



**Pace Energy and
Climate Center**

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P A C E U N I V E R S I T Y

July 20, 2009

Honorable Jaclyn A. Brillling
Secretary
State of New York Public Service Commission
Three Empire Plaza
Albany, NY 12223

**Re: Cases 08-E-1305, 08-E-1306, 08-E-1307, 08-E-1308, 08-E-1309, 08-E-1310
SAPA Notice PSC-22-09-00009-P
Petition of Buddy's Place for Reconsideration of a Size Limit on Qualifying
for Net Metering**

Dear Secretary Brillling:

The Pace Energy and Climate Center ("Pace") hereby submits these comments in support of the Petition filed by Karen Walker ("Petitioner"), owner of "Buddy's Place." Petitioner seeks a waiver or reconsideration of a determination by National Grid that Petitioner's solar generation facility exceeded the size limit to qualify for net metering.

Pace has a longstanding commitment to reducing the environmental impacts of producing and using energy through clean, efficient and renewable alternatives. Pace is frequently active in utility regulatory matters before the New York Public Service Commission ("Commission"), and regularly provides legal and policy analysis and advocacy for market and regulatory reforms that support renewable energy and clean distributed generation ("DG"). Matters that adversely affect the terms under which customers can implement net metering of customer-owned DG facilities are of particular importance to us, as net metering is a potentially powerful tool that can encourage and foster the growth of clean renewable energy.

Pace supports the comments submitted by the Alliance for Clean Energy New York ("ACE NY") in these proceedings, and submits the following additional comments.

Background

Petitioner is a small business pet crematory located in Hudson, NY, and as such is a non-residential, non-demand customer of Niagara Mohawk Power Corporation (National Grid). As described in the Petition, Petitioner installed a 10.6 kW solar energy project with the intention of interconnecting and net metering with National Grid after the new net metering law passed by the State legislature was signed into law by Governor Paterson in 2008. According to the Petition, National Grid informed Petitioner that she was ineligible to net meter, as a non-demand customer with a system greater than 7 kW. National Grid made this determination based on the Order Modifying and Authorizing Net Metering Tariffs issued by the Commission on February 13, 2009 in Cases 08-E-1305, et al.

Recent Commission Decisions Regarding Utility Tariffs Related To Net-Metering Fail To Comport With The Spirit And Intent Of The State Energy Policy and New York Net Metering Law

Net metering policy is intended to enable and encourage the use of generation from renewable sources by generally allowing generating customers to sell their generation at retail prices. Net metering is a vehicle for capturing numerous societal benefits, including the reduction in demand for centrally generated power and correlating reductions in greenhouse gas emissions. These benefits are aligned with the policy objectives outlined in the State Energy Plan, which envisions that "New York's future is

one in which possibilities are realized for developing a world-class and sustainable renewable-based energy economy.”¹ The stated objectives in the State Energy Plan include supporting safe, reliable and secure energy infrastructure, stimulating sustainable economic growth, increasing energy diversity through alternative energy resources, promoting a cleaner environment, and ensuring fairness, equity and consumer protection.² It is also the stated policy of the State of New York in the Public Service Law that “it is in the public interest to encourage [...] the development of alternate energy production facilities...”³ Increased development of distributed, renewable generating resources would provide a wide range of benefits, including avoided or deferred investments in transmission and distribution infrastructure, the correlation of generation to periods of system wide peak demand providing relief from generation shortfalls, congestion relief, demand reduction-induced price effects, avoided line loss, hedges against unpredictable fuel prices, and numerous environmental benefits, most notably reduced greenhouse gas emissions.

In August 2008, new net metering legislation became effective, which expanded eligibility to net metering from only residential and farm customers to include commercial class utility customers with solar generation facilities at a rated capacity up to 2 MW.⁴ Petitioner built her 10.6 kW system after the legislation became effective, but prior to the adoption of utility tariffs for the implementation of net metering. The

¹ State Energy Plan Executive Summary, available at: <http://www.nyserda.org/sep/sepexecsummary.pdf> (p.S-2).

² *Id.*

³ New York Public Service Law (§ 66-c).

⁴ *Id.* at §§ 66-j and 66-l.

February 2009 tariff⁵ under which Petitioner contracts with her utility restricts system size for eligibility based on the following statutory language, which limits installations for non-residential customers to:

...a rated capacity of not more than the lesser of two thousand kilowatts or *such customer's peak load as measured over the prior twelve month period*, or in the case that such twelve month period of measurement is not available, then as determined by the commission based on its analysis of comparable facilities.

ACE NY points out that the language emphasized above has been interpreted in Commission approved tariffs in such a way that "peak load" really means "peak demand," where peak demand describes a customer's maximum electricity usage in any given 15 minute period. This interpretation appears to be consistent with definitions in the Commission energy glossary, which uses "demand" or "load" interchangeably to mean the amount of electricity that must be generated to meet the needs of all customers at a certain point in time.⁶ The glossary definition relates to a group of customers, yet if extrapolated to refer to an individual customer, it could reasonably be interpreted to mean the amount of electricity that must be generated to meet the needs of the individual customer at a certain point in time. It follows then that peak load could be interpreted to mean the amount of electricity that must be generated to meet the needs of the customer at the point in time at which its demand has peaked or is greatest.

Peak load is measured for demand-metered customers. For customers that are not demand-metered, however, their demands at particular points in time are not recorded. It is this group of non demand-metered customers that are most unfairly treated by the

⁵ Order Modifying and Authorizing Net Metering Tariffs issued on February 13, 2009 in Cases 08-E-1305, et al.,

⁶ New York PSC Glossary, available at: <http://www.dps.state.ny.us/enegloss.htm#L>

interpretation of peak load, because the tariff permitted the utility to set the limit at 7 kW, which is the cut off for demand metered business customers.

Pace respectfully submits that the interpretation adopted in Cases 08-E-1305 through 08-E-1310 does not comport with the stated policy objectives of net metering. An intermittent generator (such as solar or wind) cannot generate at all hours of the day, and to have a reasonable opportunity to meet all of the customer's average annual energy use, the on-site generating facility must be operated at a capacity that exceeds what is needed at "peak load," in order to net against energy consumption at the site when the generating facility is not operating at full capacity. This "netting" is the essence of net metering, and to allow tariffs to eliminate commercial customer applicants from participating in net metering simply because they are not demand-metered customers is unfair and unnecessarily limits the benefits that can be attained from net metering. To restrict the capacity size in the way that the legislation has been interpreted is inconsistent with the objectives of net metering, and thus contradicts stated New York energy policy.

The Commission Should Order National Grid to Net Meter Petitioner's 10.6 kW Solar Energy System.

Pace agrees with ACE NY that the Commission has the authority to order National Grid to allow Petitioner's 10.6 kW solar generation system to net meter. Pace further agrees that there is no rational reason to the limit of 7 kW, which is the simply the threshold established by the utility for demand-metered businesses. Petitioner falls into this group of non-demand metered customers whose systems must be under 7kW to net meter, and as such National Grid deemed Petitioner ineligible. But the determination

conflicts with the spirit and intention of New York law and policy and should not be allowed to stand. Instead, the Commission should immediately Order National Grid to net meter Petitioner's system.

The Commission Should Issue An Order That Repeals And Replaces The Restrictive Provisions Which Exclude Non-Demand Metered Customers From Net Metering In Cases 08-E-1305 Through 08-E-1310.

Petitioner is not the only small business in New York that will be harmed by National Grid's determination of ineligibility (in the event it is allowed to stand). The above described 7 kW cutoff would exclude a great number of other small businesses that may desire to install renewable generation systems for net metering but will refrain from doing so unless Petitioner's request is granted. Restricting eligible system size to 7 kW can seem like an arbitrary cut off to a customer that is attempting to build a system that meets its electrical usage needs. This restriction can render the construction of a renewable generation facility for such a customer uneconomic, and is likely to hinder the growth of distributed generation in the State of New York. As a result of Petitioner's determination of ineligibility, other non-demand metered businesses can safely assume that their applications to net meter systems sized above 7 kW will also be denied.


Instead, the Commission should adopt a policy that would allow eligibility for net metering for customers with systems that are sized to produce up to their annual average energy use. The Commission should therefore reconsider its previous decision in these proceedings that directed the utilities to exclude from net metering those systems larger than the thresholds used by utilities in determining the need for demand meters.

Conclusion

The determination of Petitioner's ineligibility to net meter will have a great impact if it is allowed to remain in effect. The result will be a stifling of growth in the renewable energy industry, harming New York's chances of staying competitive in the green economy. A range of benefits that occur with increased penetration of DG will be lost to New York without a correction. The legislation passed in 2008 restricts the size of systems that business customers can net meter, ultimately damaging the ability of the State to achieve greater penetration of DG. The Commission should not only grant Petitioner's request and order revisions to all the net metering tariffs, but also should express its support for the necessary statutory change that will correct the language that allows the restrictive interpretation in the net metering tariffs.

Respectfully submitted this 20th day of July, 2009.

Pace Energy and Climate Center

By 

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