



**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition for a Declaratory Ruling or
Clarification Regarding Separate Site
Requirement for the 5 MW Aggregated
Generation Capacity Limit**

Case 15-E-0751

Case 14-E-0151

**Comments of New York Solar Energy Industries Association Regarding
Borrego Solar Systems Inc. Petition
For A Declaratory Ruling Or Clarification
Dated: November 26, 2020**

**New York Solar Energy Industries Association Comments to New York State Public
Service Commission
Regarding Borrego Solar Systems Inc. Petition For A Declaratory Ruling Or Clarification
Cases 15-E-0751 and 14-E-0151**

**1. Comments in Support of Borrego Solar Systems Petition and Recommending the
Elimination of the Separate Site Requirement**

In accordance with prior New York Public Service Commission (“Commission”) Orders, net metering and Value Stack-based compensation are limited to distributed generation projects with an aggregate rated generation capacity limit of 5 megawatts-alternating current (“MW-AC”).¹ When determining whether two or more projects are “separate projects” that adhere to this rated capacity limit, the Commission applies the following three-factor test: (a) each facility must be separately metered and interconnected; (b) each facility must be operationally independent; and, (c) each facility must be located on a separate site.²

In its petition to the Commission, Borrego Solar Systems (“Borrego”) notes that the definition of a “separate site” under the three-factor test was not clearly defined and asks the Commission to issue a Ruling that either: (i) Finds the requirements for net metering and Value Stack eligibility are met where projects have a unique SBL number, a separate lease and a separate metes and bounds description recorded via a separate memo of lease uniquely identifying each project within the 5 MW rated capacity limit; or (ii) Clarifies that the definition of a “separate site” is not limited to those projects with a separate deed but also includes projects with a unique SBL number, separate leases and a metes and bounds description recorded via a separate memorandums of lease uniquely identifying each project within the 5 MW-AC rated capacity limit.

¹ *Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures*, December 15, 2014 (Case 14-E-0422).

² *Order on Phase One Value of Distributed Energy Resources Project Size Cap and Related Matters*, February 22, 2018 (Case 15-E-0751).

NYSEIA supports these aspects of Borrego’s petition. However, NYSEIA urges the Commission to go further by issuing a Declaratory Ruling eliminating the separate site requirement as part of the above-referenced three-factor test used in determining whether two or more distributed generation projects are “separate projects” that adhere to the 5 MW-AC rated generation capacity limit.

The Commission adopted the three-factor test to ensure that net metering and Value Stack compensation are used for distributed generation projects, as intended, rather than for compensation of large-scale generators that should instead seek compensation through wholesale energy markets.³ However, NYSEIA contends that adherence to the first two conditions of the three-factor test – namely, separate metering and interconnection, and operational independence – is sufficient to ensure that large-scale generators cannot “game the market” and satisfy eligibility requirements for compensation intended only for distributed generation projects. The separate site requirement provides no real benefit to either the ratepayer or the electric utility over and above that provided by the first two conditions of the three-factor test. The only practical impact of the separate site requirement is to add unnecessary uncertainty, time and soft costs to distributed solar project development such as the need for formal subdivisions when adhering to the strict adherence to the deeded parcel mandate, the specific cost and time-related implications of which are outlined in detail in Borrego’s petition.

The separate site requirement, therefore, has the net effect of adding unnecessary and onerous burdens to the development of distributed solar projects that effectively hamper the realization of New York’s Climate Legislation and Community Protection Act-mandated targets of six gigawatts of distributed solar energy deployed by 2025, 70 percent electric sector decarbonization by 2030, and 100 percent electric sector decarbonization by 2040. For these reasons, NYSEIA urges the Commission to either:

³ *Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures*, December 15, 2014 (Case 14-E-0422).

1. Issue a Declaratory Ruling eliminating the separate site requirement of the three-factor test used in determining whether two or more projects are “separate projects” that adhere to the 5 MW-AC rated capacity limit;
2. Issue a Declaratory Ruling that finds the requirements for net metering and Value Stack eligibility are met where projects have a unique SBL number, a separate lease and a separate metes and bounds description recorded via a separate memo of lease uniquely identifying each project within the 5 MW rated capacity limit; or
3. Issue a Ruling clarifying that the definition of a “separate site” is not limited to those projects with a separate deed but also includes projects with a unique SBL number, separate leases and a metes and bounds description recorded via a separate memorandums of lease uniquely identifying each project within the 5 MW-AC rated capacity limit.

2. Eligibility of Distributed Generation Projects Sited on Multiple Land Parcels

A recurring area of uncertainty in interactions between distributed solar project developers and interconnecting utilities is the eligibility of projects located on multiple deeded land parcels. As in the case of the separate site requirement of the three-factor test, a strict requirement that a distributed solar project be sited on a single deeded parcel only adds additional uncertainty, time and soft costs to land owners, municipalities, and distributed solar project developers, through the need for formal subdivisions, without any real benefit to the ratepayer or electric utility. While NYSEIA is not aware of any prior Commission Rulings or Orders that require distributed generation projects to be sited on a single deeded land parcel, the lack of explicit clarification has resulted in some interconnecting utilities adopting this position and advising project developers that projects must be sited on a single deeded parcel to be eligible for net metering or Value Stack compensation.

In light of the prevailing uncertainty, NYSEIA therefore requests the Commission to issue a Ruling clarifying that any project located on multiple deeded land parcels is eligible for net metering or Value Stack compensation, so long as the aggregate rated generation capacity of the project does not exceed 5 MW-AC, and the project has a single meter and point of interconnection.

NYSEIA appreciates the opportunity to provide comments on this important matter and the Commission's consideration of the above recommendations. Please contact NYSEIA Executive Director Shyam Mehta at shyam@nyseia.org with any questions.

Dated: November 26, 2020

By: Shyam Mehta, Executive Director
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