



Agenda Date: 6/22/18
Agenda Item: 8A

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 MARINA ENERGY, LLC –)
SEEKING A DECLARATORY JUDGMENT PURSUANT)
TO N.J.S.A. 58:14B-1 ET SEQ.)
)
)
)
) DOCKET NO. QO18030297

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Howard O. Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, LLP, on behalf of Marina Energy, LLC
Gregory Eisenstark , Esq., Windels Marx, LLP, on behalf of Jersey Central Power & Light Company

BY THE BOARD:

This Order memorializes the New Jersey Board of Public Utilities' ("Board") decision regarding a motion to intervene filed by Jersey Central Power & Light ("JCP&L") in a declaratory judgment proceeding involving the Board's net metering rules.

BACKGROUND

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. 14:8-4.1 to -4.5. The statute limits net metering to customers "that generate electricity, on the customer's side of the meter, using a Class I 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 the criteria for determining whether a renewable generation facility is on the "customer's side of the meter" and therefore eligible for net metering.

On March 22, 2018, Marina Energy, LLC ("Marina" or "Petitioner") filed a petition with the Board for a declaratory ruling concerning the Board's net metering rules, found at N.J.A.C. 14:8-4.1 ("Petition"). Specifically, Petitioner seeks a declaratory ruling that its solar generation facility, located on and intended to serve the Crystal Springs Resort Development, LLC ("CSRD"), will meet the Board's requirements to be net metered as set out at N.J.A.C. 14:8-4.1; or, in the alternative, a waiver of N.J.A.C. 14:8-4.2, pursuant to the Board's authority under N.J.A.C. 14:1-1.2(b). Petition at pages 1-3.)

Under cover of a letter dated April 12, 2018, JCP&L filed a motion to intervene in the above-captioned proceeding. JCP&L states that the Board's decision in this matter will have a specific and direct impact upon its operations and revenues, as well as involving potentially complex interconnection issues. JCP&L also asserts that the relief requested, if granted, would expand the definition of what is considered a "contiguous property" under N.J.A.C. 14:8-4.1(b)(ii) and would thus directly affect JCP&L.

Petitioner has not opposed JCP&L's motion to intervene.

STAFF RECOMMENDATION

The electric distribution companies ("EDCs") play a central role in the implementation of the Board's net metering rules, which are intertwined with the interconnection rules governing Class I renewable energy generation. N.J.A.C. 14:8-4.1 to -5.9. The Board and the public rely upon the EDCs to ensure that the renewable generation will not adversely affect safe, adequate, and proper functioning of the electricity grid. Staff concurs with JCP&L that the Board's ruling upon the underlying petition could have a significant impact upon JCP&L. In addition, as an EDC, JCP&L has expertise in interconnection issues and experience in dealing with the Board's net metering rules. Its perspective is both valuable and quite different from that of Petitioner. Thus, its involvement in this proceeding is likely to add constructively to the record.

As such, Staff recommends that the Board grant the motion to intervene.

DISCUSSION AND FINDINGS:

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 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).

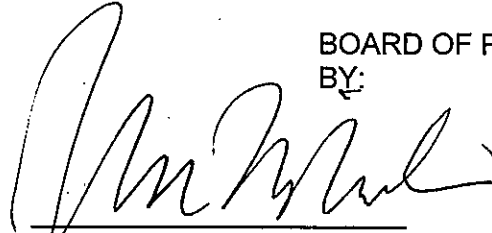
After careful review of the filings and of Staff's recommendation, the Board **FINDS** that JCP&L has a substantial interest in this matter and could be significantly affected by the outcome. The Board **FURTHER FINDS** that JCP&L'S inclusion as an intervenor will add measurably and constructively to the proceeding and will not result in any delay or confusion.

Accordingly, the Board **HEREBY GRANTS** the motion to intervene.

DATED: 6/22/18

BOARD OF PUBLIC UTILITIES

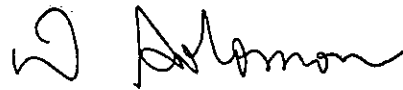
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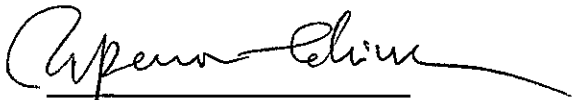
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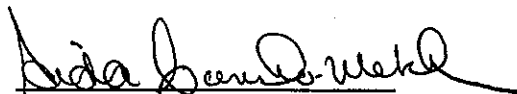


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
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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