

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 No: _____

PETITION FOR A DECLARATORY RULING

**The Port Authority of New York & New Jersey
New York Power Authority**

Dated: December 14, 2018

**BEFORE THE
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PRELIMINARY STATEMENT

The Port Authority of New York & New Jersey (“Port Authority”) seeks to develop several solar electric generation facilities at the John F. Kennedy International Airport (“JFK”). These solar generation facilities, when aggregated, may present over 10 MW of new renewable resources within New York City through the electric distribution system of Consolidated Edison Company of New York, Inc. (Con Edison). The proposed solar generation projects include one 5 MW rated capacity Community Distributed Generation solar facility (“CDG Facility”) to be separately interconnected from the other solar facilities at JFK (“Other Solar Facilities”), and operated under Con Edison’s Rider R – Net Metering and Value Stack Tariff for Customer Generators (“VS Tariff”).¹ The proposed CDG Facility will be offered to residents that reside in Environmental Justice (“EJ”) communities located around JFK.² This will allow EJ community residents to potentially subscribe to the CDG Facility, benefit from the locally sited zero-emission generation, and reduce their electric bills through monetary credits. The Other Solar Facilities are planned to be interconnected behind the electric meter of JFK without exporting to Con Edison’s electric system. The Port Authority may also couple energy storage with the Other

¹ PSC No: 10 – Electricity, Consolidated Edison Company of New York Inc., General Rules, Leaf No. 244.

² See Department of Environmental Conservation, Maps & Geospatial Information System (GIS) Tools for Environmental Justice identifying potential EJ communities (Available at <https://www.dec.ny.gov/public/911.html>). As of 2013 the total population within a half-mile radius of JFK was 212,398 where 75.8% (160,939) of the total population was minority and 15.4% (32,712) of the total population was living below the federal poverty level.

Solar Facilities to maximize the benefit from those solar projects and potentially enhance the resiliency of JFK, a critical regional transportation facility. The New York Power Authority (“NYPA”), in collaboration with the Port Authority, will coordinate and plan the proposed JFK solar generation facilities, finalize the project concept, and complete preliminary analyses of technical and economic viability of the proposed projects.³

Con Edison interprets the VS Tariff to require the aggregated rated capacity of all generation on a site, regardless of whether a generation facility seeks compensation under the VS Tariff, to not exceed the 5,000 kW (5 MW) capacity limit. Con Edison applies this interpretation even if the generation facilities have separate interconnections and operations. The Port Authority and NYPA believe that the 5 MW aggregated rated capacity limit under the VS Tariff only applies to the generation facilities seeking Value Stack compensation. Con Edison’s interpretation of the VS Tariff creates uncertainty as to whether the Port Authority can proceed with the solar facilities and achieve its on-site renewable goals while promoting the clean CDG Facility and related benefits to the EJ community residents.

Therefore pursuant to Rule 8.1 of the New York State Public Service Commission’s (“Commission”) Rules of Procedure 16 NYCRR § 8.1, Port Authority and NYPA hereby file this Petition for a Declaratory Ruling requesting the Commission to declare that:

1. The 5 MW aggregated rated capacity limit per site under Con Edison’s VS Tariff only applies to generation seeking compensation under the VS Tariff; and
2. Separately interconnected and operated generation not seeking compensation under the VS Tariff is not be counted towards the 5 MW limit per site.

³ New York Public Authorities Law § 1005(17) authorizes NYPA to “finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity....”

The Port Authority and NYPA underscore the limited scope of the petition, and do not request ruling on the VS Tariff requirements that projects have separate interconnections and operations, or matters related to multiple distributed generation projects on the same site seeking compensation under the VS Tariff.

BACKGROUND

The Port Authority conceives, builds, operates and maintains infrastructure critical to the New York/New Jersey region's trade and transportation network. These facilities include America's busiest airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Port Authority Bus Terminal in Manhattan, and the World Trade Center.

In support of strong environmental goals in both New York and New Jersey, the Port Authority has adopted aggressive measures to reduce greenhouse gas (“GHG”) emissions by embracing the Paris Climate Agreement.⁴ In doing so, the Port Authority has established an interim GHG reduction target of 35% by 2025 for its direct emissions, and a long-term target of reducing all emissions related to the agency's facilities by 80% by 2050. Both targets are in comparison to a 2006 baseline. The Port Authority has already reduced its own emissions by 13% compared to the 2006 baseline year through energy conservation measures such as LED lighting, upgrading old equipment, and some on-site renewable energy projects and offsite renewable energy purchases, but more must be done to reach those aggressive targets. The Port Authority aims to meet these targets through 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. Several planned on-site renewable

⁴ See Port Authority, Port Authority Embraces the Paris Climate Agreement (available at <http://www.panynj.gov/about/paris-climate-agreement.html>)

energy projects and a fuel cell at Port Authority facilities, including JFK, are projected to reduce GHG emissions by over 8,000 metric tons per year.⁵ On-site renewables will be incorporated into new construction through redevelopment programs at Port Authority facilities including JFK, likely leading to the development of additional small distributed generation projects.⁶

JFK is located on approximately 5,000 acres of land and is connected to Con Edison's Brownsville and Jamaica networks. The current average JFK electrical load is 44 MW with a peak load of 55 MW. The \$13 billion redevelopment program for expanding JFK operations and facilities is expected to increase peak load to approximately 83 MW by 2040. The large JFK site with significant on-site load appears to be well-suited to host over 10 MW of solar generation and relieve congestion on the historically congested electric networks, and help the Port Authority meet its aggressive GHG reduction goals.

Con Edison's narrow interpretation of the VS Tariff could limit the Port Authority's ability to achieve these on-site renewable goals and develop the planned CDG Solar Facility. Under Con Edison's interpretation, if the Port Authority were to develop the CDG Facility at JFK, it would be unable to develop the Other Solar Facilities on the site or else the members of the CDG Facility would no longer be able to receive monetary credits from the output of the CDG Facility. This limitation would thwart the Port Authority's GHG reduction and on-site renewable goals that would help New York reach the State Energy Plan to reduce GHG emissions by 40% and to have 50% of electricity be generated from renewable resources by 2030. In particular Con Edison's misinterpretation of its VS Tariff will limit the development of

⁵ See Id.

⁶ See Id.

solar, particularly CDG, connected to Con Edison's Brownsville network, a historically congested network in a utility service territory that is seeing limited solar development.⁷

DISCUSSION

The Commission is authorized to issue declaratory rulings “with respect to ... the applicability to any person, property, or state of facts of any rule or statute enforceable by the Commission or the validity of any such rule.” Here, Con Edison's VS Tariff is a rule enforceable by the Commission. The Port Authority and NYPA are seeking a declaratory ruling that the 5 MW aggregated rated capacity limit per site in the VS Tariff only applies to generation facilities seeking Value Stack compensation, and not to other on-site generation facilities.

The 5 MW Aggregated Capacity Limit Under the Con Edison's VS Tariff Only Applies to Generation Facilities Seeking Value Stack Compensation

The VS Tariff states that the kW of facilities with generating equipment located near each other will be aggregated to determine if the kW limit is met, and that the aggregated rated capacity for customers served under the VS Tariff shall be limited to 5 MW.⁸ In the Order increasing the aggregated generation capacity limit from 2 MW to 5 MW per site, the Commission aimed to spur additional clean energy generation without impacting nonparticipating ratepayers.⁹ The ordering clauses and discussion within the Order focus on the individual projects seeking compensation under the “Value Stack.” On their face both the VS Tariff and the Order establishing the 5 MW capacity limit seek to prevent projects greater than 5 MW from benefiting from the VS Tariff, but do not place limits on the development of

⁷ Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Staff Whitepaper on Future Community Distributed Generation Compensation (July 26, 2018) p. 4, notes that only 8.1 MW of CDG had reserved their VS Tariff allocation in the Con Edison Service territory, while all other utility service territories have seen significantly more CDG development.

⁸ PSC No: 10 – Electricity, Consolidated Edison Company of New York Inc., General Rules, Leaf No. 244.

⁹ Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Order on Phase One Value of Distributed Energy Resources Project Size Cap and Related Matters, p.3.

electrically separate projects on the same site that are not seeking service or compensation under the VS Tariff. In fact, the Commission supported the increase in aggregated generation capacity limit by acknowledging a need to encourage more clean generation without impacting non-participating ratepayers. Allowing for the development of additional on-site generation that is not seeking Value Stack compensation does just that.

The Commission has interpreted other provisions restricting the availability of benefits to generators of a certain size. In those cases the Commission has utilized a three-factor test that could apply here. The test requires each benefiting project to be: (i) separately metered and interconnected, (ii) independently operated, and (iii) located on a separate site.¹⁰ The Port Authority and NYPA are not challenging validity or applicability of this test. In compliance with the first factor of the test, the proposed CDG Facility will be interconnected and metered separately from the Other Solar Facilities, and will not be connected electrically to another generation facility at JFK.¹¹ In compliance with the second factor of the test, the CDG Solar Facility will not share any electrical equipment and operate to benefit the subscribers of the CDG Facility independent of the Other Solar Facilities.¹² The third factor of the test requires that each benefiting project be separately sited.¹³ In assessing whether a project satisfies the requirement for being “separately sited”, the Commission held that “[a]s a result, only one remote net metering facility may be located within the bounds of a site as described in a deed.”¹⁴ The proposed CDG Facility would be the only project at JFK availing itself of the benefits of the VS

¹⁰ Id. at p.22.

¹¹ The Commission has stated that if any interconnection equipment is shared, or the facility is interconnected in any way electrically to another facility, then the two facilities will be deemed combined, and if joint capacity exceeds the limit for the benefit, neither will qualify. Id. at 22.

¹² Id. at 23.

¹³ Id. at 23.

¹⁴ Id. at 23. In that case the Commission was interpreting whether or not multiple projects would qualify for remote-net metering under the Public Service Law.

Tariff, satisfying the third factor of the Commissions inquiry. For this factor, the Commission did not state that a second project on-site not seeking the benefit for limited size projects could disqualify the first project from benefiting, in contrast to its analysis of electrically connected projects in the first factor.¹⁵

CONCLUSION

Under a plain reading of the VS Tariff, and application of the Commission's three-factor test, Con Edison is misinterpreting its VS Tariff by requiring that all generation projects at a site be aggregated to determine VS Tariff eligibility for an individual project. The Commission should declare that the 5 MW aggregated rated capacity limit per site under Con Edison's VS Tariff only applies to generation projects seeking compensation under the VS Tariff. Further, the Commission should declare that generation that is not seeking compensation under the VS Tariff will not count towards the aggregated rated capacity limit for generation per site.

¹⁵ Id. at 22.

Respectfully submitted,

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