March 9, 2017

The Future of Distributed Energy in New York

On March 9, the New York Public Service Commission (the Commission) issued its latest order (the Order) in Gov. Andrew Cuomo's Reforming the Energy Vision (REV) plan, transitioning compensation for distributed energy resources (DER) away from net energy metering (NEM), toward an alternative, value-based compensation system.[1] The Order implements immediate changes to the NY DER market compensation model and sets a framework for further transition. This Alert describes the more significant changes that result from the Order and identifies key dates that those who are participating in the DER markets should keep in mind.

Immediate changes and upcoming deadlines for program participants include:

- NEM compensation under existing New York law[2] is no longer available after March 9 for "new" projects, other than wind projects. Certain projects that were close to being in service but not yet interconnected on March 9 can still qualify in some situations if they demonstrate by a filing, no later than **March 17**, that they had completed pre-established steps in the interconnection process by March 9.
  - Wind projects will still be eligible to receive NEM under existing law, but only until statutory caps are reached.
- Phase One NEM, which is identical to existing NEM in terms of compensation but imposes a term length of 20 years from a project's in-service date, will be available for a limited period following the Order.
  - Larger projects, including community solar, remote net metered, and large on-site projects, must be interconnected or make a defined financial commitment (further described below) **by July 17** to receive Phase One NEM.
  - Mass-market projects interconnected **before January 1, 2020**, will be eligible to receive Phase One NEM, although this time frame is subject to change by Commission order if the number of interconnected projects exceeds the expected level.
- Any projects compensated under NEM or Phase One NEM will be able to opt in to the Phase One Value Stack tariff, as further described below.
- Utilities are required to file by **May 1** an Implementation Proposal, which will provide the basis for the Phase One Value Stack tariff. The Commission expects the Phase One Value Stack tariffs to be in place as early as summer.

Background

New York, like other states, has been grappling for a number of years with the issue of how to appropriately compensate DER projects. Traditional NEM programs, such as the one that New York has had in place since 1997, allow projects to receive compensation at retail rates, often including transmission and distribution rates, for any power exported to the grid. As a service territory becomes further saturated with DER projects, this leaves a shrinking pool of customers not participating in those projects to support the grid. Although most traditional programs included participation caps in an attempt to avoid over-saturation, in some states, such as New York, those caps have been raised over the years as more customers seek to participate in DER and states continue to recognize the benefit of the projects.

Recognizing the unsustainability of its existing NEM program, and in furtherance of the New York REV plan, in December 2015 the Commission initiated a proceeding to determine the value of DER, with a goal of designing rates for DER providers that would replace the existing NEM programs. After receiving stakeholder input and proposals, the Commission issued a Staff Proposal on October 28, 2016, soliciting stakeholder comments on the Proposal through December 2016. The Order is based on the Staff Proposal, with consideration of the stakeholder comments.

Order

As described above, the primary effect of the Order is to transition from existing NEM to a new, value-based compensation system, referred to as the Value Stack tariff. The Order also works to address the cost-allocation issues associated with traditional NEM, includes a mechanism to compensate energy storage when paired with eligible DER, and sets out requirements regarding the treatment of environmental attributes associated with projects.

Transition to Value-Based Compensation

As described above, the Order eliminates participation by new DER projects under the existing NEM compensation program, effective immediately with some limited exceptions. The Order allows new wind projects to participate in NEM until statutory limits have been reached, and includes some allowance for projects that are not yet in service but had completed project construction (Step 8 of the SIR for projects over 50 kW) or project installation (Step 4 of the SIR for projects 50 kW or less) by close of business on the date of the Order. Those projects are eligible to participate in NEM if they provide written notification of complete installation to the interconnecting utility (under Step 9 of SIR for projects over 50 kW and Step 5 of SIR for projects 50 kW or less) by March 17.

For a limited period of time, DER projects that no longer qualify for the existing NEM program will be eligible to participate in Phase One NEM, which is identical to existing NEM but has a term limit of 20 years after the project's in-service date.[3] All mass-market on-site DER projects that are interconnected prior to January 1, 2020, will be eligible to receive Phase One NEM, although the Commission has reserved the right to change that deadline by issuing an order if the number of mass-market projects exceeds expected levels. Larger projects will continue to be eligible for Phase One NEM if they have paid for 25 percent of interconnection costs or have executed their interconnection agreement if no such payment is required within 90 business days of the Order, or July 17, subject, in the case of community distributed generation, to a per-utility capacity limit for such projects.

Value Stack Compensation

Those DER projects that would have qualified but no longer qualify for NEM and that do not qualify for Phase One NEM, as well as those projects that opt in, will be compensated under the Value Stack tariff. Utilities are directed to come up with an Implementation Proposal for a Phase One Value Stack tariff that compensates DER on a monetary (rather than volumetric) basis, based on the value of the project's energy, capacity, environmental attributes, demand reduction, and locational system relief. The Order provides that energy value will be based on the day-ahead hourly zonal locational-based marginal price, inclusive of losses, and the capacity value will be based on retail capacity rates for intermittent technologies and capacity tags for dispatchable technologies. Environmental value will be based on the higher of the latest Clean Energy Standard Tier 1 Renewable Energy Certificate (REC) procurement price published by NYSERDA or the Social Cost of Carbon. In addition, community distributed generation projects compensated under the Phase One Value Stack tariffs will be eligible for a Market Transition Credit, which is designed to provide compensation for initial projects that would be substantially similar in value to compensation under NEM. Projects would be eligible for revenue recovery under the Value Stack tariff for 25 years.

Inclusion of Energy Storage

Recognizing the value of energy storage to the state's energy future, the Order adopts the recommendation of the Staff Proposal to provide for compensation of energy storage under the Value Stack tariff when storage is paired with an eligible resource. Mass-market customers that receive NEM or Phase One NEM compensation can pair energy storage with their projects and continue to receive the applicable NEM compensation. Customers pairing energy storage with community distributed generation, remote net metered projects, or larger on-site systems will not have that option, and will be compensated under the Value Stack tariff.

Cost Allocation

In an attempt to avoid the cost-allocation concerns associated with traditional NEM programs as described above, the Commission directs in the Order that costs associated with the Value Stack tariff be collected proportionately from the same group of customers that benefit. Benefits include reduced utility purchases of energy and capacity, reduced utility purchases of RECs for compliance purposes, and avoided voltage level costs. Recognizing that determining these allocations will be time-consuming, the Order requires utilities to make a filing by May 1, explaining their proposed implementation of cost-allocation principles.

Treatment of Renewable Attributes

Under the Order, the only DER projects eligible to bid into Renewable Energy Standard (RES) Tier 1 solicitations will be those projects existing as of the date of the Order that participate in the NEM program. DER projects enrolled in Phase One NEM will not be eligible to bid in RES Tier 1 solicitations and will not receive tradable certificates. Such customers other than community distributed generation customers will be eligible to receive nontradable certificates to demonstrate their use of renewable electricity. Customers enrolled in Phase One NEM through a community distributed generation project will either have their renewable attributes go to the interconnecting utility (the default option) or retained by the customer, in which case the customer will receive nontradable certificates like those received by other DER customers. As noted above, those projects compensated through the Value Stack tariff will be credited for the value of environmental attributes associated with those projects.[1]

Next Steps

Utilities have a number of filing obligations stemming from the Order, including the filing of tariff leaves implementing the transition from NEM to Phase One NEM, to be effective on April 1, on not fewer than five days' notice, as well as the filing of an Implementation Proposal for public review by May 1. The Commission intends to finalize the Phase One Value Stack tariffs as early as this summer, and to develop Phase Two of the Value Stack methodology by the end of 2018. The Commission issued a request for comments regarding Phase Two last fall and will be holding a procedural conference during May to commence the Phase Two process.

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[1] *Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters*, Issued in Case 15-E-0751 and Case 15-E-0082 on March 9, 2017.

[2] *New York Public Service Law § 66-j, Net energy metering for residential solar, farm waste, non-residential solar electric generating systems, micro-combined heat and power generating equipment, fuel cell electric generating equipment, and micro-hydroelectric generating equipment.*

[3] *Note the Phase One NEM term is 25 years for certain grandfathered remote net metered projects. Developers and customers may file a petition requesting a longer term based on pre-existing financing or other contractual arrangements.*

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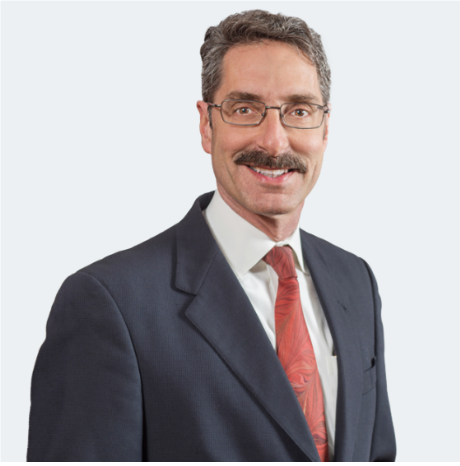

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