



STATE OF NEW JERSEY
Board of Public Utilities
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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 PARTICIPATE AND
) APPROVING MODIFIED
) PROCEDURAL SCHEDULE

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
Philip J. Passanante, Esq., Atlantic City Electric Company
Michael Rato, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP, on behalf of Vanguard Energy Partners, LLC
William Harla, Esq., Decotiis, Fitzpatrick & Cole, LLP, on behalf of the Solar Energy Industries Association
Richard D. McLaughlin, Esq., on behalf of J. Fletcher Creamer & Son, Inc.
Roger M. Schwarz, Esq., on behalf of of IBEW Local Union 94
Bradley M. Parsons, Esq., Kroll Heineman Carton, on behalf of New Jersey Laborers-Employers Cooperation and Education Trust

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

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 sites; 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")

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.

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.

By Order dated July 19, 2016, Commissioner Joseph L. Fiordaliso issued an Order setting the Procedural Schedule, granting the motions to intervene on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC") and the Mid-Atlantic Solar Energy Industries Association ("MSEIA"), and granting the motion for admission *pro hac vice* of Mr. Paul F. Forshay, Esq. ("July, 19, 2016 Order").

THE MOTIONS TO INTERVENE AND PARTICIPATE:

The Procedural Schedule contained in the July 19, 2016 Order provides that all motions to intervene and participate were due to the Board on or before July 25, 2016, and any opposition to such motions was due on or before August 1, 2016. As the time to file and object has passed, this Order will address the following motions to intervene and participate:

J. Fletcher Creamer & Son's Motion to Intervene

By letter dated July 22, 2016, Richard D. McLaughlin, Esq. filed a motion to intervene in this proceeding on behalf of J. Fletcher Creamer & Son ("Creamer"). According to this motion, Creamer is a New Jersey corporation engaged in heavy construction and utilities installation, including, but not limited to, construction and upgrade of power generating plants, solar installations, and wind turbine installation. See Creamer's motion at ¶ 2. Creamer's motion states that it has worked on over a dozen solar projects, including a project for PSE&G. Id. at ¶ 5. Creamer asserts that "[g]iven the amount of the proposed investment, the work created will likely involve Creamer." Id. at par. 7.

No opposition was filed in response to Creamer's motion.

Solar Energy Industries Association's Motion to Intervene

By letter dated July 25, 2016, William Harla, Esq. filed a Motion to Intervene in this proceeding on behalf of the Solar Energy Industries Association ("SEIA"). SEIA is a national trade association of the solar energy industry whose "New Jersey membership is comprised of many national companies that own and operate solar projects in the state, as well as approximately 30 firms that a specific New Jersey operating address." See SEIA's motion at pp. 1-2. In 2013, SEIA was granted intervention in PSE&G Solar 4 All Extension Filing. Id. at 3. SEIA argues that the outcome of the present proceeding will have a direct economic impact on SEIA's members, id. at p. 4, because "SEIA member companies were responsible for a significant share of the 181 MWs of solar projects installed in New Jersey in 2015 and own and operate a significant share of the total 1.6 GW of solar projects in New Jersey." In addition, asserts SEIA,

its members provide hardware, financing, and other services to a large portion of the New Jersey solar market. *Id.* at p. 6. Therefore, SEIA argues that it seeks intervention to ensure that a fair and open market place for solar energy is maintained because “there are many solar firms that are also well-suited to develop brownfields and landfills, in addition to PSE&G.” SEIA also asserts that its intervention would ensure that issues related to the impact on the SREC market are addressed *Id.* at p. 2 and 7. SEIA also submitted a list of its members.

No opposition was filed in response to SEIA's Motion to Intervene.

New Jersey Laborers-Employers Cooperation and Education Trust's Motion to Intervene

By letter dated July 8, 2016, Bradley M. Parsons, Esq., filed a Motion to Intervene in this proceeding on behalf of the New Jersey Laborers-Employers Cooperation and Education Trust (“NJLECET”). Its membership is comprised of local unions engaged in construction, and some of its members work for the New Jersey utilities, including PSE&G. *See* NJLECET Motion to Intervene at pp. 1-2. Acknowledging that the proposed solar program would create a large number of jobs in industries in which its members work, *Id.* at p. 3, NJLECET states that it can provide a unique prospective regarding “the costs and feasibility of planned infrastructure construction; the related economic impact; and the impact of the current financing environment and amortized costs on long-term construction projects.” *Id.* at p. 5.

No opposition was filed in response to NJLECET's Motion to Intervene.

Vanguard Energy Partners, LLC Motion to Intervene or to Participate

By letter dated July, 11, 2016, Michael Rato, Esq., filed a Motion to Intervene or Participate on behalf of Vanguard Energy Partners, LLC (“Vanguard”). Vanguard is a national solar construction firm that “specializes in solar infrastructure and generation projects, including such projects for PSE&G.” *See* Vanguard Motion at ¶¶ 2 and 10. The Motion provides that Vanguard “has experience handling brownfield and landfill solar construction work for PSE&G in connection with the current Solar 4 All Extension Program.” *Id.* at ¶ 10. Furthermore, Vanguard argues that its interest is unique because it concerns “the solar construction projects (and attendant jobs) that will be created as a result of the Program.” *Id.* at ¶ 13. *See* NJLECET Motion to Intervene at pp. 1-2.

No opposition was filed in response to Vanguard's Motion to Intervene or Participate.

Local Union 94 of the International Brotherhood of Electrical Workers Motion to Participate

By letter dated July 22, 2016, Roger M. Schwartz, esq. filed a Motion to Participate on behalf of Local Union 94 of the International Brotherhood of Electrical Workers (“IBEW”). IBEW represents approximately 2,500 non-management employees who are engaged in all aspects of operations at PSE&G. *See* IBEW Motion at ¶1. IBEW will “have the responsibility of safely integrating the individual new solar projects into the company's electric distribution system.” *See* IBEW Motion at ¶4. Therefore, IBEW claims that the issues to be decided in this proceeding substantially, significantly and directly affect its members. *See* IBEW Motion at ¶ 5.

No opposition was filed in response to IBEW's Motion to Participate.

Atlantic City Electric's Motion to Participate

ACE states that as an electric utility in the State, it has a direct concern with the outcome of this

matter as it may be precedential and impact ACE. Further, says ACE, as its territory, facilities, tariff, and customers are all different from those of PSE&G, it provides a different perspective than any other party. It pledges to abide by the approved schedule(s) and not to delay the proceedings. For all of the above reasons, ACE seeks participant status.

No opposition was filed in response to ACE's Motion to Participate.

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.

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).

After consideration of the papers and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3(a) that Creamer, SEIA, Vanguard, and NJLECET have met the standards for intervention. Accordingly, I **HEREBY GRANT** the motions on behalf of Creamer, SEIA, NJLECET, and Vanguard for intervention on the basis of each entity's representation that it will adhere to the scope of the issues to be addressed in this proceeding.

As to the motions to participate filed by IBEW and ACE, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of the IBEW and ACE is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motions to participate submitted on behalf of IBEW and ACE, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

I reiterate my direction in the prior Prehearing Order 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.

Procedural Schedule

The Parties have submitted an amended procedural schedule for my consideration. I have reviewed the proposal for an amended schedule, to which all parties have consented. I **HEREBY ISSUE** the attached amended procedural schedule identified as Exhibit A, and **HEREBY DIRECT** all parties, as well as participants, to comply with its terms.

I **DIRECT** Staff to provide a copy of this Order to individuals and entities on the e-service list, including those added by this Order, and to post this Order on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate.

DATED: August 3, 2016

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
COMMISSIONER

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FOR APPROVAL OF A SECOND EXTENSION OF A SOLAR GENERATION INVESTMENT
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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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EXHIBIT 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

Amended 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
Settlement/Discovery Conference (Tentative)	July 21 or 22, 2016
Second Round of Discovery Due	July 22, 2016
Motions to Intervene/Participate Due	July 25, 2016
Responses to Second Round of Discovery Due	July 29, 2016
Opposition to Intervention/Participation Motions due	August 1, 2016
Discovery/Settlement Conference (Tentative)	August 1, 2016
Public Hearing in New Brunswick	August 2, 2016
Public Hearing in Hackensack	August 4, 2016
Public Hearing in Mt. Holly	August 9, 2016
Settlement Conference (Tentative)	August 12, 2016
Intervener/ Respondent Testimony Due	August 15, 2016
Discovery on Intervener/Respondent Testimony	August 19, 2016
Responses to Discovery on Intervener/Respondent Testimony	August 26, 2016
Written Public Comments due to Board Secretary	August 26, 2016
Rebuttal Testimony	September 7, 2016
Discovery on Rebuttal Testimony	September 12, 2016
Responses to Discovery on Rebuttal Testimony	September 16, 2016

Evidentiary Hearings (if necessary)*

September 20 and 21, 2016

Initial Briefs due

September 30, 2016

Reply Briefs

October 14, 2016

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

* - . Inteveners/respondents may present oral surrebuttal at evidentiary hearings.