



Agenda Date: 4/17/24
Agenda Item: 2B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF TRENTON)
RENEWABLE POWER, LLC FOR APPROVAL OF A)
RENEWABLE ENERGY POWER PURCHASE)
AGREEMENT WITH PUBLIC SERVICE ELECTRIC)
AND GAS COMPANY)
)
)
) DOCKET NO. EM24020105

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., on behalf of Trenton Renewable Power, LLC
Matthew Weissman, Esq., on behalf of Public Service Electric and Gas Company

BY THE BOARD:

On February 8, 2024, Trenton Renewable Power, LLC (“Trenton Renewable” or “Petitioner”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking approval of a renewable energy power purchase agreement (“PPA”) with Public Service Electric and Gas Company (“PSE&G”) (“Petition”).

BACKGROUND AND PROCEDURAL HISTORY

Trenton Renewable owns and operates a food waste recycling facility (“Facility”), also known as a “biomass facility,” in Trenton, New Jersey. The Facility includes a digester that recycles vegetative food waste and produces renewable natural gas as a byproduct of the recycling process. The Facility comprises three (3) onsite 1.134 megawatt (“MW”) electric generation turbines that use the natural gas produced by the digester to generate electricity (“Generation System”). The Generation System has a total nameplate capacity of 3.4 MW and electricity it generates is classified as Class 1 renewable energy pursuant to N.J.A.C. 14:8-1.2 and N.J.A.C. 14:8-2.5(b)(8) and (c). The Generation System is also a Qualified Facility (“QF”) as defined under the Public Utility Regulatory Policy Act of 1979 (“PURPA”), originally codified at 16 U.S.C. § 2601 *et seq.* The Facility and Generation System are in PSE&G’s service territory and the Generation System is interconnected with PSE&G’s electric distribution system in Trenton, New Jersey.¹

¹ The Petitioner is an electric distribution customer of PSE&G.

Pursuant to an August 19, 2018 interconnection agreement between the Petitioner and PSE&G, Trenton Renewable currently sells the Generation System's net electric generation to PSE&G under PSE&G's Purchased Electric Power ("PEP") tariff based on a wholesale avoided cost proxy.²

Petition

By the Petition, Trenton Renewable noted that PJM Interconnection, LLC's ("PJM") wholesale price at the PSEG node sets the price that Trenton Renewable receives for its Class 1 Renewable Energy under the PEP Tariff. According to the Petition, since it began selling renewable electricity, Trenton Renewable has received an average price of 3.8 cents per kilowatt-hour ("kWh") from PSE&G.

By the Petition, the Petitioner noted that PSE&G's PEP tariff is a legacy of PURPA, which has been partially repealed. Trenton Renewable further identified that PURPA required electric utilities to purchase electricity from certain non-utility generators at prices that were based on the utility's avoided cost of generation. The Petitioner proffered that the pricing structure under the PEP tariff is an outdated legacy of federal policy that has been superseded by legal, regulatory, and structural changes to the electric industry. According to Trenton Renewable, those changes include the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 *et seq.*, which restructured the electric industry in New Jersey. EDECA required the electric utilities to divest or functionally separate their operating assets, and opened the market to retail competition for electricity supply.

Trenton Renewable argued that, in the years since EDECA passed, the Board initiated financial incentives for several types of Class 1 renewable energy such as grants, solar renewable energy certificates ("SRECs"), the Successor Solar Incentive Program, community solar, and the Offshore Wind Renewable Energy Certificate program. According to the Petitioner, no similar incentive programs exist for biomass facilities, even though they are the most carbon-negative under New Jersey law.

Trenton Renewable noted that it receives Class 1 Renewable Energy Certificates ("RECs") for its renewable energy production. However, Trenton Renewable identified that the value it receives for the Class 1 RECS is substantially below the price of SRECs even though the environmental and health benefits of a biomass facility are substantially greater than that of solar or offshore wind facilities.

By the Petition, the Petitioner proposed the PPA with a purchase price of \$0.20 per kWh, which the Petitioner identified as being approximately one-tenth the actual market value of electricity produced by the Generation System. Trenton Renewable further identified that PSE&G's cost recovery for the PPA does not directly concern the Petitioner. Trenton Renewable noted that it understands PSE&G currently recovers costs associated with its purchase of energy from Trenton Renewable via PSE&G's non-utility generation charge of its electric tariff.

² See: PSE&G Electric Tariff, Original Sheet No. 176, Payment Schedule PEP – Purchased Electric Power.

Motion to Intervene

On February 27, 2024, PSE&G filed a motion to intervene in this matter (“Motion”). By the Motion, PSE&G noted that Trenton Renewable’s request involved a 10-year power purchase agreement under which PSE&G would purchase all Class 1 renewable electricity produced by Trenton Renewable’s Generation System and delivered to PSE&G. PSE&G further identified that Trenton Renewable currently sells the net electric generation from the Generation System under PSE&G’s PEP tariff and that the pricing Trenton Renewable received under PSE&G’s PEP tariff was based on the wholesale avoided cost proxy tied to the PJM wholesale locational marginal price at the PSEG node.

Because the proposed PPA would pay Trenton Renewable 20 cents per kWh, which is substantially more than the present rate under the PEP tariff, PSE&G argued that it has a direct and specific interest on the outcome of this matter in light of the impact that Board approval of the proposed PPA on the cost of power purchased from Trenton Renewable and in the continued recovery of these costs from PSE&G’s customers as a result of the proposed PPA.³ PSE&G further stated that its interests are clearly distinct from those of other entities and that no other party can adequately represent its interests in this matter. By the Motion, PSE&G stated that it would abide by the procedural schedule set for this proceeding and that granting the Motion would not cause undue delay or confusion.

Reply

By letter dated March 4, 2024, Trenton Renewable replied to the Motion, noting that it did not oppose the Motion.

DISCUSSION AND FINDINGS

Motion to Intervene

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

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 of confusion or undue 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.

Application of these standards involves an implicit balancing test to weigh the need and desire for development of a full and complete record, which involves consideration of a diversity of interests, against the requirements of the New Jersey Administrative Code, which recognizes the need for

³ PSE&G currently recovers the costs to purchase Trenton Renewable’s electricity, under the PEP tariff, through the non-utility generation charge component of its electric tariff.

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.⁴

After considering the Motion to Intervene, and Trenton Renewable's letter of non-objection, the Board **HEREBY FINDS**, pursuant to N.J.A.C. 1:1-16.3(a), PSE&G will be directly affected by the outcome of this proceeding and will contribute to the development of a full and complete record for review by the Board. As such, the Board **FURTHER FINDS** that PSE&G met the standard for intervention in this matter because it has a direct interest in this proceeding not represented by another party and will add measurably and constructively to the proceeding without causing undue delay. Accordingly, the Board **HEREBY GRANTS** the Motion.

Designation of Commissioner

The Board **HEREBY DETERMINES** that the Petition should be retained by the Board for hearing. Pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** President Guhl-Sadovy as the Presiding Officer with authority to rule on all motions that arise during the pendency of this proceeding and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the Board **HEREBY DIRECTS** that any entity seeking to intervene or participate file the appropriate application with the Board on or before May 15, 2024. Any party wishing to file a Motion for Admission of Counsel, *pro hac vice*, should do so concurrently with any Motion to Intervene or Participate.

In addition, in compliance with the Board's Orders in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically.⁵ No hard copies shall be filed until the Board lifts the restrictions imposed by the Orders. The Board **HEREBY DIRECTS** Staff to post this Order to the Board's website.

⁴ See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.


⁵ In re the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, Orders dated March 19, 2020 and June 10, 2020.

This Board Order shall be effective on April 24, 2024.

DATED: April 17, 2024

BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOLOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRI L. GOLDEN
SECRETARY

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

IN THE MATTER OF THE PETITION OF TRENTON RENEWABLE POWER, LLC FOR APPROVAL OF A
RENEWABLE ENERGY POWER PURCHASE AGREEMENT WITH PUBLIC SERVICE ELECTRIC AND GAS
COMPANY

BPU DOCKET NO. EM24020105

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