



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE APPLICATION OF NJ LAND, ) ORDER  
LLC SEEKING A DECLARATORY JUDGMENT )  
PURSUANT TO N.J.S.A. 52:14B-1 ET SEQ., OR A )  
WAIVER PURSUANT TO THE WAIVER RULE, N.J.A.C. )  
14:1-1.2(B) ) DOCKET NO. QO16040382

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Gabrielle A. Figueroa, Esq.**, Windels Marx Lane & Mittendorf, LLP, on behalf of Jersey Central Power & Light Company  
**Howard O. Thompson, Esq.**, Russo Tumulty Nester Thompson & Kelly, LLP, on behalf of NJ Land, LLC

BY THE BOARD:<sup>1</sup>

This Order memorializes the Board of Public Utilities' action upon a motion to intervene filed by Jersey Central Power & Light ("JCP&L" or the "Company") in a declaratory judgment proceeding involving the Board's net metering rules.

**BACKGROUND**

The statutory and regulatory authority for net-metering is codified at N.J.S.A. 48:3-87(e) and implemented through N.J.A.C. 14:8-4. The statute limits net metering to customers "that generate electricity, on the customer's side of the meter, using a Class 1 renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period." N.J.S.A. 48:3-87(e)(1). The rules establish the criteria for determining whether a renewable generation facility is on the "customer's side of the meter" and therefore eligible for net metering.

On April 25, 2016, NJ Land, LLC ("NJ Land" or "Petitioner"), a solar developer, filed a petition with the Board for a declaratory ruling concerning the Board's net metering rules found at N.J.A.C. 14:8-4.1 (the "Petition"). Specifically, Petitioner seeks a declaratory ruling that the two solar installations it proposes to build will be "on-site" for purposes of N.J.A.C. 14:8-4.1; or, in the alternative, a waiver of N.J.A.C. 14:8-4.2, pursuant the Board's authority under N.J.A.C. 14:1-1.2(b). (Petition at pg. 3, para. 7.)

<sup>1</sup> President Richard S. Mroz recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

On June 15, 2016, JCP&L filed a motion to intervene and a response to the Petition. Citing the intervention standards contained in N.J.A.C. 14:1-16.3, JCP&L asserts that the Board's ruling on the Petition could substantially impact JCP&L's operations and customers and references its revenues and the associated non-bypassable charges as well as potentially complex interconnection issues. In addition, JCP&L argues that since NJ Land seeks an expanded interpretation of "contiguous" in the context of the Board's net metering rules, the Board's ruling on that issue will also have a direct and substantial impact on all electrical distribution companies ("EDCs").

On June 21, 2016, NJ Land filed a reply to the motion to intervene, objecting to the motion on the ground that it was untimely. Specifically, NJ Land submits that N.J.A.C. 14:1-6.2 is the applicable rule and under that rule, the timeframe for submitting an answer or motion to intervene is 20 days from service of the petition, which timeframe lapsed in mid-May 2016. NJ Land also filed a reply to JCP&L's response in which NJ Land again asserted its arguments for the Board to either deem its project to be "on-site" or grant NJ Land a waiver of N.J.A.C. 14:8-4.1.

### **STAFF RECOMMENDATION**

The EDCs play a central role in the implementation of the Board's net metering rules, which are intertwined with the interconnection rules governing Class I renewable energy generation. N.J.A.C. 14:8-4.1 through 5. The Board and the public rely upon the EDCs to ensure that the renewable generation will not adversely affect safe, adequate, and proper functioning of the electricity grid. Staff concurs with JCP&L that the Board's ruling upon the underlying petition could have a significant impact upon JCP&L and could raise potentially complex interconnection issues.

NJ Land asserts that JCP&L will add nothing of value to the record because it does not dispute the location of the proposed solar generation facility. However, as an EDC, JCP&L has expertise in interconnection issues and experience in dealing with the Board's net metering rules. JCP&L's perspective is both valuable and quite different from that of Petitioner. Thus, its involvement in this proceeding is likely to add constructively to the record.

Staff recommends that the Board grant the motion to intervene.

### **DISCUSSION AND FINDINGS:**

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.

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 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, Order dated June 8, 2005.

Turning first to NJ Land's argument that JCP&L's motion is untimely, the Board disagrees. Pursuant to N.J.A.C. 17:27-16.2, a motion to intervene may be filed at any time after a case has been initiated. The rule does not set a time limit on when such motions may be filed. In addition, there is no scheduling order governing this matter that sets forth the filing deadline for a motion to intervene. Therefore, the timing of JCP&L's motion to intervene is permissible. The 20-day rule cited by NJ Land does not apply.

Concerning the merits of JCP&L's motion, the Board **FINDS** that JCP&L has a direct and substantial interest in the outcome of this proceeding and can add constructively to the matter. The Board **FINDS** that, as an EDC, JCP&L's interest is sufficiently different from that of the Petitioner to add measurably and constructively to the case. The Board **FURTHER FINDS** that JCP&L's intervention will not result in any delay or confusion. Under these circumstances, the Board will not reject JCP&L's intervention motion or its substantive response as untimely. Therefore, the Board **HEREBY GRANTS** the motion to intervene.

Although both parties have argued the merits of the underlying Petition in their filings on the motion to intervene, the Board will not address the merits of the matter at this time.

The effective date of this Order is September 3, 2016.

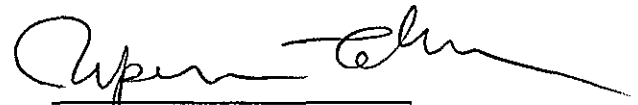
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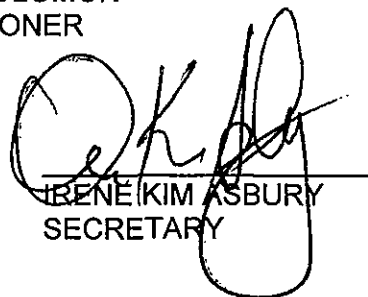
BOARD OF PUBLIC UTILITIES  
BY:

  
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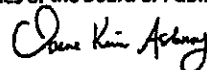
  
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IRENE KIM ASBURY  
SECRETARY

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



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JUDGMENT PURSUANT TO N.J.S.A. 52:14B-1 ET SEQ., OR A WAIVER PURSUANT TO THE  
WAIVER RULE, N.J.S.A. 14:1-1.2(B)

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