

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 16, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 18-E-0130 - In the Matter of Energy Storage Deployment
Program.

ORDER DIRECTING FURTHER MODIFICATIONS
TO ENERGY STORAGE SOLICITATIONS

(Issued and Effective March 16, 2023)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on November 30, 2022 (the Petition), 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 (collectively, the Joint Utilities or JU) sought certain modifications to the competitive procurements for energy storage dispatch rights, as directed by the Public Service Commission (Commission). Specifically, the Joint Utilities request: (1) an extension of the required in-service date for resources, from December 31, 2025, to no later than December 31, 2028; and (2) an extension of the maximum dispatch rights contract duration, from "up to ten years" to "up

to fifteen years.” As discussed below, in order to fulfill the energy storage goals of New York State, the Commission approves the requests of the Joint Utilities.

BACKGROUND

On December 13, 2018, the Commission issued the Energy Storage Order, which directed the Joint Utilities to competitively procure dispatch rights for bulk-level energy storage systems.¹ The Energy Storage Order established an in-service date of December 31, 2022, for those storage systems. Additionally, the Commission established minimum megawatt (MW) requirements to be achieved by each utility; Con Edison was required to contract for a minimum of 300 MW of qualified energy storage systems, while the other utilities were required to contract for a minimum of 10 MW each.² The Joint Utilities conducted a first-round solicitation; with the exception of National Grid, they were unable to reach their targets.

Following the first solicitation, the Joint Utilities filed a petition on October 30, 2020, seeking to modify the Energy Storage Order in order to improve the solicitation results.³ As a result of that petition, the Commission issued an order that directed: (1) the in-service date of the energy storage resources be extended from December 31, 2022, to

¹ Case 18-E-0130, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018) (Energy Storage Order).

² Energy Storage Order, p. 55.

³ Case 18-E-0130, Petition to Modify Energy Storage Order (filed October 30, 2020).

December 31, 2025; and (2) the maximum contract duration be extended from seven years to ten years.⁴

THE PETITION

As discussed in the Petition, following the Modification Order, the Joint Utilities conducted a second round of solicitations. The Petition explains that after the two rounds of competitive solicitations, the Joint Utilities, with the exception of National Grid, have been unable to meet the storage dispatch rights contract goals of the Commission. The Joint Utilities point out that the Modification Order directed the regular evaluation of the implementation of the program and to make adjustments where and when needed. Consistent with this directive, the JU filed the Petition to further adjust the directives in the Energy Storage Order and Modification Order. Specifically, the Joint Utilities request two changes to the Energy Storage Order: (1) an extension of the in-service date from December 31, 2025, to no later than December 31, 2028; and (2) an extension of the maximum dispatch rights contract duration from the current "up to ten years" to "up to fifteen years."

According to the Joint Utilities, there are several changes in the energy storage industry that will impact future solicitations and facilitate the successful deployment of energy storage. The federal Investment Tax Credit created in the Inflation Reduction Act of 2022 provides tax credits of 30 percent or more for energy storage expenditures. The JU also adopted a new rate setting to lower the cost of charging for

⁴ Case 18-E-0130, Order Directing Modifications to Energy Storage Solicitations (issued April 16, 2021) (Modification Order).

energy storage projects in December 2022.⁵ The Petition explains that if this third-round solicitation is completed with contracts awarded to bidders by the end of 2023, those projects would likely not be in service by December 31, 2025, especially if the project is required to enter the New York Independent System Operator, Inc.'s (NYISO) Class Year process or if the project has complicated permitting requirements.

The JU state that based on the results of the previous two solicitations and through conversations with bidders, the JU believe increasing the contract length for dispatch rights from ten years to fifteen years will result in more competitive bids and awards. The JU cite developer uncertainty on the amount of revenue they would receive in the merchant market. They further describe that the NYISO market rules for energy storage may change and as of now do not provide sufficient revenue to enable a robust storage market. The JU explain that increasing the maximum contract length from ten to fifteen years would allow for the amortization of costs over a longer time horizon and result in lower annual contract costs, thus improving the chances of the next solicitation achieving the storage goals. They state that fifteen years is a modest enough contract length that the developer will be able to maximize revenues while also having the ability to pursue additional business opportunities once the contract ends.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making was published

⁵ Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Order Establishing an Allocated Cost of Service Methodology for Standby and Buyback Service Rates and Energy Storage Contract Demand Charge Exemptions (issued March 16, 2022).

in the State Register on December 21, 2022 [SAPA No. 18-E-0130SP12]. The time for submission of comments pursuant to the Notice expired on February 21, 2023. Comments were received by Microgrid Networks, LLC (MGN), New York Battery and Energy Storage Consortium, Inc. (NY-BEST), and jointly from Advanced Energy United & Alliance for Clean Energy New York, Inc. (United/ACE NY); the comments are addressed within the relevant portions of the discussion section of this Order.

LEGAL AUTHORITY

The Commission has broad jurisdiction, power, and duties over the “[m]anufacture, conveying, transportation, sale, or distribution of ... electricity ...”⁶ Furthermore, PSL §5(2) instructs the Commission “[t]o encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs ... with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.” The Commission’s supervision of electric corporations includes the responsibility to ensure that all charges made by such corporation for any service rendered shall be just and reasonable.⁷ PSL §66 empowers the Commission to “[p]rescribe from time to time the efficiency of the electric supply system.” The Commission may exercise this broad authority to direct regulatory standards to execute the provisions contained in the PSL. Additionally, the Commission has the authority to direct the treatment of Distributed Energy Resources (DERs) by electric corporations.⁸

⁶ PSL §5.

⁷ PSL §65.

⁸ PSL §§5(2), 66(1), 66(2), 66(3), 66-c, 66-j, and 74.

Pursuant to PSL §74, the Commission is required to establish, in consultation with New York State Energy Research and Development Authority (NYSERDA), the NYISO, and the Long Island Power Authority, a statewide energy storage goal for 2030, and a deployment policy to support that goal. The actions directed by this Order are within the Commission's regulatory authority indicated above and advance the Commission's statewide energy storage goal and deployment policy established by the Energy Storage Order.

DISCUSSION

Since the issuance of the Energy Storage Order, the Commission has continued to establish ambitious energy storage deployment goals and a suite of far-reaching policies to help achieve them. After two rounds of utility solicitations, a total of 120 MWs of storage projects have executed contracts between developers and utilities, with 20 MWs located in National Grid's service territory and 100 MWs within Consolidated Edison's footprint. In addition, it is the Commission's understanding that Central Hudson is in the final contract negotiation stages for a 50 MW project, as MGN referenced in its comments. Real world experience in developing storage projects continues to help inform Commission policy and program requirements. As discussed in the Commission's Modification Order, it is important to continually assess the state of the storage market and make programmatic changes as necessary. Here, as was the case in the first petition filed on October 30, 2020, the changes proposed by the Joint Utilities are intended to increase the likelihood of future successful storage solicitations.

In-Service Date

In the Petition, the JU request that the Commission extend the required in-service date of the energy storage resources from December 31, 2025, to December 31, 2028. In their comments, MGN, NY-BEST, and United/ACE NY all support extending the energy resource in-service date to December 31, 2028. The Joint Utilities' assertion that any new solicitation and subsequent contract with a bidder would be awarded by the end of 2023 at the earliest and therefore have an in-service date after December 31, 2025, particularly if that project needs to go through the NYISO Class Year process, is persuasive. The Commission agrees with the Joint Utilities that it would not be feasible to select and complete negotiations with winning bidders, and to then afford adequate time for any necessary permitting and construction activities, to meet a December 31, 2025 in-service date.

The next Request For Proposals (RFP) issued by the JU should be designed to drive interest and competition to produce a successful outcome for the utilities. Extending the in-service date provides a better timeframe for both the utilities and the project developers. Therefore, the Commission adopts the Joint Utilities' request to extend the in-service date to December 31, 2028, and further clarifies that the extension applies to both utility RFP storage projects that are not yet in-service and to future contracted projects. The Commission underscores that this is a "no later than" in-service date, and the Joint Utilities and winning projects continue to have the flexibility to begin operation earlier for any projects that can be in-service sooner.

Maximum Contract Duration

The Commission also agrees with the Joint Utilities and developers regarding extending the maximum contract duration

beyond ten years to fifteen years. A fifteen-year contract duration will permit amortization of costs over a longer period of time and provide the utilities, and ultimately ratepayers, with a lower annual cost. NY-BEST, and United/ACE NY support extending the maximum contract duration to fifteen years; MGN was silent as to this aspect of the Petition.

The Commission finds that extending the maximum contract duration to fifteen years will allow developers more flexibility in financing projects and lower utility and ratepayer cost impacts. The Commission therefore directs that the contract duration for energy storage projects be extended from up to ten years to up to fifteen years. The Joint Utilities shall amortize and recover the contract costs over the term of the contract.

Other Issues

NY-BEST offers additional comments on concerns and recommendations they have with the storage RFPs. Specifically, they comment that the RFP process should carefully balance transparency and competition. Lack of knowledge on the developer's part of assumed revenue projections makes it difficult for developers to submit competitive bids. NY-BEST also recommends that utilities list specific substations that are preferred locations for projects so that proposals target these high value areas. Lastly, NY-BEST states that there are several terms and conditions in previous RFPs that resulted in increased project costs and recommends that this language be modified in future contracts to align the contract with generally accepted market practices. These changes include altering the contract termination language, removing terms which could make transfer of the project difficult, and removing terms around total default.

At this time, the Commission declines to adopt the recommendations by NY-BEST as they are beyond the scope of this Order. However, to the extent that these concerns and recommendations are relevant, the Commission invites NY-BEST and other Stakeholders to submit these comments in response to New York's 6 GW Energy Storage Roadmap, Policy Options for Continued Growth in Energy Storage.⁹

CONCLUSION

The extension of the in-service date and extension of the maximum contract duration approved by this Order will facilitate the Energy Storage Order's directive for the Joint Utilities to competitively procure a minimum of 350 MW of qualified energy storage dispatch rights contracts. The Commission expects Department of Public Service staff to continue to collaborate with the Joint Utilities, NYSERDA, the Long Island Power Authority, and the NYISO to advance the energy storage deployment policy and report any recommended changes in the triennial review.

The Joint Utilities are directed to file tariff amendments consistent with this Order, on not less than thirty days' notice, to become effective on June 1, 2023. As these tariff revisions will be filed in compliance with this Order, and Stakeholders have already had an opportunity to provide comment, the newspaper publication requirements of Public Service Law Section 66(12)(b) and 16 NYCRR §720-8.1 shall be waived.

⁹ Case 18-E-0130, New York's 6 GW Energy Storage Roadmap, Policy Options for Continued Growth in Energy Storage (filed December 28, 2022).

The Commission orders:

1. 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 updated implementation plans detailing the competitive direct solicitation and procurement process for qualified energy storage systems reflecting the changes adopted in this Order, within 30 days of the effective date 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 revisions, as necessary to effectuate cost recovery of the contract costs authorized in this Order, on not less than 30 days' notice, to become effective on a permanent basis on June 1, 2023.

3. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication for the tariff revisions directed in Ordering Clause No. 2 are waived.

4. 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.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary