STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on October 16, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 15-E-0751 - In the Matter of the Value of Distributed Energy Resources.

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 APPROVING COMPENSATION FOR HYDROELECTIC BASELINE GENERATING FACILITIES

(Issued and Effective October 17, 2024)

BY THE COMMISSION:

INTRODUCTION

On May 26, 2022, the Interested Hydroelectric Parties[1] (Hydro Parties or Petitioners) filed a petition (Petition) seeking expansion of the eligibility for the Environmental Value

[1] The Interested Hydroelectric Parties are Albany Engineering, Azure Mountain Power, Black Brook Hydro, Boralex, Brookfield Renewable, Central Rivers Power LLC, Dichotomy Power LLC, Eagle Creek Renewable Energy, ECOsponsible, Energy Ottawa NY, Gravity Renewables, Kruger Energy, MCM Development, Natural Power Group, Northern Power & Light, Inc., and Sandy Hollow Power Company.

(E-Value) compensation under the Value of Distributed Energy Resources (VDER) Value Stack to include baseline distributed energy resources (DERs).[2] The Petition notes that the resources seeking E-Value compensation under the Value Stack would also need to meet the Climate Leadership and Community Protection Act's (CLCPA) definition of "renewable energy systems."[3]

In this Order, the Public Service Commission (Commission) grants the Hydro Parties' request to provide E-value compensation under the VDER Value Stack for baseline/legacy hydroelectric renewable facilities, with modifications. Instead of providing baseline hydroelectric renewable facilities with the same E-Value as new generation facilities, this Order directs those hydroelectric generating facilities in service before January 1, 2015, and up to and including 5 megawatts (MWs) to have the opportunity to receive a modified form of the E-Value, called the "H-Value," set at 75 percent of the current E-Value. To qualify for the H-Value, hydroelectric facilities must operate, and register with the local utility as a Community Distributed Generation (CDG) project. In addition, the facility must register with the Department of Public Service as a DER supplier under the Uniform

[2] Baseline DER facilities, also referred to as "legacy" units, are renewable energy resources that entered into operation prior to January 1, 2015.

[3] The CLCPA defines renewable energy systems as "systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity." Public Service Law (PSL) §66-p(1)(b).

Business Practices for Distributed Energy Resource Suppliers (UBP-DERS).[4]

BACKGROUND

On March 9, 2017, the Commission issued the Phase One VDER Order, which directed that the compensation for eligible DERs transition from net energy metering (NEM) to VDER Phase One NEM or the Value Stack.[5] The VDER Value Stack is a methodology that bases compensation on the actual, calculable avoided costs and benefits that such resources create. Projects placed in-service after January 1, 2020, are compensated under the VDER Value Stack tariff. The Phase One VDER Order provided immediate improvements in the DER compensation structure, recognizing the value of DERs to the electric system while setting the foundation for continual improvement. The Phase One VDER Order was established to promote the location selection, design, and operation of DERs in a manner that maximizes benefits to the customer, the electric system, and society, while also ensuring the development of clean generation needed to meet the State's ambitious clean energy goals.

The VDER Value Stack is a monetary crediting construct for net-hourly injections of electricity into the utility's distribution grid in which bill credits are generated and provided to the CDG host and satellite subscribers. Excess credits generated are eligible to be carried over (banked) to subsequent billing and annual periods. As part of the VDER

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[4] Information on registering as a DER supplier can be found on the Commission's website at: https://dps.ny.gov/distributed-energy-resource-der-regulation-and-oversight.

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

Value Stack, certain projects are compensated for their environmental attributes, or E-Value. The E-Value is based on the higher of the latest Clean Energy Standard (CES) Tier 1 Renewable Energy Certificate (REC) procurement price published by the New York State Energy Research and Development Authority (NYSERDA), or the Social Cost of Carbon net of the expected Regional Greenhouse Gas Initiative allowance values, as calculated by Department of Public Service staff (Staff) per the BCA Framework Order.[6] The E-Value price was updated by Staff based on these values and was set at $31.03/MWh for a 25 year period.[7] Projects eligible for the VDER Value Stack receive compensation for the term of 25 years.

On September 12, 2018, the Commission adopted the VDER Expansion Order that, among other things, expanded the eligible VDER Value Stack technologies to include any Tier-1 eligible technologies and stand-alone storage facilities.[8] The VDER Expansion Order stated that resources that are not eligible for Tier 1 due to their vintage date (i.e., projects in-service before January 1, 2015) are not eligible for the E-Value. Attached to this Order as Appendix B is a summary of the different categories of DERs and the treatment of their renewable attributes.

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[6] Case 14-M-0101, Reforming the Energy Vision, Order Establishing the Benefit Cost Analysis Framework (issued January 21, 2016) (BCA Framework Order).

[7] Case 15-E-0751, Staff letter and supporting calculations in determining revised E-Value price at $31.03 per MWh (filed April 21, 2021).

[8] Case 15-E-0751, Order on Value Stack Eligibility Expansion and Other Matters (issued September 12, 2018) (VDER Expansion Order).

PETITION

The Hydro Parties' Petition seeks to expand the eligibility for the E-Value compensation under the VDER Value Stack to include baseline DERs that also meet the CLCPA's definition of renewable energy systems. The Hydro Parties believe that such a program would empower New York electric customers to drive much needed compensation to existing distributed renewables. The Petitioners contend that the circumstances have changed for independent hydroelectric resources since September 2018, and that reconsideration of the Commission's determination that baseline renewable generators would not be eligible to receive the E-Value is warranted. The Petitioners argue that the economic viability of independent hydroelectric resources has become more precarious in the intervening years, leading to reduced production, attrition, and increased exports into adjacent control areas, namely into New England. The Petitioners highlight that total contributions to New York from baseline hydroelectric resources has already declined 8.2% from 2017-2020, and have severely impacted progress towards the CES and CLCPA goals. The Petitioners note that the CLCPA goals do not distinguish between resources that are constructed before and after January 1, 2015. The Petitioners assert that, while the Commission adopted the Competitive Tier 2 program (which concludes at the end of 2024), to provide assistance to baseline resources, it has not met that objective. Additionally, they add that the Commission has not yet leveraged the VDER Value Stack program to accomplish the goal of retaining the baseline resources targeted by Tier 2.

The Petitioners state that owners of baseline renewable resources have expressed strong interest in CDG but the expiration of the Market Transition Credit and Community Credit under VDER have halted the progress of this market

segment. The Petitioners believe that the added E-Value is needed to restart the hydroelectric CDG market and provide a much-needed supplement to the Tier 2 program. They contend that the cost would be minimal when compared to the cost of new distributed renewables. The Petitioners highlight that the 2022 reduction in the load service entity (LSE) Tier 1 compliance obligation demonstrates the need to retain and encourage DERs of all vintages.[9] The Petitioners assert that by utilizing VDER Value Stack as the mechanism to provide additional value for hydroelectric resources, the Commission puts ratepayers themselves in control since the VDER Value Stack's value is monetized through the purchase of and sale of bill credits to community members through Remote Crediting or CDG programs. Further, they argue that VDER Value Stack has the power to enable communities to drive additional revenue to the very facilities which communities rely on for flood control and access to public waterways.

The Petitioners claim that the overall cost of the expansion of VDER Value Stack is estimated at $6.3 million per year. They estimate that the funding would retain about 210 gigawatt hours per year of baseline hydroelectricity and serve up to 34,000 residential customers.

The Petitioners highlight the Commission's VDER Phase Two Order, which excluded baseline resources from receiving the E-Value, despite contributing to the State's renewable and zero-carbon generation mix.[10] The Petitioners argue that this policy created a divergence in the compensation for injections based

[9] Case 15-E-0302, Clean Energy Standard, Order Modifying Clean Energy Standard Load Serving Entity Obligations and Establishing the 2024 Obligation (issued March 16, 2022).

[10] Case 15-E-0751, Order Regarding Value Stack Compensation (issued April 18, 2019) (VDER Phase Two Order).

not on their value to the grid, climate, or CES's renewable energy goals, but on which side of an arbitrary date a given resource was constructed. Further, they note that the Phase One VDER Order stated that it would address technologies that do not produce Tier 1 RECs in the Phase Two Order; however, the Commission never addressed pre-2015 hydroelectric facilities in the VDER proceeding. While the Commission extended the VDER Value Stack eligibility in the VDER Expansion Order to pre-2015 projects up to and including 5 MW, the Petitioners note that it did not include the E-Value compensation.

Additionally, the Petitioners argue that LSEs do not have the option to offset their Tier 2 compliance obligations with RECs generated by DERs as they can do in the Tier 1 program. Further, they state that resources compensated under VDER are ineligible for most CES solicitations, including Tier 2. The Petitioners believe that this creates a gap in compensation around the disposition of RECs from these resources. The Petitioners cite the 2020 CES Energy Standard Triennial Review's acknowledgement that energy and capacity prices have fallen sharply since the 2014 period in which the baseline production was calculated and has resulted in decreased energy-related revenue.[11] Declining energy revenue, according to the Petitioners, has led facilities to defer maintenance and capital improvements. Further, the Petitioners highlight that the operational costs of hydroelectric facilities have not declined, but remain at $60 to $70 per megawatt hour (MWh). The Petitioners state that the baseline hydroelectric resources provide environmental benefits to the State and absent compensation will lead to increased exports, which would require

[11] Case 15-E-0302, supra, Renewable Energy Standard Program Impact Evaluation and Clean Energy Standard Triennial Review (filed June 1, 2020).

the procurement of additional Tier 1 RECs to backfill those exports in order to achieve the State's clear energy goals.

The Petitioners propose that the expansion of the E-Value be restricted to projects which: (1) meet the requirements for both VDER Value Stack and Competitive Tier 2 program; (2) are developed prior to 2015; (3) are 5 MWs or less in size; and (4) are interconnected to distribution utility systems. They also suggest that the facilities should qualify for the E-Value in effect at the time the project pays 25 percent of any interconnection upgrade costs under the Standard Interconnection Requirement and files a Standard Interconnection Requirements Contract with the utility. Further, Petitioners propose that projects currently receiving compensation under grandfathered NEM, the Competitive Tier 2, or Maintenance Tier would not be eligible until the expiration of those contracts. The Petitioners propose that the Joint Utilities,[12] which pay the E-Value, receive RECs in exchange, and these RECs may be used to satisfy CES Compliance Obligations related to Tier 1 or Tier 2. Because of the scarcity of Tier 1 RECs, the Petitioners note that compliance has been more expensive because of required purchases of Alternative Compliance Payments (ACPs) which are more expensive than Tier 1 RECs, in lieu of Tier 1 RECs. The Petitioners suggest that NYSERDA could re-allocate funds from the Competitive Tier 2 program budget to the Tier 1 budget to make up for any shortfall.

[12] The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on June 29, 2022 [SAPA No. 15-E-0751SP42] (Notice). The time for submission of comments pursuant to the Notice expired on August 29, 2022. Comments were filed by Adirondack Parties (AP), Arcadia Power (Arcadia), Clean Energy Parties (CEP), Community Choice Aggregation Administrators of New York (CCAANY), Development Authority of the North Country (DANC), Franklin County Economic Development Corporation (FCEDC), Interested Energy Advocacy Parties (IEAP), Independent Power Producers of New York (IPPNY), Joint Utilities, and Town of Woodstock (Woodstock). The comments received are discussed below and summarized in Appendix A.

LEGAL AUTHORITY

The Commission's authority derives from the PSL, through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of ... electricity." PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources."

In addition, PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying ... electricity ... and have power to

order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such ... electricity." Further, PSL §65(1) provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and, in all respects, just and reasonable." PSL §4(1) also expressly provides the Commission with "all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]" including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,[13] environmental stewardship, and the conservation of resources.[14]

In addition to the PSL, the New York State Energy Law §6-104(5)(b) requires that "[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update."

DISCUSSION

The Hydro Parties are seeking eligibility to receive the E-Value component of the VDER Value Stack. The Hydro Parties cite the declining economic viability of independent hydroelectric resources and the increase of exports of non-New

[13] See International R. Co. v Public Service Com., 264 AD 506, 510 (1942).

[14] PSL §5(2); see also Consolidated Edison Co. v. Public Service Commission, 47 NY2d 94 (1979) (overturned on other grounds) (describing the broad delegation of authority to the Commission and the Legislature's unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5).

York Power Authority (NYPA) hydroelectric generation in recent years. Further, the Petitioners argue that additional value in the VDER Value Stack is needed to restart the growth of hydroelectric resources in the DER space and keep these resources in operation. The Petitioners also believe that extending the E-Value to eligible resources would retain attributes in New York and supplement the Tier 2 program. Lastly, the Petitioners propose that RECs procured from pre-2015 resources through the VDER Value Stack be eligible to offset utility compliance obligations for either Tier 2 or Tier 1 of the CES.

The majority of commenters support the Petition. Adirondack Parties and IEAP suggest that the E-Value will provide increased revenues for eligible hydroelectric facilities and provide a local option to support clean energy. Arcadia recommends that extending the E-Value to hydroelectric facilities will meet the growing CDG demand. CEP argues that the E-Value is needed to maintain baseline resources and meet the CLCPA goals without backsliding. CEP adds that the Competitive Tier 2 program does not provide adequate compensation for hydroelectric facilities. CCAANY, DANC, and FCEDC argue that providing the E-Value to these facilities will provide opportunities for Community Choice Aggregations to offer CDG using hydroelectric facilities located in a number of partner municipalities. FCEDC also asserts that small hydroelectric facilities are a threatened renewable resource in the State, and that it is important to extend this support to small-scale resources compensated under VDER. IEAP suggests that the E-Value would provide a pathway for financially stressed small facilities to make operations sustainable. IEAP adds that it is appropriate to reallocate funds from the Competitive Tier 2 program since it is underutilized. IPPNY

argues that expanding eligibility of the E-Value to Baseline DERs would create substantial benefits at minimal costs and ensure that baseline resources remain in the State.

The Joint Utilities do not oppose the Petition but note that costs would increase and would be borne by utility delivery customers. The Joint Utilities further argue that the proposal to use the RECs created by pre-2015 resources through VDER Value Stack to offset utility Tier 1, Tier 2, or ACP compliance obligations would create a mismatch as delivery customers would bear the brunt of the incremental out-of-market costs if the Petition was adopted without any accommodation. The Town of Woodstock is opposed to the Petition because they are a purchaser of baseline hydroelectric to reduce the Town's carbon footprint and providing the E-Value option would remove the baseline hydroelectric off the market for end-users like the Town.

The Commission agrees with the Petitioners and the vast majority of commenters that some form of financial support should be available to baseline hydroelectric facilities. However, the VDER Value Stack E-Value component is designed to provide financial support to sufficiently encourage the deployment of new, incremental distributed renewable generation resources, and therefore, is not appropriate to provide to existing baseline resources. That said, the Commission recognizes the importance of the generation resources that are part of the renewable baseline and agrees that these resources provide economic and environmental benefits to their communities and advance the achievement of CLCPA goals. The Commission has previously taken steps to support baseline resources, including the creation of the Competitive Tier 2 program, which offered baseline resources the opportunity to bid into a NYSERDA-run auction for three-year REC contracts. Additionally, the

Maintenance Tier program is still available to support baseline facilities that need the financial support to remain in operation. Commenters have indicated that these programs have provided some assistance to the hydroelectric resource community, but these programs do not offer the kind of longer-term certainty that the VDER Value Stack E-Value provides. Moreover, low energy prices have compelled existing baseline resources to seek financial support in other markets.[15] To that end, the Commission adopts a modification of the VDER Value Stack to assist hydroelectric generating facilities that participate in that compensation methodology.

Using the current VDER Value Stack compensation structure, the Commission adopts a new component, called the H-Value, that will provide financial support to hydroelectric facilities sized at 5 MW or less that register as a CDG project.[16] As the Hydro Parties stated in their petition, "absent additional value in the Value Stack, Community Hydro will likely not grow beyond the projects that reached maturity under the [Market Transition Credit] and [Community Credit]."[17] The Commission anticipates that the H-Value will provide the needed support for hydroelectric facilities that are interested in CDG.

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[15] Recent NYGATS reports indicate that non-NYPA hydroelectric baseline resources exports equal 17% of the total exports. Furthermore, there was a 21% increase in non-NYPA hydroelectric exports between 2022 and 2023. See NYGATS CES Baseline Bundled REC Exports Report, available at: https://nygats.ny.gov/ng/Report/getdto view Report PublicRenewableCertificateExports.

[16] Case 15-E-0082 et al., Order Establishing a Community Distributed Generation Program and Making Other Findings, (issued July 17, 2015) (CDG Framework Order).

[17] Petition, p. 6.

In order to register as a CDG project, the facility must be interconnected to a major electric distribution utility. The CDG project must have at least ten members and meet the 40/60 rule.[18] The CDG project is responsible for acquiring subscribers. The H-Value will be equal to 75 percent of the current VDER Value Stack E-Value, currently at $0.03103/kWh, for a maximum contract tenor of 25 years. The 75 percent value reflects the fact that unlike Tier 1 resources, these hydroelectric resources have typically recovered a significant portion of their investment costs and therefore should not receive the entire E-Value. By way of example, if the hydroelectric facility registers as the CDG program and signs a contract today with the interconnecting utility, the H-Value would be $0.02327/kWh ($0.03103 x 75%) for 25 years. The E-Value was designed to support the economics of developing new renewable resources to meet New York's climate goals. Existing hydroelectric resources do not have the same kind of costs such as financing, permitting, land payments, and interconnection costs associated with developing a new resource that warrant a larger value.

The Commission's policy has been to provide fair and reasonable support to existing and new renewable resources. The CES Rehearing Order stated that the Commission "agrees that it is in the best interests of electric consumers to retain existing renewable resources, provided that the cost of retention is less than the cost to replace them with new

[18] The 40/60 rule requires that any of the subscribers that are sized in excess of a demand of 25 kilowatts (kW), those members collectively are limited to an aggregate distribution of credits constituting no more than a 40 percent share of CDG project output, and each remaining member's share must not exceed 25 kW in demand and together those members at that size limit must aggregate to at least 60 percent of the CDG facility's generation.

facilities under the Tier 1 REC program."[19] Our approach on the H-Value maintains that policy. The H-Value will provide financial support to baseline hydroelectric facilities of 5 MW or less so they can continue contributing to New York's baseline renewable resources. Moreover, these projects will be able to provide renewable energy to their local communities where developing rooftop solar may be difficult for homeowners due to the cost or lack of abundant sunshine in the mountainous and forested land topography. Additionally, the Petitioners note that CDG programs can foster development of deep ties between the hydroelectric facility owner and the community addressing the unique perspective and responsive to customer needs. As the Petition states, "re-establishing economic relationships between communities and their resources localizes value and creates accountability."[20] The CDG option allows the hydroelectric facility to offer various discounts to customers, such as low-income customers or small business.

The Commission finds the Hydro Parties' estimate of 210,000 MWh in total generation to be compensated by this program to be realistic. Applying the $23.27/MWh H-Value rate explained above, the total yearly cost of providing this relief is approximately $4.9 million ($4,886,700) resulting in negligible bill impacts to ratepayers. That value will fluctuate as the program begins operation. NYSERDA shall track and report on these expenditures as part of the reconciliation process and reporting discussed further below.

As stated above, hydroelectric facilities interested in the H-Value compensation must register as a CDG/DER provider

[19] Case 15-E-0302, supra, Order on Petitions for Rehearing (issued December 15, 2016) (CES Rehearing Order), p. 14.

[20] Petition, p. 12.

with the Department of Public Service.[21] As such, the hydroelectric generator must commit 100 percent of its output of the project to its subscribers. Once the hydroelectric facility registers as a CDG project, its account in the New York Generation Attribute Tracking System (NYGATS) would be modified to indicate that the project is a CDG and participates in the H-Value Value Stack program. To ensure that NYSERDA is apprised of hydroelectric facility CDG registrations, the Commission directs Staff to communicate to NYSERDA any such registrations at the time the applicant is provided a letter accepting their registration as complete.

While the utilities that pay the E-Value to generators receive a Tier 1 REC that can currently be used to offset the utilities' Tier 1 obligation, this process will change at the end of 2024 when the calculation of the Tier 1 obligations changes and those RECs are socialized across the State to all LSEs on a load share approach.[22] The H-Value cost incurred by each appliable utility will follow the same process and be socialized across the State on a load share approach to all LSEs through NYSERDA's invoicing for the Tier 1 RECs, as a separate line item on those invoices.

In terms of administrative processes, the timing of program rollout is based upon the lead time it will require NYSERDA to file its implementation plan and make the necessary

[21] DER providers must include, among other things, sample sales agreements, sample bills for each customer for each material category of the CDG or on-site mass market products or services that will be offered and copies of information and promotional materials used for mass marketing purposes. Information on registering as a DER supplier can be found on the Commission's website at: https://dps.ny.gov/distributed-energy-resource-der-regulation-and-oversight.

[22] Case 15-E-0302 et al., supra, Order Modifying Clean Energy Standard Tier 1 Obligations (issued April 20, 2023).

structural changes to NYGATS to reclassify the corresponding H-Value RECs as CDG-related. The program will begin in 2026, and the Joint Utilities will contract with qualifying hydroelectric CDG projects and pay for the H-Value RECs generated at the rate discussed above.[23] The Joint Utilities will retire the RECs in NYGATS, and in the appropriate field would indicate the retirement reason as "on behalf of NYS residents" to reflect the fact that costs of the H-Value RECs are being distributed to all LSE supply customers. By October 1, of each year, and beginning in 2027, the Joint Utilities will report to NYSERDA the total CDG H-Value RECs they purchased and retired on behalf of the New York State residents for the previous calendar year. By October 15, each year, NYSERDA will develop the "CDG Compensation Factor" based upon the CDG H-Value RECs reported to NYSERDA by the Joint Utilities and communicate this factor to the Joint Utilities. Then, by November 1, each year, NYSERDA will calculate and publish the CDG H-Value Compliance Obligation LSE per MWh Rate to be collected from all LSEs. Beginning in 2028, NYSERDA will bill the LSEs monthly, based on the New York Independent System Operator, Inc. (NYISO) Version 1 load data for this obligation.[24] The Joint Utilities will send quarterly invoices to NYSERDA for payment for the cost of the H-Value payments made to the CDG projects, beginning in 2028. These 2028 invoices will reflect H-Value payments made in 2026, with subsequent invoices following this same cadence. At the close of the compliance year, NYSERDA will conduct a CDG Reconciliation process. NYSERDA shall include in the CES Annual

[23] The Joint Utilities are authorized to defer the net-of-tax amounts paid to qualifying hydroelectric CDG projects (net of reimbursements from NYSERDA), with carrying charges accruing at the other customer provided capital rate.

[24] Version 1 Data from the NYISO is defined as 15 days after the close of the month.

Progress Report as well as in its regular CES financial reporting to the Commission, efforts related to the H-Value program adopted in this Order. The Commission directs NYSERDA to file an implementation plan outlining the processes and procedures necessary to implement the H-Value component of the VDER Value Stack on or before May 1, 2025.

Finally, IEAP suggests that the Commission reallocate the funds from the Competitive Tier 2 program to support the cost the providing the E-Value to baseline resources. The $200 million cited in the Petition was a cap on the program costs according to the CES Modification Order and not a firm budget allocation.[25] No collection schedule was adopted for this program. The only budget approved for this program was for administrative costs for NYSERDA to run the program. Therefore, there are no funds to be reallocated from the Competitive Tier 2 program and this proposal is rejected.

The Commission directs the Joint Utilities to file tariff amendments to implement the H-Value of the VDER Value Stack, as discussed in the body of this Order, on not less than 15 days' notice, to become effective on July 1, 2025. While the Commission is aware that each utility's tariffs have their own complexities and variations, the Joint Utilities shall use consistent terminology and nomenclature for the H-Value component of the VDER Value Stack. Because the action taken in this Order has been the subject of extensive public review and comment, newspaper publication of the tariff amendments is unnecessary and is therefore waived.

[25] Case 15-E-0302 et al., Order Adopting Modification to the Clean Energy Standard (issued October 15, 2020).

CONCLUSION

The Commission hereby adopts the Value Stack H-Value compensation mechanism for hydroelectric facilities that are 5 MW or less in size that register as a CDG project. The H-value compensation should provide the long-term financial support that hydroelectric facility supporters indicate is required, while the CDG construct effectively engages and helps to financially support the local community. This program will allow these facilities to continue to provide environmental and economic benefits to the local community and New York State.

The Commission orders:

1. The Petition filed on May 26, 2022, by the Interested Hydroelectric Parties seeking expansion of the eligibility for Environmental Value compensation under the Value of Distributed Energy Resources Value Stack to legacy distributed energy resources is granted, with the modifications discussed in the body of this Order.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to file tariff amendments implementing the hydroelectric component (H-Value) of the VDER Value Stack consistent with the requirements in the body of this Order on not less than 15 days' notice to become effective on July 1, 2025.

3. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall, beginning January

1, 2026, pay eligible hydroelectric generating facilities the H-Value of the Value of Distributed Energy Resources Value Stack, as discussed in the body of this Order.

4. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall, by October 1, of each year, beginning October 1, 2027, report to the New York State Energy Research and Development Authority the total number of H-Value renewable energy certificates they purchased and retired on behalf of the New York State residents for the previous calendar year, as discussed in the body of this Order.

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall, on a quarterly basis beginning in 2028, invoice the New York State Energy Research and Development Authority for payment for the cost of the H-Value payments made to eligible hydroelectric generators, as discussed in the body of this Order.

6. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are authorized to defer the net-of-tax amounts paid to qualifying hydroelectric Community Distributed Generation projects, net of reimbursements from the New York State Energy Research and Development Authority, with carrying charges accruing at the other customer provided capital rate, as discussed in the body of this Order.

7. The New York State Energy Research and Development Authority shall, by November 1 each year, and beginning November 1, 2027, calculate and publish the H-Value compliance obligation per megawatt hour rate to be collected from all load serving entities, as discussed in the body of this Order.

8. The New York State Energy Research and Development Authority shall, on a monthly basis, bill load serving entities for this H-Value compliance obligation utilizing the New York Independent System Operator, Inc. Version 1 load data, as discussed in the body of this Order.

9. The New York State Energy Research and Development Authority shall, at the close of each Clean Energy Standard compliance year, conduct a reconciliation process for amounts collected pursuant to this H-Value compliance obligation, as discussed in the body of this Order.

10. The New York State Energy Research and Development Authority shall include in its CES Annual Progress Report as well as in its regular CES financial reporting to the Commission, efforts related to the H-Value program adopted in this Order, as discussed in the body of this Order.

11. The New York State Energy Research and Development Authority shall make any modifications to the New York Generation Attribute Tracking System Operating Rules necessary to effectuate the tracking of H-Value attributes, as discussed in the body of this Order.

12. The New York State Energy Research and Development Authority shall, by May 1, 2025, file an implementation plan for the accounting and cost recovery of the H-Value Renewable Energy Certificates, as discussed in the body of this Order.

13. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, concerning newspaper publication with

respect to the tariff amendments directed in Ordering Clause No. 2, are waived, as discussed in the body of the Order.

14. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

15. These proceedings are continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

SUMMARY OF COMMENTS

Adirondack Parties (AP)[26]

AP notes that awareness is growing in the region of the impacts posed by deteriorating hydroelectric infrastructure and low zonal energy prices and notes that the concerns are growing more urgent as many facilities need to renew their FERC license. AP argues that with E-Value, VDER will provide a pathway for qualifying facilities to increase revenues, making long-term operation feasible. Further, they argue that Adirondack residents and businesses want and deserve a local option to support clean energy. AP points out that small facilities throughout the region have ceased operations in recent years, placing the future of water impoundments, such as Cranberry Lake, in doubt. Moreover, communities such as Croghan, Ausable, Forks, Hogansburg, and Potsdam, the cost of repairing, operating, or removing uneconomic dams often falls to local municipalities, placing additional burdens on impacted communities, according to AP. AP emphasizes that the construction of a new dam on a virgin stream can be disastrous for the local environment, flooding forests and bisecting aquatic ecosystems, and therefore they do not support new dam development, rather the careful retrofitting and improvement of existing small hydroelectric dams. AP states that VDER-eligible hydroelectric facilities are integral to healthy local plant and animal ecosystems, as well as human communities. Moreover, economically healthy facilities are able to undertake upgrades to support updated priorities for ecological health, such as

[26] The Adirondack Parties are Adirondack Council, Adirondack Diversity Initiative (ADI), Adirondack North Country Association (ANCA), ADK Action, Adirondack Research, Adirondack Wild, Clarkson University, John Brown Lives!, and Protect the Adirondacks.

fish passage structures to restore aquatic connectivity. AP adds that many deteriorating non-powered dam structures in the region represent an ongoing threat to nearby ecosystems, as well as an intransigent barrier to aquatic connectivity and should be removed. Lastly, AP believes that excluding hydroelectric resources from the E-Value is not only discriminating against small hydroelectric technologically, but also regionally discriminating. The geography of the Adirondack Park region makes it ideal for hydropower, while limiting opportunities for other technologies, AP asserts. AP argues that excluding hydroelectric from Environmental Value compensation under VDER severely limits opportunities for Adirondack businesses and residents to benefit from the program.

Arcadia Power Inc. d/b/a Arcadia

Arcadia supports expansion eligibility of the E-Value compensation under the VDER tariff to baseline distributed energy resources to meet the growing demand for CDG products. Arcadia notes that the Commission has already established a precedent to support the retention of baseline pre-2015 renewable resources with the development of the Competitive Tier 2 program. Arcadia believes that the E-Value compensation via the VDER tariff achieves the goal of supporting renewable baseload generation at no additional cost, as participation in VDER by pre-2015 resources offer New York ratepayers a cost-effective tool to retain these assets. Arcadia states that there has been strong growth of the CDG market among baseline renewable resources in areas like the Adirondacks. However, Arcadia states that the expiration of the Market Transition Credit and Community Credit under VDER have halted the progress. Arcadia believes that the E-Value compensation is needed to preserve DER hydroelectric. Further, Arcadia believes that the

E-Value compensation should be funded out of the Competitive Tier 2 program. Arcadia argues that the expanded eligibility for E-Value compensation necessary to meet the growing demand for CDG and to achieve the CLCPA goals relating to disadvantaged communities. They add that providing additional CDG-eligible resources for areas with higher levels of hydroelectric production but lower available land for siting solar (such as the North Country, Mohawk Valley) will be necessary to ensure that less-wealthy rural geographies are able to obtain equitable access to clean energy while ensuring equitable distribution of the benefits of clean energy across all types of disadvantaged communities.

Clean Energy Parties (CEP)[27]

CEP supports the Hydro Parties' Petition. CEP believes the Petition would rectify an omission in the VDER program and provide the State with benefits far outweighing the costs. Further, CEP says that VDER was established prior to the CLCPA's more aggressive renewable and emission free electricity goals, and the State should modify existing programs to meet the new goals. CEP argues that the State needs to maintain the baseline renewables to reach the CLCPA goals without going backwards. CEP believes that the Competitive Tier 2 program does not offer adequate compensation for its baseline resources, which can receive a higher value for their RECs out of State. CEP supports the expansion of E-Value compensation through VDER because it will reduce the number of RECs that are currently sold out of State and include these baseline resources in the

[27] The Clean Energy Parties are the Alliance for Clean Energy New York, Environmental Advocates for New York, New Yorkers for Clean Power, Sierra Club, Northern Power and Light, New York Solar Energy Industries Association, New York League of Conservation Voters, and Natural Resources Defense Council.

generation mix. CEP asserts that the State is losing in-State renewable generation from baseline hydroelectric due to low market revenues and high operational costs. Baseline hydroelectric retirement is prompted by sudden unavoidable costs, not a threshold market price, according to CEP.

CEP argues that pre-2015 generators are bringing environmental value and deserves E-Value compensation in the VDER tariff. CEP adds that to achieve the 100% emission-free power by 2040, all possible resources need to be deployed and all emission-free resources should be compensated for their environmental value. CEP emphasizes that baseline resources are increasingly being exported out of State. Further, baseline resources have expressed interest in participating in the CDG market. Lastly, CEP notes that baseline hydroelectric was not addressed in the VDER Phase Two orders as expected.

Community Choice Aggregation Administrators of New York (CCAANY)[28]

CCAANY supports the Hydro Parties' Petition to expand the eligibility of the E-Value to baseline hydroelectric resources. CCAANY notes that as more municipalities and companies continue to voluntarily transition to renewable energy, it is imperative that New York State supports all current and future renewable energy generators. Further, CCAANY argues that ensuring small hydroelectric has access to the E-Value would allow CCAs to offer CDG using hydroelectric facilities located in a number of its partner municipalities. CCAANY believes that small hydroelectric is critical to New York's clean energy goals, and that empowering New York

[28] The Community Choice Aggregation Administrators of New York are Municipal Electric and Gas Alliance, Joule Assets, Inc., and Sustainable Westchester.

ratepayers to direct additional revenue to these resources through VDER will be a cost-effective way to ensure that all continue to benefit from these important resources. CCAANY asserts that small hydroelectric facilities are the most threatened renewable resources in the State and important to extend this support to small-scale resources compensated under VDER, consistent with the CLCPA treatment of solar. They also note that hydroelectric facilities are not only a source of renewable power, but they are deeply integrated into the fabric of their landscape and are now increasingly becoming liabilities as hydroelectric dams age and marginal revenues leave operators without the capital required to make needed investments. CCAANY says that it is unjust to expect these communities to shoulder the burden of new wind and solar development on the one hand, while dealing with the failure of uneconomic hydroelectric facilities on the other. CCAANY urges the Commission to adopt the recommendations in the Hydro Parties' Petition. The Development Authority of the North Country, Franklin County Economic Development Corporation, and the North Country Chamber of Commerce filed comments in support of the Petition that mirrored those CCAANY.

Interested Energy Advocacy Parties (IEAP)[29]

IEAP argues that the availability of compensation for RECs from existing hydroelectric under the RES, but absence of environmental compensation under VDER, amounts to an inconsistency in the structure of renewable energy programs under the CLCPA. They believe that the E-Value would provide a pathway for financially stressed small facilities to make

[29] The Interested Energy Advocacy Parties are Distributed Energy Resources Task Force, Network for a Sustainable Tomorrow, New York Communities for Change, and New Yorkers for Clean Power.

operations sustainable. IEAP adds that it would restore the integrity of the VDER/RES program structure. IEAP suggests that counting all RECs procured from renewable DERs, regardless of vintage, is a simple and cost-effective mechanism to ensure that utilities and ratepayers bear no additional costs for the payment of E-Value to pre-2015 resources. Further, IEAP states that allowing VDER RECs from hydroelectric facilities to apply to Tier 1 compliance would simply result in fewer ACPs. Should there be a shortfall in Tier 1 cost recovery, IEAP believes it is appropriate to reallocate funds from the Competitive Tier 2 program since it is underutilized. IEAP argues that VDER offers a pathway to both increase power plant revenues and democratize the benefits, while incentivizing plant owners to be responsive to community needs. Additionally, IEAP adds that failing to support a diverse suite of DER resources means excluding certain areas and their residents from the benefits of DER. They also note that communities that host hydroelectric facilities, many of which are very old, will be vulnerable to the effects of climate change effects. Managing these changes will place strains on aging infrastructure and the E-Value compensations will raise revenues for operators and forge closer ties between resources and communities.

IEAP believes that the Commission's desire to avoid providing "windfall" compensation to resources that do not need it is understandable, and precisely why the E-Value under VDER is an appropriate tool. IEAP also notes that the E-Value is not automatic, and it puts ratepayers in control by forcing the hydroelectric owners to build trust in the community. Lastly, IEAP suggests that using pre-2015 RECs for CES compliance will reduce the number of ACPs.

Independent Power Producers of New York (IPPNY)

IPPNY urges the Commission to grant the Hydro Parties Petition. IPPNY states it has consistently advocated that both new and existing renewable resources be eligible to participate in the Commission's clean energy programs. IPPNY notes that since the original CES Order and the enactment of the CLCPA, the Commission found that low energy prices have compelled existing renewable resources to seek financial support in other markets. The Commission recently reversed its decision on baseline resources by enacting the Competitive Tier 2 program. IPPNY argues that expanding eligibility of the E-Value to Baseline DERs would create substantial benefits at minimal costs, reduce the need for load serving entities to procure RECs or make ACPs at higher costs to replace RECs from Baseline DERs, and ensure that baseline resources remain in State. Also, IPPNY states that it would help address the shortfall in CES cost recovery that that has caused NYSERDA to exercise the Utility Backstop Mechanism. IPPNY adds that the expansion of the E-Value is estimated to cost $6.3 million and be funded out of the underutilized Competitive Tier 2 program. IPPNY also supports Petitioners' request that the Commission rule that RECs procured from baseline DERs be eligible to offset LSE utility compliance obligations for either Tier 2 or Tier 1.

Joint Utilities[30]

The Joint Utilities do not oppose the Hydro Parties' Petition but have some concerns. They point out that all the Joint Utilities' electric delivery customers bear the cost of

[30] The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

the VDER Value Stack compensation where such costs are recovered through a VDER surcharge on their bills. Should the Commission adopt the Hydro Parties Petition, the Joint Utilities assert that costs would increase and be borne by utility delivery customers. The Joint Utilities argue that the Hydro Parties proposal to use the pre-2015 resources through VDER compensation to offset utility Tier 1 or Tier 2 REC or ACP compliance obligations would create a mismatch as delivery customers would bear the brunt of the incremental out-of-market costs if the Petition was adopted without any accommodation. Further, the Joint Utilities oppose the reallocation of Tier 1 or Tier 2 budgets to make up for shortfall in cost recovery. They believe it would be cumbersome to implement and require each of the utilities to track the E-Value compensation for these projects separately.

The Joint Utilities agree that projects receiving compensation under net-metering, Tier 2, or the Tier 2 Maintenance Program are ineligible for the E-Value under the Value Stack. Additionally, the Joint Utilities note that DER projects currently compensated under the VDER Value Stack should be eligible to receive the E-Value compensation rate that was in effect at the time of the project's VDER Value Stack Eligibility Date going forward, fixed for the remaining term of the project's compensation under the VDER Value Stack. Further, the Joint Utilities continue, all RECs generated by such DER projects from the effective date of E-Value compensation will be required to be transferred to the utility. Lastly, the Joint Utilities recommend that the expanded E-Value eligibility should be limited to 5 MW or less, small-scale, run-of-river pre-2015 hydroelectric generation.

Town of Woodstock (Woodstock)

Woodstock urges the Commission to deny the Hydro Parties' Petition. Woodstock is subscriber for electrical energy from a baseline hydroelectric facility, but the imposition of Tier-1 E-Values would frustrate the town's ability to reduce its carbon footprint in conformance with the requirements of the Department of Environmental Conservation Climate Smart Communities Program. Woodstock adds that since the baseline resources are not eligible for Tier 1 incentives, the resource must market its supply to end-users. Woodstock explains that this arrangement allows the Town to purchase renewable, carbon-free, hydroelectric power which it would lose with the addition of Tier 1 RECs. While the Town would still be eligible for VDER credits, Woodstock argues that the small VDER credit available for demand accounts without the associated hydroelectric power would not justify renewing the contractual arrangements. Woodstock maintains that the initial concept for Tier 1 RECS was to incentivize the building of new renewable energy resources, not as a method for compensating existing faculties. Therefore, Woodstock recommends the Commission deny the Petition.

SUMMARY TABLE OF DISTRIBUTED ENERGY RESOURCE CATEGORIES AND TREATMENT OF GENERATION ATTRIBUTES

		DER Category	Options	Is the project allowed to bid into RES Tier 1 Solicitations conducted by NYSERDA if otherwise eligible?	Will NYGATS create a transferable Certificate in the account of the generator?	Will NYGATS create a non-transferable Certificate in the account of the customer (indicates retirement by the customer)?	Do the attributes of the generation count towards the interconnecting LSE's RES Compliance Mandate?	Do the attributes of the generation count towards the Statewide 50% by 2030 renewable resources goal?
Pre-existing NEM Tariffs	Net Energy Metering	All Projects (Prior to Cut-Off)	RES Tier 1 (if eligible and awarded a contract by NYSERDA) *	Yes	Yes**	No	No	Yes
			Customer Retention	No	No	Yes	No	Yes
VDER Phase One Tariffs	Phase One NEM	On-Site Mass Market Projects and Small Wind Remote Net Metering Projects On-Site Large Projects	None	No	No	Yes	No	Yes
		Community Distributed Generation Projects	Interconnecting-LSE-Option	No	No	No	Yes	Yes
			Customer-Retention-Option	No	No	Yes	No	Yes
	Value Stack	On-Site Mass Market Projects and Small Wind (by opt-in, no longer net metering) Community Distributed Generation Projects (no longer net metering) Remote Customer Projects (no longer net metering) On-Site Large Projects (no longer net metering)	Interconnecting-LSE-Option	No	No	No	Yes	Yes
			Customer-Retention-Option	No	No	Yes	No	Yes
		For hydroelectric facilities contracted as a Community Distributed Generation project	Interconnecting-LSE Option	No	Yes – transferable only to the interconnecting utility	No	No	Yes