

June 16, 2016

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

Re: Case _____ - Joint Petition of Cornell University and Argos Solar LLC for a
Declaratory Ruling, or in the Alternative, Waiver of Certain Tariff Provisions

Dear Secretary Burgess:

Attached please find the Joint Petition of Cornell University and Argos Solar LLC for a
Declaratory Ruling, or in the Alternative, Waiver of Certain Tariff Provisions. Please contact me
with any questions.

Respectfully submitted,

COUCH WHITE, LLP

Adam T. Conway

Adam T. Conway

ATC/glm
Attachment

cc: Mark Dolan (via email; w/att.)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Joint Petition of Cornell University and Argos Solar LLC
for a Declaratory Ruling, or in the Alternative,
Waiver of Certain Tariff Provisions**

Case _____

**JOINT PETITION OF
CORNELL UNIVERSITY AND ARGOS SOLAR LLC
FOR A DECLARATORY RULING, OR IN THE ALTERNATIVE,
WAIVER OF CERTAIN TARIFF PROVISIONS**

Dated: June 16, 2016

**COUCH WHITE, LLP
540 BROADWAY
P.O. BOX 22222
ALBANY, NEW YORK 12201-2222
518-426-4600**

PRELIMINARY STATEMENT

Cornell University (“Cornell”) has partnered with Argos Solar LLC (“Argos”; and with Cornell, “Petitioners”) to develop and construct a solar photovoltaic (“PV”) generating facility located at Cornell’s agricultural research facility in the Town of Seneca, New York (“Project”), within the service territory of New York State Electric & Gas Corporation (“NYSEG”). The Project is grandfathered for remote net metered monetary crediting pursuant to the New York State Public Service Commission’s (“Commission”) Order establishing a Transition Plan.¹ As such, the Project was designed to generate monetary credits under NYSEG’s Service Classification (“S.C.”) 6, which is NYSEG’s rate for non-demand billed customers.

During the Project’s testing phase, beginning December 2015, the Project unexpectedly encountered a limited number of brief spikes in electric demand above 5 kW. Through additional testing, it was determined that the root cause of the spikes lay with inverters that did not operate as expected. Petitioners have since implemented a temporary solution using portable generators and coordinated with the inverter’s manufacturer to replace the problematic components with new inverters that operate within NYSEG’s S.C. 6 tariff specifications.

By correspondence dated February 15, 2016, Cornell was notified by its account representative that NYSEG was re-classifying the Project’s “Host Account” to a demand-based rate (NYSEG S.C. 2) based on the fact that the brief spikes in demand resulted in the Project registering a demand in excess of the 5 kW threshold for S.C. 6. NYSEG has stated that it will not

¹ Case 14-E-0151 *et al.*, Hudson Valley Clean Energy, Inc., Order Granting Rehearing in Part, Establishing Transition Plan, and Making Other Findings (issued April 17, 2015) (“Transition Plan Order”) at Att. I, p. 1 (“Transition Plan”).

change the Project's service classification back to S.C. 6 until it has operated for 11 consecutive months without registering demand greater than 5 kW.

As explained below, the demand spikes that have occurred were an unexpected anomaly that arose during Project testing. Petitioners have taken concrete and timely steps to address these spikes, and a permanent remedy will be installed at the Project before NYSEG finishes all of its obligations under the Standardized Interconnection Requirements ("SIR"). By re-classifying the Project, NYSEG has misapplied the express language of its tariff as well as the Commission's Transition Plan Order grandfathering certain projects into monetary crediting.

Accordingly, pursuant to Rule 8.1 of the Commission's Rules of Procedure, 16 NYCRR § 8.1, Petitioners hereby file this Petition for a Declaratory Ruling requesting that the Commission declare that the Project qualifies for service under S.C. 6, and direct NYSEG to issue a refund to Cornell for the difference between the S.C. 6 and S.C. 2 credit values from the date of the re-classification. In the alternative, based on the unique circumstances of this case, Petitioners request that the Commission grant the Project a waiver from the 5 kW threshold in NYSEG's tariff and direct NYSEG to return the Project to S.C. 6 and issue a refund to Cornell for the difference between the S.C. 6 and S.C. 2 credit values from the date of the re-classification.

BACKGROUND

A. The Project

Argos, a special purpose entity formed and managed by Distributed Sun LLC and Building Energy Holdings, LLC, owns the Project, and has entered into a power purchase agreement ("PPA") with Cornell to provide Cornell with the net metering credits generated by the Project. The Project is designed to operate in full compliance with the SIR and NYSEG's S.C. 6 tariff. Cornell submitted an Interconnection Application to NYSEG on October 27, 2014 to

interconnect the Project through a new service established at 480V under NYSEG's S.C. 6 tariff. It is not contested that the Project qualifies for remote net metering monetary crediting under the Commission's Transition Plan.²

After the Interconnection Application was submitted, all engineering and data sheet information on the Project's design was provided to NYSEG to review and the Project was deemed compliant with the SIR technical requirements. NYSEG was also consulted several times during Project construction to coordinate testing and commissioning activities. In particular, the Project required NYSEG's assistance to energize the service in order to connect the Project's inverters to NYSEG's grid to complete testing before synchronization. NYSEG energized the service on December 10, 2015 and issued a Final Acceptance Letter on December 22, 2015.

B. Testing Phase and Discovery of Inverter Issues

Beginning December 22, 2015, the Project was subjected to a number of tests to verify operability, safety, and other key performance metrics in coordination with, and in the presence of, NYSEG staff. During this subsequent testing period, it was also observed that, during times when the Project was not generating electricity, the Project was consuming power greater than 5 kW – the stipulated maximum allowable demand under S.C. 6. This excess demand was not anticipated and the Project's inverters were immediately taken offline for diagnosis.

Between January 4 and 5, 2016, Argos determined the root cause of the excess demand to be an issue with the heating and cooling system of the installed inverters. The inverter manufacturer had failed to disclose the actual maximum consumption of the auxiliary heating and cooling system, and that the auxiliary systems could cause spikes in measurable demand above 5

² Id. at 1-2.

kW during periods of cold weather. Cornell voluntarily relayed this information to NYSEG's metering department on January 18, 2016, and requested additional time for testing.

Between January 6 and 22, 2016, the heating and cooling systems for the inverters were disconnected while the Project installation team investigated possible remedial options with the inverter manufacturer. At that time, the technical representative of the inverter manufacturer asserted that the equipment could accept stand-alone power supply and therefore comply with the consumption limit of 5 kW. On January 22, 2016, the Project utilized a temporary generator to power the inverter heating and cooling system to investigate whether the Project had other issues related to excess demand. A peak demand of over 5 kW was observed during the transition of auxiliary supply from the NYSEG grid to the temporary generator. Peak demands of 5.3 kW, 5.1 kW and 5.4 kW were also observed on February 6, 2016, February 7, 2016, and February 26, 2016, respectively. When contacted, the inverter manufacturer clarified its earlier statement regarding stand-alone power supply, noting that only the inverter circulating pumps were disconnected from the primary feed, but some fans still remained connected to the primary feed. The manufacturer incorrectly assumed that the electric consumption of those fans was negligible.

Following this site testing, Argos determined that due to technical and commercial challenges presented with the inverter manufacturer, the best course of action was to remove the currently-installed inverters entirely and replace them with inverters that are proven to operate below the 5 kW threshold.³ A formal request was submitted to NYSEG on March 10, 2016 to replace the existing inverters. By e-mail dated March 24, 2016, NYSEG acknowledged and

³ Specifically, Argos installed same type inverters to those in use at Cornell's other remote net metered PV facility located in Lansing, New York, which is classified under S.C. 6 and has operated below the 5 kW threshold since achieving commercial operation in August, 2014.

approved the replacement inverters, and Argos completed installation of the new inverters on April 15, 2016. In doing so, the Project incurred over \$260,000 in additional costs, including the new equipment, installation, and associated design and management expenses.

On February 15, 2016, Cornell was notified by its account representative that NYSEG was re-classifying the Project to S.C. 2 based on the registered demand in excess of 5 kW during the testing phase. By letter dated March 28, 2016, Petitioners explained to NYSEG the unanticipated manufacturer issues that occurred during testing resulted in the limited number of registered spikes in demand, and requested NYSEG to reverse its decision to re-classify the Project to the S.C. 2 tariff. NYSEG responded by letter dated April 7, 2016 (“April 7 Letter”) rejecting Petitioners’ request. Moreover, NYSEG noted that, under its S.C. 2 tariff, the Project would be billed at the S.C. 2 rate for at least the next 11 consecutive months, and that the Project’s billing classification would not be reverted to S.C. 6 until 12 months had passed where the Project did not register demand greater than 5 kW.⁴

NYSEG rejected Petitioners’ re-classification request despite the fact that NYSEG has not yet completed all steps required of it under the SIR. Pursuant to an Engineering, Procurement, and Construction Agreement (“EPC Agreement”) between NYSEG and Argos, NYSEG is tasked with a variety of engineering and procurement activities related to interconnection of the Project, and NYSEG has been compensated for this work by Argos. NYSEG had a contractual deadline to complete its portion of the interconnection work by April 30, 2016. As of the date of this Petition, NYSEG has not yet completed all of its requirements under the EPC Agreement and NYSEG requested an extension of the April 30, 2016 deadline from

⁴ Copies of both letters are attached hereto as Exhibits A and B, respectively.

Argos, which Argos denied.⁵ Once NYSEG’s work is completed, NYSEG will issue its final reconciliation invoice and at that point the SIR process will be fully complete.

Moreover, around the time that the Project registered the demand spikes, NYSEG itself was still working to resolve significant billing errors on its end with respect to the Project. For example, through the end of March, 2016, NYSEG’s invoices showed only 7,000 kWh in total Project generation, despite actual Project generation in excess of 200,000 kWh. NYSEG and Petitioners have since resolved this discrepancy.

ARGUMENT

The Commission can issue a declaratory ruling “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.”⁶ The Commission is also permitted to issue a declaratory ruling “whenever the commission determines it is warranted by the public interest.”⁷ Here, Petitioners are seeking a declaratory ruling regarding the applicability of NYSEG’s S.C. 2 and S.C. 6 Tariffs to the Project. NYSEG’s S.C. 2 and S.C. 6 tariff leaves are “rule[s]...enforceable by the Commission,”⁸ and thus a petition for declaratory ruling is the proper vehicle to seek the relief requested herein. Moreover, issuance of a declaratory ruling in this instance is warranted by the

⁵ SIR at 16. By e-mail correspondence between February 4 and February 11, 2016, NYSEG acknowledged that the SCADA work was still outstanding, and that the final charges owing to NYSEG would be subject to completion of such work. This correspondence has been attached hereto as Exhibit C.

⁶ 16 NYCRR § 8.1(a)(1).

⁷ *Id.* at § 8.1(b).

⁸ *See* Case 12-S-0147, Petition for Declaratory Ruling by Vornado Realty Trust to Revise Consolidated Edison Company of New York, Inc.’s Steam Standby Tariff, Order Denying Petition for Declaratory Ruling (issued September 17, 2012) at 6.

public interest in promoting renewable energy development within the State and in clarifying the rules applicable to the remote net metering program.

As explained in more detail below, NYSEG's position that the Project is to be billed under the S.C. 2 rate should be rejected because it conflicts with the express language and the intent of both S.C. 6 and the Transition Plan Order. The Commission should therefore direct NYSEG to return the Project to the S.C. 6 rate and issue a refund to Cornell for the difference between the S.C. 6 and S.C. 2 credit values from the date of the re-classification. However, if the Commission determines that NYSEG's application of the S.C. 2 tariff is correct, the Commission should nonetheless grant the Project a waiver of the 5 kW demand threshold tariff provisions and direct NYSEG to retroactively apply its S.C. 6 Tariff to the Project and provide Cornell with the appropriate refund because, under the unique circumstances presented here, it would be unjust and unreasonable to reclassify the Project to S.C. 2.⁹

⁹ Petitioners request that any refund be provided in cash, as opposed to a refund of excess credits. The refund requested herein, if returned in the form of a lump sum credit, has the potential for creating an excess credit that could sit unused on Cornell's Satellite Accounts until such time as Cornell has sufficient charges on its Satellite Accounts to absorb this excess. This concern would not have existed if Cornell remained properly classified under S.C. 6, and thus a cash refund is the appropriate vehicle for returning the historical credit values that Cornell should have received.

POINT I

NYSEG HAS MISAPPLIED ITS TARIFF AND THE TRANSITION PLAN ORDER AND THE PROJECT SHOULD BE CLASSIFIED UNDER S.C. 6

NYSEG claims that, because the Project registered limited instances of demand greater than 5 kW during performance testing due to faulty component issues that were undetectable prior to testing, the Project should be completely re-classified under a different service classification. This position is a misapplication of NYSEG's tariff leaves for S.C. 6, and should be rejected.

Leaf 203 of NYSEG's Tariff for Electric Service states that S.C. 6 is applicable to non-residential customers "for estimated metered demand of 5 kW or less and use of 2,000 kWh or less per month for any two consecutive months."¹⁰ The Project was designed with an estimated demand of 5 kW or less. Prior to being energized on December 10, 2015 in preparation for performance testing, the Project was fully expected to draw no more than 5 kW of demand, and use no more than 2,000 kWh of electricity a month. At all times, the Project has used less than 2,000 kWh per month. As explained above, the actual spikes in demand were unexpected anomalies and Petitioners have since taken concrete steps to resolve all component issues to ensure that the Project functions as originally designed. Thus, at all times going forward, the Project's estimated metered demand will be 5 kW or less and the Project's Host Account should therefore be classified under S.C. 6.

In its April 7 Letter, NYSEG asserted that "[a]lthough the tariff states 'estimated metered demand of 5 kW or less', there is a demand meter already at your customer's location, so

¹⁰ P.S.C. No: 120 – Electricity, New York State Electric & Gas Corporation, Leaf No. 203.

we know if actual metered demand is ‘5 kW or less’.”¹¹ In other words, NYSEG would impute the meter readings that were registered during initial performance testing of an interconnecting project (when operational and other issues are still in the process of being worked out) as the final operational parameters of the generator itself once it is fully and continuously generating energy with all issues resolved. In order to avoid a re-classification, a generator would have to solve all issues prior to testing, even if those issues could not have been detected without testing.

NYSEG’s interpretation of the S.C. 6 tariff is untenable. Although the Project’s design was deemed compliant with the SIR, the Project needed to undergo further testing, above and beyond the SIR, subsequent to energization to verify operability, safety, and other key performance metrics.¹² The tests were performed in consultation with, and in the presence of, NYSEG personnel. Furthermore, NYSEG’s Final Acceptance Letter was required to allow the inverters to operate for the performance testing, and it would not have been possible to determine the existence of the power draw issue otherwise. Thus, NYSEG’s re-classification of the Project to S.C. 2 essentially punishes Petitioners for failing to resolve operational issues prior to actual energization, even though those issues could not have been detected without NYSEG energizing the Project.¹³

¹¹ April 7 Letter, at 2.

¹² As noted earlier, NYSEG itself has not completed all necessary steps under the SIR, which underscores that the Project was still within a testing phase during the time of the demand exceedances (the last of which occurred on February 27, 2016).

¹³ If the Commission concludes that there is ambiguity in S.C. 6, which Cornell and Argos contend there is not, NYSEG, as keeper of the tariff, should suffer the consequences, not its customers.

Additionally, the S.C. 2 tariff states that billing under S.C. 2 “shall continue for at least 11 months after the establishment of a demand in excess of 5 kW”¹⁴ NYSEG asserts that this tariff requires it to bill the Project at S.C. 2 rates, and NYSEG will only re-classify the Project to S.C. 6 after twelve months of billing has passed during which the Project has not achieved a demand higher than 5 kW in any month.¹⁵ Combining this with NYSEG’s interpretation of the applicability requirements of S.C. 6 yields a palpably unfair result: an interconnecting generator that inadvertently registers demand higher than 5 kW even once during system testing would ostensibly be billed at the S.C. 2 rate for twelve months thereafter even if, in those twelve months, the generator never again registers demand greater than 5 kW. To highlight the incongruity, the generator in question would be classified as an S.C. 2 customer for those twelve months despite the fact that, for that duration of time, it would not meet the applicability requirements of S.C. 2, which states that the service classification is “for estimated metered demands of more than 5 kilowatts but less than 500 kilowatts.”¹⁶

NYSEG’s application of its tariff also is inconsistent with the Transition Plan Order. In the Transition Plan Order, the Commission was concerned about “disrupting the plans of developers seeking in good faith to bring solar and other net metered generation projects on-line.”¹⁷ As a result, the Transition Plan Order grandfathers eligible projects into monetary crediting for 25 years at non-demand remote net metered locations. NYSEG’s narrow application of its tariff and premature re-classification of the Project to S.C. 2 disrupts Petitioners’ good faith

¹⁴ P.S.C. No: 120 – Electricity, New York State Electric & Gas Corporation, Leaf No. 136.

¹⁵ April 7 Letter, at 2.

¹⁶ P.S.C. No: 120 – Electricity, New York State Electric & Gas Corporation, Leaf No. 128.

¹⁷ Transition Plan Order, *supra* note 1, at 2.

efforts to develop new renewable generation, thereby doing exactly what the Commission sought to avoid in adopting the Transition Plan.

Availability of monetary credits at non-demand rates influenced Petitioners' decision-making with respect to the Project, including entering into a PPA at payment rates that anticipated credits tied to S.C. 6 rates. Indeed, if NYSEG's tariff interpretation is upheld, developers would be faced with the unenviable decision of whether to pursue projects that may possibly come close to that threshold, knowing that a single misstep during the testing process that results in a brief spike of demand above 5 kW could result in the entire project being billed for a minimum of twelve months at a substantially less favorable rate. Such an outcome is inconsistent with the Transition Plan Order, which was crafted to ensure long-term revenue stability for renewable projects, like the Project at issue here, that relied on monetary credits at non-demand rates. Petitioners have fully committed themselves to ensuring that the Project operates within its design specifications, including promptly replacing the faulty inverters to ensure the Project remains within the acceptable boundaries of S.C. 6. NYSEG's re-classification of the Project is contrary to the Commission's Transition Plan Order and, if not overturned in accordance with this Petition, will disrupt Petitioners' reasonable financial expectations for the Project before they can bring it fully online.

This is not to say that Petitioners generally oppose the tariff leaves governing S.C. 2 and S.C. 6. If a generator completes all necessary testing and begins full continuous operations, and thereafter registers a power draw in excess of the 5 kW threshold, it is reasonable to credit that generator under S.C. 2. However, the circumstances are different here. As is the case with the Project, system testing often yields unanticipated results that are then corrected. There is no justification for re-classifying a generator to S.C. 2 and keeping it there for twelve continuous

months for an issue that was only discoverable when the electricity was turned on, particularly where, as here, the interconnection process is not fully complete, and the Project's inverters have been replaced at substantial cost to ensure that metered demand remains at 5 kW or less. Indeed, NYSEG, like Petitioners, is still resolving the final interconnection issues, and its reclassification was therefore premature.¹⁸ Accordingly, the Commission should declare that the Project is properly billed under S.C. 6, and direct NYSEG to retroactively apply S.C. 6 rates to the Project starting on the date of NYSEG's re-classification and issue a cash refund to Cornell in accordance with this Petition.

POINT II

IF THE COMMISSION DOES NOT GRANT PETITIONERS' REQUEST FOR A DECLARATORY RULING, PETITIONERS ALTERNATIVELY REQUEST A WAIVER FROM THE S.C. 2 AND S.C. 6 TARIFF REQUIREMENTS

If the Commission does not grant Petitioners' request to re-classify the Project, Petitioners alternatively request that the Commission grant a limited waiver from the 5 kW demand threshold in S.C. 6 and the 11-month term in S.C. 2, so that the Project can be returned to S.C. 6. Assuming the limited waiver is granted, Petitioners request a cash refund to Cornell equal to the difference between the S.C. 6 and S.C. 2 credit values from the date the Project was initially re-classified to S.C. 2.

Public Service Law § 65 mandates that all rates and charges imposed by regulated utilities on their customers shall be just and reasonable. In the past, the Commission has granted

¹⁸ In addition, around the time of the demand spikes, NYSEG itself was having substantial issues with its own billing system. Through March, 2016, NYSEG's invoices showed only 7,000 kWh of Project generation, despite actual generation of over 200,000 kWh, more than 28 times the invoiced amount.

a waiver when the tariff imposes an unjust and unreasonable financial burden on a customer, particularly “when compared to similarly situated customers in other utility service areas.”¹⁹ For example, in E. Tetz & Sons, the Commission granted E. Tetz & Sons, Inc. (“Tetz”) a waiver of Orange and Rockland Utilities, Inc.’s requirement for interruptible gas customers to maintain certain minimum inventories of alternate fuel on-site throughout the heating season. The Commission held it would have been an unjust and unreasonable financial burden if Tetz were required to maintain a full alternate fuel supply during part of the heating season when Tetz shut down its operations. In granting the request, the Commission noted that there were other utilities in the state whose tariffs specifically allowed interruptible gas customers to shut down operations in lieu of maintaining full alternate fuel supplies.²⁰

The limited waiver requested here satisfies the two prongs established in E. Tetz & Sons. First, re-classification of the Project to S.C. 2 will impose an unjust and unreasonable financial burden on the Project by materially reducing the value of the remote net metering credits from the Project. Based on rates in effect as of April 1, 2016, Petitioners estimate that the difference in credit value between S.C. 6 and S.C. 2 is approximately \$0.05 per kWh. When applied against estimated annual production of 3,380,000 kWh from the Project, Petitioners estimate that a 12-month re-classification under S.C. 2 will reduce the value of the Project’s remote net metering credits by \$169,000.

In addition, Petitioners have expended substantial amounts of time and money (over \$260,000) in a good faith effort to resolve the technical issues here, including performing a string of diagnostic tests, implementing a temporary solution, and installing new, compliant inverters. It

¹⁹ See Case 10-G-0482, Petition of E. Tetz & Sons, Inc., Order Directing Waiver and Initiating New Proceeding (issued September 11, 2011) (“E. Tetz & Sons”) at 6-7.

²⁰ Id.

would be highly inequitable to require Petitioners to wait a full twelve months before the Project can qualify for service under S.C. 6 again, especially since the remedial actions are complete and the Project is expected to operate within the boundaries of S.C. 6, all before NYSEG finalizes its obligations under the SIR.

The second prong of E. Tetz & Sons prompts a comparison to what other utilities do. Here, the 5 kW demand threshold in NYSEG's S.C. 6 is materially lower than similar thresholds in other utility service areas, resulting in disparate treatment for Petitioners as compared to similarly situated customers in other service areas. For example, Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") allows customers to remain on its equivalent non-demand billed rate, S.C. 2, "until monthly measured demand exceeds 100 kW for twelve consecutive months...."²¹ This 100 kW threshold is *20 times* higher than NYSEG's 5 kW threshold, and it requires a continuous demand at this higher level for a full year. Importantly, the registered demands for the Project during the testing period were sporadic and far below the National Grid threshold. Thus, as it did in E. Tetz & Sons, the Commission should find that NYSEG's application of its 5 kW demand threshold in this case was not just and reasonable when compared to the thresholds applicable to similarly situated remote net metered customers in other utility service territories.

Accordingly, for the reasons set forth herein, if the Commission rejects the relief sought in Point I, supra, the Commission should avoid an inequitable result by issuing a limited waiver from NYSEG's tariff requirements that: (i) relieves the Project from the 5 kW threshold during the Project testing period; and (ii) directs NYSEG to return the Project's Host Account to

²¹ See P.S.C. No. 220 – Electricity, Niagara Mohawk Power Corporation d/b/a National Grid, Leaf No. 370.

S.C. 6 and to issue a cash refund to Cornell equal to the difference between the S.C. 6 and S.C. 2 credit values from the date the Project was initially re-classified to S.C. 2.

CONCLUSION

For all of the foregoing reasons, Petitioners respectfully request that the Commission declare that NYSEG has misapplied both its tariff and the Transition Plan Order and that NYSEG must reclassify the Project's Host Account under S.C. 6 and issue Cornell a cash refund equal to the difference between the S.C. 6 and S.C. 2 credit values from the date the Project was initially re-classified to S.C. 2. In the alternative, Petitioners request that the Commission grant the Project a limited waiver from NYSEG's 5 kW demand threshold and direct NYSEG to reclassify the Project's Host Account under S.C. 6 and issue Cornell a cash refund equal to the difference between the S.C. 6 and S.C. 2 credit values from the date the Project was initially re-classified to S.C. 2.

Dated: June 16, 2016
Albany, New York

Respectfully submitted,

Adam T. Conway

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EXHIBIT A

MARCH 28, 2016 LETTER TO NYSEG



Cornell University

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March 28, 2016

VIA ELECTRONIC SUBMISSION

Mark V. Dolan
Deputy General Counsel and Secretary
New York State Electric and Gas, Inc.
18 Link Drive
Binghamton, New York 13904

CC: Mark Marini

Re: Request for Classification of Account Number 1004-3202-432 as SC-6

Dear Mr. Dolan,

Cornell University ("Cornell") and Argos Solar LLC ("Argos") hereby request that New York State Electric and Gas, Inc. ("NYSEG") review the classification of account number 1004-3202-432 located at 3425 Sutton Road in Seneca, NY. The meter for this account is located on property owned by Cornell University and is the site of a 2MWac photovoltaic ("PV") array, referred to as the Cornell Geneva Ag Center PV Array (or "the Project"). Argos, the special purpose entity formed and managed by Distributed Sun LLC and Building Energy Holdings US, LLC, owns the Project, and has entered into a Power Purchase Agreement ("PPA") with Cornell to provide a project that will allow remote net metering credits to be provided to Cornell by NYSEG in accordance with New York State Public Service Law 66-j.

As explained herein, NYSEG has re-classified the meter to Service Classification ("SC") – 2 based on abnormal demand spikes unexpectedly encountered during Project commissioning. Through further testing, Argos has since identified the root cause of these spikes, immediately instituted a temporary fix, and will install a permanent technical fix in the near future. Thus, going forward, Project demand is designed to not exceed 5 kW and the meter should therefore be classified under SC 6.

I. Background

The Project is designed to operate in full compliance with the Standard Interconnection Requirements ("SIR") and the SC 6 tariff. An Interconnection Application was submitted to NYSEG on October 27, 2014 to interconnect the Project through a new service established at 480V under NYSEG's SC 6 tariff. All engineering and data sheet information on the Project's design was provided to NYSEG for review and deemed compliant with the SIR.

During the construction of the Project, NYSEG was consulted several times to coordinate testing and commissioning activities. The Project required NYSEG's assistance to energize the service in order to connect the Project's inverters to NYSEG's grid to complete testing before continuous operation. NYSEG energized the service on December 10, 2015 and issued a Final Acceptance Letter dated December 22, 2015.

The Project completed construction and was subjected to a number of tests to verify operability, safety and other key performance metrics in coordination with, and in the presence of, NYSEG staff. The Project's tests revealed that it met the requirements under the SIR and the UL 1741 standard. During this testing period, it was also observed that, during times when the Project was not generating electricity, the Project was consuming power of greater than 5kW – the stipulated maximum allowable demand under the SC 6 tariff.

This draw of excess power was not an anticipated event. On the contrary, as noted above, the Project was designed to operate below the demand and usage thresholds set forth in SC 6 (e.g., estimated metered demand of 5 kW or less and use of 2,000 kWh or less per month for any two consecutive months).

II. Follow Up and Remedial Action

Subsequent to the completion of construction on December 22, 2015 the following events occurred:

- (1) The excess demand was observed and the Project's inverters were taken offline to determine the cause.
- (2) During the dates of January 4 and 5, 2016, Argos determined the root cause of the excess power import problem to be the heating and cooling system of the inverters. The inverter manufacturer had failed to disclose the actual maximum consumption of the auxiliary heating and cooling system, and that the auxiliary systems could cause spikes in measurable demand above 5kW at times.
- (3) On January 18, 2016, Cornell reached out to NYSEG's metering department voluntarily to inform them of the observed demand being in excess of 5kW and to request additional testing time for resolution.
- (4) During the period from January 6 to January 22, 2016, the heating and cooling systems for the inverters were disconnected while the Project installation team investigated possible remedial options with the inverter manufacturer. At that time, the technical representative of the inverter manufacturer stated that the equipment had been modified, within warranty provisions and certifications, to accept a temporary, stand-alone power supply and therefore comply with the consumption limit of 5kW. This statement would come under review later.
- (5) On January 22, 2016, the Project utilized a temporary generator to power the inverter heating and cooling system to investigate if the Project had other issues related to excess demand. A peak demand over 5kW was observed during the transition of auxiliary supply from the NYSEG grid to the generator.

- (6) On February 6, 2016, a peak demand measured at 5.3kW was observed while work was being done on the Project as part of other tests. One minor peak over 5kW was also observed on February 7 at 5.2kW. Following up from work performed during the period described in Item (4) above, the technical representative from the inverter manufacturer clarified that only the inverter circulating pumps were disconnected from the primary feed, but some fans remained still connected, based on the manufacturer's incorrect assumption that the consumption of those fans was negligible.
- (7) On February 27, 2016, the Project voluntarily disconnected one of the two inverters following site testing. This inverter has remained off and will continue to do so until the inverter manufacturer can comply with the original design and SC 6 tariff.

Argos has now confirmed that the cause of each exceedance was the heating and the cooling system of the inverters. Based on technical and commercial challenges presented with the inverter manufacturer, Argos has elected to remove the currently installed inverters from the Project. Based on the NYSEG approval received on March 24 from Rick Kauffman, Argos proposes to replace the inverters currently on site with different inverters that are compliant with both the SIR and the SC 6 tariff, by April 30, 2016.

On February 15, 2016, Cornell was notified by its account representative that NYSEG was re-classifying the Host Meter to SC 2 based on the demand exceedances registered during the Project testing periods. This re-classification, if not corrected, will have a material adverse impact on the value of the remote net metering credits generated by the Project.

III. Conclusion and Request

The Project needed to undergo extensive performance testing, above and beyond the SIR, subsequent to energization. Because the NYSEG Final Acceptance Letter was required to allow the inverters to operate for the purposes of performance testing, it would not have been possible to determine the existence of the excess power draw issue without the events described above. The excess power draws observed have since been resolved through a temporary solution while the Project awaits approval, delivery, installation and commissioning of new inverters.

The demand exceedances during testing were unavoidable due to the aforementioned reasons. The SC 6 tariff is applicable to customers with estimated metered demand of 5 kW or less and use of 2,000 kWh or less per month for any two consecutive months. The demand exceedances encountered by the Project during the testing period were unanticipated, have been temporarily resolved as described herein, and are in the process of being permanently fixed. With a remedial solution in place, the Project will not exceed the 5kW demand threshold henceforth, and thus the Project has design metered demand less than 5 kW.

The Project submitted a formal request (via email dated March 10, 2016 and attached) to NYSEG's Electric Transmission Services to replace the existing inverters. Electric Transmission Services has acknowledged and approved the replacement process (via email dated March 24, 2016 and attached).

Based on the temporary measures discussed herein and the pending inverter replacement, the Project's demand in the future is not estimated to exceed 5kW. Moreover, the Project only exceeded

March 28, 2016
Page 4 of 4

this threshold in limited instances based on unexpected conditions encountered during performance testing that was required after the Final Acceptance Letter was issued. For these reasons, we therefore request that NYSEG: (i) reverse its recent decision to reclassify the Host Meter account to the SC 2 tariff, and (ii) retroactively apply the SC 6 tariff to the Host Meter account beginning December 22, 2015.

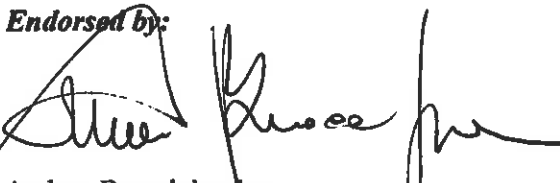
Do not hesitate to reach out to us with any questions.

Sincerely,




W.S. (Lanny) Joyce, P.E.
Director, Utilities and Energy Management
Department of Energy and Sustainability
Cornell University
wsj1@cornell.edu
(607) 255-6631 w
(607) 255-5377 f

Endorsed by:



Andrea Braccialarghe
Authorized Person, Argos Solar LLC
Managing Director, Building Energy Development US LLC
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(202) 524-5570 w
(202) 550-1383 c



Jeff Weiss
Managing Director, Distributed Sun LLC
jeff@distributedsun.com
(202) 255-3893 c

Attachment: Request to substitute inverters via email dated March 10, 2016
Approval to substitute inverters via email dated March 24, 2016

EXHIBIT B

APRIL 7, 2016 RESPONSE FROM NYSEG



April 7, 2016

VIA Electronic Submission

W.S. (Lanny) Joyce, P.E.
Director, Utilities & Energy Management
135 Humphreys Service Building
Ithaca, N.Y. 14853-3701

RE: Request for Classification of Account Number 1004-3202-232

Dear Mr. Joyce,

New York State Electric & Gas Corporation ("NYSEG") has received your request to review the classification of the above referenced account number located at 3425 Sutton Road in Geneva, N.Y. It is NYSEG's understanding that this site location contains a 2 MW photovoltaic array. It is also NYSEG's understanding that during times when the array was not generating electricity, the project was consuming power greater than 5 kW¹, which exceeds the threshold to remain on Service Classification No. 6 ("SC 6").

NYSEG's tariff, specifically Leaf No. 128 of PSC 120, requires customers with demands of 5 kW and above (but less than 500 kW) to be served at Service Classification No. 2 ("SC 2"). Below is an excerpt from that leaf:

SERVICE CLASSIFICATION NO. 2

APPLICABLE TO THE USE OF SERVICE FOR:

General Services - with Demand Billing. (For estimated metered demands of more than 5 kilowatts but less than 500 kilowatts.)

In accordance with Leaf 136, when you achieve a demand of 5 kW or greater, NYSEG bills the customer for the next 11 months at the SC 2 rate.

(c) Billing Duration:

Billing for service under this Service Classification shall continue for at least 11 months after the establishment of a demand in excess of 5 kW.

¹ The metered demand in December 2015 was 20 kW.

After the 12 months of billing at SC 2 has passed, and you have not again achieved a high demand of 5 kW in any month, the billing class will be changed to SC 6 because that is the appropriate Service Classification for a customer with demands of 5 kW or less.

Leaf 203 of PSC 120 is excerpted below. Although the tariff states “estimated metered demand of 5 kW or less”, there is a demand meter already at your customer’s location, so we know if the actual metered demand is “5 kW or less”.

SERVICE CLASSIFICATION NO. 6

APPLICABLE TO THE USE OF SERVICE FOR:

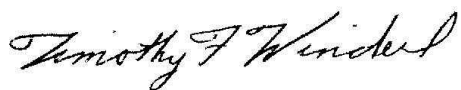
General Service - Non-Residential Service. (For estimated metered demand of 5 kW or less and use of 2,000 kWh or less per month for any two consecutive months.)

In accordance with Public Service Law, Section 65, paragraph 3, the Company is prohibited from granting undue preference or advantage to a customer and NYSEG has to apply its tariff to all customers consistently. From a Public Service Commission Determination, issued and effective January 28, 1998, in Case 97-E-2182, “A utility is obligated to apply the charges set forth in its filed tariff. It may not unilaterally decide to cease billing tariffed charges nor may a utility reinterpret a tariff in a manner that directly contradicts its previous interpretation without changing the tariff language.”

NYSEG Electric Transmission Services provided approval of the installation of the inverters in accordance with the technical requirements for interconnection, it was not an endorsement of the appropriate billing service classification.

We hope this explanation has clarified the reasons that NYSEG cannot bill this account at SC 6 until the demand has dropped to 5 kW or less for a 12-month period. If it does not, please contact me to further discuss the points in question.

Sincerely,



Tim Winderl

NYSEG Key Account Manager

315-253-9094 Ext. 705

tfwinderl@nyseg.com

EXHIBIT C

EMAIL CORRESPONDENCE FROM NYSEG

Chet Feldmann

From: Kinney, Raymond <RPKinney@nyseg.com>
Sent: Thursday, February 11, 2016 1:47 PM
To: Chet Feldmann; Kauffman, Richard
Cc: Bharath Srinivasan; Jeff Weiss; Chier, Mark
Subject: RE: Geneva PV Plant: Closeout and Run of Charge

Chet,

NYSEG is in general agreement with the information in your email, with the following update. A run of charges completed today has the current run of charges at \$123,000. As you correctly point out, final charges will be subject to completion of the SCADA work currently estimated at \$35,000, finalization of punch list items and a final run of charges.

Ray Kinney



Ray Kinney
Director - Transmission, Energy Services

18 Link Drive, PO Box 5224, Binghamton, NY 13902-5224
Telephone 607-762-4321
Cell 607-725-7166
Fax 607-762-8666
rpkiney@nyseg.com



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From: Chet Feldmann [<mailto:chet@distributedsun.com>]
Sent: Monday, February 08, 2016 2:20 PM
To: Kauffman, Richard
Cc: Bharath Srinivasan; Jeff Weiss; Chier, Mark; Kinney, Raymond
Subject: RE: Geneva PV Plant: Closeout and Run of Charge

Rick,

I am trying to create an update for our lender who needs a status update on this item. Would you agree to the following to be accurate? If you agree, I will provide this to our lender.

Argos has provided NYSEG with \$285,000. NYSEG's current run of charge is \$122,000 under the Project's EP&C agreement. The pending SCADA work is estimated to cost around \$35,000. These numbers are present day information.

Final punch list and closeout items will be determined before a final run of charge on this account can be determined and provided back to the project.

Chet
202-706-6164

From: Kauffman, Richard [<mailto:RAKauffman@nyseg.com>]
Sent: Monday, February 8, 2016 11:48 AM
To: Chet Feldmann
Cc: Bharath Srinivasan; Jeff Weiss; Chier, Mark; Kinney, Raymond
Subject: RE: Geneva PV Plant: Closeout and Run of Charge

Chet - I need to get a final punchlist of all outstanding items that need to be completed. Once I have that and anticipated schedule for completion we can look at the timeline for the closing process

Thanks - Rick



Richard A. Kauffman
Electric Transmission Services

18 Link Drive, PO Box 5224, Binghamton, NY 13902-5224
Telephone 607-762-7606
Cell 607-427-8693
Fax 607-762-8666

rakauffman@nyseg.com



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From: Chet Feldmann [<mailto:chet@distributedsun.com>]
Sent: Friday, February 05, 2016 11:53 AM
To: Kinney, Raymond
Cc: Bharath Srinivasan; Jeff Weiss; Kauffman, Richard; Chier, Mark
Subject: RE: Geneva PV Plant: Closeout and Run of Charge

Ray

Thanks for getting in touch in this morning. It is helpful in getting this project closed. I understand you and Rick have been putting pressure to commission the SCADA for your equipment in the project vicinity. In addition, you were unaware of any outstanding checklist items.

As we discussed, the project is currently on pace to come in under budget. The current run of charge for work done to date was estimated at \$122,000. The SCADA work, not yet accounted for in the run of charge, was originally budgeted at \$35,000. The amount for SCADA could vary based on the executed work. I understand that these numbers may not be final. If you can confirm the current status, that will help our team advance with our closing process.

Thanks!

Chet
202-706-6164

From: Chet Feldmann
Sent: Thursday, February 4, 2016 5:57 PM
To: Kinney, Raymond (RPKinney@nyseg.com); Kauffman, Richard (RAKauffman@nyseg.com); Chier, Mark (MAChier@nyseg.com)
Cc: 'Bharath Srinivasan'; Jeff Weiss
Subject: Geneva PV Plant: Closeout and Run of Charge

Ray, Rich and Mark,

Thank you all for your cooperation with the field work for our Geneva system. We appreciate your effort and the wider NYSEG team's effort to get the system online in December.

We are looking forward to closing out the Geneva project construction and moving on to working with you on the next system. In the short term, we are looking for a final run of charge of costs that NYSEG incurred on this particular interconnection. At the moment, the missing run of charge is impeding us closing out our construction financing. We have waited for a few weeks to make sure that all your field personnel logged in their costs. Since ample time has passed, we would like to get the final run of charge as quickly as possible. I have not been able to reach you by phone and hence the request via email.

Can you please provide NYSEG's incurred costs so that we may close out our project?

Thanks,

Chet Feldmann
Senior Operations Manager | [Distributed Sun](#)
[1350 I St. NW](#) | Suite 1280 | Washington DC 20005
202-706-6164 (office) | 443-454-7990 (mobile) | chet@distributedsun.com

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