STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition for a Declaratory Ruling Regarding the 5 MW Aggregated Generation Capacity Limit under the Consolidated Edison Company of New York, Inc. Value Stack Tariff	))))	Case 18-E-0766

RESPONSE OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. TO PETITION FOR A DECLARATORY RULING BY PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND NEW YORK POWER AUTHORITY

I. Introduction

In connection with planned solar development at the John F. Kennedy International Airport, Petitioners Port Authority of New York and New Jersey and New York Power Authority petitioned the Public Service Commission ("Commission") for a declaratory ruling on the tariff of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company").[1] Petitioners ask the Commission to find that (1) the 5 MW aggregated rated capacity limit per site under Con Edison's tariff only applies to generation seeking compensation under the Value Stack and (2) separately interconnected and operating generation not seeking compensation under the Value Stack should not be counted toward the 5 MW limit per site.[2] Petitioners emphasize the limited scope of the Petition.[3]

As discussed below, the Petition should be dismissed because, contrary to its claims, the subject Con Edison tariff is clear and consistent with Commission direction regarding the rules

[1] Case 18-E-0766, *Petition for a Declaratory Ruling Regarding the 5 MW Aggregated Generation Capacity Limit under the Consolidated Edison Company of New York, Inc. Value Stack Tariff*, Petition for a Declaratory Ruling (filed December 14, 2018) ("Petition").
[2] Petition, p. 2.
[3] Petition, p. 3.

and regulations that apply to customer-generators seeking to take service under the Value Stack tariff. In its *Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters*, the Commission clearly stated that "the VDER Phase One tariff will include only technologies and projects that are eligible for NEM [net energy metering]."[4] Subsequent Commission orders have expanded eligibility for Value Stack compensation to additional technologies, and increased the size limitation to 5 MW.[5] The Commission has not acted, however, to remove the longstanding requirement that all eligible on-site generation be counted toward the size limitation for NEM, and therefore Value Stack, eligibility.[6] Moreover, the relevant tariffs of each of the New York electric utilities and the New York State Standardized Interconnection Requirements ("SIR")[7] similarly comply with the Commission's direction such that granting the petition as requested would necessarily have a broader, disruptive effect on state-wide Value Stack/net metering policy.

To accommodate Petitioners' stated desire to install additional renewable generation to directly supply on-site load, however, and consistent with the Company's long-standing support for clean energy, Con Edison would agree to modify its tariff so that renewable projects (up to 5 MW) may be eligible for Value Stack compensation, even if there are other renewable

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[4] Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources* ("VDER Proceeding"), Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017), p. 45.

[5] *E.g.*, VDER Proceeding, Order on Phase One Value of Distributed Energy Resources Project Size Cap and Related Matters (issued February 22, 2018) ("Project Size Expansion Order").

[6] There is a long history determining the rules and regulations for NEM eligibility in New York State that finds its basis in the Public Service Law §66(j). The law defines eligible solar generators as those up to 2,000 kW for a non-residential customer. See, *e.g.*, Cases 14-E-0151 *et al.*, *Petition of Hudson Valley Clean Energy, Inc. for an Increase to the Net Metering Minimum Limitation at Central Hudson Gas & Electric Corporation* ("Net Metering Proceeding"), Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures (issued December 15, 2014)("Minimum Cap Order"), pp. 16-22. It is noted that the tariff in question in the Petition applies to both net metering and Value Stack customers.

[7] Case 18-E-0018, *In the Matter of Proposed Amendments to the New York State Standardized Interconnection Requirements (SIR) for Small Distributed Generators*, Order Granting Clarification (issued July 13, 2018).

generation facilities on the same site, only if those facilities (1) are separately metered and interconnected to the distribution system and do not export to the distribution system and (2) solely serve the customer's on-site load.[8] The Company notes that a new tariff leaf would be needed to accommodate this new class of non-exporting customer-generators.[9]

II. Background

In early 2018, within the Value of Distributed Resources ("VDER") Proceeding designed to transition compensation from net metering,[10] the Commission in its *Order on Phase One Value of Distributed Energy Resources Project Size Cap and Related Matters*[11] expanded eligibility for participation in Value Stack tariffs to technology-eligible projects up to 5 MW to encourage development of additional clean generation without imposing a significant negative impact on non-participating utility customers.[12] In so ruling, the Commission ordered the utilities to file tariff leaves addressing the expansion of project size eligibility "consistent with the requirements in the body of this Order."[13]

Accordingly, Con Edison filed tariff leaves that proposed changing its existing tariff to reflect the Commission's decision to expand eligible project size from 2 MW to 5 MW. In so

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[8] VDER Proceeding, Order on Phase One of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters (issued September 14, 2017) ("Phase One Order").

[9] Con Edison's tariff provides: "No other source of electric energy shall be introduced or permitted, directly or indirectly, in connection with the Customer's equipment to which electric energy is delivered by the Company, except as provided in Rider R [NEM and Value Stack], General Rule 8.2 [Emergency Generating Facilities Used for Self-Supply], or General Rule 20 [Standby Service]." PSC No: 10 – Electricity, Consolidated Edison Company of New York, Inc. General Rule 8.12, Leaf 77.

[10] VDER Proceeding, Notice Soliciting Comments and Proposals on an Interim Successor to Net Energy Metering and or a Preliminary Conference (issued December 23, 2015).

[11] VDER Proceeding, Project Size Expansion Order.

[12] *Id.*, p. 3.

[13] *Id.*, p. 18.

doing, the Company otherwise kept in place existing tariff language regarding generation aggregation. The relevant tariff language provides:

> The kW of facilities with generating equipment located near each other will be aggregated to determine if the kW limit is met unless each facility meets all of the following criteria: (a) each is located on a separate site (i.e., a separately deeded location); (b) each is separately metered and interconnected to the Company's grid; and (c) each is operated independently of the others. The aggregated rated capacity of electric generating equipment shall be limited to . . . 5,000 kW for Customers served under the Value Stack Tariff.[14]

As noted above, the Commission first considered aggregation criteria in connection with net metering well before the VDER Proceeding. For example, in raising the then net metering cap in 2014, the Commission required facilities to be separately sited, operated independently, and separately interconnected.[15] In so doing, the Commission relied on precedent addressing size limitations in other contexts and emphasized that these limits served the Commission's goal of encouraging development of large numbers of small facilities through net metering.[16]

Since the aggregation criteria were established, and subsequently modified, Con Edison has read the above plain language precisely as it is written, namely, that generating equipment will be aggregated to determine whether the VDER kW size limit is reached unless meeting the requirement of a separate site, separate metering and interconnection, and independent operation. The tariffs of the other electric utilities are being similarly treated by each utility. In addition,

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[14] PSC No: 10 – Electricity, Consolidated Edison Company of New York, Inc., General Rules 24, Rider R, Leaf 244.1 (A).

[15] Net Metering Proceeding, Minimum Cap Order, pp. 16-22.

[16].*Id.*, p. 16. To the extent that the Commission intended that only net metering or Value Stack generating facilities be aggregated, that intent was not clear as demonstrated by the differing language, long in place in the tariffs of the state utilities.

Con Edison has consistently taken this view with respect to customers that have taken necessary steps to comply with the criteria specified above, including restructuring deeds to split adjacent projects onto separate sites.

III. Discussion

As shown above, Con Edison has long had in place tariff language filed in conformance with Commission direction to only provide Value Stack compensation to facilities with an aggregated generating capacity, regardless of type, of no more than the applicable 5 MW limit. The tariff language is clear and uniform for each electric utility, and has been consistently applied to other customers. Con Edison is required to follow its tariff. It is well established that utilities have "no discretion in applying the tariffs and no authority to waive or ignore provisions of the tariff."[17] Con Edison is unable to simply reinterpret its tariff solely based on a single customer's plans. Moreover, particularly within the VDER context, the tariff language continues to be appropriate for premises with multiple generation facilities.

The VDER tariff is designed to permit smaller generating facilities (originally up to a maximum of 2 MW and recently increased to 5 MW) the ability to capture revenues for their energy injected into the incumbent utility's distribution system without having to directly participate in the wholesale market of the New York Independent System Operator ("NYISO") or the renewable energy credit ("REC") mechanism administered by the New York State Energy Research and Development Authority ("NYSERDA").[18] VDER compensation is also available

[17] Case 16-M-0368, *Joint Petition of Cornell University and Argos Solar LLC for a Declaratory Ruling, or in the Alternative, Waiver of Certain Tariff Provision,* Declaratory Ruling Regarding Tariff Provision (issued January 26, 2017), pp. 7-8.
[18] VDER Proceeding, Phase One Order, pp. 15-17.

to resources that are developed to share the benefits of renewable energy with other Con Edison mass market subscribers on a community basis ("CDG") through credits on subscribers' bills.[19]

In contrast, facilities greater than 5 MW are considered utility-scale generators and are precluded from participating in the Value Stack. These larger facilities can and should participate in NYISO's competitive wholesale electricity market and can sell RECs to NYSERDA in defined solicitations or to third parties pursuant to the Clean Energy Standard.[20] These larger renewable power resources can also deliver physical power and/or RECs to individual customers, akin to CDG delivery to subscribers, via private bi-lateral contracts.

The Petitioners' request would alter the Commission's three-part test for qualifying for Value Stack. The request would also significantly broaden application of the test to allow the first 5 MW of nearly any project to receive compensation via the Value Stack, while the remainder could receive other forms of compensation, such as via the buyback tariff, or direct sales to the NYISO wholesale market. Moreover, simply changing a tariff element within the complex dynamics of the Value Stack and wholesale markets can raise unforeseen issues[21] regarding multiple and potentially duplicative forms of compensation. Any tariff change along the lines urged by Petitioners would necessarily have an impact on compensation policy and on utilities and customers throughout the State and should only be considered in a comprehensive manner.

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[19] 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 Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015).
[20] Cases 15-E-0302 *et al.*, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard,* Order Adopting a Clean Energy Standard (issued August 1, 2016).
[21] *E.g.*, Net Metering Proceeding, Order Granting Rehearing in Part, Establishing Transition Plan, and Making Other Findings (issued April 17, 2015).

Nevertheless, it is Con Edison's understanding that the Petitioners' intent is to have the non-Value Stack portion of the proposed generation to be entirely self-consumed by the on-site load. Accordingly, Con Edison proposes to amend its tariff so that a solar customer-generator could install renewable generation separately interconnected and entirely consumed on-site, and retain the ability to take service under the Value Stack tariff for separately interconnected generation up to the 5 MW limit.[22] Specifically, Con Edison proposes allowing Petitioners to proceed with their project based on the following: the VDER maximum value of 5 MW on the premises would be separately interconnected and metered and all other renewable generation on the premises would require a separate interconnection and would exclusively self-consume on the property without the ability to export.[23]

IV. Conclusion

For the foregoing reasons, Con Edison respectfully urges the Commission to deny the Petition and instead consider the proposed solution for an amended tariff so that renewable projects (up to 5 MW) may be eligible for Value Stack, even if there are other renewable generation facilities on the same site, only if those facilities (1) are separately metered and interconnect to the distribution system and do not export to the distribution and (2) solely serve the customer's on-site load. This would to accommodate Petitioners and avoid an unnecessarily

[22] The Commission could grant a one-time waiver of the 5 MW limit as a pilot for the Port Authority's plan seeking to serve help its own needs as a large airport while also providing benefits to its surrounding community through a solar project. In the alternative, Con Edison proposes that the Commission make clear that this change is limited to New York City where there are a limited number of large single-customer sites. Before the Commission directs any broader actions with state-wide implications, further study is needed to assess impacts on customers.

[23] In this particular case, the account with other renewable generation on the premises would be exempt from standby rate4s under the designed technologies exemption, which is currently scheduled to expire on May 31, 2019, and since the capacity of the other renewable generation is less than 15 percent of the customer's' maximum potential demand. However, in other circumstances standby rates may apply.

broad, complicated, and potentially problematic change to the Value Stack based on insufficient analysis and review.

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Respectfully submitted,

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