



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

DIVISION OF ENERGY AND
OFFICE OF CLEAN ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY FOR)
APPROVAL OF A SECOND EXTENSION OF A SOLAR)
GENERATION INVESTMENT PROGRAM AND)
ASSOCIATED COST RECOVERY MECHANISM AND)
FOR CHANGES IN THE TARIFF FOR ELECTRIC)
SERVICE, B.P.U.N.J. NO. 15 ELECTRIC PURSUANT)
TO N.J.S.A. 48:2-21, 48:2-21.1 AND N.J.S.A. 48:3-98.1)

ORDER GRANTING
MOTIONS TO INTERVENE
AND ADMISSION PRO HAC
VICE

DOCKET NO. EO16050412

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Matthew M. Weisman, Esq., Public Service Electric and Gas Company
Stephen S. Goldenberg, Esq., New Jersey Large Energy Users Coalition
R. William Potter, Esq., Mid-Atlantic Solar Energy Industries

BY COMMISSIONER JOSEPH L. FIORDALISO:

BACKGROUND:

On January 13, 2008, L. 2007, c. 340 ("Act") was signed into law by former Governor Corzine based on the New Jersey Legislature's findings that energy efficiency and conservation measures and increased use of renewable energy resources must be essential elements of the State's energy future, and that greater reliance on energy efficiency and conservation will provide significant benefits to the citizens of New Jersey. The Legislature also found that public utility involvement and competition in the renewable energy, conservation and energy efficiency industries are essential to maximize efficiencies.

Pursuant to Section 13 of the Act, codified as N.J.S.A. 48:3-98.1 (a)(2), an electric or gas public utility may, among other things, invest in Class I renewable energy resources or offer Class I renewable energy programs in its service territory on a regulated basis. Such investment in renewable energy, energy efficiency and conservation programs may be eligible for rate treatment approved by the New Jersey Board of Public Utilities ("Board"), including a return on equity, or other incentives or rate mechanisms that decouple utility revenue from sales of

electricity and gas. N.J.S.A. 48:3-98.1(b). Ratemaking treatment may include placing appropriate technology and program cost investments in the utility's rate base, or recovering the utility's technology and program costs through another ratemaking methodology approved by the Board. An electric or gas public utility seeking cost recovery for any renewable energy, energy efficiency and conservation programs pursuant to N.J.S.A. 48:3-98.1 must file a petition with the Board.

By Order dated August 3, 2009¹, the Board authorized Public Service Electric and Gas Company ("PSE&G" or "the Company") to implement a solar generation program. ("Solar 4 All Program"). The Solar 4 All Program incorporated one 40 megawatt ("MW") segment of large-scale solar installations² and one 40 MW segment of small solar units mounted upon utility and streetlight poles; the program was anticipated to have completed installation by the end of 2013. The Board authorized PSE&G to recover program costs through a new solar generation investment component ("SGIP") of the Company's Regional Greenhouse Gas Initiative Recovery Charge ("RRC")³.

By Order dated May 31, 2013, the Board authorized PSE&G to extend the Solar 4 All Program and authorized the Company's installation of 40 MWdc on properly closed sanitary landfills and on brownfields, as well as three pilot programs of one MWdc each on underutilized government facilities, grid security/storm preparedness, and innovative parking lot applications.⁴ ("Solar 4 All Extension Program") In addition, the May 2013 Order authorized the Company to reallocate capacity within the four segments, provided no capacity could be reallocated from the landfill/brownfield segment, and to recover program costs through a new Solar Generation Investment Extension Program ("SGIEP") component of its electric GPRC.

PSE&G PETITION FOR A SECOND EXTENSION OF SOLAR 4 ALL ("S4AEII")

On May 11, 2016 PSE&G filed the instant petition with the Board. In the filing, the Company seeks approval of a second extension of one of the segments of Solar 4 All Program Extension Programs, which would consist of installing 100 MWdc upon landfills and brownfields over a five year period with a total proposed capital investment of approximately \$276 million (\$240 million for investment and \$36 million for contingency and unforeseen site conditions). PSE&G proposes to recover costs associated with the program through a new Solar Generation Investment Extension II Program component of the electric GPRC set forth in the Company's tariff.

Board Staff circulated a proposed procedural schedule to PSE&G and to Rate Counsel. Both

¹ In re the Petition of Public Service Electric and Gas Company for Approval of a Solar Generation Investment Program and Associated Cost Recovery Mechanism, BPU Docket No. EO09020125, Order dated August 3, 2009. ("August 2009 Order")

² The large scale segment approved in the August 2009 Order included three sub-segments: 1) systems installed on PSE&G-owned sites; ii) systems installed on third-party owned signed; and iii) systems installed on sites in Urban Enterprise Zones, including publicly-owned sites.

³ By Order dated February 19, 2014, in Docket Nos. ER13070603 and GR13070604, the RRC was renamed the Green Programs Recovery Charge ("GPRC").

⁴ In re the Petition of Public Service Electric and Gas Company for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and For Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1, BPU Docket No. EO12080721, Order dated May 31, 2013. ("May 2013 Order")

parties provided feedback and the schedule was finalized on June 29, 2016. The procedural schedule is attached as Appendix A.

By Order dated June 29, 2016 ("June 29, 2016 Order"), the Board determined that this matter should be retained by the Board for review and hearing, and, as authorized by N.J.S.A. 48:2-32, designated the undersigned as the presiding officer who is authorized to rule on all motions that arise during the proceeding, and modify any schedule that may be set as necessary to secure just and expeditious determination of the issues.

The Motions to Intervene and for Admission *Pro Hac Vice*:

As described in detail below, there are two Motions to Intervene in this matter, one on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"), and the other on behalf of the Mid-Atlantic Solar Energy Industry ("MSEIA"). NJLEUC also seeks admission *pro hac vice* of Paul F. Forshay, Esq. a member in good standing of the bar of the District of Columbia.

New Jersey Large Energy Users Coalition Motion to Intervene and Admission *Pro Hac Vice*

By letter dated May 25, 2016, Steven S. Goldenberg, Esq. filed a motion to intervene in this proceeding on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"). According to the motion, NJLEUC is an association of large volume customers which, among other things, monitors regulatory proceedings on behalf of its members, including those serviced by PSE&G. The motion states that NJLEUC's members, as large end-use customers of electricity and gas on the PSE&G system, will be directly and immediately affected by the solar generation investments and associated rate relief requested by the petition. NJLEUC maintains that it has a unique perspective not otherwise represented, and that its participation in this matter will constructively and measurably advance this proceeding, as required by N.J.A.C. 1:1-16.3(a). NJLEUC also commits to working cooperatively with the other parties to this proceeding, to the extent possible.

Mr. Goldenberg has also moved pursuant to N.J.A.C. 1:1-5.2 and 1:21-2 for the admission *pro hac vice* of Paul F. Forshay, Esq. a member in good standing of the bar of the District of Columbia. Mr. Forshay filed an affidavit with the motion asserting that there is good cause for his admission since he has considerable experience representing marketers and large end users in proceedings before the Board and the Federal Energy Regulatory Commission, he has been requested by NJLEUC to appear in these proceedings, and that he is associated in this matter with Mr. Goldenberg who is New Jersey counsel of record. The affidavit also indicates that Mr. Forshay has satisfied all of the conditions for admission as set forth in R. 1:21-2(a), and that the fees required by R. 1:20-1(b) and 1:28-2 have been paid to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection.

By letter dated June 6, 2016, PSE&G responded to NJLEUC's motion to intervene. PSE&G maintains that for the Board to determine whether the interests expressed in the motion are sufficient to qualify for intervention in this matter, it must supply a list of its current members, and any grant of the motion should be conditioned on submittal of that list. PSE&G requests that the list identify the members that are currently PSE&G clients. In addition, Petitioner asks that the Board require NJLEUC to update its membership lists in the event of any material changes.

By electronic mail dated July 8, 2016, counsel for NJLEUC supplied a list of some of NJLEUC's members which receive service from PSE&G and by electronic mail on July 12, 2016 agreed to

update that list should any of the entities listed cease to be PSE&G customers.

PSE&G does not object to the motion for pro hac vice submitted on behalf of Mr. Forshay.

Mid-Atlantic Solar Energy Endustry's Motion to Intervene

By letter dated June 8, 2016, R. William Potter, Esq., filed a motion to intervene in this proceeding on behalf of the Mid-Atlantic Solar Energy Industries Association. According to the motion, MSEIA is a trade association of companies involved in and conducting solar business in New Jersey and includes numerous companies doing business in PSE&G service territory. In support of its motion, MSEIA relied upon the certification of Lyle Rawlings, MSEIA's president. Mr. Rawlings certifies that MSEIA's member companies include solar installers, developers, investors, and consultants and that MSEIA actively participates in state public utility commission proceedings and working groups related to issues of solar energy policy. According to his certification, MSEIA's industry-based perspective will be helpful to the Board in evaluating the Program, its members will be directly affected by the Program, and its interests will not be adequately represented by any other party to this proceeding. MSEIA also avers that its participation will not cause delay or disruption to this proceeding.

PSE&G did not file a response to the motion of MSEIA.

DISCUSSION AND FINDINGS:

Motions to Intervene

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, In re the Joint Petition of Public Service Electric and Gas

Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

I agree with the movants that the Program, if approved, has the potential to significantly affect the solar generation market in the State. As stated above counsel for NJLEUC has supplied a list of some of NJLEUC's members that receive service from PSE&G and by electronic mail on July 12, 2016 has agreed to update that list should any of the entities listed cease to be PSE&G customers. Based upon the above discussion, and no objections having been filed after due notice, I **HEREBY FIND** that, as demonstrated in their motions, MSEIA and NJLEUC have an interest in the outcome of these proceedings that is sufficiently different from that of the other parties, and that their admission will not result in delay or confusion in the proceedings. Therefore, I **HEREBY GRANT** the motions of MSEIA and NJLEUC to intervene in this matter.

Motion for Admission Pro Hac Vice of Mr. Paul F. Forshay, Esq.

Based on review of the motion for admission pro hac vice of Mr. Forshay, Esq. and supporting affidavit, and no objections having been received, I **FIND** that Mr. Forshay, Esq. has satisfied the conditions for admission, and **HEREBY GRANT** the motion for admission to practice before the Board for this proceeding in the understanding that Mr. Forshay shall:

1. Abide by the Board's rules and all applicable New Jersey court rules, and all disciplinary rules;
2. submit proof of payment of the fees required by R.1:20-1 (b) and 1:28-2;
3. consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against him that may arise out of his participation in this matter;
4. notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
5. have all pleadings, briefs and other papers filed with the Board signed by the attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the attorney admitted by this Order.

As of the date of this Order, parties to this matter include Petitioner, the New Jersey Division of Rate Counsel ("Rate Counsel"), Board Staff, NJLEUC, and MSEIA.

Petitioner is represented by Matthew Weisman, Esq.

Rate Counsel is represented by Stefanie Brand, Esq.

The New Jersey Large Energy Users Coalition is represented by Steven S. Goldenberg, Esq.

MSEIA is represented by R. William Potter, Esq.

Pending Motions:

The New Jersey Laborers-Employers Cooperation and Education Trust, by Bradley M. Parsons, Esq., filed a motion to intervene on July 11, 2016. Atlantic City Electric ("ACE"), by Philip J. Passanante, filed a motion to participate on July 11, 2016. Vanguard Energy Partners, LLC, by Michael Rato, filed a motion to intervene or participate on July 13, 2016. These motions will be addressed in a separate Order.

Procedural Schedule

In addition, I have reviewed the proposal for a preliminary schedule, after giving due

consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the attached as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

I **HEREBY DIRECT** that all documents required to be served under the terms of the schedule described on Exhibit A, shall be served by electronic-mail, while still providing hard copies 1) to the Board for those documents which must be filed with the Board, and 2) to each party requesting hard copies.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: July 19, 2016

BOARD OF PUBLIC UTILITIES

BY:



JOSEPH L. FIORDALISO
COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL OF A SECOND EXTENSION OF A SOLAR GENERATION INVESTMENT
PROGRAM AND ASSOCIATED COST RECOVERY MECHANISM AND FOR CHANGES IN
THE TARIFF FOR ELECTRIC SERVICE, B.P.U.N.J. No. 15 ELECTRIC PURSUANT TO
N.J.S.A. 48:2-21.1, AND N.J.S.A. 48:3-98.1

BPU DOCKET No. EO16050412

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Appendix A

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of a Second Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21, N.J.S.A. 48:2-21.1, and N.J.S.A. 48:3-98.1

Docket Number EO16050412

Proposed Procedural Schedule

Discovery Requests on Initial Testimony+	June 24, 2016
Board designates a Presiding Commissioner	June 29, 2016
Responses to Discovery on Initial Testimony	July 8, 2016
Motions to Intervene/Participate Due	July 25, 2016
Opposition to Intervention/Participation Motions due	August 1, 2016
Settlement/Discovery Conference (Tentative)	July 21 or 22, 2016
Second Round of Discovery Due	July 22, 2016
Responses to Second Round of Discovery Due	July 29, 2016
Discovery/Settlement Conference (Tentative)	August 1, 2016
Public Hearing in New Brunswick	August 2, 2016
Public Hearing in Hackensack	August 4, 2016
Intervener/ Respondent Testimony Due	August 10, 2016
Public Hearing in Mt. Holly	August 9, 2016
Settlement Conference (Tentative)	August 11 or 12, 2016
Discovery on Intervener/Respondent Testimony	August 15, 2016
Responses to Discovery on Intervener/Respondent Testimony	August 22, 2016
Rebuttal Testimony	August 31, 2016
Discovery on Rebuttal Testimony	September 8, 2016
Responses to Discovery on Rebuttal Testimony	September 15, 2016
Evidentiary Hearings (if necessary)*	Week of September 19, 2016
Initial Briefs due	September 30, 2016
Reply Briefs	October 14, 2016

BPU Dkt. No. EO16050412

Anticipated Board Action

October Agenda (sch 10/31/16)

+ - Petitioner agrees that discovery is ongoing and will endeavor to answer all discovery within seven business days of service.

* - Subject to Presiding Commissioner's availability. Intervenors/respondents may present oral surrebuttal at evidentiary hearings.