

September 14, 2020

Via Email

Hon. Michelle L. Phillips, Secretary
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350

Re: Case 15-E-0082 – Supplemental Comments on CCSA/NYSEIA/SEIA Petition for Clarification and/or Modification of Permissions for CDG Customers to Participate in Multiple CDG Projects

Dear Secretary Phillips:

The Coalition for Community Solar Access (“CCSA”), New York Solar Energy Industries Association (“NYSEIA”), and Solar Energy Industries Association (“SEIA”) welcome the opportunity to provide brief supplemental comments on their April 24, 2020, petition to modify and/or clarify the New York Public Service Commission’s (“Commission”) *Order Establishing a Community Distributed Generation Program and Making Other Findings* (the “CDG Implementation Order”)¹ to allow for a single customer to subscribe to multiple Community Distributed Generation (“CDG”) projects. As noted in the petition, it has become evident that limiting customers to a single CDG project has created unnecessary barriers to full CDG participation for large and medium-sized customers. We urge the Commission to approve the petition as quickly as possible.

In our supplemental comments, which address a more narrow issue raised in the noticing of the petition in the *New York State Register*, our organizations also urge the Commission to: (1) clarify that eligibility under the CDG membership requirements be determined by 25 kW subscription size; and (2) affirm the current treatment, under the 60/40 membership rule, of customers who are billed on a volumetric basis to ensure a diversity of community participation in CDG projects.

I. In Approving the Petition, the Commission Should Clarify That Eligibility Under the 60/40 CDG Membership Rules Be Determined by Contracted Demand

The CCSA/NYSEIA/SEIA petition is based on the assumption that the 25 kW threshold identified in the CDG Implementation Order’s membership requirements refers to contracted demand – or a CDG

¹ 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 Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015) (“CDG Implementation Order”).

customer's subscription size – and not metered demand. In recent months, some of our member companies have received conflicting guidance over how the 60/40 rule should be applied to certain CDG subscribers, which has led to confusion and market uncertainty. Clarity on this issue, and the market certainty it will bring, are critical to ensuring a well-functioning CDG market in New York.

We maintain that CCSA's interpretation of the 60/40 eligibility requirements as presented in the April 24 petition is correct, based on the plain language of the CDG Implementation Order:

If any of the individual members **are sized in excess of a demand of 25 kW [emphasis added]**, those members collectively are limited to an aggregate distribution of credits constituting no more than a 40% share of the Community DG facility's output. **Each remaining member's share must not exceed 25 kW in demand [emphasis added]** and together those members at that **size limit [emphasis added]** must aggregate to at least 60% of the DG facility's output.

Using subscription size as the determining factor for assignment to the residential and small commercial (60 percent) or large commercial anchor (40 percent) share is a market best practice that is working successfully in other community solar markets, including Massachusetts, where up to 50 percent of a community shared solar project's capacity is available for contracts in excess of 25 kW.²

Using subscription size as the determining factor also makes tracking compliance simpler for the utilities. Using peak demand, as measured over the most recent 12-month period, is more cumbersome, especially because this data is not always available (and no clear methodology for how this should be measured was included in the CDG order). For instance, in National Grid's Net Crediting Manual, in its discussion of "anchor satellites" that may be excluded from enrollment under net crediting, National Grid notes that, "If such billing history of the Excluded Anchor Satellite is not available, then the Company **will make a determination in its best judgment [emphasis added]** if the satellite will meet this demand criteria until the first full year of billing data is available to verify."³ Subscription size is the simplest, clearest, and most transparent metric for determining CDG membership, and thus should be affirmed by the Commission in its Order. Further, as evidenced by the language in the Net Crediting Manual, using historical demand would allow National Grid to potentially determine "in its best judgment" whether a customer should be placed on the anchor or non-anchor portion of a project, which is not the proper role of a utility.

II. The Commission Should Preserve the Current Treatment of Volumetrically-Billed Customers To Ensure Diverse CDG Participation

In the CDG Implementation Order, the Commission established these different categories of membership to ensure a diversity of CDG participation, including residential and small commercial subscribers and other community-based subscribers such as farms, non-profit organizations, and religious institutions. Residential and small commercial subscribers tend to have smaller appetites for CDG credits, while large

² See 225 CMR 20.02 defining "Community Shared Solar Tariff Generation Unit" as "[a] Solar Tariff Generation Unit that provides electricity or bill credits to three or more Customers of Record. No more than two participants may receive bill credits in excess of those produced annually by 25 kW of nameplate AC capacity, and the combined share of said participants' capacity shall not exceed 50% of the total capacity of the Generation Unit, except in the case of Generation Units smaller than 100 kW AC."

³ See National Grid Community Distributed Generation (CDG) Net Crediting Manual for Value Stack Projects, Version 1.0, August 31, 2020.

commercial anchor customers naturally have larger ones. However, to date, all customers that are part of a service class that is billed solely based on volumetric consumption have rightfully and reasonably been treated as part of the 60 percent allocation, despite some of those customers – such as farms and religious institutions – requiring larger subscription sizes.⁴

The existing treatment of these volumetrically billed customers is in the spirit of the Commission’s intent to ensure diverse community participation in Community Distributed Generation. Treating these customers otherwise would limit their ability to fully maximize the benefits of CDG participation, since they often lack the ability to serve as an anchor tenant due to credit-worthiness and the need for long-term financial commitments. Thus, the Commission should affirm the current treatment that allows these customers to be assigned to the 60 percent allocation and subscribe up to their appetites for CDG credits.

III. Should the Commission Rule that Metered Demand, not Contracted Demand, Is the Determinant of 60/40 Assignment, Existing Commercial Contracts Must be Left Undisturbed

Should the Commission rule that metered demand, rather than contracted demand, is the appropriate determining factor for a project’s 60/40 assignment, the Commission should not apply the rule retroactively. There is no compelling reason to apply such an interpretation of the rule to existing commercial contracts, which would force CDG hosts to shuffle subscribers in their existing projects and create unnecessary market disruption. Any such change should be enacted not only with a safe harbor provision for already-subscribed projects, but a reasonable grace period of at least nine months for companies that are in the process of negotiating contracts that can take up to a year to execute. These companies have been operating in good-faith belief on an alternative understanding of the membership rules and should not have to write off significant sales and marketing costs they have incurred to sign contracts that would otherwise be voided by an adverse Commission order.

IV. Conclusion

Thank you in advance for your consideration of these supplemental comments. Please contact Erika Niedowski with any questions.

Respectfully submitted,

/s/

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⁴ Recent utility guidance has indicated that, where a customer with relatively large usage is entitled to and elects to remain in a service class billed solely based on volumetric consumption (for example, a church or other religious institution or a residential farm), that customer should be treated as a “customer of 25 kW or less” and credits allocated to that customers should not be counted towards the 40 percent limit of allocations to “members sized in excess of a demand of 25 kW.” This remains true even where (a) the customer has a measured volumetric usage large enough that, mathematically, the customer’s peak demand must be 25 kW or more; or (b) the utility measures the customer’s demand even though it is not used for billing and that measurement shows a peak demand of above 25 kW.

/s/

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