



Agenda Date: 5/31/17
Agenda Item: 2J

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF GERDAU)	ORDER DESIGNATING
AMERISTEEL SAYREVILLE, INC. FOR WAIVER OF)	PRESIDING COMMISSIONER,
REQUIREMENTS CONCERNING THE SOCIETAL)	GRANTING INTERVENTION AND
BENEFITS CHARGE)	ADMISSION PRO HAC VICE, AND
)	SETTING THE METHOD OF
)	SERVICE AND BAR DATE
)	
)	BPU DOCKET NO. EW17030256

Parties of Record:

Kenneth R. Stark, Esq., McNees, Wallace & Nurick, LLC on behalf of Gerdau Ameristeel Sayreville, Inc.
Stefanie A. Brand, Esq., Director, Division of Rate Counsel
Gregory Eisenstark, Esq., Windels Marx Lane and Mittendorf, LLP on behalf of Jersey Central Power and Light Company
Alex Stern, Esq., on behalf of Public Service Electric and Gas Company

BY THE BOARD:

BACKGROUND:

On February 9, 1999, the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49, et seq. was enacted. L. 1999, c. 23, § 66. Among other provisions, EDECA established the societal benefits charge ("SBC") at N.J.S.A. 48:3-60. On January 17, 2012, the Act supplementing EDECA and providing for a credit against the SBC ("Act"), N.J.S.A. 48:3-60.3, was enacted. L. 2007, c. 340.

On March 13, 2017, Gerdau Ameristeel Sayreville, Inc. ("Gerdau"), a corporation with its principal office in the State of New Jersey, filed a petition pursuant to relevant statutes and regulations with the New Jersey Board of Public Utilities ("Board"). By its petition, Gerdau seeks determinations that: (i) it qualifies for a limited waiver of certain SBC credit program requirements; and that (ii) Gerdau's past SBC credit program-related energy efficiency and conservation investments qualify for a fifty percent (50%) reduction in its SBC obligations for electric and natural gas service going forward. Gerdau additionally requests expedited treatment of the petition.

On March 20, 2017, Kenneth R. Stark, Esq., an attorney of the State of New Jersey, filed a motion pursuant to N.J.A.C. 1:1-5.2 to permit the appearance pro hac vice of Robert A. Weishaar, Jr., Esq., a member of the bars of Pennsylvania, the District of Columbia and Maryland in this matter. By his affidavit, Mr. Weishaar represented that he is associated with Mr. Stark as New Jersey counsel of record, Gerda has requested his representation in this matter, that he has paid the fees required by Rules 1:20-1(b) and 1:28-2, and that he agrees to abide by the other requirements for admission pro hac vice. This motion was not opposed.

On April 19, 2017, Jersey Central Power & Light Company ("JCP&L"), an electric public utility, filed a motion to intervene pursuant to N.J.A.C. 1:1-16.1. JCP&L stated that a Board decision could have a substantial, specific and direct impact on JCP&L's operations and customers in several respects, including an impact on JCP&L's revenues as Gerda is a very large customer served by JCP&L. JCP&L argues that its interest is therefore different from other parties and requests full intervention status. JCP&L submits that it will not cause confusion or undue delay. No party filed opposition to the motion.

On May 18, 2017, Public Service Electric and Gas Company ("PSE&G"), an electric and gas public utility, also filed a motion to intervene pursuant to N.J.A.C. 1:1-16.1. PSE&G argued that a Board decision could have precedential effect and impact PSE&G and its customers. PSE&G asserts that it will likely be directly and specifically affected, as a variety of issues in this case may impact the markets that PSE&G operates in and relies upon. PSE&G argues that its service territories, customers, and operations are distinct from other parties and participants therefore no other party or participant will represent its interests. PSE&G submits that it will not cause undue delay or confusion. No party filed opposition to the motion.

DISCUSSION AND FINDINGS:

The Board considered this matter at its May 31, 2017 agenda meeting, determining the matter be retained for hearing and disposing of the within motions, as described below.

In deciding whether to grant a motion for intervention, 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 for confusion and delay arising from inclusion of the party; and (4) other appropriate matters. If the standard for intervention is not met, every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate consistent with N.J.A.C. 1:1-16.5. N.J.A.C. 1:1-16.6 provides for a more limited form of involvement in the proceeding for entities with a significant interest in the outcome of a case called "participant" status where, in the discretion of the trier of fact, the participant's interest is likely to add constructively to the case without causing undue delay or confusion. Participants are limited to the rights to argue orally, file a statement or brief, and file exceptions consistent with N.J.A.C. 1:1-16.6(c).

As the Board has stated in previous proceedings, application of these standards involve an implicit balancing test. The Board must balance the need and desire to allow for the development of a full and complete record to ensure consideration of a diversity of interests, with New Jersey Administrative Code requirements, recognizing a 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, e.g., Order, In re the Joint Petition of Public Service Electric and

Gas Company and Exelon Corporation for Approval of a Change in Control and Related Authorizations, BPU Docket No. EM05020106 (May 23, 2006).

After considering the motions for intervention and given the lack of any opposition, the Board notes JCP&L and PSE&G have expressed a significant interest in the outcome of this case, whether as an impact on revenues as stated by JCP&L or whether as an impact on markets in which it operates so as to affect its revenues as stated by PSE&G. JCP&L and PSE&G can add measurably and constructively to the scope of this case by providing rate information and other data such that confusion and delay are unlikely to arise. The Board **HEREBY FINDS** JCP&L and PSE&G will be directly affected by the outcome of this proceeding, their interests are unlike others in the case, and their intervention would contribute to the development of a full and complete record for review by the Board in its evaluation. Accordingly, the Board **GRANTS** JCP&L and PSE&G intervention status in this proceeding on the basis of their representations that they will adhere to the scope of the issues to be addressed.

Having reviewed Gerdau's motion and the supporting affidavit of Mr. Weishaar, the Board agrees that this proceeding involves a complex field of law in which Mr. Weishaar specializes and has an attorney-client relationship with Gerdau. Receiving no objections to the motion noticed to the parties, the Board **FINDS** that the affidavit of Mr. Weishaar satisfies the conditions for admission pro hac vice, including good cause as set forth in R. 1:21-2(a) - (b), and that proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by Rules 1:20-1(b) and 1:28-2 was submitted. The Board therefore **GRANTS** the motion for admission of Mr. Weishaar to practice before the Board pro hac vice in this proceeding only, provided that Mr. Weishaar shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) 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 each of them that may arise out of his participation in this matter;
- (3) Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this case and the admitted attorney therein.

By this Order, the Board has determined that the petition should be retained by the Board for hearing pursuant to N.J.S.A. 48:2-32. The Board **HEREBY DESIGNATES** Commissioner Solomon as the presiding officer. The Board **FURTHER ORDERS** that Commissioner Solomon, as the presiding Commissioner, is **HEREBY AUTHORIZED** to establish and modify schedules, decide all motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

The Board **HEREBY DIRECTS** that all entities seeking to intervene or participate in this matter file the appropriate application with the Board by June 23, 2017. Commissioner Solomon will render a decision on any motions filed after the issuance of this Order.

The Board **HEREBY DIRECTS** that this Order be posted on the Board website and that a copy of the Order be served by electronic circulation to the service list.

In the interest of economy, all parties are **HEREBY DIRECTED** to serve all documents electronically, while still providing hard copies to the Board for those documents which must be filed with the Board, and to any party upon request.

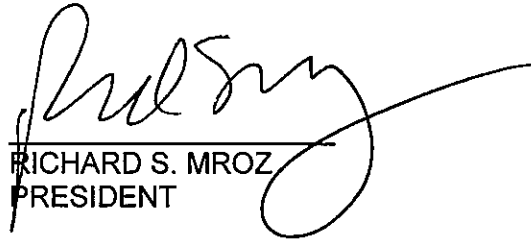
This Order shall be effective on June 10, 2017.

DATED: 5/31/17

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
COMMISSIONER



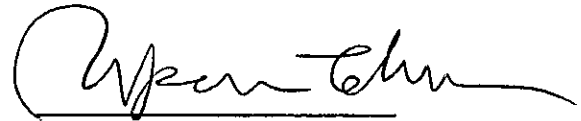
RICHARD S. MROZ
PRESIDENT



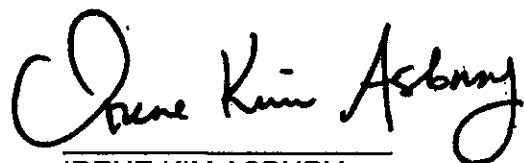
MARY-ANNA HOLDEN
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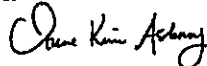
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
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



IN THE MATTER OF THE PETITION OF GERDAU AMERISTEEL SAYREVILLE, INC. FOR
WAIVER OF REQUIREMENTS CONCERNING THE SOCIETAL BENEFITS CHARGE –
DOCKET NO EW17030256

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