

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on January 17, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Gregg C. Sayre  
Diane X. Burman, dissenting  
James S. Alesi

CASE 18-E-0766 - Petition of New York Power Authority and the  
Port Authority of New York & New Jersey for a  
Declaratory Ruling Concerning the 5 MW  
Aggregated Generation Capacity Limit Under the  
Consolidated Edison Company of New York Inc.  
Value Stack Tariff.

DECLARATORY RULING REGARDING ON-SITE GENERATION LIMITS

(Issued and Effective January 17, 2019)

BY THE COMMISSION:

INTRODUCTION

On December 14, 2018, the Port Authority of New York & New Jersey (Port Authority) and the New York Power Authority (NYPA) submitted a petition for a declaratory ruling (Petition) that seeks clarification that a planned solar photovoltaic (PV) generation project at the John F. Kennedy International Airport (JFK), which is sized at 5 megawatts (MW), would be eligible for compensation under the Value Stack tariff that compensates Distributed Energy Resources (DERs) based on their contributions to the energy system. The Petition describes the Port Authority's clean energy initiatives and indicates that Commission clarification is necessary to achieve the Port Authority's goals. Specifically, the Petition explains that Consolidated Edison Company of New York, Inc. (Con Edison)

interprets its tariff to prohibit compensation under the Value Stack tariff where the cumulative aggregated rated capacity of all generation on a site exceed 5 MW, regardless of whether the generation in excess of 5 MW is used to serve on-site load.

In this Declaratory Ruling, the Commission grants the Petition and finds that the 5 MW eligibility limit for Value Stack compensation does not restrict a customer's ability to receive Value Stack compensation for a 5 MW or smaller project that is injecting energy into the grid and is separately interconnected on the same site as another, non-injecting generation project serving on-site load.

#### BACKGROUND

Based on the Value of Distributed Energy Resources (VDER) Transition Order, eligibility for Value Stack compensation is subject to the same rules as eligibility for net metering compensation, except where modified by the Commission.<sup>1</sup> In addition, the Community Distributed Generation (CDG) program is limited to projects eligible for net metering or Value Stack compensation.<sup>2</sup> Net metering compensation is limited by statute to projects with a rated generating capacity of not more than 2 MW.<sup>3</sup>

In the December 2014 Net Metering Tariff Order, the Commission addressed disputes regarding what counted as a single

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<sup>1</sup> Case 15-E-0751 et al., Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (VDER Transition Order).

<sup>2</sup> Id.; Case 15-E-0082, Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015).

<sup>3</sup> New York State Public Service Law (PSL) §66-j.

“project” for the purpose of the rated capacity limit.<sup>4</sup> The Commission determined that two net metering projects would need to pass a three factor test to be considered separate projects for the purpose of the rated capacity limit: (a) each facility would need to be separately metered and interconnected; (b) each facility would need to be operationally independent; and, (c) each facility would need to be located on a separate site. For the purpose of the three factor test, the Commission defined a “site” as a deeded parcel of land. Therefore, two projects located on a single deeded parcel of land would be considered a single project for the purpose of the rated capacity limit. In that case, the rated capacity of the projects would be considered cumulatively for the purpose of the rated capacity limit and therefore that limit would be violated if the cumulative rated capacity was above 2 MW. As the VDER Transition Order did not modify the rated capacity limit or the three factor test, those rules applied to Value Stack eligibility following the issuance of that Order.<sup>5</sup>

In February 2018, the Commission raised the rated capacity limit for Value Stack eligibility from 2 MW to 5 MW.<sup>6</sup> The Commission did not modify the three factor test in the order increasing the rated capacity limit.

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<sup>4</sup> Cases 14-E-0422 et al., Solar Energy Industries Association, et al. - Net Metering Caps, Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures (issued December 15, 2014) (Net Metering Tariff Order).

<sup>5</sup> VDER Transition Order.

<sup>6</sup> Case 15-E-0751, supra, Order on Phase One Value of Distributed Energy Resources Project Size Cap and Related Matters (issued February 22, 2018) (Project Size Cap Order).

Con Edison has implemented the rated capacity limit on Value Stack eligibility through Section A of Rider R of its electric tariff, which reads in relevant part:

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 25 kW for residential Customers served under Grandfathered Net Metering or Phase One NEM, 2,000 kW for non-residential Customers served under Grandfathered Net Metering or Phase One NEM, and 5,000 kW for Customers served under the Value Stack Tariff.<sup>7</sup>

Rider R is titled "Net Metering and Value Stack Tariff for Customer-Generators."

#### THE PETITION

The Petition explains that the Port Authority seeks to develop several solar PV electric generation facilities at JFK. The Petition states that, in support of state policy goals, the Port Authority has adopted aggressive measures to reduce greenhouse gas emissions, including through conservation measures and investment in renewable energy. It explains that the Port Authority aims to meet its clean energy goals through further initiatives including new renewable energy installations at Port Authority facilities, energy efficiency retrofits, and electrifying 100% of airport shuttle operations and 50% of light duty fleet vehicles. It states that JFK, as a large electric customer located on 5,000 acres of land, is well-sited to host

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<sup>7</sup> PSC No: 10 - Electricity, Consolidated Edison Company of New York Inc., General Rules, Leaf No. 244.

over 10 MW of solar generation. It states that the Port Authority and NYPA intend to work together to develop solar generation at JFK.

Specifically, the Port Authority intends to develop a solar PV project with a rated capacity of 5 MW for use as a CDG facility, along with one or more separately interconnected solar PV projects for use only to serve on-site load at JFK. The Petition explains that membership in the CDG project will be offered to residents that reside in Environmental Justice (EJ) communities located around JFK. The Petition states that the Port Authority may also pair one or more of its solar PV projects with energy storage resources.

The Petition states that Con Edison has indicated that this arrangement would not be permitted under its interpretation of the relevant language in its tariff, Section A of Rider R. It explains that Con Edison interprets the tariff to require the cumulative aggregated rated capacity of all generation on a site to be 5 MW or less, even if some of that generation is separately interconnected and operated and is designed solely to serve on-site usage and not to inject energy into the utility system. For that reason, Con Edison would view the 5 MW CDG project as ineligible for Value Stack compensation, and therefore ineligible for the CDG program, as soon as any additional generation is put in service on the same site.

The Petition argues that Con Edison's interpretation of Section A of Rider R is incorrect. The Petition notes that the tariff specifically states that "[t]he aggregated rated capacity of electric generating equipment shall be limited to . . . 5,000 kW for Customers served under the Value Stack Tariff." The Petition argues that based on this language, as well as the placement of the language within the Rider titled "Net Metering and Value Stack Tariff for Customer-Generators," the tariff

should be understood as limiting the cumulative generation of the generators on a site seeking net metering or Value Stack compensation, not as limiting cumulative generation of all generators on a site.

The Petition also argues that Con Edison's interpretation of the tariff is inconsistent with Commission precedent. The Petition explains that the Project Size Cap Order reflects an intent by the Commission to prevent projects with a rated capacity greater than 5 MW from benefiting from the Value Stack, not to limit the development of electrically separate projects on the same site designed for on-site usage. The Petition also argues that the proposed CDG project would meet the three factor test in that the CDG project would, in addition to being separately interconnected and metered and operationally independent of any other generator, be separately sited from any other project seeking Value Stack compensation.

The Petition explains that Con Edison's interpretation of the Value Stack tariff would impede the ability of the Port Authority to achieve its renewable goals and to support the State's clean energy goals, as well as its ability to serve EJ communities located near JFK. The Petition requests that the Commission issue a declaratory ruling finding that the 5 MW aggregated rated capacity limit under Con Edison's tariff only applies to generation projects seeking compensation under the Value Stack and that generation that is not seeking compensation under the Value Stack should not be counted towards the aggregated rated capacity limit for generation per site.

#### COMMENTS

Pursuant to 16 NYCRR 8.2(c), responses to a petition for a declaratory ruling must be filed within 21 days of the filing of the petition. Comments on the Petition were therefore

due on January 4, 2018. Con Edison filed a response to the Petition; no other comments were filed.

In its response, Con Edison argues that its tariff requires that all on-site generation be counted towards the size limitation for Value Stack eligibility and that that this requirement is clear in its tariff and consistent with Commission direction. Con Edison expresses concern that granting the Petition could result in utility-scale generators splitting off 5 MW of their project to receive Value Stack compensation for that portion of the project. However, Con Edison states that it would agree to modify its tariff to allow renewable projects to be eligible for Value Stack compensation, even if there are other renewable generation facilities on site, where those other facilities are separately metered and interconnected and do not export energy to the distribution system but instead solely serve the customer's on-site load.

#### LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; (ii) whether any action by it should be taken pursuant to a rule; (iii) and to decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute.

As described in the VDER Transition Order, the Commission has the authority to direct the treatment of DERs by electric corporations pursuant to, inter alia, Public Service Law (PSL) Sections 5(2), 66(1), 66(2), and 66(3). Pursuant to the PSL, the Commission determines what treatment will result in

the provision of safe and adequate service at just and reasonable rates consistent with the public interest.

DISCUSSION

The Commission has carefully evaluated issues related to the rated capacity limit to ensure that net metering and the Value Stack are used for compensation of distributed generation projects, as intended, rather than for compensation of large-scale generators that should instead seek compensation through the wholesale energy markets. The Commission has also recognized that net metering and Value Stack compensation have the potential to cause cost shifts and the rated capacity limit is one method of controlling those cost shifts. For those reasons, the Commission created the three factor test to reduce the ability of developers to split large-scale generators into several separate projects to receive net metering or Value Stack compensation for each.

However, these concerns do not exist where there is a legitimate reason for development of several separate projects, such as the desire to serve only on-site load with one or more projects, and where the generation resources that receive Value Stack compensation do not exceed the 5 MW rated capacity limit. The Net Metering Tariff Order explained that "net metering generating facilities" (and therefore, under later orders, generating facilities receiving Value Stack compensation) are required to meet the three factor test to be considered separate facilities; it does not direct that generating facilities not receiving net metering or Value Stack compensation be subjected to the three factor test along with facilities that are receiving such compensation. This issue is especially stark in the case of a large and effectively indivisible parcel of land, as is the case with JFK; Con Edison's interpretation of the



tariff would require that JFK either limit itself to 5 MW of generation on its entire 5,000 acre site, or completely forego Value Stack compensation.

The language of Con Edison's tariff appropriately reflects the Commission's intent, stating that "[t]he aggregated rated capacity of electric generating equipment shall be limited to . . . 5,000 kW for Customers served under the Value Stack Tariff." This clearly indicates that the previous sentence, which describes the three factor test, should only be applied for projects receiving Value Stack (or net metering) compensation. Where a project is designed and interconnected solely to serve on-site load and not to inject any energy into the utility system, counting that project's capacity towards the rated capacity limit is inconsistent with the utility tariff and Commission precedent, as well as the Commission's overall policy goals. Therefore, the Commission grants the Petition and finds that, for the purpose of Value Stack compensation eligibility, the rated capacity of projects seeking Value Stack or net metering compensation should be aggregated to determine whether the rated capacity limit is satisfied and the rated capacity of projects solely used for serving on-site load and not seeking compensation under the Value Stack or net metering should not be counted towards the rated capacity limit.

In response to Con Edison's concern that this could result in utility-scale generators splitting off 5 MW of their project to receive Value Stack compensation for that portion of the project, the Commission notes that such a situation would represent a significantly different fact pattern than the one presented in the Petition. This Declaratory Ruling is intended to address only situations where the non-Value-Stack generation is used solely for serving on-site load, such as the situation presented in the Petition or a scenario where the customer has a

generator used only to provide backup power for on-site usage, as many hospitals do. To the extent that Con Edison believes a tariff change to further clarify its tariff consistent with this Ruling is appropriate, Con Edison is welcome to make a filing with the Commission proposing such a change.

CONCLUSION

The Port Authority's interest in receiving Value Stack compensation for a CDG project while also developing separate non-injecting projects to serve on-site load is consistent with Commission precedent and the utility tariff. New York State has ambitious clean energy goals that require aggressive development of renewable energy by the public sector as well as the private sector. The projects proposed by the Port Authority will support achievement of these goals as well as promoting the Commission's interest in increasing access to clean energy in low-income and EJ communities.

The Commission finds and declares:

1. Pursuant to the Commission's Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures, issued December 15, 2014 in Cases 14-E-0151 and 14-E-0422, and consistent with the tariff PSC No: 10 - Electricity, Consolidated Edison Company of New York Inc., General Rules, Leaf No. 244, for the purpose of Value Stack compensation eligibility, the rated capacity of projects seeking Value Stack or net metering compensation should be aggregated to determine whether the rated capacity limit is satisfied and the rated capacity of projects used solely for serving on-site load and not seeking compensation under the Value Stack or net metering should not be counted towards the rated capacity limit.

2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary