



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

IN THE MATTER OF THE PETITION OF PUBLIC )  
SERVICE ELECTRIC AND GAS COMPANY FOR )  
APPROVAL OF THE ENERGY STRONG PROGRAM )  
)  
)

ENERGY

ORDER ON MOTION TO  
INTERVENE BY BLOOM  
ENERGY

DOCKET NO. EO13020155  
GO13020156

Parties of Record:

**Tamara Linde, Esq.**, Vice President –Regulatory Affairs, PSEG  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel  
**Steve Goldenberg, Esq.**, Fox Rothschild for NJLEUC  
**Janine G. Bauer, Esq.**, Szaferman Lakind for AARP  
**Roger Schwarz**, Issues Management LLC for the PSE&G Unions  
**Aaron Kleinbaum, Esq.**, Eastern Environmental Clinic for the Environmental  
Participants  
**Vincent M. Giblin, Esq.**, for International Union of Operators and Engineers, Local 825  
**Albert G. Kroll, Esq.**, of Kroll Heineman Carton, LLC for NJLECET  
**Phyllis J. Kessler, Esq.** of Duane Morris for Environmental Defense Fund  
**Thomas P. Scrivo, Esq.** of McElroy, Deutsch, Mulvaney & Carpenter, LLP for Ferreira  
Construction  
**Murray Bevin, Esq.**, for Bloom Energy

BY COMMISSIONER JOSEPH L. FIORDALISO:

On January 23, 2013, the New Jersey Board of Public Utilities (“Board” or “BPU”) issued an Order (“January 23 Order”) addressing five categories of potential improvements to be undertaken by New Jersey’s electric distribution companies (“EDCs”) in response to large scale

---

<sup>1</sup> In the Matter of the Board’s Review of the Utilities Response to Hurricane Irene, Order Accepting Consultants’ Report and Additional Staff Recommendations and Requiring Electric Utilities to Implement Recommendations, BPU Docket No. EO11090543, January 23, 2013.

weather events. These categories include: 1) Preparedness Efforts; 2) Communications; 3) Restoration and Response; 4) Post Event; and 5) Underlying Infrastructure Issues.

In the January 20 Order, among other things, the Board directed the EDCs to take specific actions to improve their preparedness for major storms. As part of this response, the Board required the EDCs to provide detailed cost benefit analyses associated with a variety of utility infrastructure upgrades. The Board further required the EDCs to “carefully examine their infrastructure and use data available to determine how substations can be better protected from flooding, how vegetation management is impacting electric systems, and how Distribution Automation can be incorporated to improve reliability.” January 23 Order at 56.

On February 20, 2013, Public Service Electric and Gas Company (“PSE&G”) petitioned the Board for the recovery of costs to bolster its “electric and gas infrastructure to make them less susceptible to damage from wind, flying debris and water damage in anticipation” of future Major Storm Events (hereafter “Energy Strong”). PSE&G requested approval of approximately \$3.9 billion in infrastructure upgrades, the cost of which would be collected from ratepayers over a period of ten years through the implementation of an “Energy Strong Adjustment Mechanism.” PSE&G further requested that the Board approve this expenditure and recovery mechanism by July 1, 2013.

On March 20, 2013, the Board opened a generic proceeding (hereafter “Storm Mitigation Proceeding”) to investigate possible avenues to support and protect New Jersey’s utility infrastructure so that it may be better able to withstand the effects of Major Storm Events.<sup>2</sup> The Storm Mitigation Proceeding focuses on category 5 from the January 23 Order, Underlying Infrastructure Issues for all utility companies, not exclusively the EDCs. Accordingly, the Board invited all regulated utilities to submit detailed proposals for upgrades designed to protect the State’s utility infrastructure from future Major Storm Events, pursuant to the terms and at the level of detail requested in the January 23 Order. Additionally, the Board found that the PSE&G Energy Strong petition, and all future petitions within the Storm Mitigation Proceeding, should be retained by the Board for review and hearing as authorized by N.J.S.A. 52:14F-8.

By Order dated June 21, 2013, the Board directed PSE&G to implement certain Board staff recommendations related to the Energy Strong Station Flood and Storm Surge Mitigation sub-program. That Order also designated me as the presiding commissioner for the Energy Strong petition with authority to rule on all motions that arise within this proceeding, and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

On August 2, 2013, I issued a Prehearing Order which set the schedule for this proceeding and provided that any parties wishing to intervene or participate in this matter must submit a motion to intervene or participate by August 12, 2013.

#### Bloom Energy: Motion to Intervene

On September 17, 2013, Bloom Energy (“Bloom”), moved to intervene in this matter. According to the motion, Bloom Energy is a solid oxide fuel cell technology provider and project developer (via subsidiaries) engaged in the development, ownership and operation of clean and resilient

---

<sup>2</sup> “Major Storm Event” is defined as sustained impact on or interruption of utility service resulting from conditions beyond the control of the utility that affect at least 10 percent of the customers in an operating area

on-site power generation projects. Bloom Energy Motion to Intervene at 2. Bloom also asserts that from time to time, variations in customer energy usage can result in the need to export power from the project to the electric utility in whose service territory the project is located. Ibid.

Bloom states that pursuant to PSE&G's current Tariff for Service, there are no clear provisions establishing: (a) the ability of a fuel cell project to export electricity to the PSE&G distribution system; or (b) the rate at which such a fuel cell project is to be compensated, if at all, for electricity that it exports to the PSE&G distribution system. Ibid. Bloom therefore claims that the lack of these tariff provisions forces developers to either: 1) undersize all projects to an extent that would eliminate the potential for export of electricity; or 2) provide free electricity to PSE&G. Ibid.

Bloom maintains that it has engaged in several meetings and has made numerous formal and informal written requests of Board staff over nearly two years to require PSE&G to include the requested provisions in PSE&G's Tariff for Service, and asserts that the reason this motion has not been filed until now is due to these ongoing discussions seeking a resolution to this issue. Bloom Motion to Intervene at 3. However, Bloom claims that there are now no other means to resolve this dispute other than by participating in this proceeding. Ibid.

Bloom is seeking through this motion a provision within the PSE&G tariff clarifying that each fuel cell project within the PSE&G service territory is entitled to export power to the PSE&G distribution system and to be compensated for such electricity at a rate equivalent to the sum of the wholesale cost of electricity and the value of the generation capacity provided by the project. Ibid.

Bloom claims that the uncertainty created by the lack of interconnection standards applicable to fuel cells gas has the effect of chilling investment in clean and resilient on-site power generation projects. This is in direct contravention of public policy as established by the Board in its administration of the New Jersey Clean Energy Program. Bloom Motion to Intervene at 3-4. Bloom is seeking a provision within the PSE&G tariff clarifying that fuel cell projects within its service territory be processed by PSE&G in accordance with N.J.A.C. 14:8.5. Id. at 4.

Bloom asserts that this motion complies with the provisions of N.J.A.C. 1.1-16.1(a) which sets forth the standards for intervention in a proceeding before the Board. Bloom maintains that it has a substantial, specific and direct interest in this proceeding and that the outcome of the proceeding will impact whether Bloom and/or its New Jersey customers will be permitted to export power to the PSE&G electric distribution system along with the rate at which the project will be compensated for that electricity by PSE&G. Ibid. Bloom also states that the proceeding will also determine whether fuel cell projects located in PSE&G's service territory will be afforded the benefit of clear and consistent standards for interconnection to the PSE&G system. Ibid.

Bloom claims that its interests in this proceeding are distinct from other participants; its interests in this proceeding are unique on both a quantitative and qualitative basis; and its participation will add measurable and constructively to the scope of the case. Bloom motion at 4 - 5.

Bloom has agreed to work cooperatively with other parties in this proceeding by joining in the proffered discovery and testimony of other parties where practicable. Id. at 5.

Finally, Bloom claims that the granting of intervener status will not cause confusion or delay; will clarify issues and contribute to the development of a complete record; and agrees to take the record "as-is." Ibid.

#### PSE&G Response to Bloom's Motion to Intervene

On September 27, 2013, Public Service Electric and Gas Company ("PSE&G) submitted its opposition to the Bloom motion. PSE&G opposes this intervention because the motion is over one month out of time and, according to PSE&G, the issues raised by Bloom are outside the scope of this docket. PSE&G Response to Bloom Motion at 1. Further, PSE&G notes that the deadline for interventions in this docket was August 12, 2013. Ibid.

PSE&G claims that Bloom has chosen a late intervention in this matter to initially request that the BPU establish new entitlements regarding the interconnection of Bloom Energy projects to PSE&G's distribution system and establish the terms of compensation for electricity produced by those projects. PSE&G Response at 2.

PSE&G claims that Bloom has made no request to intervene out of time in the proceeding and has not presented facts to justify the lateness of the motion. PSE&G asserts that Bloom's unexplained lateness and its disregard for the Board's procedural requirements support denial of the motion without further consideration of the merits. Finally, PSE&G states that presenting facts or asking for leave to file late in a reply for which PSE&G and the other parties cannot respond under the rules should not be an acceptable way to address the lateness of the motion. Ibid.

PSE&G claims that this motion does not satisfy the provisions of N.J.A.C. 1:1-16.1 that require that the movant "be substantially, specifically and directly affected by the outcome of a contested case." Ibid. PSE&G argues that Bloom has not identified any interest in PSE&G's proposed investments or PSE&G's proposed cost recovery mechanism that are the focus of this matter. PSE&G Response at 3-4. PSE&G also claims that there is no statutory or other legal obligation requiring it to compensate the projects described in Bloom's motion, and the consideration of this new obligation presents an issue that is not in this docket. Id. at 4. PSE&G therefore claims that because Bloom is not "substantially, specifically and directly affected" by the outcome of this case and that the motion is focused on issues that are not in this case, therefore the motion should be denied. Ibid.

PSE&G further claims that the motion focuses on issues that are not in the petition or pre-filed testimony, and for which there has been no discovery, provides an additional reason for denial of the motion since their inclusion would create the prospect of confusion and delay to address and litigate. Ibid.

#### Bloom's Response to PSE&G's Opposition

Bloom filed a response to PSE&G's opposition on October 1, 2013. Bloom argued that while PSE&G claims that Bloom is out of time, the motion does offer clear and justifiable facts and rationale for filing the motion past the deadline stated in the procedural order and the motion should be granted. Bloom Energy Response to PSE&G at 2.

Bloom also asserts that the motion meets the standards for intervention since the proposed tariff changes are substantially, specifically and directly related to this proceeding which involves an

overhaul of PSE&G's tariff to accommodate prospective improvements in PSE&G service. Id. at 3.

Finally, Bloom states that the motion would not create the prospect of confusion or undue delay in the case and that the motion is very clear about what it seeks through the intervention. Id. at 4. Bloom also claims that the intervention will clarify certain issues and contribute to the development of a complete record, and reiterates its offer to take the record "as-is" and not ask for additional discovery. Id. at 4-5.

#### 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 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, 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).

Bloom filed its motion thirty six days beyond the date I set for filing motions to intervene with no justification for the delay, other than that Bloom's stated reason that the late filing is due to its ongoing discussions with Board staff seeking a resolution to this issue and its claim that there are now no other means to resolve this dispute other than participating in this proceeding. However, the general rule does not override a clear bar date set in the Prehearing Order. Additionally, on September 30, 2013 I denied the motion to intervene by J. Fletcher Creamer & Son, Inc. due in part to the filing of their motion on August 21, 2013, 9 days beyond the date set in the Pre-hearing Order for filing motions to intervene. Therefore, I **HEREBY FIND** that Bloom filed its motion out of time without a showing of sufficient justification for the lateness.

Bloom is seeking the inclusion of a provision within the PSE&G tariff clarifying that each fuel cell project within the PSE&G service territory is entitled to export power to the PSE&G distribution system and to be compensated for that electricity at a rate equivalent to the sum of the wholesale cost of electricity and the value of the generation capacity provided by the project. PSE&G has responded that Bloom has not identified any interest in PSE&G's proposed Energy Strong investments or PSE&G's proposed cost recovery mechanism that are the focus of this matter, and that this motion does not satisfy the requirements of N.J.A.C. 1:1-16.1 showing that Bloom will be substantially, specifically and directly affected by the outcome of a contested case.

As I previously stated, this proceeding is focused on actions that can be taken to improve the

resiliency of PSE&G's infrastructure in the face of Major Storm Events, including such measures as flood and storm surge protection for substations. I am not persuaded that the issues raised by Bloom which revolve around the development of tariff provisions governing the exportation of energy by fuel cell projects to PSE&G's system and the level of compensation for that energy, are germane to the focus of this proceeding. Review of the requested tariff changes is more suited for inclusion into a base rate case which this is not. Notwithstanding that Bloom has agreed to take the record "as is" and not seek additional discovery, I am not persuaded that including the issues raised by Bloom within this proceeding will not result in confusion and delay since the Bloom proposals should be subject to full and thorough review.

Therefore, I **HEREBY FIND** that the relief Bloom is seeking is beyond the scope of the current proceeding as it does not pertain to the actions that can be taken to improve the resiliency of PSE&G's infrastructure in the face of Major Storm Events as directed by the January 23 Order and the March 20 Order. Accordingly, I **HEREBY DENY** the motion for intervention of Bloom Energy in Energy Strong.

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

DATED: October 24, 2013

BY



JOSEPH L. FIORDALISO  
COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
FOR APPROVAL OF THE ENERGY STRONG PROGRAM  
BPU DOCKET NOS. EO13020155 AND GO13020156

SERVICE LIST

**PSE&G:**

Tamara Linde, Esq.  
Public Service Electric and Gas  
80 Park Plaza- T5  
Newark, NJ 07102-4194  
[Tamara.Linde@pseg.com](mailto:Tamara.Linde@pseg.com)

Matthew Weissman, Esq.  
General Regulatory Counsel – Rates  
PSEG Services Corp.  
80 Park Plaza, T5C  
Newark, NJ 07102  
[Matthew.Weissman@pseg.com](mailto:Matthew.Weissman@pseg.com)

Martin Rothfelder, Esq.  
Associate General Regulatory Counsel  
PSEG Services Corp.  
80 Park Plaza, T5C  
Newark, NJ 07102  
[Martin.Rothfelder@pseg.com](mailto:Martin.Rothfelder@pseg.com)

Dennis M. Toft, Esq.  
John Valeri, Jr. Esq.  
Wolff & Samson PC  
One Boland Drive  
West Orange, New Jersey 07052  
[dtoft@wolffsamson.com](mailto:dtoft@wolffsamson.com)  
[jvaleri@wolffsamson.com](mailto:jvaleri@wolffsamson.com)

Constance Lembo  
PSEG Services Corp.  
80 Park Plaza, T5C  
Newark, NJ 07102  
[constance.lembo@pseg.com](mailto:constance.lembo@pseg.com)

**Board of Public Utilities:**  
44 South Clinton Avenue, 9<sup>th</sup> floor  
Post Office Box 350  
Trenton, NJ 08625-0350

**RATE COUNSEL:**

Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, N.J. 08625

Stefanie Brand, Esq., Director  
[s.brand@rpa.state.nj.us](mailto:s.brand@rpa.state.nj.us)

Kurt Lewandowski, Esq.  
[k.lewandowski@rpa.state.nj.us](mailto:k.lewandowski@rpa.state.nj.us)

Ami Morita, Esq.  
[a.morita@rpa.state.nj.us](mailto:a.morita@rpa.state.nj.us)

Henry Ogden, Esq.  
[h.ogden@rpa.state.nj.us](mailto:h.ogden@rpa.state.nj.us)

Diane Schulze, Esq.  
[d.schulze@rpa.state.nj.us](mailto:d.schulze@rpa.state.nj.us)

Lisa Gurkes  
[l.gurkes@rpa.state.nj.us](mailto:l.gurkes@rpa.state.nj.us)

**Deputies Attorney General:**

Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, New Jersey 07101

Caroline Vachier, Esq.  
[Caroline.vachier@dol.lps.state.nj.us](mailto:Caroline.vachier@dol.lps.state.nj.us)

Alex Moreau, Esq.  
[Alex.moreau@dol.lps.state.nj.us](mailto:Alex.moreau@dol.lps.state.nj.us)

Babette Tenzer, Esq.  
[Babette.Tenzer@dol.lps.state.nj.us](mailto:Babette.Tenzer@dol.lps.state.nj.us)

David Wand., Esq.  
[David.wand@dol.lps.state.nj.us](mailto:David.wand@dol.lps.state.nj.us)

**Division of Energy**

Jerry May, Director  
Alice Bator  
Tom Walker  
Rosalie Serapiglia  
Robert Schultheis  
Nanik Aswani  
David Ballengee  
Rene Demuynck  
Henry Rich  
Ricky John

**Counsel's Office**

Tricia Caliguire, Esq.  
Bethany Rocque-Romaine, Esq.  
Megan Lupo, Esq.

**Economist Office**

Mark Beyer  
Christine Lin  
Dr. Son Lin Lai  
Jackie O'Grady

**NJLEUC**

Steven S. Goldenberg, Esq.  
Fox Rothschild LLP  
997 Lenox Drive, Bldg. 3  
Lawrenceville, New Jersey 08648  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Paul Forshay, Esq.  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004  
[Paul.forshay@sutherland.com](mailto:Paul.forshay@sutherland.com)

**Environmental Defense Fund**

Phyllis J. Kessler, Esq.  
Duane Morris  
1540 Broadway  
New York, NY 10036  
[pjkessler@duanemorris.com](mailto:pjkessler@duanemorris.com)

**The Unions- Local 94**

Roger Schwarz  
Issues Management, LLC  
100 Overlook Center- 2<sup>nd</sup> Floor  
Princeton, NJ 08540  
[rschwarz@issuesllc.com](mailto:rschwarz@issuesllc.com)

Kenneth Thoman  
IBEW Local Union 94  
219 Franklin Street  
Hightstown, NJ 08520  
[Bud@ibew94.org](mailto:Bud@ibew94.org)

**AARP**

Jim Dieterle, New Jersey State Director  
Evelyn Liebman, Associate State Director for  
Advocacy  
AARP  
101 Rockingham Row Forrestal Village  
Princeton, NJ 08540  
[JDieterle@aarp.org](mailto:JDieterle@aarp.org)  
[ELiebman@aarp.org](mailto:ELiebman@aarp.org)

Janine G. Bauer, Esq.  
Szaferman, Lakind, Blumstein & Blader, P.C.  
101 Grovers Mill Road, Suite 200  
Lawrenceville, NJ 08648  
[jbauer@szaferman.com](mailto:jbauer@szaferman.com)

**Environmental Paticipants**

Aaron Kleinbaum, Seq.  
Eastern Environmental Law Clinic  
744 Broad Street, Suite 1525  
Newark, NJ 07102  
[akleinbaum@easternenvironmental.org](mailto:akleinbaum@easternenvironmental.org)

**NJLECET**

Albert G. Kroll, Esq.  
Kroll Heineman Carton, LLC  
99 Wood Avenue South, Suite 301  
Iselin, NJ 08830  
[akroll@krollfirm.com](mailto:akroll@krollfirm.com)



**Ferreira Construction**

Thomas P. Scrivo, Esq.  
Michael Rato, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mt. Kemble Avenue  
P.O. Box 2075  
Morristown, NJ 07962  
[tscrivo@mdmc-law.com](mailto:tscrivo@mdmc-law.com)  
[mrato@mdmc-law.com](mailto:mrato@mdmc-law.com)

**Local 825**

Vincent M. Giblin, Esq.  
Manilo Di Preta, Esq.  
10 Broadway, 28<sup>th</sup> Floor  
New York, NY 10271  
[vgiblin@pittagiblin.com](mailto:vgiblin@pittagiblin.com)  
[mdipreta@pittagiblin.com](mailto:mdipreta@pittagiblin.com)