



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF PETITION OF SUNPOWER ) ORDER  
CORPORATION - FOR DECLARATORY RELIEF )  
PURSUANT TO N.J.S.A. 52:14B-1 ESQ. AND OR )  
WAIVER PURSUANT TO N.J.A.C. 14:1-1.2(b) ) DOCKET NO. QO19091240

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Matthew Weissman, Esq.**, Public Service Electric and Gas Company  
**Howard O. Thompson, Esq.**, Russo Tumulty Nester Thompson & Kelly, LLP, on behalf of Sunpower Corporation

BY THE BOARD:

This Order memorializes the Board of Public Utilities' action upon a motion to intervene filed by Public Service Electric & Gas ("PSE&G" or the "Company") in a declaratory judgment proceeding involving the Board's net metering rules.

BACKGROUND

New Jersey's statutory definition of "connected to the distribution system" provides six ways in which a solar generation facility may be considered so connected: (1) it is net metered and located on a customer's side of the meter; (2) it is an on-site generation facility; (3) it qualifies for net metering aggregation under N.J.S.A. 48:3-87(e)(4); (4) it is owned or operated by a public utility pursuant to N.J.S.A. 48:3-98.1; (5) it is directly connected to the distribution system at 69 kilovolts or less and has been certified by the Board pursuant to N.J.S.A. 48:3-87(q), (r), or (s); or (6) it has been certified by the Board, in connection with the New Jersey Department of Environmental Protection, as being located on a brownfield, properly closed sanitary landfill facility, or an area of historic fill pursuant to N.J.S.A. 48:3-87(t). N.J.S.A. 48:3-51.

If a solar generation facility does not fall into one of the categories described above, the facility is not "connected to the distribution system" and, as such, cannot generate energy upon which a Solar Renewable Energy Certificate ("SREC") may be created. N.J.A.C. 14:8-2.2. SRECs represent the environmental attributes of one megawatt hour of solar energy and under New Jersey's regulatory scheme, they have a monetary value. Ibid. SRECs are generally sold to recoup the costs of a solar development and eventually to earn a profit on the investment.

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. 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 September 17, 2019, SunPower Corporation ("SunPower" or "Petitioner"), a solar developer, filed a petition with the Board seeking a declaratory ruling that the energy generated from the solar facility it proposes to build ("Solar Facility") for Delaware River Port Authority ("DRPA") will be considered "generated on the customer's side of the meter" for the purposes of N.J.S.A. 48:3-51 and N.J.A.C. 14:8-4.1.<sup>1</sup> Petitioner seeks this ruling so that energy generated by the Solar Facility will be eligible to serve as the basis for the creation of SRECs and so that the energy may be net metered.

On October 21, 2019, pursuant to N.J.A.C. 14:1-4.5(a)2, the Secretary of the Board served the petition upon PSE&G.

On October 28, 2019, PSE&G filed a motion to intervene. Citing the intervention standards contained in N.J.A.C. 14:1-16.3, PSE&G asserts that the Board's ruling on the Petition could have a direct impact on PSE&G's operations and its customers, including an impact on the Company's evaluation process for future net-metering projects.

On October 29, 2019, Rate Counsel filed a letter of no objection to PSE&G's motion.

On October 30, 2019, Petitioner filed a letter of no objection to the 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, -5. 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 PSE&G that the Board's ruling upon the underlying petition could have a significant impact upon PSE&G and could potentially affect its evaluation of future net metering projects.

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;

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<sup>1</sup> By Secretary's Letters dated October 21, 2019, the Board served the petition upon Public Service Electric & Gas ("PSE&G") and upon Atlantic City Electric Company ("ACE").

3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

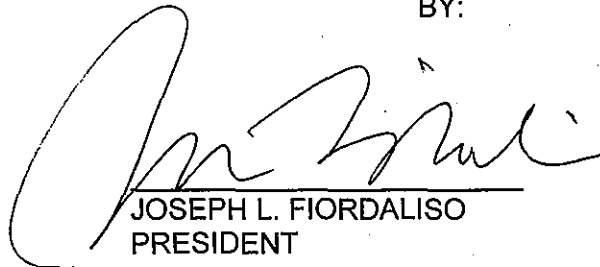
As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener'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, Order dated June 8, 2005.


Concerning the merits of PSE&G's motion, the Board **FINDS** that PSE&G has a direct and substantial interest in the outcome of this proceeding and can add constructively to the matter. The Board **FINDS** that, as an EDC, PSE&G's interest is sufficiently different from that of the Petitioner to add measurably and constructively to the case. The Board **FURTHER FINDS** that PSE&G's intervention will not result in any delay or confusion. Therefore, the Board **HEREBY GRANTS** the motion to intervene.

This order shall be effective November 23, 2019.

DATED: 11/13/19

BOARD OF PUBLIC UTILITIES  
BY:

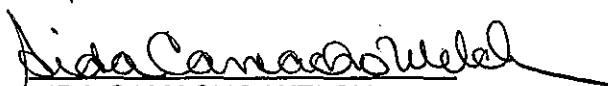
  
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ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

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

DOCKET IN THE MATTER OF PETITION OF SUNPOWER CORPORATION - FOR  
DECLARATORY RELIEF PURSUANT TO N.J.S.A. 52:14B-1 ESQ. AND OR WAIVER  
PURSUANT TO N.J.A.C. 14:1-1.2(b)  
DOCKET NO. QO19091240

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