STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Value of Distributed Energy Resources | **Case 15-E-0751**

PETITION FOR REHEARING AND/OR RECONSIDERATION OF THE COALITION FOR COMMUNITY SOLAR ACCESS AND NEW YORK SOLAR ENERGY INDUSTRIES ASSOCIATION

Dated: May 20, 2019

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PRELIMINARY STATEMENT

Pursuant to the New York State Public Service Commission's ("Commission") Rules of Practice and Procedure, 16 NYCRR § 3.7, the Coalition for Community Solar Access ("CCSA") and the undersigned organizations including New York Solar Energy Industries Association ("NYSEIA") (together, the Petitioning Parties) hereby petition the Commission for rehearing, or in the alternative, reconsideration, of a single, narrow issue in the Commission's April 18, 2019 *Order Regarding Value Stack Compensation* issued in Case 15-E-0751 (the "Order").[1] To be clear, the Petitioning Parties recognize and appreciate the important improvements to the Value of DER value stack tariff made by the Order and seek no other modifications to the Order via this Petition except as requested herein.

In the Order, the Commission rejected a proposal advanced by Department of Public Service Staff ("Staff") to allow non-mass-market customers wanting to participate in community distributed generation ("CDG") projects that were assigned to Market Transition Credit ("MTC") Tranches 1-4 in their respective utility service territories prior to July 26, 2018 to receive a $0.01/kWh Community Credit (the "Proposed Community Credit"). We believe the Commission's decision on this narrow topic may have been the result of a misunderstanding of how this aspect of the Order would interact with the community distributed generation ("CDG") business model, and in this Petition we provide further information on this topic to better inform the Commission's view of this issue.

The Petitioning Parties respectfully submit that the Commission erred in fact by basing its rejection of Staff's proposal on the premise that "increasing available above-value

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[1] Cases 15-E-0751 *et al.*, In the Matter of the Value of Distributed Energy Resources, Order Regarding Value Stack Compensation (issued April 18, 2019) ("Order").

compensation for existing projects creates a significant risk of increasing net revenue impacts without spurring additional development."[2] To the contrary, Staff concluded in its December 12, 2018 *Whitepaper Regarding Future Value Stack Compensation, Including for Avoided Distribution Costs* ("December 12 Whitepaper") that providing the Proposed Community Credit to certain non-mass-market CDG participants would "encourage increased use of anchor customers, reduc[e] project financing costs, [and also lower] total compensation of those projects, reducing net revenue impacts."[3] The Petitioning Parties provide additional context and analysis in this Petition showing that authorizing the Proposed Community Credit does not create a significant risk of increasing net revenues, rather it would lower net revenue impacts, consistent with Staff's conclusion in the December 12 Whitepaper.

To remedy the impacts that this error of fact may have on the near-term development of CDG projects and on the public policy grounds that the Commission is already encouraging the participation of anchor tenants in certain CDG projects therefore should extend that policy as broadly as plausible, we respectfully request that the Commission grant this Petition and either upon rehearing or reconsideration modify the Order to provide non-mass-market customers wanting to participate in CDG projects reserved to MTC Tranches 1-4 in all utilities prior to July 26, 2018 with the Proposed Community Credit, as originally recommended by Staff.

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2 Order at 26.

3 Case 15-E-0751, supra, Whitepaper Regarding Future Value Stack Compensation, Including for Avoided Distribution Costs (issued December 12, 2018) at 13-14 ("December 12 Whitepaper").

BACKGROUND

On March 9, 2017, the Commission issued an Order in its Value of Distributed Energy Resources ("VDER") proceeding adopting, *inter alia*, a new "Value Stack" methodology to more-accurately compensate distributed energy resources ("DER") for their locational and clean energy benefits ("VDER Transition Order").[4] In order to avoid immediate market disturbances associated with a transition to Value Stack compensation, the VDER Transition Order also created an MTC framework to make up the difference between Value Stack compensation and what a DER would have earned under the existing net energy metering ("NEM") compensation paradigm. The MTC was initially only made available to mass-market subscribers of CDG projects, and was not available to larger, demand-metered subscribers. The Commission divided the MTC into separate "Tranches," with CDG projects assigned into each successive Tranche receiving a gradually-declining MTC value.

Following issuance of the VDER Transition Order, many developers raised concerns that because only mass-market customers were eligible to receive the MTC, most CDG projects would not be able to incorporate larger, demand-metered customers, because the revenues to the project developer in the absence of the MTC would be too low to cover project costs. Without these "anchor customers,"[5] CDG projects have experienced higher financing costs as financiers view CDG projects as far more risky without the inclusion of a larger, creditworthy anchor. Moreover, CDG projects have experienced and continue to experience

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[4] Case 15-E-0751 *et al.*, supra, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017).

[5] Anchor tenants include large demand customers such as churches, hospitals, for-profit companies among others.

increased customer acquisition costs associated with the need to fill a CDG project's entire capacity with mass-market customers.

As part of the evolving VDER proceeding, Staff engaged with numerous stakeholders to formulate and implement improvements to the Value Stack calculation and compensation methodologies, including the workability of the MTC framework. Following several collaborative discussions, on July 26, 2018, Staff issued its *Whitepaper on Future Community Distributed Generation Compensation* ("July 26 Whitepaper"), in which Staff recommended, *inter alia*, modifications to existing utility MTC Tranches that were not yet fully assigned, and modifications to the utilities' specific MTC values. Staff also recommended that any changes to the VDER construct adopted by the Commission should apply to CDG projects that "qualify" for an MTC tranche by July 26, 2018 (*i.e.*, the developer pays 25% of the project interconnection costs by that date).

After receiving numerous comments on the July 26 Whitepaper from various stakeholders, Staff determined that changes to its recommendations were appropriate. Thereafter, Staff issued the December 12 Whitepaper. In the December 12 Whitepaper, Staff, *inter alia,* modified and replaced its MTC-related recommendations with a new recommendation – that new projects in those utility territories qualifying for Tranches 1-4 after July 26, 2018 receive a $0.0225/kWh Community Credit (the "$0.0225/kWh Community Credit"). Staff noted that "the [$0.0225/kWh] Community Credit will differ from the MTC in that all members of the CDG project will receive it, rather than only mass market customers, and in that recipients of the

[$0.0225/kWh] Community Credit will also be eligible to receive DRV compensation."[6] The $0.0225/kWh Community Credit is designed to fully replace the MTC.

In recommending a $0.0225/kWh Community Credit, Staff specifically noted in the December 12 Whitepaper that "it will encourage the inclusion of one or more large customers, often called anchor customers, in CDG projects" and that their presence "reduces the financing and customer acquisition costs of that CDG project [and] may also allow that CDG to have less stringent credit requirements for other customers."[7] Staff also stated that "because it lowers CDG project costs, the [$0.0225/kWh] Community Credit can be lower than the MTC and still ensure that projects are viable, *potentially resulting in lower net revenue impacts therefore lower impacts on non-participating ratepayers.*"[8]

Staff further noted in the December 12 Whitepaper that:

> "The potential to lower project costs, and therefore increase participant benefits, while also lowering the net revenue impacts, and therefore reducing non-participant impacts, also exists for CDG projects that have already been assigned a Tranche. Allowing non-mass-market customers that participate in those projects to receive a Community Credit at a level below the applicable MTC will encourage increased use of anchor customers, reducing project financing costs, while also lowering total compensation of those projects, reducing net revenue impacts."[9]

Based on that reasoning, Staff concluded that a unified one-cent Community Credit (the Proposed Community Credit) across all CDG projects already assigned to Tranches 1-4 in their respective utility service territories was appropriate. To that end, Staff recommended that the Commission authorize the Proposed Community Credit for non-mass-market participants

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6 December 12 Whitepaper at 12.

7 *Id.*

8 *Id.* (emphasis added).

9 December 12 Whitepaper at 13.

of these CDG projects. Staff excluded NEM and Phase One NEM projects from receiving the Proposed Community Credit, and also excluded *new* projects in the Orange and Rockland Utilities, Inc. and Central Hudson Gas and Electric Corporation territories, as both those utilities already had fully-assigned all of their existing MTC Tranches.

On April 18, 2019, the Commission issued the Order adopting many of the recommendations advanced by Staff in the December 12 Whitepaper, including replacing the current MTC mechanism with the $0.0225/kWh Community Credit for new CDG projects. However, the Commission rejected Staff's Proposed Community Credit for projects with existing MTC reservations in Tranches 1-4. The Commission provided very little justification for this ruling, stating only that "several commenters note that this would result in increased compensation for projects that have already made development commitments and argue that this represents overcompensation" and that "increasing available above-value compensation for existing projects creates a significant risk of increasing net revenue impacts without spurring additional development."[10] Thus, projects that paid 25% of their interconnection costs prior to July 26, 2018 would continue to receive an MTC for their mass-market subscribers, but those projects would not have the option to pursue a larger customer for anchor offtake (up to 40% of project capacity) and have that larger customer receive the one-cent Proposed Community Credit for its portion of generation, instead of the higher MTC.

[10] Order at 26.

DISCUSSION

POINT I

THE COMMISSION COMMITTED AN ERROR OF FACT BY CONCLUDING THAT PROVIDING THE COMMUNITY CREDIT TO EXISTING VDER TRANCHES 1-4 CREATES A SIGNIFICANT RISK OF INCREASING NET REVENUE IMPACTS

Section 3.7 of the Commission's rules states that "rehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination."[11] Here, the Commission committed errors of fact by rejecting Staff's Proposed Community Credit for CDG projects already assigned to Tranches 1-4 in their respective utility service territories on the basis that "increasing available above-value compensation for existing projects creates a significant risk of increasing net revenue impacts without spurring additional development."[12]

First, Staff stated in the December 12 Whitepaper that the Proposed Community Credit had the potential to "lower project costs, and therefore increase participant benefits, while also lowering the net revenue impacts, and therefore reducing non-participant impacts, also exists for CDG projects that have already been assigned a Tranche."[13] Staff further stated that "Allowing non-mass-market customers that participate in those projects to receive a Community Credit at a level below the applicable MTC will encourage increased use of anchor customers and thereby reduce project financing costs, while also lowering total compensation of those

[11] 16 N.Y.C.R.R. § 3.7.

[12] Order at 26.

[13] December 12 Whitepaper at 13.

projects and reducing net revenue impacts on ratepayers."[14] However, the Commission rejected the Proposed Community Credit without providing any factual justification for why Staff's analysis and findings to the contrary were incorrect. Instead, the Commission concluded, without further basis, that the Proposed Community Credit in fact create significant risk of *increasing* net revenue impacts. This finding is inconsistent with Staff's conclusion, and constitutes an error of fact that warrants rehearing and reversal.

To the contrary, because the Proposed Community Credit is lower than the existing utility MTCs (in some cases, by a significant amount), because increasing anchor customer participation in existing CDG projects would reduce the number of subscribers receiving a full MTC. To be clear, based on anecdotal information from our member companies and other companies comprising the bulk of the NY CDG queues, CCSA believes that nearly all, if not 100%, of the existing tranche 1-4 projects are being developed under the assumptions of 100% mass-market subscriptions. In other words, almost all of these projects are basing revenue projections on the assumption that they will be 100% subscribed by mass market customers, and therefore receive the full MTC for the entire project. As demonstrated below, an analysis of available data[15] demonstrates that providing the Proposed Community Credit to CDG projects that qualified for a Tranche 1-4 prior to July 26, 2018 will actually *reduce* net revenue impacts while also encouraging additional CDG development, consistent with Staff's findings:

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[14] *Id.*

[15] NYSERDA "The Value Stack" Website, section entitled "Tranches for Community Distributed Generation Projects," accessed May 15, 2019; and data archived from NYSERDA's Tranches for Community Distributed Generation Projects, accessed July 11, 2017.

Assuming current capacity (tranches 1-4) are 100% MTC, a change to all projects being 60% MTC and 40% CC results in the following savings:	
Year 1	**25-year savings (Real 2019$)**
$ 4,522,336	$ 84,927,501

In the above analysis, we assumed that all current projects in Tranches 1-4 would be receiving MTC for the entire output of the project. We also assumed that there are no Tranche 1 projects for Central Hudson, NYSEG, or O&R since data provided subsequent to the March 9, 2017 VDER Order indicated that Tranche 1 never opened for those utility service territories and all of those projects are "Phase One NEM projects" and therefore not included in the analysis. Furthermore, we lowered the number of Tranche 1 projects in the service territories of National Grid, RG&E and ConEd based on NYSERDA's July 2017 VDER Tranche information.[16] It should be noted that CCSA is aware of at least several projects that intend to switch from Phase One NEM projects to Tranche 1 projects if the Proposed Community Credit were approved, thereby further reducing the net revenue impacts.

[16] The current VDER tranche data posted on NYSERDA's website does not distinguish between the number of Tranche 0 and Tranche 1 projects. The July 2017 data was used to estimate the number of Tranche 0 projects in these service territories because that corresponds roughly with the 90-day deadline imposed in the March 2017 VDER Order for Tranche 0 Phase One NEM to close and Tranche 1 to open if MW capacity remained. The

In addition, in the December 12 Whitepaper, Staff stated that authorizing the Proposed Community Credit was appropriate "based on the purpose of the Community Credit."[17] Staff elaborated that the overall Community Credit construct would serve several purposes:

> "It will encourage the inclusion of one or more large customers, often called anchor customers, in CDG projects. The presence of an anchor customer in a CDG project reduces the financing and customer acquisition costs of that CDG project; it may also allow that CDG to have less stringent credit requirements for other customers. Because it lowers CDG project costs, the Community Credit can be lower than the MTC and still ensure that projects are viable, potentially resulting in lower net revenue impacts and therefore lower impacts on non-participating ratepayers. As the Community Credit is lower, it can also be paired with the DRV. This means that CDG projects will have the same incentive as other projects to design and operate their systems to maximize their receipt of the DRV, which will also maximize benefits to the utility system. The requirement that 60% of a CDG project's output be dedicated to small customers will ensure that most of the benefit of each CDG still goes to residences and small businesses."[18]

The Petitioning Parties submit that all of these purposes are equally applicable to the Proposed Community Credit for projects with existing MTC reservations as they are to the \$0.0225/kWh Community Credit for new projects that the Commission adopted in the Order. Specifically, the Proposed Community Credit would help CDG that made 25% interconnection deposits prior to July 2018 incorporate anchor customers, thereby reducing financing and customer acquisition costs, and providing the projects with flexibility to offer CDG products that are accessible to more mass-market subscribers, even those that may be less creditworthy. Moreover, because of the existing, foundational CDG policy as set forth in the Commission's July 2015 Order authorizing the CDG framework, the majority of a project's output (at least

[17] December 12 Whitepaper at 13.

[18] December 12 Whitepaper at 11-12.

60%) would still be dedicated to mass-market customers (i.e. residential or small commercial customers).[19] In rejecting the Proposed Community Credit, the Commission did not provide additional rationale for why Staff's reasoning for developing the Community Credit is inapplicable to pre-July 2018 CDG projects.

Finally, as explained in Point II, *infra*, the Commission's rejection of the Proposed one-cent Community Credit and simultaneous approval of the $0.0225/kWh Community Credit will have the unintended consequence of creating two divergent categories of CDG projects, which could lead to market confusion. Taken to the extreme, two identical CDG projects that paid 25% of their interconnection costs on July 26 and July 27, 2018, respectively, could have vastly different financing and ongoing customer management costs because of the ability of the latter to attract anchor customers. In other words, the Commission's ruling would place the former project in a significant competitive disadvantage in the CDG market, inconsistent with the Commission's goals of developing a robust CDG market and encouraging CDG proliferation in New York State.

Based on the foregoing, the Petitioning Parties respectfully request that the Commission grant this Petition and, on rehearing, modify the Order to authorize CDG projects with Tranche 1-4 MTC reservations in their respective utility service territories to be eligible for the one-cent Proposed Community Credit for anchor offtake by larger (demand-metered) customers.

[19] Case 15-E-0082, Order Establishing a Community Distributed Generation Program and Making Other Findings, pp. 7-8 (issued July 17, 2015).

POINT II

EVEN IF IT DOES NOT GRANT REHEARING AS REQUESTED HEREIN, THE COMMISSION SHOULD NEVERTHELESS RECONSIDER THE ORDER ON PUBLIC POLICY GROUNDS

If the Commission does not grant the Petition for rehearing, the Petitioning Parties respectfully requests that the Commission, in the alternative, exercise its discretion to reconsider the Order and approve the Proposed Community Credit on public policy grounds.[20] Specifically, the Commission should approve the Proposed Community Credit because it is consistent with public policy to encourage anchor customer participation in CDG projects, which in turn will help lower overall CDG costs and increase their proliferation in New York State.

Throughout these proceedings, many stakeholders have voiced concerns that the existing Value Stack compensation methodology is a significant barrier to CDG development in New York State. Specifically, as described above, the inability for anchor customers to receive the MTC (which, in some utility service territories, constitutes a significant proportion of the overall Value Stack compensation level) has disincentivized developers from pursuing anchor customer participation in CDG projects. CDG projects are less viable, and in many cases uneconomical, without the participation of a creditworthy anchor customer.

[20] *See*, *e.g.*, 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 October 16, 2015) at p. 2 ("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."); *see also* Case 14-M-0196, Tariff Filing of Central Hudson Gas & Electric Corporation to Establish Fees For Residential Customers Who Choose to Opt Out of Using Automated Meter Reading Devices, Order Denying Petition for Rehearing and Reconsideration (issued December 14, 2018) at p. 12 ("Although not specifically addressed in the Commission's regulations, reconsideration may be granted where the petitioner demonstrates that a modification to the prior order would serve the public interest.").

The Petitioning Parties note that in the Order, the Commission explained its rationale for adopting the $0.0225/kWh Community Credit for CDG projects qualifying after July 26, 2018 as follows:

> "By removing a disincentive for anchor customers, the Community Credit will create benefits by allowing the development of more projects at the same or lower net revenue impact. The increased use of anchor customers may also increase the ability of developers to enroll subscribers with low credit scores, as the anchor customer will provide the necessary certainty for financial institutions."[21]

In other words, the Commission clearly recognized the value (including in terms of net revenue impact) of encouraging anchor customer participation in CDG projects. This logic is equally applicable to CDG projects already assigned to a VDER Tranche. As noted in Point I, *supra*, authorizing pre-July 2018 CDG projects to receive the Proposed Community Credit would remove a disincentive for anchor customer participation in those projects, just as it would do the same for CDG projects that qualified for a Tranche after July 26, 2018. In turn, the development, customer acquisition and ongoing customer churn costs for those pre-July 2018 projects also would decrease, which would help projects that may be considering withdrawing their MTC tranche reservation due to difficult project economics continue development, based on an improved cost profile resulting from anchor offtake participation.

To be clear, the Petitioning Parties are pleased that the Commission is taking steps to remove this barrier from CDG development through the authorization of a $0.0225/kWh Community Credit framework, which as a result of its availability to larger customers, is a substantial improvement over the MTC construct. However, there is no reason why the Community Credit should be limited to post-July 2018 CDG projects. Many of the pre-July

[21] Order at 27.

2018 CDG projects that already have been assigned to a Tranche currently face economic difficulties due to the unavailability of anchor customers and the high customer acquisition costs associated with enrolling the thousands of mass-market subscribers required to fully subscribe a CDG project, and will continue to face those difficulties without approval of the Proposed Community Credit. Conversely, providing new CDG projects that qualify after July 26, 2018 with the $0.0225/kWh Community Credit would provide those projects an artificial competitive advantage versus older projects.

By rejecting the Proposed Community Credit but approving the $0.0225/kWh Community Credit for new projects, the Commission is essentially creating two divergent categories of CDG projects: one group of projects that necessarily would be heavily weighted toward mass-market customers, and another group of projects that have reduced development and customer acquisition/management costs because of the ability to incorporate anchor customers. Authorizing the Proposed Community Credit will help remedy this unnecessary disparity by providing all projects with flexibility to pursue anchor customers. By attracting anchor customers to all projects, the Commission would help lower overall CDG costs across the board, and foster a more robust CDG market to the benefit of ratepayers.

For the foregoing reasons, if the Commission declines to grant rehearing of the Order as requested herein, Petitioner requests that the Commission nonetheless reconsider the Order and rule that the Proposed Community Credit is available to CDG projects already assigned to Tranches 1-4 in their respective utility service territories prior to July 26, 2018.

CONCLUSION

For all of the foregoing reasons, the Petitioning Parties respectfully requests that the Commission grant this Petition and, upon rehearing, direct that CDG projects qualifying for

MTC Tranches 1-4 prior to July 26, 2018 be eligible to receive the Proposed Community Credit for non-mass-market participants seeking to become subscribers. In the alternative, if the Commission declines to grant rehearing, it should nonetheless reconsider the Order on public policy grounds, and approve the Proposed Community Credit.

Dated: May 20, 2019

Respectfully submitted,

COALITION FOR COMMUNITY SOLAR ACCESS

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