



Agenda Date: 12/1/21
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF DSM)	ORDER DESIGNATING
NUTRITIONAL PRODUCTS TO DIRECT JCP&L TO)	COMMISSIONER, SETTING
PROVIDE NET METERING CREDIT FOR EXISTING)	MANNER OF SERVICE AND
ON-SITE SOLAR GENERATION FACILITY)	BAR DATE AND RULING ON
)	MOTIONS TO INTERVENE
)	
)	DOCKET NO. QO21071021

Parties of Record:

James A. Boyd, Jr., Esq., Archer & Greiner, P.C., on behalf of DSM Nutritional Products, LLC
Brian O. Lipman, Esq., Director, Division of Rate Counsel
Gregory Eisenstark, Esq., Cozen O’Connor, on behalf of Jersey Central Power & Light Company

BY THE BOARD:

BACKGROUND

On July 29, 2021, DSM Nutritional Products, LLC (“DSM”), a limited liability corporation that operates a manufacturing facility in Belvidere, New Jersey (“Facility”), filed a petition with the New Jersey Board of Public Utilities (“Board”) requesting that the Board direct Jersey Central Power & Light Company (“JCP&L” or “Company”) to net meter the electricity produced by an on-site solar facility owned by DSM and to provide DSM with a retail credit on its electric bill for the energy produced by the solar facility since the date it commenced operation. In the petition, DSM stated that JCP&L refused to provide net metering treatment because of the existence of a combined heat and power (“CHP”) cogeneration facility also located behind DSM’s meter, and represented that DSM exhausted all informal means of resolving the matter.

THE MOTIONS

JCP&L Motion to Intervene

On September 27, 2021, JCP&L, an electric public utility that provides electric distribution service to DSM, filed a motion to intervene pursuant to N.J.A.C. 1:1-16.1. JCP&L argued that DSM’s petition and the relief sought therein would have a direct impact on JCP&L’s operations, finances and customers. Specifically, the Company maintained that whether the Facility qualifies for net metering will impact not only the Company’s treatment of the DSM account but more broadly how

JCP&L treats other similarly situated customers with both renewable and non-renewable generation sources behind the meter. Accordingly, JCP&L stated that it will “be substantially, specifically and directly affected by the outcome” of this matter as specified in the criteria for intervention. N.J.A.C. 14:1-16.1. Further, the Company asserted that as the electric utility that provides distribution service to DSM and that is interconnected with the subject solar installation, its interest in this proceeding is clearly different from that of any other party and its intervention will add measurably and constructively to the proceeding. JCP&L submitted that it will not cause undue delay or confusion. No party filed opposition to the motion.

Bloom Energy Motion to Intervene

On October 6, 2021, Bloom Energy (“Bloom”) filed a motion to intervene in this matter. As a manufacturer of solid oxide fuel cells that provide on-site generation, the movant argued that it will be substantially, specifically, and directly affected by the outcome of this proceeding because its customers are interested in co-locating fuel cells with solar projects behind the meter and, like DSM, wish to receive net meter credits for their solar generation. According to Bloom, the Board’s decision in this matter could adversely affect the competitive market for Bloom’s fuel cells, because even a decision on the specific facts of the petition under review might set precedent for co-location of solar with other non-renewable resources such as fuel cells. Bloom asserted that because it is a fuel cell manufacturer, no other party can adequately represent its interests and that its unique perspective would measurably and constructively advance the proceeding. At the same time, Bloom maintained that its involvement would not unduly broaden the issues or create confusion because it has technical knowledge regarding allocating net metering credits in a mixed generation scenario that would be helpful to the Board in resolving the issues in this petition.

RESPONSES

JCP&L Response

On October 18, 2021, JCP&L filed opposition to Bloom’s motion, stating that this matter is a customer-specific dispute that involves only DSM and JCP&L, and that Bloom will not be impacted by its resolution. Rather than joining this proceeding, JCP&L suggested that Bloom should table its concerns for a future generic proceeding. JCP&L also argued that Bloom does not offer a unique perspective because it intends to advocate for the same thing sought by Petitioner – the provision of solar net metering credits to a mixed use customer that utilizes both a solar renewable and a non-renewable power source. In addition, JCP&L noted that Bloom has not asserted that its existing operations in New Jersey are directly affected by the current net metering rules and practices, and asserted that Bloom did not establish any direct connection to this proceeding or any actual, concrete impact from the outcome of this proceeding.

Bloom Reply

On October 22, 2021, Bloom filed a reply to JCP&L, stating that its interest is not speculative because it has customers located in JCP&L’s service territory who might be interested in co-locating fuel cells behind the meter with solar projects and receiving net metering credits for the solar electricity generated. Noting that there is no generic proceeding currently in place, Bloom stated that this proceeding will have a direct impact on Bloom’s ability to provide fuel cell services to customers who also have an interest in net metered solar power. Moreover, Bloom argued that the Board has already held generic stakeholder proceedings to discuss the issue of mixed generation and solar net metering and that those proceedings resulted in a proposed mixed generation algorithm protocol to address the exact issue that DSM has asked the Board to resolve

in this proceeding. In Bloom's opinion, DSM's petition indicates that JCP&L is not following those mixed generation algorithm protocols. Bloom stated that it has a strong interest in the Board's implementation of those protocols through the issuance of a Board order. Bloom reiterated that it has technical expertise regarding the use of similar mixed generation algorithm protocols in other jurisdictions that could assist the Board in developing a more comprehensive record in this proceeding.

Rate Counsel Response to Motions

On October 28, 2021, the New Jersey Division of Rate Counsel ("Rate Counsel") filed its response to both motions, supporting JCP&L's motion and opposing that of Bloom. Stating that the sole interest asserted by Bloom is that of selling non-renewable fuel cell systems to customers that have or plan to install on-site solar generation, Rate Counsel asserted that this interest does not satisfy the standard for intervention. In addition, noting Bloom's expressed interest in "the broader issue of mixed generation involving non-renewable sources," Rate Counsel argued that Bloom wishes to expand the issues in this proceeding beyond those raised by in the petition. Given this desire to broaden the issues in the proceeding, Rate Counsel stated that Bloom's intervention would likely cause confusion and undue delay. Noting that the Board may treat a motion for intervention, in the alternative, as a motion for participation, Rate Counsel proposed that any such participation should be limited to filing a written statement or brief.

DISCUSSION AND FINDINGS

The Board has determined that the petition should be retained by the Board for hearing. Accordingly, pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** President Fiordaliso as the presiding officer with authority to rule on all motions that arise during the pendency of this proceeding and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

In considering the two (2) motions for intervention, the Board looks to the standard set by N.J.A.C. 1:1-16.3(a). The rule 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.

As the Board has stated in previous proceedings, the application of these standards involves 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., In The Matter Of The Implementation of L. 2018, C. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899, Order dated November 19, 2018.

JCP&L

The Board notes that as Petitioner's electric distribution company, JCP&L has a significant and direct interest in the outcome of this case, and its interests are not served by any other party. JCP&L will add measurably and constructively to the scope of this proceeding by providing rate

information and other data such that confusion and delay are unlikely to arise. After considering the motion to intervene and given the lack of any opposition, the Board **HEREBY FINDS** that JCP&L will be directly affected by the outcome of this proceeding, that its interests are unlike others in the case, and that its intervention would contribute to the development of a full and complete record for review by the Board.

Accordingly, the Board **HEREBY GRANTS** JCP&L's motion to intervene.

Bloom Energy

Bloom stated that its interest in the outcome of this matter arises from the circumstance of it having customers located in the JCP&L service territory that might be interested in co-locating fuel cells behind the meter with solar projects and may be interested in receiving net metering credits for the solar electricity generated.

The Board recognizes that the nature of Bloom's business selling fuel cells gives it an interest in the treatment of mixed renewable and non-renewable generation behind the meter and acknowledges that its ruling on the DSM petition may affect some of Bloom's marketing. In addition, the Board acknowledges that Bloom's knowledge of protocols in other jurisdictions could help it add to the development of the record in this matter. The Board notes, however, that Bloom has asserted only that its interest in selling fuel cell systems to certain customers is implicated by this matter. Bloom did not contend that its existing operations in New Jersey will be directly affected by the outcome of this matter. Therefore, the Board is not persuaded that Bloom's interest is so substantial, and its perspective so valuable, that it merits making Bloom a party to this proceeding. Furthermore, although the reason for Bloom's interest differs from that of Petitioner DSM, Bloom does intend to advocate for the same relief as Petitioner – the provision of solar net metering credits to a mixed use customer that utilizes both a solar renewable and a non-renewable power source. Additionally, Bloom's concerns must be weighed against the Board's need to timely resolve this matter.

After weighing the issues, and carefully considering the moving papers and responses, the Board **FINDS** that Bloom has not made an adequate showing that its interest in the outcome of this matter warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, the Board **HEREBY DENIES** Bloom's motion for intervention.

Pursuant to N.J.A.C. 1:1-16.5, the Board will treat Bloom's motion, in the alternative, as a motion to participate. Considered under this standard, the Board **FINDS** that Bloom has a significant interest in this matter and is likely to add constructively to the case as a participant without causing undue delay or confusion. Accordingly, the Board **HEREBY GRANTS** Bloom participant status, limited to the right to argue orally and to file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

Further, the Board **HEREBY DIRECTS** that any other entity seeking to intervene or participate in this matter file the appropriate application with the Board by January 3, 2022. 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 Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically. No hard copies shall be filed until the

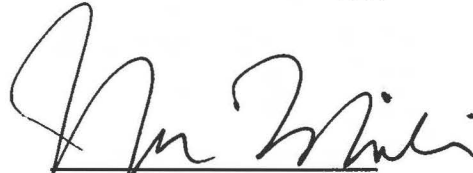
Board lifts the restrictions imposed in that Order. The Board **HEREBY DIRECTS** Staff to post this Order to the Board's website.

The effective date of this Order is December 8, 2021.

DATED: December 1, 2021

BOARD OF PUBLIC UTILITIES

BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE PETITION OF DSM NUTRITIONAL PRODUCTS TO DIRECT
JCP&L TO PROVIDE NET METERING CREDIT FOR EXISTING ON-SITE SOLAR
GENERATION FACILITY

DOCKET NO. QO21071021

SERVICE LIST

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