



Comments on NY-Sun Inclusive Community Solar Adder: Proposed Program Rule Changes, Proposed Round 2 Program Design

Submitted by
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&
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New York Solar Energy Industries Association (NYSEIA) and the Coalition for Community Solar Access (CCSA) appreciate the opportunity to provide feedback on the NY-Sun Inclusive Community Solar Adder (ICSA) Proposed Round 2 Program Design.

New York Solar Energy Industries Association (NYSEIA) is a nonprofit industry trade association proudly representing hundreds of distributed solar and storage businesses with thousands of employees across the Empire State. Our mission is to advance and accelerate distributed solar energy and energy storage deployment in New York State through engagement on key legislative, regulatory, and statutory policy matters affecting these industries. Our membership is primarily composed of local, regional, and national firms working every day to help achieve the ambitious clean energy and equity goals outlined in the Climate Leadership and Communities Protection Act (CLCPA).

Coalition for Community Solar Access (CCSA) is a national coalition of businesses and nonprofits working to expand customer choice and access to solar for all American households and businesses through shared solar programs. CCSA's mission is to empower every American energy consumer with the option to choose local, clean, and affordable shared solar. CCSA works with customers, utilities, local stakeholders, and key decision makers to develop and implement policies and best practices that ensure community solar programs provide a win, win, win for all, starting with the customer. CCSA is composed of over 100 member companies and nonprofits working together to expand access to clean, local, and affordable energy. The members and staff of CCSA have experience working in different states under different community solar policy models.

We appreciate New York State Energy Research and Development Authority's (NYSERDA's) continued commitment to the development of distributed solar in New York State through the NY-Sun program. We also encourage NYSERDA to launch the expansion of the ICSA as authorized in the recent Order Expanding NY-Sun Program without further delay to properly incentivize projects serving Low-and-Moderate Income (LMI) subscribers and related

disadvantaged communities,¹ a core tenet of the CLCPA. In the absence of an immediate successor block to the now fully allocated Upstate Community Adder, and in light of the reduction of ConEdison base incentives from NYSERDA's proposed levels in the 10 GW Roadmap (to account for higher initial ICSA, Community Adder, and MAHI rates), there is currently significant uncertainty in New York's Community Distributed Generation (CDG) market. Historically, when there has been a lapse in incentives the solar market reacts by pausing project development. Neglecting to fulfill the 10 GW NY-Sun expansion and establish ICSA rates and successor blocks at this critical juncture could not only imperil the State's ability to achieve its CLCPA targets, but could jeopardize New York developers' ability to secure the recently announced federal Inflation Reduction Act (IRA) funds. With a limited capacity of "low-income bonus" tax credits being made available, NYSERDA should launch the new State program and block rates as soon as possible to allow New York community solar developers serving LMI customers and disadvantaged communities to move forward with development activities in advance of securing limited federal funds, while reserving the authority to modify incentive rates and program rules if appropriate when federal guidance is released early next year.

1. Project Eligibility

NYSEIA and CCSA support the proposed changes to project eligibility requiring that projects receiving the ICSA dedicate no less than 40% of their capacity to ICSA eligible subscribers, and that 50% of the ICSA portion of that capacity be dedicated to eligible residential subscribers. These thresholds will effectively ensure that the project benefits are directed to LMI residents and disadvantaged communities in line with CLCPA equity objectives.

The State should consider whether the minimum discount levels in the ICSA may discourage ICSA projects from offering net crediting, which requires one discount level for all subscribers to a given project. Under current rules, net crediting ICSA projects wouldn't be able to lower the discount for high-income subscribers which may discourage participation in the program.

2. Incentive Levels

The proposed Round 2 ICSA incentive levels are in line with our previously stated support for a healthy expansion of the ICSA from the proposed SEEF budget, bringing direct savings to participating customers. In our feedback on the 10 GW Roadmap, Clean Energy Parties advocated for lower base incentive levels in favor of a higher Community Adder and ICSA.² As such, we support the incentive rates and required discount levels as proposed Upstate. However, we are concerned the proposed ICSA incentives in the critical ConEdison territory may be too low to cover the additional costs associated with the proposed Round 2 ICSA requirements. According to the Order Expanding NY-Sun Program, PSC directed an expansion of the *existing* ICSA block to rates of "\$0.30/Watt for projects meeting the base ICSA requirements, and \$0.40/Watt for projects meeting the additional EJ criteria" and noted that a "10% bill savings assumption was utilized as part of NYSERDA's modeling of the costs and benefits associated with the expanded NY-Sun program." With new Round 2 requirements that seemingly differ from previous modeling assumptions and the resulting rates directed by the Public Service

¹NYS Public Service Commission, [Order Expanding NY-Sun Program](#), April 14, 2022

² Clean Energy Parties, CEP Comments on the 10GW Distributed Solar Roadmap, March 7, 2022

Commission, we encourage NYSERDA to evaluate whether a further increase to ConEdison ICSA incentive rates is appropriate in light of both a higher bill savings requirement and new administrative complexities that were not established through the Order Expanding NY-Sun Program. In this, NYSERDA should not only consider whether a project might pencil, but whether it will be deemed worth the effort compared to a behind-the-meter or market rate CDG project which may have fewer complications for developers.

We also encourage NYSERDA to allow projects that have received the Community Credit to be eligible for the full ICSA incentive. Projects in the pipeline that have already secured the Community Credit will now seemingly be subject to more stringent requirements, including a higher discount to subscribers, only to be awarded the same incentive level that was offered during Round 1 of the ICSA. Additional requirements result in higher costs for projects, so allowing these projects to capture the full incentive may be appropriate.

NYSEIA and CCSA also recommend that the ICSA be fully stackable, including with the Multifamily Affordable Housing Incentive (MAHI). Currently, the MAHI is the only NY-Sun incentive that cannot be stacked with the ICSA, which seems contradictory in light of eligibility criteria stating: “All properties and their residents must meet the building eligibility requirements of the NY-Sun Multifamily Affordable Housing Incentive to be considered an eligible subscriber under the ICSA.”³ NYSERDA should reconsider this exclusion.

As we did in our feedback on the original ICSA proposal, NYSEIA and CCSA recommend that 100% of the incentive be paid up-front to the project. The three year payment schedule may prevent the entire incentive to be financed, with finance companies concerned that there is no guarantee that subscribers who sign short-term contracts will remain in the project while qualified replacements may not be readily available.

Additionally, we recommend a project get credit for workforce development even if they do not have a NYSERDA workforce development grant. It is reasonable to expect that some organizations have ongoing workforce development programming that does not require NYSERDA funds.

3. Eligible Subscribers

We support in concept the process by which subscriber eligibility is determined, both categorically and by applying the disadvantaged communities criteria when it has been finalized by the Climate Justice Working Group. While we appreciate that the State is utilizing participation in other needs-based programs to demonstrate income eligibility, the industry remains concerned regarding the process for obtaining documentation from potential subscribers. Requiring participants to prove eligibility can become a significant barrier to participation, so while we appreciate the need to make sure that best efforts are made to confirm eligibility, these requirements should be crafted to allow for unburdensome entry to participation. For instance, while we appreciate the removal of self-attestation forms as a requirement, the use of self-attestation forms as an alternative method to determining eligibility may still be appropriate if a low income customer lives outside of an established disadvantaged community.

³ NYSERDA, NY-Sun Inclusive Community Solar Adder: Proposed Program Rule Changes. Proposed Round 2 Program Design. Version 1.1: Revised September 6, 2022

As supported in our comments on the 10 GW Roadmap, we support ICSA eligibility for public school districts that are designated as High-Needs by the New York State Education Department or primarily serve Disadvantaged Communities and LMI households as a “lower cost path” to achieving the equity goals of the CLCPA.⁴

We also appreciate that NYSERDA has provided a pathway for master-metered affordable housing properties to be considered residential subscribers. NYSERDA could also consider revising the proposed program rules so that master metered affordable housing cooperatives and mutual housing associations would automatically be considered eligible residential subscribers since the benefits will always accrue to the residents of these properties.

4. Application Process

We appreciate the thoughtful consideration that is evident in the revised application guidelines, in particular the provision allowing contractors using the same acquisition provider, subscription manager, acquisition strategy and customer engagement protocol for multiple projects to submit a primary application with all the required elements, and then a simplified application for subsequent projects in the portfolio. We acknowledge and appreciate NYSERDA’s interest in understanding the customer experience to ensure that the program is delivering on the State’s high standards and we agree that upholding best practices is critically important. However, we encourage NYSERDA to reconsider some of the customer education requirements in an effort to make them less onerous. For instance, requiring detailed examples of marketing materials and a video screen-capture of the customer experience as they navigate the product may require a significant amount of internal work and additional costs, and risks becoming a barrier to contractor participation.

NYSEIA and CCSA oppose a prohibition on door-to-door sales contained in the program rules at this time. Door-to-door sales can be one of the most effective methods of reaching LMI families in disadvantaged communities, in large part because the face-to-face interaction provided by the door-to-door approach facilitates a unique opportunity for personalized customer education and relationship building. Additionally, the geo-eligibility provision proposed in the program rules provides a natural efficiency for contractors to enlist door-to-door canvassing in ICSA eligible census tracts. That said, we acknowledge that the State has received complaints regarding door-to-door sales of community solar products, and we agree that the industry has a legal and moral obligation to ensure consumer protections. However, rather than restrict a potentially valuable customer acquisition method, we recommend improved oversight and enforcement of current door-to-door marketing regulations. For instance, revisiting and revising the Uniform Business Practices for Distributed Energy Resources (UBP-DERS) via a stakeholder process, then strongly enforcing those practices to prevent misrepresentation of community solar products may be a more appropriate action at this time. For example, UBP-DERS could be revised to require contractors to maintain agent level canvassing data so that any subsequent complaint can be tracked to the individual involved for appropriate remediation, require clear written documentation in a subscriber’s native language be left behind by the agent, and specific verification methods can be implemented to ensure that subscribers have been properly educated

⁴ NYSERDA, [PON 4924: P-12 Schools - Clean Green Schools Initiative](#), 7/27/2022

on CDG products, prices, and contractual obligations. The solar industry maintains that banning good market actors carte blanche in light of reports of potential bad actors may not be necessary or appropriate, especially with robust oversight through UBP-DERs enforcement as it currently stands.

5. Recordkeeping Requirement

There is significant industry concern regarding the requirement for contractors to maintain the percentage of income eligible households for 25 years or risk forced repayment of a pro-rata portion of the incentive. This requirement injects an unreasonable amount of risk into project development that is likely to severely impede financing ability. Developers often contract with a customer acquisition firm for the first few years, but loss of customers due to attrition is inevitable and it may not always be possible to have the ideal mix of waitlisted customers available to join the project to compensate for unpredictable customer loss. We appreciate that the ICSA is funded by the Solar Energy Equity Framework which contains specific requirements to provide benefits to LMI families and disadvantaged communities, but there is consensus in the industry that such a prolonged recordkeeping requirement along with the severity of consequences for noncompliance will discourage contractors from participating in the ICSA. The 25-year requirement is well intended, but the vagueness of the enforcement mechanisms and consequences for non-compliance hinder the potential upside and may prevent benefits from reaching disadvantaged communities. NYSERDA should not let the perfect be the enemy of the good, and consider reducing the number of years that contractors would be required to maintain records.

6. Inflation Reduction Act Considerations

It is largely premature to speculate on the impact of the “low-income bonus” tax credits in the IRA due to the federal guidance on those incentives not expected until early 2023. Until guidance is released, projects must assume that they would receive no additional incentives beyond the interim 30% ITC and the established NY-Sun incentives. And due to the dramatic increase in costs experienced by the industry in the last 12-18 months, especially in ConEdison territory, a 4% incremental increase in the ITC may only represent supplemental revenue that does not fully offset or compensate for recent cost increases. Further, the “low-income” ITC adder is capped at 1.8 GW for all projects (community solar and otherwise) across the country which is expected to be an extremely competitive process that a small percentage of overall projects will receive. We do not believe it is appropriate to alter or delay the rollout of State policy due to a developing federal situation that is uncertain to drastically impact a significant amount of the projects being developed in New York State.

NYSERDA should not adjust the proposed ICSA program rules to account for the IRA until the U.S. Treasury Department releases its guidance early next year. Although the IRA provides additional funding for projects, this funding is not sufficient to compensate for the headwinds being experienced due to inflationary pressure, rising interest rates, and supply chain issues. Reducing incentives while simultaneously adding more requirements and higher discount levels in an environment where project costs have risen by orders of magnitude could significantly hinder developer participation in the ICSA.

Many NYSEIA and CCSA members have indicated that they are not planning to wait until federal guidance on the ITC adders is released to begin participation in the ICSA (nor the Upstate Community Adder). The industry is committed to providing benefits to LMI families and disadvantaged communities as soon as possible, in alignment with the commitments made in the CLCPA. Further delaying the rollout of the ICSA when federal ITC adders are also not yet available would serve to ensure projects that benefit target communities in New York State do not continue to advance until federal action is taken.

Also of note, on October 5, 2022, the U.S. Treasury Department released a series of RFI notices related to the implementation of the IRA, including Notice [2022-49](#): Request for Comments on Certain Energy Generation Incentives and [Notice 2022-51](#): Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements. We hope that NYSERDA plans to engage in this stakeholder process,⁵ and that by providing input on the development of the guidance for the low-income adders proposed in the IRA, New York will ensure that its established programs are as closely aligned with Federal requirements as possible, be prepared for programmatic adjustments as/if necessary, and allow New York State developers to best take most advantage of new federal funding.

7. Conclusion

The Inclusive Community Solar Adder is critical to the solar industry's ability to target benefits to LMI families and disadvantaged communities in New York State. We encourage NYSERDA to digest and integrate stakeholder feedback and launch Round 2 of the ICSA as efficiently as possible. While we appreciate that the Inflation Reduction Act has piqued the State's interest in identifying potential savings in the NY-Sun program that could be utilized to fund additional distributed solar projects to further amplify savings, NYSERDA will have ample opportunity to make further adjustments to the NY-Sun program as part of the Mid-Point Review and once the guidance around IRA provisions is finalized. For the time being, and to avoid further market uncertainty through excessive re-evaluation of program design which may also result in administrative inefficiencies as expressed by PSC in their Order Expanding NY-Sun Program, NYSEIA and CCSA urge NYSERDA to proceed as planned by releasing the ICSA along with the next Upstate Community Adder block without delay.

⁵ US Treasury, Treasury Seeks Public Input on Implementing the Inflation Reduction Act's Clean Energy Tax Incentives, <https://home.treasury.gov/news/press-releases/jy0993#.Y0M8KkNgS-E.mailto>, 10/5/2022