



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

CLEAN ENERGY

IN THE MATTER OF THE REQUEST OF INDOOR)
SPORTS PAVILION FOR A WAIVER OF N.J.A.C. 14:8-)
4.3(j))

ORDER

DOCKET NO. EG12060504V

Parties of Record:

Jeffrey A. Walder, Indoor Sports Pavilion
Gregory Eisenstark, Esq., Jersey Central Power & Light

BY THE BOARD:

This Order addresses a request for a waiver of the Board of Public Utilities' ("Board") rules governing the appropriate means of compensating a net metered customer for its "banked" kilowatt hours ("kWh") when the customer changes energy suppliers.

BACKGROUND

On February 9, 1999, the New Jersey 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 things, EDECA required all third party suppliers and basic generation providers¹ ("supplier/provider") to provide net metering to all customers at non-discriminatory rates, allowing customers who generate electricity from qualifying renewable energy sources to be compensated for their production. N.J.S.A. 48:3-87(e).

As directed by the statute, the Board adopted net metering rules. N.J.A.C. 14:8-4. These rules are designed to encourage investment in customer-sited renewable energy by offering credits for electricity generation at retail rates over an annualized period up to the amount of electricity taken by that customer from its supplier/provider. If, in a given monthly period, a customer-generator generates more energy than the supplier/provider supplies to the customer-

¹ Basic generation service is the default supply service provided through the electric distribution company ("EDC") for customers who do not choose their own supplier of electricity. In either case, the EDC delivers the electricity to the customer and usually bills for both the delivery and commodity.

generator, the customer-generator is credited for the excess by reducing the energy portion of the customer-generator's bill for the next billing period. This practice is sometimes referred to as "banking" energy credits. These credits are carried over from monthly billing period to monthly billing period until the end of the annualized period². At the end of a customer-generator's annualized period, the supplier/provider compensates the customer-generator for any excess kilowatt hours generated at the avoided cost of wholesale power. If the customer-generator changes suppliers, the supplier/provider with whom service is terminating treats the end of the service period as if it were the end of the annualized period, and therefore, will compensate the customer at the wholesale, rather than the retail, rate for any excess generation. N.J.A.C. 14:8-4.3(j).

By letter dated June 1, 2012, Indoor Sports Pavilion ("Petitioner" or "ISP") states that it installed a solar facility in December 2010. According to the petition, at the time of the installation, Petitioner was purchasing its energy from a third party supplier ("TPS") named Verde Energy USA Inc. ("Verde"). Petitioner states that it received its monthly billing statements from its EDC, Jersey Central Power & Light ("JCP&L"), showing both the EDC's charges and the energy charges of the TPS. At some time subsequent to the installation, Petitioner changed to a different TPS, NextEra Energy Services of New Jersey ("NextEra").

Petitioner identifies as one of its incentives for the installation the opportunity to "bank" kWh generated in excess of its usage in a given month, and to utilize these banked kWh to offset its energy expenses in future months. According to the petition, ISP proactively sought to determine how this process would work by contacting representatives of JCP&L, and that it informed those representatives that it wished to maximize the value of its banked hours. Petitioner further states that at the time it changed its TPS, it had 134,480 banked kWh.

Petitioner alleges that, following a series of meetings and communications with representatives of Verde and JCP&L, Petitioner was informed that Verde would compensate ISP for all of its "banked" kWh at the applicable wholesale rate, and that Petitioner could not carry those kWh with it to be credited against future bills from its new supplier, NextEra, at full retail value. Petitioner avers that at no time during the process of changing its TPS was it informed by JCP&L, Verde, or NextEra that changing its TPS would result in compensation at wholesale rates for its accumulated "credits" from the old supplier rather than a carry forward of that excess generation with its new supplier as credits against its subsequent electricity bills.

By letter dated March 15, 2012, Petitioner contacted the Board's Office of Clean Energy ("Staff"). In this letter, Petitioner stated that it would not have changed suppliers had it been advised of the impact of the change upon its banked kWh. Petitioner further stated that it had lost approximately \$25,000 by changing TPS, and that this result is not equitable.

Staff responded by letter dated April 16, 2012. Staff directed Petitioner to the Board's rules on net metering and specifically to the rules governing annualized period selection at N.J.A.C. 14:8-4.3. With respect to Petitioner's situation, the rules provide that:

- (j) A customer-generator shall retain its chosen annualized period permanently unless either of the following occurs:

² Annualized period is defined in N.J.A.C. 14:8-4.2 as a period of 12 consecutive monthly billing periods. The customer-generator has the right to select the annualized period.

1. The customer-generator switches electric suppliers. In such a case, the electric power supplier or basic generation provider with whom service is terminating shall treat the end of the service period as if it were the end of the annualized period.

Staff concluded that all parties were in compliance with the rules and that no further action was warranted.

As previously stated, on or about June 7, 2012, ISP filed this letter petition with the Board, asking to be returned to the position it would have been in but for the change of suppliers, and re-gaining the ability to use its "banked" kWh to offset its energy bills until May.

By letter dated August 3, 2012, JCP&L submitted comments in support of the position taken by Staff in its letter of April 16, 2012. JCP&L also noted that at the time it met with Petitioner in late 2011, the discussion focused on the selection of an annualized period that would maximize the value of Petitioner's banked credits and that JCP&L was not made aware that Petitioner was contemplating a change in third party suppliers.

DISCUSSION AND FINDINGS

Petitioner does not dispute the applicability of N.J.A.C. 14:8-4.3(j) to its situation. Rather, Petitioner argues that, as a matter of equity, it should receive the full retail value of its "banked" kWh. In support of this contention, it points to the fact that none of the entities it dealt with were aware of this rule, and claims that; as a result, Petitioner did not make an informed decision when it chose to change suppliers.

In effect, Petitioner seeks a waiver of N.J.A.C. 14:8-4.3(j). The Board may, in special cases and for good cause shown, permit deviation from its rules. N.J.A.C. 14:1-1.2(b)(1). Under the first prong of the waiver test the Board considers whether Petitioner's request supports the general purpose and intent of the rules. In this instance, as noted above, these rules are designed to encourage investment in customer-sited renewable energy by offering credits for electricity generation at retail rates over an annualized period up to the amount of energy delivered to the customer-generator through the EDC. The rules are also intended to place a limit upon the extent to which these credits may accrue by providing that at the end of an annualized period the customer is compensated for any remaining credits at wholesale cost, and begins the next annualized period with no outstanding credit balance. N.J.A.C. 14:8-4.3(e). The rules provide for the same treatment of excess generation credits when a customer-generator changes suppliers. Were a customer-generator permitted to carry its credits forward following a change in suppliers, the new supplier would be required to grant full retail credit for generation which had been supplied to the Petitioner's previous supplier; it would receive a burden with no corresponding benefit. The Board **FINDS** that permitting Petitioner to receive full retail credits for its excess generation notwithstanding the fact that Petitioner has chosen to change suppliers would not support the purpose and intent of these rules.

The second prong of the waiver test requires that the Board also consider whether full compliance with the rules would adversely affect the interest of the public. In this instance, the non-net metering public subsidizes net metering customers by picking up the difference between the generation supplied by net metering customers and the full retail credit, including transmission and distribution charges, which those customers receive for their generation when


it is credited against their bills. Additionally, it is Petitioner's responsibility to know the rules. Thus the Board **FINDS** that strict compliance with the rules, which would limit the amount of subsidy received by Petitioner, would not adversely affect the public interest.


Therefore, finding no basis on which to grant a waiver of N.J.A.C. 14:8-4.3(j), the Board **HEREBY DENIES** the petition.

DATED: 8/15/12

BOARD OF PUBLIC UTILITIES
BY:

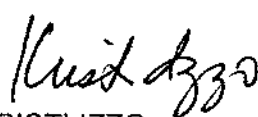

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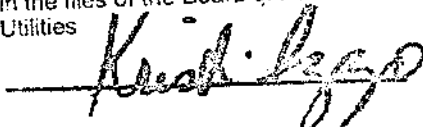

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ATTEST:

KRISTI IZZO
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 REQUEST OF INDOOR SPORTS PAVILION
FOR A WAIVER OF N.J.A.C. 14:8-4.3(j)
DOCKET NO. EG12060504V

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