



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

DIVISION OF ENERGY AND
OFFICE OF CLEAN ENERGY

IN THE MATTER OF 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)

ORDER GRANTING
MOTIONS TO INTERVENE
AND ADMISSION PRO HAC
VICE

DOCKET NO. EO12080721

Parties of Record:

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Stephen S. Goldenberg, Esq., on behalf of the New Jersey Large Energy Users Coalition
James E. McGuire, on behalf of WattLotts, LLC
Michael A. Gruin, Esq., on behalf of The Solar Energy Industries Association
William Potter, Esq., on behalf of the Mid-Atlantic Solar Energy Industries Association
Matthew Davey, on behalf of Petra Solar
Hany Khoury, Esq., on behalf of the New Jersey Solar Industry Manufacturers Association
Robert T. Lawless, Esq., on behalf of SunDurance Energy
Robert F. Shapiro, Esq., on behalf of Prologis
Matthew Weisman, Esq., Public Service Electric and Gas Company

BY PRESIDENT ROBERT HANNA:

On August 1, 2012, Public Service Electric & Gas ("PSE&G" or "Company") filed a petition ("Petition") seeking approval of an extension of its solar generation investment program and the associated cost recovery mechanism ("Program"). In its Petition, the Company states that it will add 136 megawatts ("MW") of solar photovoltaic systems to its solar for all program approved by Board Order dated August 3, 2009, In re Petition of Public Service Electric and Gas Company for Approval of a Solar Generation Investment Program and Associated Cost Recovery Mechanism, under docket EO09020125. The Program is divided into four segments:

Segment A, on landfills and brownfields, with a proposed capacity of 90 megawatts; Segment B, on warehouse roofs, with a proposed capacity of 20 MW; Segment C, on parking lots, with a proposed capacity of 25 MW; and Segment D, for pilots and demonstrations, with a proposed capacity of 1 MW.

By letter dated August 31, 2012, Board Staff notified PSE&G that the Petition was administratively incomplete. On September 12, 2012, PSE&G submitted a supplemental filing to address the deficiencies identified in Staff's August 31, 2012 letter. By letter dated October 19, 2012, Staff notified the Company that the Petition is now administratively complete.

By Order dated October 23, 2012, 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 me 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 letter dated September 19, 2012, Michael A. Gruin, Esq., filed a motion to intervene in this proceeding on behalf of The Solar Energy Industries Association ("SEIA"). According to the motion, SEIA is a national trade association of companies involved in and conducting solar business in New Jersey and nationally. In support of its motion, SEIA relied upon the certification of Katie Bolcar Rever, SEIA's Director for the Mid-Atlantic States. Ms. Bolcar certified that SEIA's member companies comprise 40% of all solar companies in New Jersey, and that SEIA actively participates in state public utility commission proceedings and working groups related to issues of solar energy policy. According to her certification, SEIA's industry-based perspective will be helpful to the Board in evaluating the Program, its members will be directly affected by the Program, and its interests will not be adequately represented by any other party to this proceeding. SEIA also avers that its participation will not cause delay or disruption to this proceeding.

By letter dated September 20, 2012, James E. McGuire, Esq., filed a motion to intervene in this proceeding on behalf of WattLots, L.L.C. ("WattLots"). According to the motion, WattLots produces innovative designs for the solar industry, incorporating the latest solar technology available, including the WattLots Power Arbor, a parking lot canopy system that is specifically designed to retrofit existing surface parking lots. The motion also references a WattLots' product called "WATTwalls," a wall-mounted system which, according to the motion, will enable solar installations for many customers who currently lack the roof or parking space to install solar generation. Since PSE&G's proposed Program includes 20 MW for warehouse roofs and 25 MW for parking lots, WattLots asserts that its particular technology is uniquely well suited for use in these segments of the Program. According to the motion, WattLots is thus in a position to add measurably and constructively to the Board's consideration of the Program, has a unique perspective, which cannot be represented by any other party, and its participation will not result in any delay or confusion in the Board's consideration of this matter.

By letter dated September 27, 2012, Steven S. Goldenberg, Esq. filed a motion to intervene in this proceeding on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"). According to the motion, NJLEUC is an association of large volume customers which, among other things, monitors regulatory proceedings on behalf of its members, including those serviced by PSE&G. According to the motion, NJLEUC's members, as large end-use customers of electricity and gas on the PSE&G system, will be directly and immediately affected by the solar generation investments and associated rate relief requested by the

petition. NJLEUC maintains that it has a unique perspective not otherwise represented, and that its participation in this matter will constructively and measurably advance this proceeding, as required by N.J.A.C. 1:1-16.3(a). NJLEUC also commits to working cooperatively with the other parties to this proceeding, to the extent possible.

Mr. Goldenberg has also moved pursuant to N.J.A.C. 1:1-5.2 and 1:21-2 for the admission *pro hac vice* of Paul F. Forshay, Esq. a member in good standing of the bar of the District of Columbia. Mr. Forshay filed an affidavit with the motion asserting that there is good cause for his admission since he has considerable experience representing marketers and large end users in proceedings before the Board and the Federal Energy Regulatory Commission, he has been requested by NJLEUC to appear in these proceedings, and that he is associated in this matter with Mr. Goldenberg who is New Jersey counsel of record. The affidavit also indicates that Mr. Forshay has satisfied all of the conditions for admission as set forth in R. 1:21-2(a), and that the fees required by R. 1:20-1(b) and 1:28-2 have been paid to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection.

By letter dated October 9, 2012, PSE&G responded to the motions to intervene of SEIA, WattLots and NJLEUC. PSE&G did not object to the motion of Wattlots. However, PSE&G maintained that SEIA's and NJLEUC's intervention should be conditioned upon the movants furnishing the Board and the Company with a list of their current members. In the case of NJLEUC, PSE&G requested that the list identify the members that are currently PSE&G customers. With respect to SEIA, the Company wishes the list to identify parties that are active in the New Jersey solar energy market or seeking to become active in it. In both cases, PSE&G asked that the Board require the parties to update their membership lists in the event of any material changes. PSE&G did not object to the motion for admission *pro-hac vice* submitted on behalf of Mr. Forshay.

By electronic mail dated October 24, 2012, counsel for NJLEUC supplied a list of the organization's members, and by electronic mail on October 25, 2012, agreed to update that list should there be any material changes in its membership.

By letter dated November 12, 2012, Matthew Davey filed a motion to intervene in this proceeding on behalf of Petra Solar, Inc. ("Petra Solar"). According to the motion, Petra Solar is a duly organized company incorporated in Delaware, which designs and manufactures unique solar technology. The motion further stated that Petra Solar is the only manufacturer or turnkey solar systems in New Jersey and that it is, therefore, substantially, specifically and directly affected by the outcome of this proceeding and no other party in the case represent similar interests¹.

By letter dated October 26, 2012, William Potter, Esq., filed a motion to intervene on behalf of the Mid-Atlantic Solar Energy Industries Association ("MSEIA"). In support of its motion, MSEIA relied upon the certification of Dennis Wilson, President of MSEIA. According to the motion, MSEIA's membership includes numerous solar photovoltaic developers and installers active in the New Jersey market who will be substantially, specifically and directly affected by the outcome of this proceeding. The motion further stated that MSEIA has a unique interest in the development of financial incentives for solar and that no other party to this proceeding will

¹ Petra Solar has represented that it has in house counsel admitted in New Jersey who will be responsible for signing any formal submissions in this proceeding.

adequately represent MSEIA's interest nor have the same level of experience and expertise on the issues at stake.

By letter dated November 14, 2012, PSE&G responded to the motions to intervene of Petra Solar and MSEIA. PSE&G does not object to Petra Solar's motion to intervene but states that MSEIA's intervention should be conditioned upon the movant furnishing to the Board and the Company a complete list of its members identifying the members that are active in New Jersey's solar market.

By letter dated November 16, 2012, Mr. Robert F. Shapiro, Esq.², filed a motion to intervene on behalf of Prologis. According to the motion, Prologis is a developer of photovoltaic rooftop solar projects with headquarters in San Francisco which has developed four solar rooftop projects in New Jersey. The motion further stated that Prologis complies with the regulatory intervention requirements, and that its future and current operations will be impacted by the outcome of this proceeding.

By letter dated November 16, 2012, Mr. Hany Khoury, Esq. filed a motion to intervene on behalf of the New Jersey Solar Industry Manufacturers Association ("NJSIMA"). According to the motion, NJSIMA is a non-profit organization incorporated in New Jersey with a goal of encouraging and advancing application and public understanding of solar energy. The motion further stated that NJSIMA is the collective voice for solar electric industry manufacturers in New Jersey, and that no other party in this case represents interests similar to that of NJSIMA.

By letter dated November 16, 2012, Robert T. Lawless, Esq. filed a motion to intervene on behalf of SunDurance Energy ("SunDurance"). According to the motion, SunDurance is a company involved in the development, construction, design and operation of megawatt-scale photovoltaic solar projects in New Jersey and throughout North America. In particular, SunDurance developed a solar project in a landfill under the Solar for All Program in Kearny, New Jersey and claims to have, together with its affiliate The Conti Group, decades of experience in environmental remediation and other issues associated with the construction of solar projects in landfills and parking structures. The motion further stated that SunDurance has a clear and unique interest in the outcome of this proceeding that is not represented by other parties involved in this case.

By letter dated November 19, 2012, PSE&G replied to the motions to intervene of Prologis, SunDurance and NJSIMA. The Company does not object to the motions to intervene of Prologis and SunDurance but requests that NJSIMA's intervention be conditioned upon the movant furnishing to the Board and the Company a complete list of its members identifying the parties that are active in the New Jersey solar energy market or are seeking to become active in it.

By letter dated November 26, 2012, SEIA responded to the Company's response to its motion to intervene. SEIA contends that the information it provided in its motion to intervene regarding the overall makeup of its membership is adequate to establish its unique interest in the proceeding, and that PSE&G's motive for seeking the names of individual members is that it intends to seek discovery against these members, who are not parties to the proceeding. The movant alleges

² I have been informed that Mr. Shapiro will be submitting a motion for his admission pro hac vice for this proceeding. Under N.J.A.C. 1:1-5.1, except in limited situations, a corporation must be represented by an attorney in contested case proceedings.

that because individual members of SEIA are actively participating in PSE&G's solar programs, requiring their identification carries an implicit threat that PSE&G could seek out those members to lobby them or to coerce them via their business relationship with PSE&G. SEIA also objects to PSE&G's statement that SEIA was not a "legal entity" and thus had no standing to intervene. SEIA states that it is a 503(c)(6) organization and had both attached a copy of its Certificate of Good Standing from the District of Columbia and provided a copy of same to the Company. SEIA represented that counsel for the Company had admitted that this certificate constituted evidence that SEIA is a "legal entity."

FINDINGS AND DISCUSSION

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 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).

The Board has encouraged full participation in proceedings that have the potential to affect large groups of interested parties to ensure that a full record is created. In light of the criteria stated above and based on my review of the motions to intervene filed by Petra Solar and WattLots, and given the lack of any objection, I **HEREBY FIND** that Petra Solar, SunDurance, Prologis and WattLots meet the standards for intervention. Accordingly, I **HEREBY GRANT** the motions to intervene of Petra Solar, SunDurance, Prologis and WattLots. In addition, based on my review of NJLEUC's motion to intervene, the membership list submitted and NJLEUC's written commitment to update its members' list should changes occur during the pendency of this proceeding, I **FURTHER GRANT** the motion to intervene of NJLEUC.

Based on review of the motion for admission pro hac vice of Mr. Forshay, Esq. and supporting affidavit, and no objections having been received, the I **FIND** that Mr. Forshay, Esq. has satisfied the conditions for admission, and **HEREBY GRANT** the motion for admission to practice before the Board for this proceeding in the understanding that Mr. Forshay shall:

1. Abide by the Board's rules and all applicable New Jersey court rules, and all disciplinary rules;
2. submit proof of payment of the fees required by R.1:20-1 (b) and 1 :28-2;
3. 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 him that may arise out of his participation in this matter;
4. notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
5. have all pleadings, briefs and other papers filed with the Board signed by the attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the attorney admitted by this Order.

I **FURTHER CONDITIONALLY GRANT** MSEIA's, NJSIMA's and SEIA's motions to intervene in this proceeding. I **FIND** PSE&G's request that membership lists be provided to be reasonable because such lists allow a determination of the actual entities represented by these associations. I am not persuaded that the provision of this information in any way infringes on the right to associate, or on the associations' ability to represent their membership. Therefore, the grant of intervenor status to MSEIA, NJSIMA and SEIA is subject to submission, within ten (10) days of the date of this Order, of updated membership lists to the Board and PSE&G, including the identification of members who are active in the New Jersey solar energy market or are seeking to become active in it. These membership lists may not be used for any purpose other than to determine that these associations do indeed represent specific, direct and different interests in this proceeding. Any misuse of this information may be subject to sanctions.

All interventions are additionally conditioned on the parties adhering to the schedule as previously set, and committing to work cooperatively with the other parties to this proceeding to the fullest extent possible.

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 deemed appropriate.

DATED: 11/29/2012

BY:


ROBERT M. HANNA
PRESIDENT

In the Matter of 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, 48:221.1 and N.J.S.A. 48:3-98.1.

BPU Docket No. EO12080721

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