



Agenda Date: 11/21/17
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF RADIANT ENERGY, LLC -)
APPROVAL OF A TRIPARTITE INTERCONNECTION) ORDER
AGREEMENT BETWEEN ATLANTIC CITY ELECTRIC,)
THE ENVIRONMENTAL PROTECTION AGENCY AND)
RADIANT ENERGY, LLC) DOCKET NO. QO17050560

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Lloyd D. Levenson, Esq., Cooper Levenson, on behalf of Radiant Energy, LLC

BY THE BOARD:

Petitioner Radiant Energy ("Radiant" or "Petitioner") seeks approval of a tripartite Interconnection Agreement ("Agreement") between Atlantic City Electric Company ("ACE"), the United States Environmental Protection Agency ("EPA"), and Petitioner. Petitioner must obtain approval from the New Jersey Board of Public Utilities ("Board") because it proposes using a contract other than the standard bipartite form required of all customer-generators by the Board's interconnection rules at N.J.A.C. 14:8-5.1 and available from each Electric Distribution Company ("EDC"). Petitioner also asks the Board to approve its proposed solar facility as eligible for net metering.

BACKGROUND

Petitioner proposes to develop a ground-mounted solar array with a nameplate capacity of 1000 kW on Price's Landfill, a Superfund site located in Egg Harbor Township and in the City of Pleasantville ("the Site"). (Petition at Par. 2.) EPA is currently in the process of remediating the Site and has subcontracted design and construction of the landfill cap and remediation system to the United States Army Corps of Engineers. (Petition at Pars. 3-4.) The groundwater remediation process entails a treatment plant located on the other side of Sawmill Road from the solar array. (Petition at Par. 5.)

ACE's customer of record for the treatment plant electrical meter is a private contractor retained by the United States Army Corps of Engineers ("the Corps") under their agreement with EPA. (Petition at Par. 8.) However, EPA is currently responsible for payment of the ACE bill. (Petition at Par. 9.) For this reason, and because the private contractor can be changed on a

periodic basis and may be changed in the future, ACE has agreed to consider EPA as the customer of record for purposes of the Agreement. Ibid. Although the customer of record insofar as the Agreement is concerned, the EPA may not under federal law perform certain contractual duties which are specified for the customer of record in the Board's standard interconnection agreement. (Petition at Par. 16.) As a result, Petitioner requests that the Board approve the tripartite agreement developed cooperatively between itself, ACE, and the EPA. (Petition at Par. 17.)

Petitioner states that the treatment plant is located "immediately across a public right-of-way" from the landfill and is thus contiguous to the landfill and to Petitioner's solar array. (Petition at 6.) Petitioner requests the Board to approve net metering of any solar energy generated in excess of the treatment plant's usage.

STAFF RECOMMENDATION

Staff works with the EDCs and public stakeholders to implement the Board's net metering and interconnection rules. The standard form of agreement which is made available to facilitate applications to interconnect and net meter customer-generator facilities was developed cooperatively between Staff, the EDCs and stakeholders. Staff estimates that the standard form agreement has been executed by approximately 80,000 customer-generators and their EDC.

Staff views the indemnification requirements in the standard form agreements as critical to the EDCs and by extension to their ratepayers. The risks of potential harm to the grid and the liability for the costs from improper installation, operations and maintenance of a customer-generator facility should ultimately be borne by the customer-generator. In this case the EPA, although the customer-of record, is prohibited by federal statute from accepting the contractual indemnification obligations of a bipartite agreement. Staff notes that the wastewater treatment plant forms part of the remediation of a superfund site. Under these circumstances, Staff believes that a solar facility located on a landfill for the purpose of supplying power to that treatment plant promotes the public interest and is consistent with the State's Energy Master Plan policy of promoting solar energy development on landfills. In this limited context, and with the incorporation of certain additional amendments to better conform the tripartite agreement to the standard Board-approved agreement, Staff agrees to the addition of project developer and owner Radiant Energy.

With respect to Petitioner's request that the Board approve net metering treatment for solar generation, Staff notes that Petitioner has re-configured the design of its proposed solar facility since submitting the petition. As redesigned, the portion intended to serve the treatment plant will be located directly across the public thoroughfare, Sawmill Road, from the treatment plant. Petitioner has provided Staff with a diagram of the re-configured facility design. In addition, at Staff's request Petitioner has supplied copies of the relevant areas of the official tax maps of the two municipalities. After reviewing the Petition, the attached interconnection agreement, and Petitioner's subsequent submittals, Staff is satisfied that the solar array proposed to serve the treatment plant would be contiguous to it within the meaning of N.J.A.C. 14:8-4.1(b). Staff recommends that the Board approve the solar facility as proposed for net metering.

DISCUSSION AND FINDINGS

The Board's rules require the use of a standard form developed by the Board for interconnection agreements:

"Interconnection agreement" means an agreement between a customer-generator and an EDC, which governs the connection of the customer-generator facility to the electric distribution system, as well as the ongoing operation of the customer-generator facility after it is connected to the system. An interconnection agreement shall follow the standard form agreement developed by the Board and available from each EDC.

N.J.A.C. 14:8-5.1 (emphasis added).

Therefore, although not couched as such in the petition under review, the Board will treat this petition as a request for waiver of the above-quoted rule. Requests for waiver are addressed pursuant to N.J.A.C. 14:1-1.2(b), which requires that the Board make two determinations prior to waiving one of its rules: first, that the petitioner's request is in accord with the general purposes and intent of the rules; and second, that full compliance with the rule requirements would adversely affect the interest of the public.

In determining whether this request accords with the general purposes and intent of its rules, the Board looks to their history. The Board promulgated the interconnection rules to facilitate net metering. Through the years, the Board has repeatedly amended these rules to allow increased participation because such participation "will enable more people to offset their electric bills through use of renewable energy systems." 41 N.J.R. 2215(a) (June 1, 2009.) Upon readopting the Renewable Portfolio Standard rules, the Board stated that the net metering and interconnection rules would have a positive social and a positive economic impact because both sets of rules "help increase investment in renewable energy," which in turn supports "the development of renewable energy in New Jersey and beyond." 43 N.J.R. 1162(a) (May 2, 2011.)

While the interconnection rules provide standard application requirements to make the development of renewable energy more efficient, they do so in service of the underlying goal: to increase the use and generation of renewable energy in New Jersey. Ibid.

Here, the EPA has identified certain terms in the standard interconnection agreement that create a legal impediment to its ability to sign the agreement with ACE. As such, they have requested a waiver to allow them to sign a modified, tripartite agreement.

Petitioner thus seeks a waiver in order to allow its participation in the generation of solar energy. The Board therefore **FINDS** that waiving the requirement of a standard form in this instance comports with the general intent and purpose of its rules.

The second prong of the test looks to whether full compliance with the rule requirements would adversely affect the interest of the public. The matter under review concerns a solar project designed to supply power to a treatment plant which is part of a groundwater remediation program for a superfund site. The request for a waiver arises because the standard interconnection agreement requires the customer of record to indemnify the electric distribution company for the acts and omissions of the renewable energy developer. In this instance, the EPA would be required to indemnify ACE for the acts and omissions of Radiant; however, the EPA has advised the other two parties that applicable federal law does not permit it to indemnify ACE. The proposed tri-partite agreement would instead require Radiant to indemnify the utility.

There is no question that the remediation of a superfund site consistent with a plan approved by the EPA, which in this case, includes groundwater remediation, promotes the public interest. The proposed solar system may be expected to lower the energy cost of operating the treatment plant. In addition, as noted above, implementation of this project would further the State's goal of siting solar facilities on properly closed sanitary landfills. Moreover, the request for a waiver of the standard contract requirement arises directly from the involvement of a federal agency, the EPA. In these circumstances, the Board that strict adherence to N.J.A.C. 14:8-5.1 would adversely affect the public interest.

The Board **HEREBY APPROVES** the use of the tripartite agreement, under the facts and circumstances of this case.

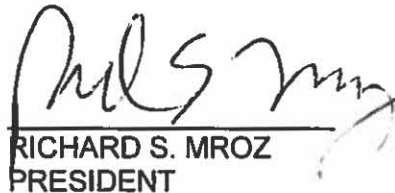
As to Petitioner's request for confirmation that their amended site plan approval of net metering for the solar energy provided to the treatment facility, the Board has reviewed the record and Staff's recommendation and **HEREBY GRANTS** this request.

The Board **HEREBY GRANTS** the petition.

This Order will be effective on November 30, 2017.

DATED: 11/21/17

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

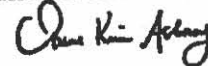

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



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