

**New York Concrete Corp./JPL Indus. JV v
Consolidated Edison of N.Y.**

2025 NY Slip Op 33135(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 654910/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. NICHOLAS W. MOYNE</u>	PART	41M
	<i>Justice</i>		
-----X		INDEX NO.	<u>654910/2024</u>
NEW YORK CONCRETE CORP./JPL INDUSTRIES JV		MOTION DATE	<u>09/19/2024, 11/15/2024</u>
	Petitioner,	MOTION SEQ. NO.	<u>002 003</u>
	- v -		
CONSOLIDATED EDISON OF NEW YORK,		DECISION + ORDER ON MOTION	
	Respondent.		
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 002) 2, 21, 22 were read on this motion to/for JUDGMENT - DECLARATORY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 were read on this motion to/for COMPEL ARBITRATION

Upon the foregoing documents, it is

This matter comes before the Court on Respondent Consolidated Edison of New York's (Con Edison) Motion to Compel Arbitration and Stay the Proceeding, pursuant to CPLR § 7503(a). Petitioner New York Concrete Corp./JPL Industries JV (JPL) opposes the motion, asserting that the underlying dispute falls outside the scope of the parties' contract and its arbitration clause.

The dispute arises from a public works construction project known as "East Side Coastal Resiliency from Montgomery Street to East 25th Street" (the "Project"). The Project utilizes a joint bidding method where the City of New York (the City) combines its public work with privately-owned utility work. The City of New York Standard Construction Contract (the "Contract"), dated March 2017, governs the relationship between JPL and the City, and includes specific "Joint Bid" (JB) pages, paginated JB-1 through JB-189, which contain additional contract requirements for work performed in the presence of privately-owned utility facilities. Con Edison is a third-party beneficiary of this Contract, entitled to enforce its terms as they pertain to JPL and the performance of utility work.

A key component of the Contract is Appendix C, titled "Resolutions of Certain Disputes Arising Between the Contractor and the Utilities" (Appendix C). Section C.1.0 of Appendix C, the "Applicability" clause, broadly states that it "shall apply to disputes between the Contractor and the Utilities that arise under, or by virtue of, the provisions of this contract." It further specifies that disputes arising under this Appendix, as described in paragraph C.1.0, "shall be resolved in accordance with the provisions of this Appendix C." The Contract incorporates the American Arbitration Association (AAA) Construction Industry Arbitration Rules. Rule 9 of these Rules explicitly grants the arbitrator the power to rule on their own jurisdiction, including objections to the existence, scope, or validity of the arbitration agreement, and to determine the existence or validity of a contract of which an arbitration clause forms a part.

The current dispute centers on additional utility work related to overruns of bid schedule quantities. JPL contends that this overrun work falls outside of the contract work as defined on page JB-3 paragraph 8. This paragraph states, "Overruns not paid by City will be negotiated and paid to Contractor by the Utility." JPL interprets this to mean a new, standalone agreement with Con Edison is required, covering not just pricing but also payment terms, escalation costs, retainage, and dispute resolution, and that the Contract's arbitration provisions are moot for such work. JPL also points to alleged inconsistencies in Appendix C, specifically references to a non-existent paragraph A.1.0, as rendering the arbitration clause ambiguous or illusory. Con Edison, conversely, maintains that this is a contractual interpretation dispute covered by the existing Contract and Appendix C. They argue that JB-3, paragraph 8, simply addresses the method of payment for certain overruns (direct from Utility instead of City), and that the Contract explicitly provides for applicable unit items to be used for extra work. Con Edison emphasizes that the Department of Design and Construction (DDC) views Appendix C arbitration as the only method of resolving disputes between contractors and utilities on joint bid projects, promoting speedy resolution and avoiding delays. The Contract also mandates that work continue during disputes.

The parties engaged in pre-arbitration discussions and exchanged final offers as required by Appendix C procedures. However, JPL did not accept Con Edison's final offer and instead commenced this action for declaratory judgment and injunctive relief.

New York courts have a long and strong public policy favoring arbitration as a means of conserving judicial resources (see *Stark v Molod Spits DeSantis & Stark, P.C.*, 9 NY3d 59, 66 [2007]; *Matter of Smith Barney Shearson v Sacharow*, 91 NY2d 39, 49 [1997]). In deciding a motion to compel arbitration, the Court's role is typically limited to two threshold questions: (1) whether a valid agreement to arbitrate was made, and (2) whether the issue sought to be arbitrated falls within the scope of that agreement (see *Edgewater Group Capital Partners, L.P. v Greenstar N. Am. Holdings, Inc.*, 69 AD3d 439 [1st Dept 2010]; *Koob v IDS Fin. Servs.*, 213 AD2d 26, 30 [1st Dept 1995]).

JPL concedes that where an express arbitration clause exists between two parties, it is the arbitrator that initially determines whether the issue in dispute is arbitrable. JPL's core argument is that the Court must first determine whether an enforceable contract exists between JPL and Con Edison for the specific out of contract utility work. However, the Court of Appeals in *Wu v. Uber Tech, Inc.* clarified that challenges that go solely to the enforceability of other provisions of the contract cannot be considered by the court; rather, the arbitrator decides such issues (see *Wu v Uber Technologies, Inc.*, 43 NY3d 288, 302 [2024]). The critical distinction is between a challenge to the existence of the arbitration agreement itself versus a challenge to the applicability or scope of the arbitration agreement to a particular dispute within an undeniably existing contract (*id.* at 301-302).

Here, JPL does not dispute that the underlying City Contract exists, nor that this Contract contains a broad arbitration clause (Appendix C). The arbitration clause specifically incorporates the AAA Construction Industry Arbitration Rules, which explicitly state that "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." (Rule 9(a)) and "to determine the existence or validity of a contract of which an arbitration clause forms a part." (Rule 9(b)) By agreeing to arbitrate under these AAA Rules, the parties clearly and unmistakably delegated the gateway issue of arbitrability to the arbitrator (see *Revis v Schwartz*, 192 AD3d 127, 141 [2d Dept 2020], *aff'd*, 38 NY3d 939 [2022]). JPL's claim that the additional utility work falls outside the contract and requires a new agreement is, in essence, a dispute over the scope and interpretation of the existing contract, specifically JB-3, paragraph 8, and the applicability of

Appendix C to such work. These are questions for the arbitrator, not the Court, to decide in the first instance.

Even if this Court were to determine arbitrability, the clear language of Appendix C mandates arbitration. The clause broadly applies to "disputes...that arise under, or by virtue of, the provisions of this contract." The only express exclusion from arbitration in the Contract is for claims relating to delays caused by a utility's failure to provide specialty contractors in a timely manner. JPL has not made such a claim in its Petition.

JPL's argument regarding the non-existent paragraph A.1.0 in Appendix C is unpersuasive. Section C.1.0, the primary applicability clause, unambiguously sets the scope of arbitration without reference to the missing paragraph. Even if deemed an ambiguity, questions of contract interpretation are squarely within the arbitrator's purview given the existence of a broad arbitration clause (see *Bd. of Ed. Of Deer Park Union Free Sch. Dist. v Deer Park Tchrs. Ass'n*, 50 NY2d 1011, 1012 [1980]; *George A. Fuller Co. v Albin Gustafson Co.*, 55 AD2d 872, 873 [1st Dept 1977]).

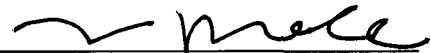
Furthermore, as noted above, the DDC has consistently articulated that Appendix C arbitration is the only method of resolving disputes between contractors and utilities on joint bid projects, as it best serves the stated aims towards speedy construction and a fair and efficient system to resolve disputes. JPL itself participated in the pre-arbitration procedures outlined in Appendix C, including exchanging final offers. The contract also explicitly states that work must continue during disputes, reinforcing the intent for quick, non-litigious resolution. JPL's characterization of the work as outside the contract is a fundamental contractual interpretation dispute. Con Edison asserts that the Contract contains provisions for pricing overruns at bid unit prices or less (e.g., Article 26.1.2). Whether JB-3, paragraph 8, necessitates entirely new terms for payment beyond unit prices, or merely dictates the payment mechanism for overruns, is a matter of contract interpretation best decided by an arbitrator as agreed to by the parties.

Given the broad and mandatory nature of the arbitration clause in Appendix C, the incorporation of AAA Rules which delegate arbitrability questions to the arbitrator, and the strong public policy favoring arbitration

in such disputes, this Court finds that the issues raised in JPL's Petition, which fundamentally concern the interpretation and application of the existing contract to the additional utility work, are properly within the scope of arbitration. Therefore, Con Edison's motion to compel arbitration is granted. All proceedings in this action are hereby stayed pending arbitration.

The forgoing constitutes the decision and order of this court.

8/19/2025
DATE


NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT