

NEW YORK LAUNCHES ITS INCLUSIVE COMMUNITY SOLAR ADDER WITH \$52.5 MILLION AVAILABLE FOR QUALIFYING PROJECTS

Hodgson Russ Renewable Energy Alert
August 3, 2021

Finding a way to share the benefits of community solar and other climate change programs with economically challenged and other disadvantaged communities has been a significant concern in New York. But the State recently took a major step forward by launching the Inclusive Community Solar Adder Program (“Program”, “Adder”, or “ICSA”) on July 20, 2021. The Adder will provide \$52.5 million in incentives for community distributed generation (“CDG”) projects focused on increased access for low to moderate income (“LMI”)—which the New York State Energy Research and Development Authority (“NYSERDA”) defines as households making 80 percent or less of the Area Median Income—and disadvantaged communities (“DACs”). Operating within the NY-Sun and CDG programs, the Adder will provide incentives for CDG projects dedicating at least 20 percent of their capacity to qualifying LMI communities or DACs. It is expected that 25,000 to 50,000 households, affordable housing providers, and other facilities serving such communities will be served by roughly 250 to 500 MWdc of CDG. Industry and solar access leaders lauded the new Program, with New York Solar Energy Industries Association Executive Director Shyam Mehta stating “[t]he Inclusive Community Solar Adder program will be a critical mechanism in expanding Community Solar’s many benefits to low-and-moderate income and environmental justice communities and addressing crucial equity, access, and inclusion considerations related to the achievement of New York’s Climate Leadership and Community Protection Act (“CLCPA”) goals and our transition to a fully decarbonized electricity sector. New York Solar Energy Industries Association (“NYSEIA”) and its members appreciate the hard work, robust stakeholder process, and thoughtful program design pertaining to the ICSA, and are excited to participate in this program as it is rolled out across the state.” Similarly, Coalition for Community Solar Access Northeast Regional Director Kaitlin Kelly O’Neill added, “[w]e are excited to see the hard work and commitment of NYSERDA resulting in a dedicated resource that further expands the accessibility of community solar projects for all the state’s energy consumers.”

Attorneys

Joseph Endres
Michael Hecker
Elizabeth Holden
Alicia Legland
Charles Malcomb
Rosellen Marohn
Paul Meosky
Aaron Saykin
Daniel Spitzer
Jeffrey Stravino
Brienne Szopinski
William Turkovich
Sujata Yalamanchili
John Zak
Henry Zomerfeld

NEW YORK LAUNCHES ITS INCLUSIVE COMMUNITY SOLAR ADDER WITH \$52.5 MILLION AVAILABLE FOR QUALIFYING PROJECTS

Both access and affordability are strong goals behind the Program. Thus, as an eligibility requirement, customers serviced by these incentivized CDG projects must realize at least 10 percent in energy cost savings, and affordable housing providers and related nonprofits will see decreased operating costs. The Program will also aid the State in achieving its goal, as outlined in the CLCPA, of providing at least 35 percent of clean energy investments to DACs, which have been unduly impacted by greenhouse gas emissions and climate change.[1] As such, a bonus incentive is available for projects sited in communities facing environmental justice concerns due to conventional electricity generation.

As noted by NYSERDA, this incentive scheme is unique in that it provides the benefits of decreased costs and increased access to both individual households and affordable housing providers. The design of the Program was shaped largely by public input, following the presentation of the initial design in September of 2020. The Program was launched on July 20, 2021, and on July 28, 2021 NYSERDA provided a high-level overview of the Program, walk-throughs of the application process, guidance on preparation of the required Marketing & Implementation Plan (discussed below), and real-time responses to questions and concerns. The following is a brief overview of the final Program.

Eligibility

Metered CDG projects in the Upstate and Con Edison (“ConEd”) regions are eligible to participate in the Program[2] if they meet the NY-Sun Nonresidential Program requirements; have either (1) been “Approved” or (2) attained “Completed” status between March 25, 2021 and July 20, 2021; and will dedicate at least 20 percent of project capacity to eligible residential customers. This means that projects can receive the Adder *in addition to* other NY-Sun incentives or adders for which they are eligible, except the Multifamily Affordable Housing Adder. New CDG projects are also eligible for the Program; however, the project must first submit a NY-Sun application before applying for the Adder. If a new project is seeking inclusion in the Program but the NY-Sun commercial/industrial or nonresidential incentives are fully committed, the project developer must still submit the commercial/industrial or nonresidential incentive application. Such applications would receive a \$0 reward as the base incentive before receiving an ICSA award.

Subscriber Definitions and Requirements

Though NYSERDA initially proposed several different options for minimum and maximum allocation requirements between the Upstate and ConEd regions, it ultimately proposed to have the same requirement for both regions: projects will need to meet a minimum 20 percent residential allocation and projects can provide 100 percent allocation to eligible subscribers, and in such case, receive the highest adder available. Additionally, NYSERDA’s initial definition of eligible residential subscribers was retained following stakeholder input:

- Residential electric utility customers (*e.g.*, homeowners, renters, residents of multifamily buildings) that can verify their income via any method listed below
- Sub-metered residents with documented direct savings pass-through from a CDG subscription on a master-metered account
- A residential subscriber in a DAC
- A residential subscriber who *does not* live in a DAC if they have a documented household income less than 80 percent of the Area Median Income (“AMI”) or 80 percent of the State Median Income (“SMI”), whichever is higher

NEW YORK LAUNCHES ITS INCLUSIVE COMMUNITY SOLAR ADDER WITH \$52.5 MILLION AVAILABLE FOR QUALIFYING PROJECTS

Notably, at the point a residential subscriber becomes eligible and is allocated to a project, the subscriber will remain eligible for the duration of the project, even if they relocate within the utility region, and will not be required to provide new proof of eligibility. However, customers changed from or added to the initial allocation list will need to provide such proof, and if a particular customer is no longer eligible at the second or third year mark, the project will need to allocate that capacity to a new customer. Similarly, there was broad support among RFI respondents for the proposed definition of affordable housing/nonresidential subscribers—regulated affordable housing that primarily serves low to moderate income residents—which NYSERDA expanded by including small non-profit organizations in DACs. Lastly, an individual eligible customer can only be counted as a subscriber to determine ICSA funding if such individual has not received CDG credits from another operational project.

Income Verification

NYSERDA has provided multiple pathways of income verification for individual residential subscribers to demonstrate eligibility for the Program:

- Categorical eligibility, which allows customers to demonstrate eligibility with proof of receipt of other forms of public assistance (e.g., SNAP, HEAP, TANF, supplemental Social Security income, etc.)
- Geo-eligibility, which allows customers to demonstrate eligibility with proof of residence in an Interim DAC or with a self-attestation form if the Marketing & Implementation Plan for the relevant project does not adequately demonstrate a plan to ensure eligibility of LMI customers
- Affordable housing residential eligibility, which deems residents of regulated affordable housing properties eligible for the Program and does not require additional documentation from the individual customer
- Individual household eligibility, which allows residential customers to submit an Affordable Solar incentive eligibility application to demonstrate eligibility with a documented household income under 80 percent of the AMI or SMI, whichever is higher

Additionally, nonresidential demand and non-demand accounts serving eligible affordable housing properties are eligible for the Adder. Such properties must meet the requirements for the NYSERDA Multifamily Affordable Housing Adder and must be qualified by NYSERDA prior to submitting an ICSA invoice. Similarly, accounts serving nonprofit organizations or public facilities that assist DACs are eligible for the Adder as well if they (1) meet the “small” subscriber criteria under the CDG rules and (2) are located in or serve a designated DAC. Again, such facility or organization must be qualified by NYSERDA before submitting an ICSA invoice.

The Application Process and Requirements

NYSERDA is anticipating a significant wave of ICSA applications in the initial application period, which is open now and will be closing on August 31, 2021. For applications received before August 31, 2021, NYSERDA will queue the application review based on the date of the 75 percent interconnection payment for the associated NY-Sun project, and applications will be funded in order of full interconnection payment. Once all projects that have made full interconnection payments have been funded, remaining projects will be queued based on the date of the initial 25 percent interconnection payment. Applications submitted after August 31, 2021 will be reviewed in the order in which they are received until funding is fully

NEW YORK LAUNCHES ITS INCLUSIVE COMMUNITY SOLAR ADDER WITH \$52.5 MILLION AVAILABLE FOR QUALIFYING PROJECTS

committed.

ICSA applications are completed in the NY-Sun portal and must include: (1) the affiliated NY-Sun project application number; (2) the anticipated percentage range of the project that will be allocated to eligible customers; (3) a Marketing & Implementation Plan; and (4) an example residential subscriber contract and disclosure form that demonstrates compliance with all UBP-DER terms and a guaranteed savings rate of at least 10 percent. The Marketing & Implementation Plan must demonstrate that the project contractor or its customer management provider have the experience and capability to meet the ICSA requirements and achieve its identified percentage of eligible customers. This capability and preparedness should be established with a detailed marketing and sales strategy, sample marketing materials, and existing subscription contracts, letters of intent, etc. Further, NYSERDA maintained its original position following the stakeholder input process that minimum FICO scores would not be required in the customer acquisition strategy to demonstrate eligibility for the Adder.

Incentive Levels and Environmental Justice

The incentive level is based on the capacity allocated to eligible subscribers and varies based on project type and the initial adder capacity block. In the ICSA application, project developers are required to identify the anticipated percentage range of the project that will be allocated to eligible customers in 20 percent increments as well as the rationale behind that range. The funding amount is based on the higher end of the range, the total Watt-dc capacity of the project, and the ICSA rate for the relevant project type. There is no penalty to applicants whose actual performance is lower than its anticipated range; the project will only be able to invoice for the equivalent percentage of its actual performance. However, NYSERDA recommends developers be realistic in identifying a range on their applications to ensure the funding mechanism operates efficiently. Alternatively, if an applicant's actual performance is higher than the anticipated range, the project can invoice for the full percentage of its actual performance, but those dollars are drawn from the total not to exceed. Meaning, the second and third year payments (discussed below) would be reduced proportionately.

Additionally, as noted above, there is a bonus incentive for projects sited in environmental justice communities polluted by traditional energy generation. In order to receive the higher added incentive level of 20 cents per Watt, projects must:

- Be located within "preferred load areas" as defined on ConEd's load area maps
- Be located in a DEC Potential Environmental Justice Area
- Dedicate at least 40 percent of its capacity to eligible customers in the community
- Provide in its Marketing & Implementation Plan close partnerships with local community organizers and stakeholders and proposed additional community benefits to customers, beyond cost savings

Payment Process and Schedule

Payment of the Adder is based on actual, documented capacity allocation to eligible customers and is split into three payments: the commercial operation payment, the first anniversary payment, and the second anniversary payment. Following the thorough stakeholder process, NYSERDA modified its initial proposal for the Adder payment process, but kept the initial proposed schedule intact. As such, projects will receive 50 percent of the Adder payment once the project is complete and will thereafter receive a 25 percent payment on both the first and second anniversaries of completion. These

NEW YORK LAUNCHES ITS INCLUSIVE COMMUNITY SOLAR ADDER WITH \$52.5 MILLION AVAILABLE FOR QUALIFYING PROJECTS

25 percent payments, however, will be adjusted to reflect the actual allocation percentage provided to eligible customers, based on the utility's allocation list and crediting confirmation.

The Adder payment process also requires the project developer to report on eligible customer allocations for each payment as well as for three additional years following the last 25 percent payment (*i.e.*, annually for the third, fourth, and fifth anniversary of completion). If the level of participation in the project by eligible customers falls significantly during the course of a reporting period, the contractor may be ineligible to enroll future projects in the Program. However, this is a vastly different approach in comparison to NYSERDA's initial proposal to recapture a portion of the Adder already paid if the project failed to maintain the requisite level of eligible customers. Lastly, it should be noted that the ICSA payments are invoiced separately from NY-Sun payments.

Takeaways: Across the spectrum of decarbonization efforts, there has been criticism that too few of the benefits are available to low to moderate income households and in environmental justice communities. NYSERDA has taken a major step toward addressing that inequity, while also providing an additional potential revenue stream to a community solar industry that has been waiting for additional needed support.

If you have questions on this Program, or any aspect of NY-Sun or other renewable energy programs, contact [Daniel Spitzer](#) (716.848.1420) or [Alicia Legland](#) (518.433.2416), or any member of our [Renewable Energy](#) practice.

[1] Pub. Serv. Comm'n, Case 19-E-0735, Proceeding on Motion of New York State Energy Research and Development Authority Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025 (May 14, 2020).

[2] NYSERDA, *NY-Sun Upstate + Long Island Program Manual* (July 2021)