STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on December 15, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, concurring

CASE 14-M-0101 – Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision.

ORDER DENYING PETITION FOR RECONSIDERATION

(Issued and Effective December 15, 2016)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

In a Petition dated June 20, 2016, the Joint Utilities[1] request reconsideration of the portion of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (Track Two Order) in the Reforming the Energy Vision (REV) proceeding that established a method for calculating the reliability credit for

[1] Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (Con Edison), Niagara Mohawk Power Corporation d/b/a National Grid, New York State Gas & Electric Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (together, the Joint Utilities or Petitioners).

standby service.[2] As is relevant here, the Track Two Order directed the electric utilities to offer a reliability credit to standby customers that maintain a load below their contract demand, regardless of how the customer achieves the lower load level (the as-used demand approach for calculating the reliability credit).[3] For the purpose of determining the reliability credit, the Track Two Order allowed standby customers to exclude up to three outage events per year from the summer period, regardless of the cause of such events. The Order rejected the Joint Utilities' argument that the reliability credit should be determined based only on the measured and verified performance of an on-site distributed generation (DG) unit (the generator performance approach).[4] It found, among other things, that the argument "ignores a central tenet of REV, which is that a variety of [distributed energy resources (DER)] and customer activities should be encouraged, to produce desired outcomes."[5]

In seeking reconsideration, Petitioners argue that, in calculating the credit for standby service, the Track Two Order should have adopted the generator performance approach, rather than the as-used demand approach. The claims raised in the Petition do not state errors of law or fact or identify new

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[2] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) (Track Two Order). The Joint Utilities do not request reconsideration of any other part of the Track Two Order.

[3] Case 14-M-0101, supra, Track Two Order, p. 127-132.

[4] Case 14-M-0101, supra, Track Two Order, p. 130-131.

[5] Case 14-M-0101, supra, Track Two Order, p. 130.

circumstances that warrant rehearing.[6] Rather, the Petition is an application for reconsideration, addressed to the discretion of the Commission. We decline to exercise our discretion to reconsider the Joint Utilities' claims because they either have been already evaluated and rejected in this proceeding or are without merit.

POSITIONS OF THE PARTIES

The Petition for Reconsideration

Petitioners seek reconsideration of the Track Two Order on the sole issue of how to calculate the reliability credit for standby service. More specifically, the Joint Utilities seek reconsideration of the Commission's rejection of their claim that the reliability credit should be based only on the performance of an on-site DG unit and not on an actual demand reduction as achieved through any means. They argue the Commission's adoption of the as-used demand method conflicts with REV's premise that compensation for DER should reflect payment for performance.

The Joint Utilities maintain that the Order would provide standby customers with unwarranted financial benefits, such as where the weather is cooler than normal in two consecutive summers. This example, they assert, shows that the Order removes the incentive for the customers to make any effort to operate a DG unit reliably and efficiently because it provides the credit opportunity without requiring reliable DG unit performance. The Joint Utilities further maintain that, by allowing standby customers to exclude up to three outage events per year from the summer period, the Track Two Order fails to require that eligibility for the credit be linked to the actual

[6] Indeed, Petitioners do not specifically request a rehearing.

benefits that the DG unit's performance provides to the distribution system.

Moreover, Petitioners claim that the Order conflicts with REV's goal of increased precision and granularity in rate designs. They contend that allowing the customer to receive standby credit without demonstrating that their DG facilities have performed reliably would credit customers for engaging in demand response activities and not for providing reliability benefits to the grid, and, thus, could have the effect of bundling reliability and demand response.

NOTICE OF PETITION

In contemplation of the relief sought in the Petition, the Commission sought comments pursuant to the State Administrative Procedure Act (SAPA) §202(1), and a Notice of Proposed Rulemaking (Notice) was published in the State Register on July 13, 2016 (SAPA No. 14-M-0101SP5). In addition, the Secretary to the Commission issued a Notice of Petition With Respect to Request for Reconsideration and Petition for Rehearing on June 30, 2016. The time for submission of comments pursuant to the Notices expired on August 29, 2016. Several comments were received; they are summarized below.

SUMMARY OF COMMENTS

Clean Energy Organizations Collaborative

The Clean Energy Organizations Collaborative (CEOC) opposed the request for reconsideration. According to CEOC, Petitioners fail to meet the burden of demonstrating that the Commission had committed an error of fact or law, or that new circumstances have arisen, which would warrant rehearing. Regardless, CEOC maintains, the reliability credit is consistent with REV's goals and rate design principles, and provides a fair

incentive for DER providers to spur reliable service. Petitioners' arguments against the Reliability Credit, CEOC adds, rely on a flawed understanding of the principles of REV.

That the reliability credit lacks a weather normalization mechanism, CEOC states, does not eliminate the incentive for DER providers to perform reliably. Indeed, CEOC points out, the Track Two Order does not preclude the development of such a mechanism in the future. Moreover, CEOC argues that, contrary to the Petitioners' claims, the reliability credit reduces barriers to penetration of DER, provides incentives for DER development, and reasonably balances the goals of ensuring accurate cost allocation and inducing efficient actions which will lower customer bills and improve reliability of the electric grid.

CEOC also defends the exclusion of outage events from the reliability credit. CEOC states that the exemption for certain outage events avoids penalizing standby customers for outages which are beyond their control. It points out that, as reflected in the Track Two Order, the number of exemptible outage events per year may be modified as experience is gained with the reliability credit.[7]

City of New York

The City of New York (City) also opposes the application for reconsideration. The City argues that the

[7] Digital Energy Corp (Digital) supports CEOC's opposition to the request for reconsideration. Digital suggests that the utilities should define "reliability" in order to provide guidance in how to determine DER value as it applies to the credit for standby reliability service. Digital further suggests that the utilities should define "local facilities" and "shared facilities" as they apply to standby rates in the utilities' October 2016 standby rates filings, and that these terms be used and delineated specifically for each interconnection request.

reliability credit for standby service, as designed in the Track Two Order, is consistent with the Track Two Order's rate design principles, as well as REV's objectives. According to the City, the reliability credit will make it more certain that standby customers will stay off the grid during peak times by sending distinct price signals for performance and allowing standby customers to supplement their existing generation assets with any form of DER. The City also defends that portion of the Track Two Order allowing the exclusion of three outage events. It asserts that setting an exemption threshold is an equitable compromise between the interests of the utilities and customers, given the difficulty of determining whether an outage of customer equipment was triggered by the customer or by conditions on the utility grid.

NECHPI

The Northeast Clean Heat and Power Initiative (NECHPI) does not support the application for reconsideration. NECHPI states that calculating the reliability credit based on only the performance of the DG unit is contrary to REV's goal of encouraging a variety of DER resources and customer activities to produce the desired outcomes. Additionally, NECHPI maintains, unlike the generator performance approach advocated by Petitioners, calculating the credit based on "used demand" is likely to provide customers with greater opportunities to lower their standby cost by lowering their dependence on the distribution system during the peak coincident hours.

Riverbay

Riverbay Corporation (Riverbay) partially supports the application for reconsideration. Riverbay operates a 40 MW cogeneration facility that is interconnected to Con Edison's distribution system and currently receives a standby performance credit. Riverbay is concerned that changes to the standby

credit may eliminate its incentive to assist Con Edison in meeting its load and demand management requirements. Riverbay maintains, however, that the flexibility of outage events and the criteria in the Track Two Order should be upheld.

DISCUSSION

Initially, although Petitioners describe their application for reconsideration as falling under PSL §22 and 16 NYCRR §3.7, which apply to rehearing, their Petition is not governed by those provisions, but is addressed to the discretion of the Commission. They do not allege, let alone demonstrate, any error of law or fact or any new circumstances that would warrant a different determination on rehearing.[8] Rather, Petitioners contend that the Commission's newly-adopted method for calculating the credit for standby service allows standby customers to receive standby credit without demonstrating that their DG facilities have performed reliably. From that premise, they conclude that the new as-used demand approach is inconsistent with REV's objectives and rate design principles. We decline to exercise our discretion to reconsider Petitioners' claims, which do not acknowledge that the principles and objectives of REV go beyond a strict adherence to reliability

[8] Case 14-W-0307, Petition of Forever Wild Water Company, Inc. for Approval to Use Escrow for Financing the Replacement of a Water Tank, Order Granting Reconsideration (issued September 17, 2015), p. 6 (holding that, "[u]nder PSL § 22 and the Commission's rules in 16 NYCCRR 3.7(a), rehearing may be sought on the grounds that the Commission committed an error of fact or law or that new circumstances warrant a different determination," and that where, as here, "the Company did not specifically request a rehearing or cite any Commission error of fact or new circumstances" the application is a mere petition for reconsideration, which the Commission has the discretion to grant or deny).

concerns. The Joint Utilities' claims either have been already evaluated and rejected in this proceeding or are without merit.

The Commission already considered and rejected the Joint Utilities' contention that the credit for standby service should be determined based only on the generator's performance. More specifically, the Commission found that, unlike the as-used demand method, the generator performance approach was inconsistent with REV's goal of encouraging a variety of DERs and customer activities to produce the desired outcome of reliably reducing demand on the utility system during peak periods.[9]

In the Track Two Order, the Commission stated that the Joint Utilities' further argument that, under the as-used demand approach, a customer might receive a credit, or a higher credit, based on external factors such as weather was "theoretically correct."[10] The Commission observed, however, that it was unclear whether it was practical to normalize external factors in the context of standby rates. The Commission noted that whether it is practical to normalize external factors "in the context of standby rates should be developed further."[11] The Petition for reconsideration offers no practical methods for normalizing external factors. We decline to revisit that issue at this time.

Similarly, to the extent Petitioners request reconsideration of the finding that, for the purposes of calculating standby service credit, standby customers could exclude up to three outage events per year from the summer

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[9] Case 14-M-0101, supra, Track Two Order, p. 130.

[10] Case 14-M-0101, supra, Track Two Order, p. 131.

[11] Case 14-M-0101, supra, Track Two Order, p. 131.

period, we also reject their request. In allowing the exclusion of to three outage events per year, the Track Two Order found that "outages triggered by fluctuations on the utility side of the system should not be held against the customer" and recognized that "it [was] administratively difficult to determine after the fact whether any particular outage was triggered by the customer or by the utility."[12] Petitioners have not offered a way to distinguish between utility-triggered and customer-triggered outages.

Furthermore, the exclusion of up to three outage events is consistent with Con Edison's performance credit mechanism which offered customers a credit based on minimum performance of on-site DG. The Petitioners do not allege that allowing three outage events has had undesirable results related to the Con Edison performance credit program, which preexisted the Track Two Order. We thus decline to reexamine that exemption, as the Track Two Order already held that the subject exemption would be revisited as experience is gained with the reliability credit for standby service.

Contrary to Petitioners' remaining contentions, the Track Two Order's adoption of the as-used demand approach is not inconsistent with REV's objectives and rate design principles. The Commission appropriately implemented REV's concept of increased precision and granularity in rate design. The Track Two Order reasonably balanced REV's objective of ensuring accurate cost allocation with the goal of removing barriers to DER penetration in order to lower customer bills and improve reliability of the electric grid. Accordingly, the Petition for Reconsideration is denied.

[12] Case 14-M-0101, supra, Track Two Order, p. 131.

CONCLUSION

The Join Utilities' Petition does not state errors of law or fact, or new circumstances that would warrant a different determination on rehearing. It is, therefore, an application for reconsideration, which rests in the discretion of the Commission. We decline to exercise our discretion to reconsider the claims raised therein, because they either have been already evaluated and rejected in this proceeding or are without merit.

The Commission orders:

1. The Petition for Reconsideration filed by the Joint Utilities is denied.

2. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

Commissioner Diane X. Burman, concurring:

As reflected in my comments made at the December 15, 2016 session, I concur on this item.