



Agenda Date: 2/11/15
Agenda Item: 8G

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/

CLEAN ENERGY

IN THE MATTER OF THE JOINT PETITION OF KDC)
SOLAR LLC AND SIX FLAGS ENTERTAINMENT)
CORPORATION SEEKING A DECLARATORY)
JUDGMENT PURSUANT TO N.J.S.A. 52:14B-1, ET)
SEQ., OR A WAIVER PURSUANT TO THE WAIVER)
RULE, N.J.A.C. 14:1-1.2(B)) DOCKET NO. QO14080885

Parties of Record:

Keith E. Lynott, Esq., McCarter & English, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Windels Marx Lane & Mittendorf, LLP on behalf of Jersey Central Power & Light Company

BY THE BOARD¹:

On August 6, 2014, KDC Solar LLC (“KDC”), a solar developer headquartered in Bedminster, New Jersey, and Six Flags Entertainment Corporation (“Six Flags”) (collectively, “Petitioners”) filed a joint petition with the New Jersey Board of Public Utilities for a declaratory ruling concerning the Board’s rules pertaining to net metering, found at N.J.A.C. 14:8-4.1. Specifically, Petitioners seek a declaratory ruling that “(i) the provisions of N.J.A.C. 14:8-4.1(b)(2) are satisfied by the [proposed solar PV facility], despite the anomalous circumstance whereby JCP&L owns the wires and other equipment on Great Adventure property downstream of the point of interconnection and meter; and (ii) Six Flags qualifies as a ‘net metering customer’ pursuant to N.J.A.C. 14:8-4.2.” Petition at para. 14. In the alternative, Petitioners seek a waiver of N.J.A.C. 14:8-4.2, pursuant the Board’s authority under N.J.A.C. 14:1-1.2(b).

BACKGROUND

Petitioners propose to develop and net-meter a 17 MW photovoltaic facility at Six Flags’ Great Adventure & Safari theme park (“Great Adventure”) located in Jackson Township, New Jersey. According to the petition, the solar facility will be located entirely on property owned by Great Adventure and, pursuant to N.J.A.C. 14:8-4.1(b)(3)(ii), the generation system’s capacity will be

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

tailored not to exceed Great Adventure's annual usage. Once interconnected, the system will be the largest net-metered solar facility in the State.

Petitioners and Jersey Central Power & Light ("JCP&L"), the local electric distribution company ("EDC"), have engaged in a collaborative process to explore various interconnection designs that would be suitable for the project. The design submitted with the petition contemplates the solar facility interconnecting behind-the-meter to a new customer-owned substation, and delivering power downstream from the substation to serve the theme park by using the utility's distribution equipment.

The Petitioners assert that the construction design is unique because it involves use of JCP&L's distribution equipment located on the property to serve the load at Great Adventure. This unusual circumstance has been in existence at the theme park since its construction in the early 1970s. According to the petition, no other JCP&L customer is served by this equipment.

In 1994, JCP&L and Six Flags executed an Electric Service Agreement (the "1994 Agreement"), in which the parties agreed that JCP&L would "retain ownership and inspection/maintenance responsibilities for the distribution facilities presently dedicated to Great Adventure's" theme park.² Petition at para. 8. In consideration, Great Adventure pays JCP&L a primary ("GP") tariff rate plus a monthly facility charge of approximately \$18,000. Petitioners and JCP&L confirmed to Board Staff that the 1994 Agreement is still in effect and has not been modified.

Concerning the configuration of the solar facility, Petitioners anticipate that it will be located on several different tax lots, all of which comprise the Great Adventure entertainment complex. The site plan has not been finalized, but Petitioners have committed to obtain the necessary local zoning approvals and submit a final site plan to the Board for verification that the design and engineering is consistent with the requirements of N.J.A.C. 14:8-4.1(b)(1)(ii) setting criteria for the location of the net-metering generator.

Petitioners also propose to develop a customer-owned substation to interconnect the solar facility. The existing substation is a utility-owned substation that serves approximately 3,000 JCP&L customers and Great Adventure. The new customer-owned substation will serve only Great Adventure. According to the petition, doing so will allow Petitioners to interconnect at a level of 34.5 kV, which is higher than with the existing substation; and it will allow Petitioners to deliver energy from the solar facility to the point of interconnection using equipment that is owned and operated by an entity other than the utility.

The existing utility-owned substation will continue to serve part of the Great Adventure property that is known as Camp Adventura, which houses small animals within the safari. Petitioners estimate that the load for this area may be between 250-500 kW. The utility substation will also continue to serve approximately 3,000 existing JCP&L residential customers.

By letter dated October 2, 2014, JCP&L stated that it took no position on the merits of the petition. However, JCP&L requested that if the Board granted the relief requested, that it do so on the following conditions: 1) that any finding that the project is eligible for net-metering not be deemed precedential; 2) that the project be required to demonstrate that it meets all of the remaining requirements of N.J.A.C. 14:8-4, including the "contiguous property" requirement in

² Staff understands that the 1994 Agreement modified an earlier agreement between Great Adventure and the EDC.

N.J.A.C. 14:8-4.1(b)(1); and 3) that the project obtain all approvals and pay associated costs of the interconnection process with JCP&L.

STAFF RECOMMENDATION

The statutory and regulatory authority for net-metering is codified at N.J.S.A. 48:3-87(e) and implemented through N.J.A.C. 14:8-4. In part, the statute limits net metering to customers “that generate electricity, on the customer’s side of the meter, using a Class 1 renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period.” N.J.S.A. 48:3-87(e)(1). The rules establish four criteria for determining whether a renewable generation facility is on the “customer’s side of the meter” and therefore eligible for net metering.

First, N.J.A.C. 14:8-4.1(b)(1) limits the physical location of the generation as it relates to the end-user and sets other constraints. The generator must be located on the property of the end-user or on contiguous property. Petitioners have described the general plan for the development, but have not asked the Board to approve a plan as the exact configuration of the project is still under development. Instead, Petitioners represent that the solar facility will be built on property owned by Six Flags or on property contiguous to Great Adventure but that they will return to the Board with the final site plan to confirm whether the project satisfies this portion of the rule. Petition at para. 4-7. Accordingly, this question is not currently before the Board.

Second, N.J.A.C. 14:8-4.1(b)(2) prohibits the use of EDC equipment to deliver energy from the generation facility to the net-metering customer.

[C]lass 1 renewable energy that meets all of the following criteria shall be deemed to be on the customer’s side of the meter:

....

2. The renewable energy is delivered from the generation facility to the property on which the energy is consumed through wires and/or other equipment installed, owned, and operated by an entity other than the EDC” N.J.A.C. 14:8-4.1(b)(2).

The plain language of the rule states that to qualify as energy generated on the customer’s side of the meter, the renewable energy must be distributed from the generation source using equipment that is not “installed, owned, and operated” by an EDC. In practice, this rule prohibits an entity from qualifying for net-metering if the on-site renewable generator distributes the energy using equipment that is EDC-installed, owned, and operated.

As applied to the facts of this petition, one reading of the situation would result in the Petitioners being prohibited from qualifying for net metering because JCP&L installed, owns, and operates the distribution equipment that serves Great Adventure. The 1994 Agreement, including the monthly service fee, demonstrates JCP&L’s ongoing ownership and maintenance of the distribution equipment on the property. Accordingly, the project may not comply with N.J.A.C. 14:8-4.1(b)(2). Because of this open question, Staff recommends that the Board deny Petitioners’ request for a declaratory ruling that the proposed facility satisfies the requirements for net-metering.

However, Staff does find that the project is consistent with the intent of the statute and rules, and therefore, a waiver of N.J.A.C. 14:8-4.1(b)(2) is appropriate, pursuant to the Board’s

authority under N.J.A.C. 14:1-1.2(b), subject to certain conditions. Pursuant to N.J.A.C. 14:1-1.2(b), the Board may waive sections of its rules if full compliance would adversely impact the interests of the general public.

The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public[.]

Staff is persuaded that the public interests at issue here can be balanced – the State's interest in supporting commercial entities who desire to reduce their energy costs, and the State's interest in developing clean, distributed generation that complies with the mandates of the 2011 Energy Master Plan ("EMP") by providing the dual benefits inherent in the use of on-site generation while ensuring that distribution costs solely incurred by the customer-generator are largely met by the customer-generator. If the Board requires full compliance with N.J.A.C. 14:8-4.1(B), the public would lose the benefit.

In part, the net metering rules aim to ensure that other ratepayers are not unjustly burdened by a net metering customer; only a single customer can be served by the renewable generation facility; and, the owner/operator of the generation facility must adhere to all safety codes and requirements. See N.J.A.C. 14:8-4.1(b)(1), (2). Great Adventure will continue to be the sole customer served by the EDC's distribution equipment; and, the new customer-owned substation will ensure that the energy is delivered from the generation facility to the point of interconnection using wires and equipment that are not owned by the utility. Moreover, Great Adventure will continue to abide by the 1994 Agreement. As such, Staff believes that the interconnection design is consistent with the overarching purpose of the net metering rules.

After considering the unique history of development at Great Adventure, Staff supports a waiver of this portion of the net-metering rule. The construction dates back to the early 1970s when each ride was individually metered and served by the EDC's distribution equipment. A master meter is now on the property, but it remains that no other JCP&L customer is served by the distribution equipment. Petitioners explain, and Staff agrees, "[b]ecause the JCP&L-owned wires at issue form islanded circuits that only serve the Great Adventure property, the use of these wires for distributing electricity from the solar facility downstream of the point of interconnection cannot and will not result in service to any other customer." Petition at para 33. Further, Great Adventure pays a GP tariff rate, which includes demand charges that are rarely avoided with solar and a monthly service fee designed to compensate JCP&L for its exclusive use of the equipment.

The proposed, new customer-owned substation lends further support to the notion that this project is consistent with the intent of N.J.A.C. 14:8-4.1(b). The new substation will guarantee that the solar facility interconnects behind the customer meter.

The interconnection of the solar facility to the meter at the new substation will also ensure that electric power is delivered from the solar facility to the point of interconnection via wires and/or other equipment that are not owned by JCP&L. The Project will be connected on premises of the Customer "behind-the-meter" to the new dedicated substation. The equipment and wires to be used to

distribute the electric power from the solar generation facility to the substation will be owned and maintained by KDC Solar and the substation will be owned by Six Flags or KDC Solar and maintained by KDC Solar.

[Petition at para 11; see also Petition at para 18-19.]

No utility equipment will be used in delivering the energy from the generator site to the new substation. Therefore, Staff supports a waiver of N.J.A.C. 14:8-4.1(b)(2), subject to certain conditions.

A financial benefit of net metering is that it enables customers to obtain full retail credits against all variable charges on their utility bills for each kWh of electricity their system produces over an annualized basis. The retail credit normally includes the costs for generation, transmission and distribution. As a net metered customer, Petitioner will be eligible to receive a retail credit, including its share of the "common" distribution surcharge. Regarding distribution equipment that is behind the meter, Great Adventure will continue to pay the GP tariff rate plus the monthly service fee.

Last, it should not be ignored that this project will be the largest net-metered project in the State. To this end, and to mitigate the impact of this project on the New Jersey solar market, Staff recommends that Petitioners implement all cost-effective energy efficiency measures with a goal of reducing the system size. Any reduction in load will create a reduction in the size of the solar field, and will also provide Great Adventure with cost savings.

DISCUSSION AND FINDINGS

The Board has the power to relax its administrative rules if doing so is in the public interest. N.J.A.C. 14:1-1.2. The Board is persuaded that the public would benefit from relaxation of N.J.A.C. 14:8-4.1(b)(2) in this instance because the proposed project furthers the State's interest in balancing renewable on-site generation and reducing the energy costs of large commercial customers. The Board **FINDS** that but for JCP&L's ownership of the wires, switches, and transformers used on the Great Adventure property behind the meter, this project is consistent with the intent of N.J.A.C. 14:8-4.1(b)(2) to encourage the use of on-site, clean, generation. The Board also **FINDS** that the proposed customer-owned substation will guarantee that the solar facility connects behind-the-meter to the point of interconnection. In addition, the Board **FINDS** that Great Adventure is the sole user of the EDC's distribution equipment located on the theme park's property, and that it will continue to pay for the cost of the equipment pursuant to the 1994 Agreement. The Board **ACCEPTS** Petitioners' representation that the 1994 Agreement was negotiated pursuant to the EDC's Board-approved Tariff.

Therefore, the Board **HEREBY GRANTS** a waiver of N.J.A.C. 14:8-4.1(b)(2) as in the interests of the public by providing clean distributed generation which reduces dependency on the grid, (2011 EMP at 7.2.6) subject to the following conditions:

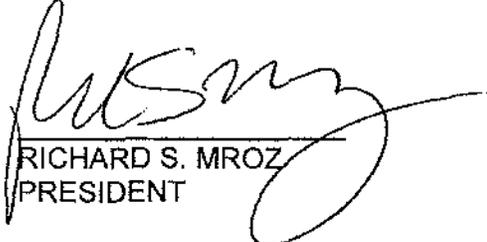
- 1) The discussion and findings herein are based on the particular facts and circumstances of this petition and shall not be deemed precedential;
- 2) Petitioners must submit a site plan to the Board demonstrating that the configuration of the solar facility satisfies all of the remaining requirements of N.J.A.C. 14:8-4.1, including the "contiguous property" requirement in N.J.A.C. 14:8-4.1(b)(1);

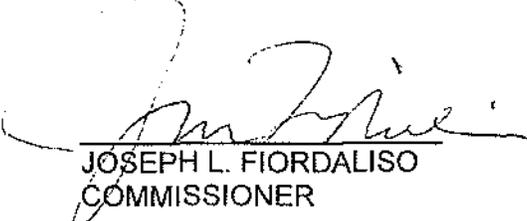
- 3) Petitioners are responsible for obtaining all approvals and paying associated costs of the interconnection process with JCP&L; and
- 4) Within 180 days of the effective date of this Order, Petitioners must submit a plan³ to Board Staff setting forth a strategy to implement all cost-effective energy efficiency measures. The plan should identify the anticipated energy savings and also reduce the size of the solar facility to account for the reduced energy usage due to the energy efficiency measures.

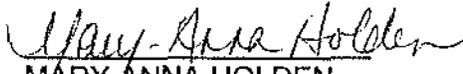
The effective date of this Order is February 23, 2015.

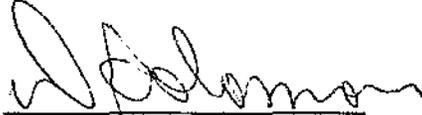
DATED: 2/11/15

BOARD OF PUBLIC UTILITIES
BY:

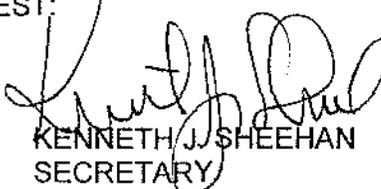

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

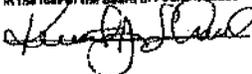

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


KENNETH J. SHEEHAN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.



³ Petitioner is not required to submit the plan to the Board for approval. Nothing in this order is intended to waive the rules for participation in NJCEP incentive programs.

IN THE MATTER OF THE JOINT PETITION OF KDC SOLAR LLC AND SIX FLAGS
ENTERTAINMENT CORPORATION SEEKING A DECLARATORY JUDGMENT PURSUANT
TO N.J.S.A. 52:14B-1, ET SEQ., OR A WAIVER PURSUANT TO THE WAIVER RULE,
N.J.A.C. 14:1-1.2(B)
DOCKET NO. QO14080885

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