



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY/ CLEAN ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)	ORDER GRANTING
SERVICE ELECTRIC AND GAS COMPANY FOR)	MOTIONS TO INTERVENE
APPROVAL OF AN EXTENSION OF A SOLAR)	AND MOTION TO
GENERATION INVESTMENT PROGRAM AND)	PARTICIPATE
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)	DOCKET NO. E012080721

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
- Michael R. Yellin, Esq.**, on behalf of KDC Solar LLC
- Gary Weisman**, on behalf of the New Jersey Solar Energy Coalition
- Matthew Weisman, Esq.**, Public Service Electric and Gas Company
- Pamela J. Scott, Esq.**, Atlantic City Electric 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” or “Solar for All Extension”). 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 with authority to rule on all motions that arise during the proceeding, and to modify any schedule that may be set as necessary to secure just and expeditious determination of the issues.

By letter dated December 10, 2012, Michael R. Yellin, Esq., filed a motion to intervene in this proceeding on behalf of KDC Solar L.L.C. ("KDC Solar"). The motion asserts that KDC Solar is a New Jersey-based developer of large "behind the meter" solar energy projects with a unique interest in the outcome of this proceeding. KDC Solar claims that its interests are not adequately represented by the other parties in this proceeding because most intervenors are trade associations, two intervenors are manufacturers of solar products (WattLots and Petra Solar), one is an engineering/construction firm (SunDurance), and one is a property owner that leases roof-top space for solar installations (Prologis). The motion further assures that although several deadlines and hearing dates have passed, KDC Solar will comply with the procedural schedule and will not cause undue delay in this proceeding. With regard to the delay in submitting its motion to intervene, KDC Solar asserts that: (i) under N.J.S.A. 1:1-16.2 a motion for leave to intervene may be filed at any time after a case is initiated, and (ii) the scheduling Order, dated November 19, 2012, under this docket states that the presiding officer can modify any schedule that may be set.

On December 17, 2012, Gary Weisman filed a motion to intervene on behalf of the New Jersey's Solar Energy Coalition ("NJSEC"). In support of its motion, NJSEC states that it is a non-profit corporation representing the unique and significant interests of a broad coalition of residential, small commercial, large commercial, brownfield and landfill solar developers, EPC contractors, and law and accounting firms specializing in the development of solar energy in New Jersey. According to the motion, the outcome of this proceeding will substantially, specifically and directly affect these interests of NJSEC, which are not adequately represented by any other party in this proceeding. NJSEC asserts that it is filing this motion out of time based on its mistaken belief that the PSE&G Solar Loan III filing and this Program were a single case.

By letter dated December 18, 2012, PSE&G responded to KDC Solar's motion to intervene in this proceeding. The Company objects to KDC Solar's intervention on the grounds that KDC Solar has not established the nature and extent of its interest in the outcome of this case or established that its interest is sufficiently different from those of any other party so that including KDC Solar as a party will add measurably and constructively to the scope of the case. According to the Company's response, intervention by SunDurance Energy, Prologis, WattLots, LLC and Petra Solar, Inc. is justified because they bring to this case unique products and/or related experience that will assist the Board in evaluating the Program. According to PSE&G,

KDC Solar's motion to intervene, however, should not be granted because KDC Solar has not had any involvement in the Solar for All program or established that it will be able to present any information relevant to the Board's evaluation of the proposed Program. Furthermore, PSE&G's response asserts that although KDC Solar claims in its motion that it is not a member of any of the trade associations that have been granted intervenor status in this matter, KDC Solar's interest as a developer is adequately represented by associations such as the Solar Energy Industries Association ("SEIA"). If the Board nevertheless concludes that KDC Solar's presence is likely to add constructively to the case, the Company requests that the Board treat KDC Solar's motion to intervene as a motion to participate pursuant to N.J.A.C. 1:1-16.6(c).

By letter dated December 20, 2012, KDC Solar replied to PSE&G's objections, stating that its business objective is to undertake projects similar to those contemplated by the proposed Program and to earn solar renewable energy certificates ("SRECs"). KDC Solar further maintains that because the number of SRECs is limited, any project undertaken by PSE&G could constrain the ability of private companies such as KDC Solar to enter and compete effectively in the New Jersey solar market. As to whether SEIA or the Mid-Atlantic Solar Energy Industries Association adequately represents KDC Solar's interests, KDC Solar asserts that these trade associations defend positions agreed to by a broad spectrum of solar interests, and are unlikely to advocate for the position of only one segment of the industry they serve. In addition, according to KDC Solar, the majority of the members of these solar trade associations are contractors hired by PSE&G to install solar projects. Finally, KDC Solar emphasized that it will abide by the established procedural schedule, so granting its motion to intervene will not create any confusion or delay.

On December 20, 2012, Pamela J. Scott, Esq., filed with the Board a motion to participate on behalf of the Atlantic City Electric Company ("ACE"). The motion asserts that ACE is a New Jersey Utility as defined by N.J.S.A. 48:2-13 and that the outcome of this proceeding could have precedential effect on matters involving ACE. The motion further states that due to its experience and history of coordinating positions with other utilities where appropriate, ACE's participation is likely to add constructively to the proceeding. Finally, the motion asserts that ACE will abide by the approved schedule and participate in this proceeding within the bounds permitted by N.J.A.C. 1:1-16.6.

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 addition, N.J.S.A. 48:3-98.1.b establishes that in determining the cost recovery by electric public utilities for programs such as the Solar for All Extension, the Board may take into account the effect on competition and the availability of such programs in the marketplace. Based on review of the motion and the responses, I **THEREFORE FIND** that KDC Solar's input as a competitor to PSE&G in the New Jersey solar market should add measurably and constructively to the scope of this case, and help the Board on its evaluation of the Program. In light of these criteria and findings and given the lack of objection to NJSEC's motion to intervene and ACE's motion to participate, I **HEREBY GRANT** the motion to intervene of KDC Solar and ACE's motion to participate in this proceeding, permitting ACE to file a statement or brief. I **FURTHER GRANT** NJSEC's motion to intervene contingent on NJSEC retaining representation as required for corporations under N.J.A.C. 1:1-5.1. All newly added parties have agreed to comply with the schedule as adopted.

Additionally, to facilitate the efficient conduct of these proceedings, the intervenors and the participant added by this Order are **HEREBY DIRECTED** to consult with and work cooperatively with PSE&G, Board Staff, Rate Counsel and the other intervenors, to the greatest extent possible, consistent with their respective interests, so as to avoid undue delay and repetition.

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.

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

DATED: 1/9/2013

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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