

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 15, 2015

COMMISSIONERS PRESENT:

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

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 GRANTING RECONSIDERATION IN PART

(Issued and Effective October 16, 2015)

BY THE COMMISSION:

BACKGROUND

In the CDG Order,<sup>1</sup> the Commission adopted a Community Distributed Generation (DG) Program to be implemented by New York's investor-owned electric utilities. The purpose of the Community DG Program is to expand customer options for accessing clean DG. Although any customer that does not net meter may subscribe to a Community DG project (subject to certain limitations specified in the CDG Order), one primary purpose of the Community DG Program is to allow customers that otherwise would not have access to clean DG to net meter from a single solar generation or other clean DG facility. The Program is expected to promote New York's clean energy programs and objectives while equitably expanding the access of customers

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<sup>1</sup> Case 15-E-0082, Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015)(CDG Order).

that currently support, but are unable to participate in, those programs. It also will advance the goals of the ongoing Reforming the Energy Vision (REV) initiative.<sup>2</sup>

By Petition of the Indicated Joint Utilities for Clarification and Reconsideration (Petition) filed on August 17, 2015, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation (Central Hudson), and Niagara Mohawk Power Corporation d/b/a National Grid (collectively, the "Indicated Utilities") sought clarification and reconsideration of the Order. The Petition does not seek rehearing pursuant to Public Service Law (PSL) §22, nor does it claim that the CDG Order was affected by an error of fact or law or that new circumstances warrant rehearing. Although the PSL does not establish a process for the reconsideration of Commission orders, we have the discretion, through a realistic appraisal and interpretation of the PSL, to reconsider or clarify our prior orders.<sup>3</sup> Accordingly, for the reasons detailed below, reconsideration is granted in part and denied in part.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on August 5, 2015 [SAPA No. 15-E-0082SA2]. The time for submission of comments pursuant to the Notice expired on September 21, 2015. On September 9, 2015, a Ruling Granting in Part and Denying in Part Request for Extension of

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<sup>2</sup> Case 14-M-0101, Reforming the Energy Vision.

<sup>3</sup> Since the Petition does not request rehearing, it does not, as discussed in the Notice With Respect to Petition for Reconsideration and Request for Extension of Time issued August 21, 2015 in this proceeding, toll the statute of limitations for an Article 78 challenge to the CDG Order.

Time (Ruling) was issued in this proceeding affirming the comment deadline established by the SAPA Notice.<sup>4</sup> The comments received are addressed below.

#### THE PETITION

The Indicated Utilities request that the Community DG Program established in the CDG Order be modified by adopting the recommendations advanced in the Petition. The Indicated Utilities' proposals fall into two broad categories. First, the Indicated Utilities explain that the Commission is developing rules and regulations that will apply to Distributed Energy Resource (DER) providers and products.<sup>5</sup> The Petition asserts that program design elements are needed now to govern the Community DG Program during the transitional, or "bridge," period that the Indicated Utilities assert will extend at least until rules and regulations of general applicability to DERs are adopted.

The Indicated Utilities recommend three program elements that they assert should be adopted for immediate implementation during this bridge period. First, the Indicated Utilities propose that CDG sponsors be required to formally certify that each proposed DER satisfies all Community DG Program criteria established in the Order. Second, the Indicated Utilities recommend that CDG sponsors be required to certify their creditworthiness for each project proposed during the bridge period. Third, the Indicated Utilities assert that CDG sponsors should be directed to certify that they can satisfy

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<sup>4</sup> The Ruling extended the deadline to file the tariff amendments required in the CDG Order to implement the Community DG Program to September 28, 2015, but declined to modify the October 19, 2015 effective date of those amendments.

<sup>5</sup> Case 15-M-0180, In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products.

all obligations assumed with respect to project members. Finally, the Indicated Utilities state their intention to include these recommendations in proposed tariff amendments implementing the Community DG Program.

Second, the Petition also recommends changes to the methodology by which excess credits accumulated by CDG sponsors are distributed to members. The Indicated Utilities argue that the CDG sponsor should allocate to members all credits arising from the project on a monthly basis. If, however, excess credits remain for any reason after the monthly allocation, then the CDG sponsor should allocate them in the subsequent month, together with all "new" credits generated during that period. The Indicated Utilities recommend that this process be followed iteratively until all credits have been allocated to members.

The Indicated Utilities further recommend that excess credits should not be returned to the CDG sponsor at the end of each annual period, as required by the Order. Instead, members should retain all credits allocated to them until they are used. According to the Indicated Utilities, members would have paid for excess credits and should be allowed to hold them, rather than return them to the CDG sponsor.

#### COMMENTS

##### SunEdison, Inc. (SunEdison)

SunEdison supports the Indicated Utilities' proposals regarding the distribution of excess credits. SunEdison argues that the Indicated Utilities' proposals are consistent with the existing protocols applicable to remote net metering credits. According to SunEdison, adopting similar rules for the two programs would facilitate market understanding and acceptance. SunEdison asserts that CDG sponsors would realize greater revenues in a shorter period of time if they are not required to

retain excess credits for up to one year. SunEdison maintains that increasing revenues in this manner would lower the risk and financing costs associated with Community DG projects while reducing the administrative burden purportedly imposed on the CDG sponsor and the utility. SunEdison also supports the self-certification requirements proposed in the Petition.

Solar Energy Industries Association (SEIA)

SEIA similarly agrees that the CDG sponsor should distribute all excess credits to members on a monthly basis. SEIA further agrees that excess credits accumulated by the CDG sponsor should be carried forward and applied to accounts that are not fully subscribed until all credits have been allocated. SEIA also supports the Indicated Utilities' recommendation that allocated credits remain on members' accounts for future use, rather than being returned to the CDG sponsor at the end of each annual period.

DISCUSSION AND CONCLUSION

Since, as discussed above, the Petition is styled as one for clarification and reconsideration instead of rehearing, it could be denied on the grounds that it makes no attempt to satisfy the statutory criteria, at PSL §22, needed to justify rehearing. Absent rehearing pursuant to §22, further consideration of the CDG Order is not required by law. Through the realistic appraisal of the PSL noted above, however, the Commission has repeatedly exercised its discretion to interpret §22 as allowing for reconsideration or clarification of prior orders when that action is warranted even though the predicates for rehearing have not been asserted.

These circumstances present another instance where discretion can be exercised to address a request for reconsideration and clarification on grounds other than would be

required for rehearing. Accordingly, reconsideration is granted with respect to program design elements that should be incorporated in the Community DG Program during the transitional, or bridge, period that is anticipated to extend at least until general rules governing DER service providers and products are adopted. Reconsideration is also granted in part on the proposals for reconfiguring the excess credit methodology.

Responsibility for Program Compliance

As the Indicated Utilities point out and SunEdison agrees, Community DG project sponsors should meet self-certification requirements. Three self-certification requirements are proposed. First, sponsors would affirm that all program criteria set forth in the CDG Order have been satisfied. It is reasonable to expect that any project that a sponsor enrolls in the Community DG Program would comply with the requirements of that initiative. Utilities would thereby avoid expending time, effort and funds on projects that do not qualify for the program.

Second, sponsors would be required to certify their creditworthiness for each project they propose to develop. Failure of a project that is not financially viable would frustrate the expectations of project members while impeding the success of the Community DG Program. Moreover, this requirement is consistent with rules emerging in related proceedings such as Case 15-M-0180,<sup>6</sup> where creditworthiness standards of general applicability are being developed for application to DER providers.

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<sup>6</sup> See, e.g., Case 15-M-0180, Oversight of Distributed Energy Resource Providers and Products, Staff Proposal (July 28, 2015).

Third, sponsors would certify that they can satisfy all obligations assumed with respect to project members. Any entity that assumes the role of Community DG project sponsor must acknowledge that it will satisfy all obligations attending that role. Requiring sponsors to affirm those obligations would also increase customer confidence in the proposed project.

Each of the foregoing self-certification requirements would benefit CDG project members without unduly burdening project sponsors. The certifications shall be provided to the interconnecting utility, and not to the Commission or Department of Public Service Staff (Staff) as the petitioners suggest. The proposed tariffs the major electric utilities filed in this proceeding on September 28, 2015 provide for appropriate self-certification, but require revision to direct that self-certification only to the utilities.

#### Distribution of Excess Credits

The Petition requested reconsideration of three elements of the excess credit distribution methodology adopted in the Order. The proposed modifications are that: (a) all credits held by the CDG sponsor should be allocated to members on a monthly basis; (b) excess credits held by the CDG sponsor should be reallocated to members in the following month, until all such credits have been allocated to members; and (c) excess credits should not default to the CDG sponsor if they are unused by members at the end of each annual period.

As noted in the CDG Order, however, under certain circumstances, the CDG sponsor may unavoidably accumulate credits. For instance, a member may forfeit its share of credits to the CDG sponsor by defaulting on an obligation to the sponsor, or the output of a facility may exceed the subscribed load. Because CDG sponsors should not be encouraged to obtain or retain excess credits and any such credits accumulated must

be distributed to members, a monthly reallocation and an annual reconciliation were established. The former authorizes changes to the distribution of credits to the project membership, while the latter eliminates yearly the CDG sponsor's balance of excess credits. This distribution methodology is intended to "ensure that the membership that is entitled to the credits receives them." Thus, members should receive all credits attributable to their shares of the Community DG project and sponsors should structure their arrangements with their members with this goal in mind.

The Community DG Program involves contractual relationships between sponsors and members that are not present in the existing remote net metering program. The credit distribution methodology was selected so as to balance competing interests while reducing opportunities and incentives for any party to accumulate an inequitable share of credits. Upon consideration of the proposals advanced in the Petition, some clarification of the methodology is appropriate.

CDG sponsors shall be permitted to distribute excess credits on a monthly basis through the existing methodology. Thus, CDG sponsors may elect to distribute accumulated excess credits through either the monthly redistribution or the annual reconciliation, provided that all such credits are allocated to members by the end of each annual period. Providing CDG sponsors with the authority to elect monthly credit distribution improves their ability to match credits produced by the Community DG project with changing obligations to project membership. While the sponsors may manage their distributions as they deem effective and efficient through making allocations monthly or deciding to retain credits for the annual close out, any credits remaining on the CDG sponsor's books at the end of an annual period will expire if not distributed, and so credits

cannot be carried forward for distribution in a subsequent annual period.

However, sponsors will not be required to allocate all excess credits on a monthly basis, as requested in the Petition. That proposal is rejected as inconsistent with the option of choosing whether to distribute such credits on a monthly or an annual basis.

As proposed in the Petition, CDG project members shall be permitted to accumulate excess credits that do not expire at the end of an annual period. Instead of being returned to the sponsor as previously required, the credits may remain on their accounts until used.<sup>7</sup> Members may thereby smooth out annual differences that result as solar output varies from year to year. Retaining the credits on the member account is also more administratively efficient than returning them to the sponsor, which would then have to track and distribute them.

The utilities shall file the tariff amendments necessary to implement these changes to the credit allocation methodology, along with the self-certification revision discussed above. In order to accommodate these changes within the scope of the initial tariff filings, their effective date is extended from October 19, 2015 to October 26, 2015.

The Community DG credit allocation rules are distinguishable from those applicable to remote net metered projects and reflect substantive differences between the two programs. Under remote net metering, a clean DG facility generates credits that may be applied to one or more accounts of the customer associated with the project. There, the customer-utility relationship is subject to and governed by the laws and

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<sup>7</sup> This is broadly similar to the treatment of excess credits in other jurisdictions, including Massachusetts, Vermont, and Colorado.

rules established for remote net metering, including with respect to the allocation and use of credits. Under the CDG Program, however, the net metering statute applies only to the relationship between the sponsor and the utility. The relationship between CDG Project members and the utility is merely a billing relationship that is otherwise outside the scope of the net metering statutes. This distinction is critical, and demands certain differences between the rules adopted for remote net metered projects and those adopted for the CDG Program.

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. Further procedures will be adopted at a later time so that the lessons of experience may be reflected in the CDG Program when Phase II commences on May 1, 2016.

#### The Tariff Issue

The September 28 tariff filings discussed above raise an issue. Most of the utilities referenced a manual entitled the "CDG Operating Procedure" that was not submitted with the proposed tariff amendments. A manual explaining the details regarding the Community DG Program would facilitate commencement and implementation of the CDG Program, but it should be made readily available to the public. Accordingly, the major electric utilities that propose CDG Operating Procedure manuals are directed to file them with the Commission on or before October 26, 2015. Staff will review the manuals for consistency with this Order, the CDG Order, and the tariff leaves, and may

direct further changes thereto, although the manuals will be effective upon filing.

Finally, the CDG Order provided that the CDG Program would be implemented in two phases. During "Phase 1" (which extends through April 30, 2016), utilities only may interconnect projects that are located within designated "Opportunity Zones" or promote low-income customer participation. Central Hudson designated its entire service territory as an Opportunity Zone, thereby enabling any CDG project to be interconnected during Phase 1. Notwithstanding this result, the Commission affirms that promoting low-income customer access to clean DG remains a vital policy objective that should inform utility decisions regarding Phase 1 projects. Community DG projects that promote this objective, including those within the Central Hudson service territory, should be encouraged and prioritized for interconnection.

Accordingly, reconsideration is granted to the extent discussed above and is otherwise denied. Moreover, to achieve consistency, all major electric utilities shall incorporate the changes to sponsor self-certification and credit distribution described above into their Community DG tariffs and programs.

The Commission orders:

1. The Petition for Reconsideration of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid is granted in part to the extent discussed in the body of this Order and is otherwise denied.

2. The effective date of the proposed tariffs filed on September 28, 2015, in conformance with the Order Establishing a Community Distributed Generation Program and Making Other

Findings issued in this proceeding on July 17, 2015, is extended from October 19, 2015 to October 26, 2015.

3. 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 and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to file, on not less than one day's notice, tariff leaves implementing the changes discussed in the body of this Order, to become effective October 26, 2015.

4. The requirements of §66(12)(b) of the Public Service Law concerning newspaper publication of the tariff amendments described in Ordering Clause No. 3 are waived.

5. Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, and, if applicable, Central Hudson Gas and Electric Corporation, are directed to file their respective Community Distributed Generation Operating Procedures on or before October 26, 2015.

6. 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 one day prior to the affected deadline.

7. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

CASE 15-E-0082

Commissioner Diane X. Burman, abstaining:

As reflected in my comments made at the public session on October 15, 2015, and as consistent with my voting history on such net metering matters, I abstain.