



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF PETITION OF)	ORDER ON MOTIONS FOR
PUBLIC SERVICE ELECTRIC AND GAS)	PARTICIPATION AND PRO HAC
COMPANY FOR APPROVAL OF A SOLAR)	VICE ADMISSION
GENERATION INVESTMENT PROGRAM)	
AND AN ASSOCIATED COST RECOVERY)	
MECHANISM)	DOCKET NO. EO09020125

(SERVICE LIST ATTACHED)

BY THE BOARD:

Under N.J.S.A. 48:3-98.1.a (2) electric public utilities are allowed to invest in Class I renewable energy resources or programs on a regulated basis. N.J.S.A. 48:3-98.1.b allows electric public utilities to file a petition with the New Jersey Board of Public Utilities ("Board") to approve cost recovery of these programs. Pursuant to N.J.S.A. 48:3-98.1.b in determining the recovery by electric public utilities of program costs, the Board may take into account the potential for job creation from such programs, the effect on competition for such programs, existing market barriers, environmental benefits, and the availability of such programs in the marketplace. Unless the Board issues a written order within 180 days after the filing of the petition approving, modifying or denying the requested recovery, the recovery requested by the utility will be effective on the 181 day after the filing without further order by the Board. N.J.S.A. 48:3-98.1.d defines "program costs" as:

"all reasonable and prudent costs incurred in developing and implementing energy efficiency, conservation, or Class I renewable energy programs approved by the board pursuant to this section. These costs shall include a full return on invested capital and foregone electric and gas distribution fixed cost contributions associated with the implementation of the energy efficiency, conservation, or Class I renewable energy programs until those cost contributions are reflected in base rates following a base rate case if such costs were reasonably and prudently incurred."

On February 10, 2009, Public Service Electric and Gas Company ("PSE&G" or "Company") filed with the Board a solar program petition, *I/M/O Petition of Public Electric Service and Gas Company Petition for Approval of a Solar Generation Investment Program and Associated Cost Recovery Mechanism*; Docket No. EO09020125 ("Solar for All Program" or "Program") requesting the Board to: (i) retain jurisdiction of this matter and not transfer the filing to the Office of Administrative Law; and (ii) approve the Solar for All Program and the proposed cost recovery mechanism.

By letter dated February 19, 2009, Mr. Weiner, Executive Vice-President of Resource Energy Systems, L.L.C. ("Resource Energy"), and a licensed attorney in New Jersey (as required under N.J.A.C. 1:1-5.1), moved to intervene in this matter on behalf of Resource Energy. According to the motion, Resource Energy is a developer of solar energy systems in the service territory of PSE&G with a legitimate interest in the Solar for All Program as a potential collaborator or competitor to PSE&G under the Program as well as a market participant developing solar projects in the PSE&G service territory.

By letter dated February 25, 2009, Mr. Goldenberg, Esq., attorney for the New Jersey Large Energy Users Coalition ("NJLEUC"), moved to intervene in this matter on behalf of NJLEUC. According to the motion, the Program substantially, specifically, and directly affects the interests of NJLEUC members purchasing electricity and gas from PSE&G. Mr. Goldenberg also moved for admission pro hac vice of Mr. Forshay, Esq., a member in good standing of the bar of the District of Columbia, who filed an affidavit with the motion asserting that there is good cause for his admission in light of his considerable experience representing the interests of large end-use customers.

By motion dated March 5, 2005, Ms. Thayer, Esq. moved to intervene on behalf of New Jersey Natural Gas Company ("NJNG"). NJNG is a natural gas distributor subject to the jurisdiction of the Board. According to the motion, the Solar for All Program has the potential to change the renewable energy market in New Jersey, thus affecting current and potential NJNG programs or offerings related to renewable energy or energy efficiency in the state.

By letters dated March, 11, 2009 Ms. LeGros, Esq. filed a motion to intervene on behalf of the Solar Alliance ("SA"); and Mr. Ramadan, Esq. filed two motions to intervene, one on behalf of Petra Solar Inc. ("Petra Solar") and another on behalf of the New Jersey Solar Industry Manufacturers Association ("NJSIMA"). According to the motion, SA is a non-profit trade association of approximately 30 companies doing business in New Jersey and providing solar energy equipment, services and expertise to retail customers, many of whom are retail electric customers of PSE&G. In its motion SA asserts that it has a unique interest in these proceedings because the Program is likely to have a profound impact in the market for solar photovoltaic projects in New Jersey and thus have an impact on the businesses of SA members. According to the motion, Petra Solar designs and manufactures technology for the solar industry and is a pioneer of pole-mounted solar technology. Furthermore, according to the motion Petra Solar is the only manufacturer of turnkey solar systems in New Jersey; and thus claims to have a unique interest in these proceedings. NJSIMA is a non-profit corporation with a goal (as established in its bylaws) to encourage and advance, through cooperative effort of New Jersey solar electric energy manufacturers, application and public understanding of solar energy. NJSIMA asserts it has a legitimate and unique interest in the outcome of these proceedings as they will impact current and future operations of NJSIMA.

By letter dated March 12, 2009, Mr. Cappelli, Jr. a New Jersey licensed attorney (as required under N.J.A.C. 1:1-5.1) filed a motion to intervene on behalf of NextEra Energy Resources, L.L.C. ("NextEra"). NextEra has power generating facilities in 25 states including New Jersey, with more than 90 per cent of NextEra's power generation coming from clean or renewable energy sources. NextEra motion asserts its interest in maintaining the competitive balance of the Solar Renewable Energy Credit ("SREC") market and affirms that the Program will substantially, specifically and directly affect NextEra's businesses in New Jersey. By letter dated March 13, 2009, Mr. Potter, attorney representing the Mid-Atlantic Solar Energy Industries Association ("MSEIA") filed a motion to intervene in these proceedings. According to the motion many of MSEIA's members are solar photovoltaic developers and installers active in the PSEG service area with a significant economic stake in the outcome of this docket. MSEIA claims that the alternative participant status pursuant to N.J.A.C. 1:1-16.5 will not protect MSEIA's interests and will not assist the Board and other parties in fashioning a just outcome.

PSE&G does not object to the above-referenced motions to intervene. However, as expressed in Company's letter dated April 3, 2009, PSE&G maintains that certain conditions of membership verification must be met for the Board to determine whether the interests expressed in the motions are sufficient to qualify for intervention in this matter. In particular, PSE&G conditioned its lack of objection upon MSEIA and NJLEUC furnishing the Board and the Company an updated list of all their respective members. In the case of NJLEUC, PSE&G requests that the list identify the members that are currently PSE&G clients.

No other responses to the motions were received.

FINDINGS AND DISCUSSION

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 intervenor'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, *I/M/O 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).

The Board agrees with the movants that the Program, if approved, has the potential to significantly affect the solar generation market in the State. Based upon the above discussion, and no objections having been filed after due notice, the Board **HEREBY FINDS** that, as demonstrated in their motions, Petra Solar, NextEra, MISEIA, NJSIMA, SA, NJNG, Resource Energy and NJLEUC have an interest in the outcome of these proceedings that is sufficiently different from that of the other parties, and that each has committed to working cooperatively and constructively with the other parties to these proceedings. In addition and based on review of the motion for admission pro hac vice of Mr. Forshay, Esq. and supporting affidavit, and no objections having been received, the Board **FINDS** that Mr. Forshay, Esq. has satisfied the conditions for admission, and **HEREBY GRANTS** 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, including BPU Docket. Nos. E008080543, E007110881, 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.

The Board **FURTHER GRANTS** intervenor status to Petra Solar, NextEra, MISEIA, NJSIMA, SA, NJNG, Resource Energy and NJLEUC. However, finding PSE&G's request to be reasonable, the grant of intervenor status to SA, NJLEUC and MISEIA is subject to submission, within ten (10) days of the date of this Order, of updated membership lists to the Board and PSE&G, including the identification by NJLEUC of those of its members who purchase gas or electricity from PSE&G.

The Board has determined that the petition described above should be retained by the Board for review and hearing as authorized by N.J.S.A. 52:14F-8. As authorized by N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** Commissioner Fiordaliso as the presiding officer who is authorized to rule on all motions that arise during the proceedings and modify any schedules that may be set as necessary to secure just and expeditious determination of the issues.

Finally, the Board **DIRECTS** Staff to provide a copy of this Order to individuals and entities listed on the attached service list, including those added by this Order, and to post this Order on the Board's website.

DATED:

5/15/09

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ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

Kristi Izzo

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