become effective on June 1, 2024. Since these tariffs are being filed in compliance with this Order, and have a negligible impact on customers, we are waiving the requirements of newspaper publication.

CONCLUSION

The Joint Utilities' Petition presents a reasonable approach to addressing an emergent and short-term issue related to the quantity of Tier 1 VDER RECs in the 2023 and 2024 CES compliance years and is adopted. The Joint Utilities are authorized to sell their Tier 1 VDER RECs amongst themselves at the price the utility initially paid for the REC for the 2023 and 2024 CES compliance periods. Further, should there be any excess Tier 1 VDER RECs at the end of 2024, NYSERDA is directed to purchase the remaining RECs at the price the utility initially paid. NYSERDA shall subsequently include the Tier VDER 1 REC costs in the 2025 Tier 1 reconciliation process which will begin in March of 2026 when the utilities provide the actual number and cost of Tier 1 VDER RECs procured during 2025. These values will be used in the calculation of final reconciliation values.

¹⁰ Case 21-E-0629, Advancement of Distributed Solar, Order Expanding NY-SUN Program (issued April 14, 2022); Case 03-E-0188, Renewable Portfolio Standard, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs (issued April 24, 2014).

The Commission orders:

1. The petition filed by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corporation is approved, as discussed in the body of this Order.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are authorized to sell and transfer banked Tier 1 VDER RECs amongst themselves for the Clean Energy Standard 2023 and 2024 compliance periods.

3. The New York State Energy Research and Development Authority is directed to purchase any banked Tier 1 Value of Distributed Energy Resources Renewable Energy Certificates remaining at the end of the 2024 Clean Energy Standard Compliance year from the utilities identified in Ordering Clause No. 1, retire them in the New York Generation Attribute Tracking System, and to collect the cost of purchasing these Renewable Energy Certificates in future Renewable Energy Standard compliance years starting in 2025, as discussed in the body of this Order.

4. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall file a detailed report on the sales and transfers of Tier 1 Value of Distributed Energy Resources Renewable Energy Certificates resulting from the trading authorized by this Order, within 30 days after the

closing of the 2023 and 2024 Clean Energy Standard compliance period.

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to file, on not less than 30 days' notice, tariff amendments implementing the changes discussed in the body of this Order, to become effective on June 1, 2024.

6. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 concerning newspaper publication with respect to the tariff amendments directed in Ordering Clause No. 5 are waived, as discussed in the body of the Order.

7. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

8. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary