

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 14, 2009

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 09-E-0109 - Proceeding on Motion of the Commission as to
Continuation of Standby Rate Exemptions For
Beneficial Distributed Generation.

ORDER CONTINUING AND MODIFYING
IN PART THE STANDBY RATE EXEMPTION

(Issued and Effective May 18, 2009)

BY THE COMMISSION:

BACKGROUND

As discussed in an Order Instituting Proceeding and Notice Soliciting Comments (Order and Notice) issued February 18, 2009 in this proceeding, it has been decided that certain forms of beneficial distributed generation (DG), including small, efficient combined heat and power (CHP) facilities, would be eligible to opt for an exemption from standby rates.¹ That exemption, however, is scheduled to expire on May 31, 2009.

¹ See Case 02-E-0551, et al., Rochester Gas and Electric Corporation, et al., Order Granting Rehearing in Part and Continuing Standby Rate Exemptions (issued October 25, 2006) and Order Extending Deadline and Continuing Standby Rate Exemption (issued May 23, 2006) (2006 Exemption Orders).

This proceeding was initiated to consider whether the exemption should be continued beyond that date.²

At present, customers installing DG projects that qualify for the exemption may select among standby rates, a phase-in to those rates, or standard tariff rates for the usage they take in excess of the production from their generators. The exemption was made available premised upon a showing that the number and magnitude of DG installations was growing only slowly and the availability of rate options was needed to assist in that development. A reevaluation of the exemption is needed at this time, to assess the balancing of the interests of the DG developers, in promoting DG development, and the interests of other ratepayers, who might face increased costs if DG customers avoid the standby rates intended to accurately charge them for the costs of electric service.

In the Order and Notice, interested parties were invited to submit their comments on the issues raised in this proceeding by April 6, 2009. Reply comments were due by April 20, 2009. In addition, in conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the proceeding was published in the State Register on March 4, 2009. The SAPA §202(1)(a) comment period expired on April 20, 2009. Comments received in response to the Order and the SAPA notice are summarized below.

² The electric utilities tariffing the exemption are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. A similar exemption for Niagara Mohawk Power Corporation d/b/a National Grid expires at the end of 2011. Case 01-E-1847, Niagara Mohawk Power Corporation, Untitled Order (issued April 28, 2006).

POSITIONS OF THE PARTIES

Initial Comments

A. ACENY

The Alliance For Clean Energy New York (ACENY) explains that encouraging the development of DG and clean CHP is public policy in New York. The exemption from standby rates, ACENY maintains, was intended to support DG until the industry matured. As the maturation process is ongoing, ACENY believes the exemption should be continued.

According to ACENY, the balancing of interests between DG and other customers identified in the Order Instituting Proceeding should reflect the benefits all ratepayers receive from DG systems, which promote economic development and improve the environment. The imposition of standby rates, ACENY contends, can adversely affect the economics of installing clean DG projects at a time when their benefits are particularly important, especially to New York City, where, it says, the distribution grid is aging, energy prices are high and volatile, and climate change would have a disproportionate impact on a sea-level location.

As a result, ACENY would continue the exemption through 2015, the year when it is expected that New York will achieve a 15% reduction in demand attributable to energy efficiency measures. ACENY believes progress in meeting that "15 by 15" goal and in promoting clean, renewable DG could be reevaluated together at that time.

B. Aegis

Aegis Energy Services, Inc. (Aegis) would extend the exemption from standby rates indefinitely. Aegis believes that the nursing homes, apartment complexes, and similar entities interested in small DG installations find their existing billing under standard tariffs confusing enough. The standby tariff

rate, Aegis contends, imposes additional complexities that discourage these types of entities from pursuing DG, especially since these customers might benefit substantially from smaller systems, of 500 kW or less, that do not meet their entire electric load. Allowing these customers to opt for standard tariff rates, Aegis asserts, will remove a barrier to installation of DG.

C. City of New York

The City of New York (the City) proposes to extend the exemption for three years, to May 31, 2012. Benefits attending clean DG, the City asserts, justify continuing the exemption, which furthers New York's "45 by 15" goal of meeting 45% of the state's electricity needs through improved energy efficiency and clean renewable energy by 2015. The City adds that the New York State Energy Research and Development Authority (NYSERDA) believes that significant barriers continue to hinder the development of CHP in New York.

The City would open the exemption to clean DG facilities of up to 5 MW. Its efforts to reduce greenhouse gas emissions by 30% as of 2030, the City declares, depend in part upon the installation of 800 MW of clean DG, which would yield substantial reductions to CO² and equivalent emissions. To achieve its goal, the City explains, it plans to require developers of buildings sized at 350,000 square feet or more to analyze the potential for installing CHP. A system of 1 MW or less, the City advises, is unlikely to meet the needs of a typical building space of that magnitude. As a result, it believes a 5 MW size standard is appropriate.

D. E-Cubed

The E-Cubed Company LLC (E-Cubed) would extend the exemption for another five years. It reiterates arguments made by other parties in support of such an exemption.

E. Farm Bureau

According to the New York Farm Bureau (Farm Bureau), anaerobic digester technology that processes farm waste into a clean fuel for generation is still in the development stage, and the economics of digester projects may be adversely affected by even a small rise in cost. Since the difference between standby rates and standard tariff rates may create such a cost, the Farm Bureau would continue the standby rate exemption.

F. Harbec

Harbec Plastics, Inc. (Harbec) reports that it meets its thermal needs with DG, producing electricity as a by-product. That production, Harbec continues, does not meet its usage, and it purchases most of its electricity under a phase-in to full standby rates. Harbec complains that, once the phase-in is complete, it will pay more under standby rates than it would have paid under standard tariff rates.

G. IREC

The Interstate Renewable Energy Council (IREC) would extend the exemption for standby charges for at least six years. IREC contends that the circumstances that justified the adoption of the exemption previously still exist, because standby charges can undermine the economics of DG installations. It asserts Florida has exempted DG from standby rates for that reason.

IREC believes that continuing the exemption will have minimal impact on other ratepayers. Renewable-fueled DG generation, IREC cautions, is unlikely to achieve more than a 2% penetration into state-wide demand for electricity. Clean CHP, IREC adds, is unlikely to expand penetration significantly beyond that level.

An exemption for solar generation, IREC argues, is especially important. IREC believes that solar production coincides with utility peak demand, during sunny days when air-

conditioning load is heavy. As a result, IREC asserts, the benefits solar generation creates are substantial.

H. DSMEA

According to DSM Engineering Associates, P.C. (DSMEA), the as-used daily demand component of the standby rate could reduce, by between 10% and 20% annually, the savings a small CHP installation, of 300 kW or less, will yield. If the DG customer exceeds its contract demand and incurs a surcharge, DSMEA asserts, savings will fall even further. Claiming that the CHP industry has not yet matured, DSMEA would alleviate the adverse impacts it describes by extending the exemption for at least three years, and preferably for an additional six years.

I. NFG

National Fuel Gas Distribution Company (NFG) asserts that the economic viability of DG installations in its western New York service territory remains largely dependent upon the standby rate exemption. With the advent of hourly electric pricing, NFG explains, DG customers taking service under standard tariff rates can respond to fluctuating prices by running their DG installations when peak demand and prices are high and shutting them down when prices are low. The imposition of standby rates, NFG claims, would inhibit the execution of that strategy, and so withdrawing the exemption would jeopardize growth of the DG industry.

J. NYSEG/RGE

New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (together, NYSEG/RGE) argue that any extension should be limited to no more than one additional year. Because DG market participants have had the opportunity to become accustomed to standby rates during the years when the exemption has been available, they assert, it should be decided that any extension granted will be the last.

Analyzing the option for phasing into standby rates, NYSEG/RGE report that they are in the sixth year of an eight year phase-in schedule that concludes with the application of full standby rates by February 1, 2011. NYSEG/RGE would allow DG customers to elect to join the phase-in at its present stage or opt for standard tariff rates during the additional year the exemption they propose would remain in effect.

K. Pace

Pace Energy & Climate Center (Pace) supports a six-year extension of the exemption from standby rates, to conform to the "15 by 15" and "45 by 15" policies, and to assist in meeting Renewable Portfolio Standard goals for customer-sited renewable generation. Pace adds that other benefits attending clean DG include the reductions to peak demand and support of delivery system reliability. Pace also joins with some other parties in requesting that the threshold for the exemption be increased from 1 MW to 5 MW.

Pace believes that photovoltaic (PV) generators benefit more from the standby rate exemption than other types of generators, because the demand charges imposed under the standby rate design do not mesh well with the intermittent character of PV production. In particular, says Pace, low load factor PV customers whose usage pattern is susceptible to demand spikes find it difficult to economically install a PV project under the standby rate design.

L. NNEC/VSI

The Network For New Energy Choices and the Vote Solar Initiative (NNEC/VSI) believes that the standby rate exemption should be extended for a period of six years, and the size of the generation systems eligible for the exemption should be increased to 2 MW. Joining in the arguments made by Pace, NNEC/VSI contends that PV customers in particular are harmed by

the application of standby rates, which, NNEC/VSI calculates, can impose costs on PV customers that are 50% higher than under standard tariffs and do not reflect the benefits of PV generation in meeting peak load during hot sunny days.

IREC's Reply

Criticizing the existing standby rate design, IREC complains that the standby demand charges are overstated, because they are not limited to recovering only local delivery system costs. Those charges, IREC continues, fail to properly reflect the coincident effect of aggregate CHP facility production on utility peak delivery costs. IREC claims that imposing the demand charges on solar and wind facilities is particularly inappropriate, because the intermittent pattern of generation production at those facilities prevents customers from effectively managing the size of those charges. IREC, however, distinguishes solar from wind facilities, in that, it argues, the former assists utilities in meeting their peak demands on sunny afternoons, while no similar effect is associated with the latter.

Asserting that net metered customers in other states are not subject to standby demand charges, IREC claims that a similar exemption from demand charges should be extended to solar and wind customers here. IREC also concludes that, while an extension of exemption from standby rates for at least six years is justified, a permanent exemption is preferable.

DISCUSSION AND CONCLUSION

Under the standby rate exemption provided for in the 2006 Exemption Orders, eligible customers may to elect to take utility service under standard tariff rates, a phase-in to standby rates, or the standby rates themselves. DG projects eligible for the exemption, include renewable-fueled DG and

environmentally-beneficial CHP, sized at 1 MW or less, and NYSERDA-funded projects, as identified when tariffs implementing the current standby rate design were first adopted, if their developers are able to achieve operation within the time the exemption remains available.³ Each utility also exempted small residential and non-demand commercial and industrial customers from application of the standby rates, until a utility-specific ceiling on the number of exempt small customers was reached.⁴

The existing exemption shall be continued. No more than about 15 DG customers have availed themselves of the exemption available to the 1 MW projects. No utility has as yet reached its ceiling on the number of small customers electing the exemption. This overall penetration level is too low to create costs of a magnitude that might threaten the interests of other ratepayers.

Continuing the standby rate exemption for a term initially set at six years is appropriate. That term will expire in 2015, when a re-evaluation of the exemption can be conducted, taking into account the success of the State's policies for achieving the "45 by 15" and "15 by 15" renewable-fueled generation and energy efficiency goals by that year.

Utilities or other parties, however, may petition to shorten the six-year term if it can be shown that the DG industry has matured and retaining the exemption would cause other ratepayers to bear excessive costs. Any curtailment of the six year term adopted upon such a petition would be

³ The types of renewable facilities eligible for the exemption are described in greater detail, and beneficial CHP is defined, in an Order Directing Modifications to Standby Service Tariffs issued January 23, 2004 in Case 02-E-0551, supra (2004 Exemption Order).

⁴ See, e.g., 02-E-0551, supra, Order Establishing Electric Standby Rates (issued July 29, 2003) (2003 Standby Order).

accompanied by conditions sufficient to avoid adverse impacts on any investment decisions DG developers would have made.

To track the growth of the DG industry, we direct the electric utilities that tariff the exemption to file an annual report, by August 1 of each year. The report shall list:

1) each DG customer that availed itself of the exemption and its size; 2) each DG customer that was eligible for the exemption but selected standby rates instead, and its size; 3) each DG customer, sized from more than 1 MW to up to 5 MW that would have qualified for the exemption but for its size, and each such customer's size; and, 4) cumulating, for each DG customer category, the total number of DG customers and magnitude of DG installations over the annual period and since inception of the exemption.

Under the extension, customers eligible for the exemption may continue to exercise a one-time option to select among standard tariff rates, standby tariff rates, and a phase-in to the latter rates. As NYSEG/RGE point out, the existing phase-in period of eight years will expire early in 2011. In the past, customers electing the phase-in under the exemption have joined it at the stage the phase-in has reached at the time the customer's DG facility enters service. That process will continue in effect for DG customers electing the phase-in as their exemption option. Once the existing phase-in reaches its final step in 2011, the option will expire by its terms. Since the option was intended to familiarize customers with standby rates, and those rates have been in effect for a sufficient period of time for customers to acquire that familiarity, the phase-in option need not be continued beyond its otherwise-effective expiration.

The eligibility criteria a customer must meet for its project to obtain the exemption remains satisfactory for the

most part and so existing restrictions on NYSERDA-supported and small customer project eligibility will remain in place. As stated when those eligibility requirements were first adopted, the exemption avoids interference with expectations attending the financing of the NYSERDA-funded projects, and the ceilings on the number of small customers that are eligible constrain the potential for revenue losses that a utility might experience.

Reconsideration, however, of the limitation on the size of solar projects that may qualify for the exemption is warranted. Production from solar PV facilities is not random, to the extent that they make some contribution to meeting peak load on hot, sunny days.⁵ Moreover, since the standby rate exemption was last extended in 2006, PSL §66-j, providing for the net metering of generation from solar facilities,⁶ has been amended to open net metering to non-residential customers installing a solar facility sized at up to 2 MW, so long as the facility does not exceed the size of the customer's load.⁷ Given the special characteristics of solar generation, and the use of 2 MW as an appropriate limit in PSL §66-j,⁸ the size of a solar DG customer that may avail itself of the standby rate exemption is expanded from 1 MW to 2 MW.

⁵ As IREC points out, wind facilities do not provide that sort of benefit; consequently, they may be treated differently than solar facilities.

⁶ Contrary to IREC's implication, PSL § 66-j(3)(d) establishes that New York, like other states, does not impose standby rates on participants in net metering programs.

⁷ See Case 08-E-1305, Central Hudson Gas & Electric Corporation, et al., Order Modifying and Authorizing Net Metering Tariffs (Issued February 13, 2009).

⁸ This referencing of the 2 MW limit in PSL § 66-j does not imply that the benefits of net metering programs may be extended to customers that do not qualify for them.

Similar reasoning does not apply to CHP facilities. The City of New York and other parties maintain that the size of those facilities entitled to the exemption should be increased to 5 MW, to encourage broader penetration and to assist the City in meeting its energy planning goals. Developers of larger sized CHP units of more than 1 MW, however, should at this point be capable of designing their systems to take advantage of standby rates. Moreover, allowing larger-sized facilities to escape standby rates poses the potential for more harm to other customers, who are entitled to expect that these larger-sized customers will be able to design and operate their systems under the standby rates that accurately price the costs of electric service.⁹

As some commentators have pointed out, it is the smaller CHP customers installing systems sized at 1 MW or less that might experience difficulty in designing their systems to work well in conjunction with standby rates.¹⁰ Under standard tariff rates, delivery revenues are recovered from these smaller customers primarily through volumetric charges, making coordination with the standby rate design, based primarily on demand charges, more difficult. For larger customers, however, an increasing proportion of delivery costs are recovered through demand charges under standard tariff rates, reducing the

⁹ IREC's criticisms of the standby rate design were rejected when it was adopted in 2001, and its arguments do not warrant reconsideration here. Case 99-E-1470, Electric Standby Service, Opinion No. 01-4 (issued October 26, 2001) and Order Concerning Petitions for Rehearing (issued March 29, 2002); see also, 2003 Standby Order.

¹⁰ Those difficulties should not include the charges resulting from exceedances of contract demand; customers can readily avoid those charges by submitting a realistic contract demand figure to the utility.

disparity between the standard and standby rate designs.¹¹ As a result, the size of the CHP facilities entitled to the exemption shall be left at no more than 1 MW.

The DG project in-service deadline for qualifying for the exemption from standby rates is extended from May 31, 2009 to May 31, 2015. The size of a PV facility that may qualify for the exemption is increased from 1 MW to 2 MW. Other proposals to modify the exemption are rejected. The utilities shall make appropriate tariff filings implementing these decisions.

The Commission orders:

1. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to file tariff amendments implementing the provisions discussed in the body of this Order. These amendments shall be filed on not less than one day's notice to become effective on June 1, 2009.

2. The electric utilities listed in Ordering Clause No. 1 shall make the annual filings on distributed generation installations described in the body of this Order by August 1 of each year. The filings shall be made in this proceeding, continuing after it is otherwise closed.

3. The requirements of Public Service Law §66(12)(b) as to newspaper publication of the changes proposed by the tariff amendments required in Ordering Clause No. 1 are waived.

4. This proceeding is continued but shall be closed by the Secretary after the filings required by Ordering Clause

¹¹ Contrary to NFG's contention, hourly pricing should make it easier for these larger customers to benefit from the standby rate design.

No. 1 have been reviewed, unless the Secretary finds good cause to continue these proceedings further.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary