

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on March 9, 2017

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Gregg C. Sayre  
Diane X. Burman

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 MODIFYING COMMUNITY DISTRIBUTED GENERATION  
MEMBERSHIP REQUIREMENTS

(Issued and Effective March 13, 2017)

BY THE COMMISSION:

INTRODUCTION

On September 1, 2016, the City of New York, Solar One, GRID Alternatives, Natural Resources Defense Council, The Association for Energy Affordability, and Environmental Defense Fund (collectively, Petitioners) filed a petition requesting a limited waiver of the ten member minimum requirement for Community Distributed Generation (CDG) projects (Petition). The Petitioners seek the waiver to allow CDG projects on residential properties with multiple units, and thereby encourage development of innovative on-site solar development. In this Order, the Commission grants the Petition and finds that the ten member minimum requirement should not apply to CDG projects that are located on the site of a property serving multiple residential or non-residential customers.

THE PETITION

Petitioners seek a limited waiver of the CDG program rule requiring each CDG project to have at least ten members. Petitioners do not propose a lower limit on project membership, requesting instead that the waiver apply to properties with multiple residential units. The current membership requirement, Petitioners continue, effectively shuts out many city-dwelling customers - including low- and moderate-income customers - that live in buildings with rooftop space for solar, but insufficient on-site customers to meet project subscription requirements. This includes, for instance, residents of smaller apartment and mixed-use buildings that are predominate in cities such as New York City.

Petitioners describe multiple scenarios in which the minimum project subscription requirement would impede customer participation. According to the Petitioners, direct-metered customers living in multi-unit buildings and master-metered buildings with fewer than ten units are unable to site a CDG project on the building roof. Petitioners further note that many buildings have fewer than ten metered customers, including Housing Development Fund Corporations (HFDCs) and 2-5 family homes. Petitioners cite data indicating that buildings with less than five units account for approximately 40% of New York City's households, and approximately 75% of all low-income customers in New York that do not receive a housing subsidy live in such rental properties. These customers might be able to participate remotely in CDG project, but Petitioners maintain that this is burdensome in dense urban areas with limited sites for larger projects.

Petitioners argue that recent developments increase opportunities for smaller-scale rooftop solar and justify the proposed waiver. According to Petitioners, design innovations

increase the rooftop solar capacity that may be installed in compliance with local building and fire codes. Petitioners note that these systems would be relatively small in scale, but the accumulation of small projects in a large urban market could yield significant quantities of installed solar capacity.

A corollary impact of the minimum participation requirement, Petitioners continue, is that systems located on small rooftops that serve less than ten customers are unlikely to satisfy the annual 1,000 kWh subscription threshold. Petitioners note, however, that certain buildings might meet this output threshold but lack ten interested members on site. The need to search more broadly for additional members would increase the difficulty of project development, according to Petitioners.

Finally, Petitioners argue that the proposed waiver would reduce, not increase, the CDG program's administrative burden. Petitioners explain that the waiver could potentially reduce the number of interconnection applications filed for solar projects, and that utilities could implement the revised program with only minimal administrative burden.

#### NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) with respect to the Petition was published in the State Register on November 16, 2016 [SAPA No. 15-E-0082SP4]. The SAPA §202(1)(a) period for submitting comments in response to the Notice expired on January 3, 2017. The comments received are addressed below.

COMMENTS

Joint Utilities

The Joint Utilities<sup>1</sup> support the requested waiver. Noting that the CDG program is in the early stages of implementation, however, the Joint Utilities oppose broad changes to program eligibility requirements. The Joint Utilities acknowledge the unique challenges that urban areas present to solar generation developers and, therefore, agree that the minimum subscription level should be relaxed for projects located on buildings in which the subscribers are located.

The Joint Utilities dispute the Petitioners' claim that the proposed waiver would impose a minimal administrative burden. To the contrary, the Joint Utilities aver, each CDG project application requires administrative attention and imposes a burden that would be magnified commensurate with the increase in project applications due to the relaxed membership requirement. Nevertheless, the Joint Utilities state that the requested waiver is relatively narrow and would further the public policy goals of the program while limiting the costs shifted to other customers.

Other Parties

Many other parties filed comments supporting the Petition. Seven non-profit organizations and two individuals urge the Commission to grant the Petition for the reasons stated

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<sup>1</sup> The Joint Utilities are comprised of: 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.

therein.<sup>2</sup> The Alliance for a Green Economy also supports the Petition, but urges the Commission to eliminate the minimum membership requirement for all projects. Four parties with commercial interests in the solar development market similarly support the waiver requested in the Petition.<sup>3</sup>

#### DISCUSSION AND CONCLUSION

On July 17, 2015, the Commission established the parameters for CDG programs, including membership requirements. As the Commission explained, the requirements for membership in CDG projects should ensure that CDG projects "accomplish their goal of expanding the availability of participation in net metering to utility customers otherwise encountering obstacles to participation in net metered projects either on-site or remotely."<sup>4</sup> While a minimum membership level was initially set at ten, the Commission noted that such membership restrictions "should not impede the development of [CDG] projects."<sup>5</sup>

Even though the CDG Order contemplated participation by members in multiple unit buildings with various metering arrangements, the Petition identifies certain circumstances where the ten member minimum may present obstacles to CDG

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<sup>2</sup> These non-profit organizations are: New York Solar Energy Industries Association; GRID Alternatives Tri-State, Inc.; Solstice Initiative; Pace Energy and Climate Center; Vote Solar; Interstate Renewable Energy Council, Inc.; and NYC Environmental Justice Alliance. The individuals are Mike Weiss and Joe Fisher. Mr. Fisher recommends that the waiver be extended to single-family homes.

<sup>3</sup> These parties are: Co-op Power; Brooklyn SolarWorks; rabble; and Coalition for Community Solar Access.

<sup>4</sup> Case 15-E-0082, supra, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015), p. 7 (CDG Order).

<sup>5</sup> Id.

development. Specifically, on-site rooftop systems that, due to a limitation on the building's rooftop space, would be unable to support a facility sized to meet a ten member community with the 1,000 kWh minimum annual threshold requirement for each member. Therefore, on-site solar projects on residential buildings with less than ten residential units may be precluded from participating. The CDG projects potentially impacted, as noted in the Petition, are primarily located in New York City and other urban areas throughout the State.

The Commission concurs with Petitioners that a modification of the ten member minimum is appropriate, and agrees with the Joint Utilities that these circumstances be limited to CDG projects that are located on the site of a property serving multiple residential or non-residential customers. This change recognizes the need to expand CDG to smaller multi-family housing in urban areas. Therefore, the Commission finds that removing the minimum ten membership requirement for on-site CDG installations on multi-unit housing is in the public interest, and directs the Joint Utilities to make conforming changes to their tariffs. Good cause exists to waive newspaper publication of the tariffs given the limited scope of customers impacted and that developers are anticipated to provide direct notification to such customers.

Finally, the Commission finds no basis behind the Petitioners' claim that the waiver would decrease administrative burden. The Joint Utilities are correct that each additional application made possible requires incremental effort to administer, and the Commission appreciates the thoughtful observation of the Joint Utilities that the waiver is narrow and would further public policy goals of the program with limited cost. The Commission's action in this Order furthers the commitment to CDG projects, which are poised to become a

valuable contributor to the success of New York's clean energy programs and the Reforming the Energy Vision initiative.

The Commission orders:

1. 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 shall file tariff revisions necessary to remove the ten member minimum requirement for Community Distributed Generation projects that are located on the site of a property serving multiple residential or non-residential customers, as discussed in the body of this Order, on not less than 10 days' notice to become effective April 1, 2017.

2. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 concerning newspaper publication of the tariff amendments directed in Clause No. 1 are waived.

3. 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.

4. This proceeding shall be continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary