

October 22, 2015

NY PSC Revises Key Aspects of the Community Distributed Generation Program

The New York Public Service Commission (NY PSC) recently issued an order revising key aspects of the Community Distributed Generation (Community DG) program it established pursuant to its Order Establishing a Community Distributed Generation Program (the "Order"),¹ illustrating the continuing evolving nature of the Community DG program in New York. The NY PSC's ruling was in response to a petition filed on August 17 (the "Petition") by Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; Central Hudson Gas and Electric Corporation; and Niagara Mohawk Power Corporation d/b/a National Grid (together, the "Utilities") seeking clarification and reconsideration of two key Community DG program components.

The Petition proposed changes to the Order's treatment of excess net metering credits accumulated by the sponsors of a Community DG project in instances when the member's monthly electric consumption is less than its share of the project's output. Under the net metering rules, as incorporated into the Community DG program, the utility carries over the excess credit to the member's bill for the next month. The Utilities asserted that, consistent with the net metering rules, to the extent sponsors retain excess credits after the credits are distributed each month to members, the sponsors should be required to carry the credits forward and reallocate them in a subsequent month's allocation of credits until 100 percent allocation is reached. The Utilities also requested that any excess credits existing at the end of the annual period be retained by the members rather than returned to the sponsor as contemplated by the Order. The Utilities argued that the mechanism to return to a sponsor the excess credits accumulated at the end of the annual period essentially transferred valuable credits to the sponsor from a member that has already paid for them.

On reconsideration, the NY PSC agreed, and sponsors are now permitted to distribute excess credits either through a monthly redistribution or an annual reconciliation, provided all such credits are allocated to members by the end of each annual period. Any excess credits not distributed by the sponsor at the end of an annual period cannot be carried forward to a subsequent annual period and will expire. The NY PSC also agreed with the Utilities' proposal that excess credits remain on members' accounts until such time as they are used. As a result of these changes to the credit allocation approach for Community DG programs as envisioned in the Order, sponsors will have discretion to distribute excess net metering credits in a manner that ensures the members receive the credits they are entitled to.

In addition to the changes to the crediting methodology, the Utilities requested in their Petition that the NY PSC modify the Order to adopt certain program design elements that the Utilities argued were necessary to govern the Community DG program during the current "transitional period," until final rules for distributed energy resource (DER) providers are established as part of the NY PSC's Reforming Energy Vision proceeding.² Specifically, the Utilities proposed the adoption of certain self-certification requirements for project sponsors to ensure that proposed projects and their sponsors are financially viable and capable of satisfying the program criteria as well as the obligations with respect to the project members set forth in

the Order. The NY PSC largely agreed with the Utilities' request, and the suggested self-certification requirements will be provided directly to the utility pursuant to the utility's tariff.

The Utilities are required to file tariff amendments necessary to implement and incorporate the clarifications confirmed by the NY PSC, with such tariff changes to be effective on October 26. The NY PSC acknowledged that the crediting methodologies and other details for structuring Community DG projects are "necessarily experimental"³ and that project sponsors and members are likely to see "improvements and enhancements" to the Community DG program based on experience. The NY PSC also signaled that there may be further revisions to the Community DG program to incorporate lessons learned when Phase II of the Community DG program commences in May 2016. Potential project developers and sponsors are encouraged to remain vigilant regarding these evolving program rules during these early stages of the Community DG program.

[1] NY PSC Case 15-E-0082 (Reconsideration decision issued October 16, 2015). The Order was the subject of a recent Day Pitney advisory, which may be accessed [here](#).

[2] NY PSC Case 15-M-0101; See also NY PSC Case 15-M-0180.

[3] NY PSC, Order Granting Reconsideration in Part, Case 15-E-0082 (October 16, 2015) at 10.