

MURRAY E. BEVAN
mbevan@bmg.law

May 11, 2020

VIA EMAIL ONLY

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
board.secretary@bpu.nj.gov
aida.camacho@bpu.nj.gov

***Re: In the Matter of the Verified Petition of Commercial Metals Company
for a Declaratory Ruling***

Dear Secretary Camacho-Welch:

On behalf of Commercial Metals Company (“CMC”) enclosed please find an electronic copy of the Verified Petition referenced above, which requests that the Board issue a declaratory ruling exempting CMC’s load from renewable portfolio standard compliance so long as it remains an electric distribution customer of Jersey Central Power & Light (“JCP&L”), or for alternative relief.

Kindly note that portions of this Verified Petition are confidential. Accordingly, we submit both Confidential and Public versions, and we enclose CMC’s Affidavit in support of confidential treatment.

Consistent with the Board’s Order dated March 19, 2020, in Docket No. EO20030254 temporarily waiving certain requirements for non-essential obligations, we submit these documents via electronic filing only and without the requisite filing fee. We will submit the \$25.00 filing fee when the Board advises that it is ready to accept such payments again.

Please contact me if you have any questions regarding this petition.

Respectfully submitted,


Murray E. Bevan

Secretary Camacho-Welch

May 11, 2020

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Enclosures

cc: Abe Silverman, Chief Counsel, BPU
Paul Flanagan, Executive Director, BPU
Stacy Peterson, Director, Division of Clean Energy, BPU
Kelly Mooij, Deputy Director, Division of Clean Energy, BPU
Stefanie Brand, Director, Division of Rate Counsel
Pamela Owen, DAG
Jody Absher, Assist. Gen. Counsel, Corporate Secretary and Interim Gen. Counsel, CMC
Mark Zimmerman, Energy Manager, CMC

**REQUEST FOR CONFIDENTIAL TREATMENT REGARDING CERTAIN
INFORMATION PERTAINING TO COMMERCIAL METAL COMPANY'S MAY 11, 2020
PETITION FOR DECLARATORY RULING:**

**In the Matter of the Petition of Commercial Metals Company for a
Declaratory Ruling. BPU Docket No.**

**AFFIDAVIT
OF
CONFIDENTIALITY**

Mark Zimmerman, of full age, being duly sworn upon his oath, deposes and says:

1. I am the Energy Manager for Commercial Metals Company (“CMC”).
2. I am duly authorized to make this Affidavit of Confidentiality on behalf of CMC

and I have personal knowledge of the information that CMC seeks to designate as confidential in this proceeding.

3. I am also the designee for to whom all CMC custodian communications (oral or written), including, without limitation, the notices listed in N.J.A.C. 14:1-12.7 and N.J.A.C. 14:1-12.9 should be directed. My contact information is as follows:

Mark Zimmerman
Commercial Metals Company
1 Crossman Road N.
Sayreville, NJ 08872
Office 732.401.1117
Mobile 732.427.0444
Email: mark.zimmerman@cmc.com

4. In this proceeding, CMC has filed a Petition seeking a declaratory ruling from the Board of Public Utilities (“BPU or Board”) that, because CMC’s facility (“NJ Steel Mill”) has an economically viable opportunity to bypass the electric distribution system, its load may be exempt from renewable portfolio standard compliance so long as it remains an electric distribution customer of Jersey Central Power & Light (“JCP&L”).

5. The Petition contains the following information for which Confidential Treatment is requested, is as follows:

- Production and sourcing data for the NJ Steel Mill;
- Employment data for the NJ Steel Mill;
- Energy consumption data for the NJ Steel Mill; and
- Calculated investment costs for potential independent energy transmission system.

6. The specific information set forth in the confidential and unredacted version of the Petition, which has been redacted from the public version of the Petition, is referred to herein as the “Confidential Information.”

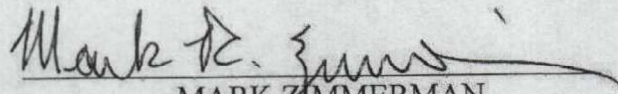
7. The Confidential Information is proprietary and highly sensitive commercial and financial information about CMC. Public disclosure of this information could adversely affect the competitive position of CMC.

8. By way of further substantiating the claim of confidentiality, I hereby verify that:

- CMC has taken measures to prevent the disclosure of the Confidential Information to others by restricting its dissemination outside of CMC and its respective attorneys and agents.
- The Confidential Information is not contained in materials which are routinely made available to the general public, such as Initial and Final Orders in contested case adjudications, press releases, speeches, pamphlets and educational materials.

- The Confidential Information has not been disclosed to others except pursuant to confidentiality agreements on a strict need-to-know basis, in which case the recipients of such need-to-know disclosures are professionally obliged to refrain from making further disclosure.
- The disclosure of Confidential Information, including internal production data, employment data, energy consumption data, and calculations of prospective investment costs, would cause substantial harm to the competitive position of CMC.
- Therefore, CMC requests that the Confidential Information be treated as confidential permanently.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

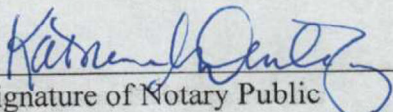

MARK ZIMMERMAN

Dated: May 11, 2020

State of New Jersey

County of Morris

On May 11, 2020 before me, Katherine M. Dailey, Notary Public in and for said county, Mark Zimmerman appeared before me using communication technology and has satisfactorily identified himself as the signer to the above referenced document. I have been able to confirm his identity by having personal knowledge of the individual appearing before me based on past dealings. I have confirmed that the record before me is the same record in which Mark Zimmerman made a statement or signed. I have recorded the notarial act. It will be stored at the firm of Bevan, Mosca & Giuditta, P.C. for a period of ten (10) years following the date of the notarial act pursuant to the requirements of P.L. 2020, c. 26 (A-3903) ¶ 1(f).



Signature of Notary Public

My commission expires on **KATHERINE M. DAILEY**
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/7/2022



**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In The Matter Of The Petition Of)	
)	
Commercial Metals Company)	Docket No. _____
)	
For A Declaratory Ruling)	
)	

VERIFIED PETITION

Commercial Metals Company (“CMC”), a vertically integrated metals recycler, manufacturer, and fabricator of low-cost, high-quality steel products, by its undersigned counsel and pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*, respectfully petitions the Board of Public Utilities (“Board”) for a declaratory ruling that, because it has an economically viable opportunity to bypass the electric distribution system, its load may be exempt from renewable portfolio standard compliance so long as it remains an electric distribution customer of Jersey Central Power & Light (“JCP&L”), or for alternative relief that would provide a commensurate reduction in CMC’s energy costs.

BACKGROUND

Founded in 1915, CMC together with its subsidiaries manufactures, recycles, and markets steel and metal products, related materials and services through a network of facilities including eight electric arc furnace (“EAF”) mini mills, two EAF micro mills, a rerolling mill, steel fabrication and processing plants, construction-related product warehouses and metal recycling facilities in the United States and Poland. CMC has four business segments: Americas Recycling, Americas Mills, Americas Fabrication, and International Mill. A publicly traded company (NYSE: CMC) on the Forbes Fortune 1000 list, CMC is recognized as among the best in the industry.

On November 5, 2018, CMC completed the acquisition of Gerdau Ameristeel (“Gerdau”), which included 33 reinforcing bar (“rebar”) fabrication facilities in the United States that are now part of the CMC’s Americas Fabrication segment, as well as four EAF mini mills located in Knoxville, Tennessee; Sayreville, New Jersey; and Rancho Cucamonga, California, which are part of the American Mills segment. The acquisition of Gerdau allows CMC to better serve its customers, expand its footprint in key markets, and strengthens its operational flexibility.

The EAF facility in Sayreville, New Jersey (“Steel New Jersey” or “NJ Steel Mill”), which was part of the Gerdau acquisition, is an important facility for CMC due to its strategic location. The NJ Steel Mill is the largest steel recycler in New Jersey despite the fact that it has been operating, on average, at half capacity—it has been running only two of a potential four crews per day. Over the past year, the NJ Steel Mill transformed [REDACTED] pounds of recycled scrap metal into green rebar. Approximately [REDACTED]% of the recycled scrap metal was sourced within a [REDACTED]-mile radius of the plant.

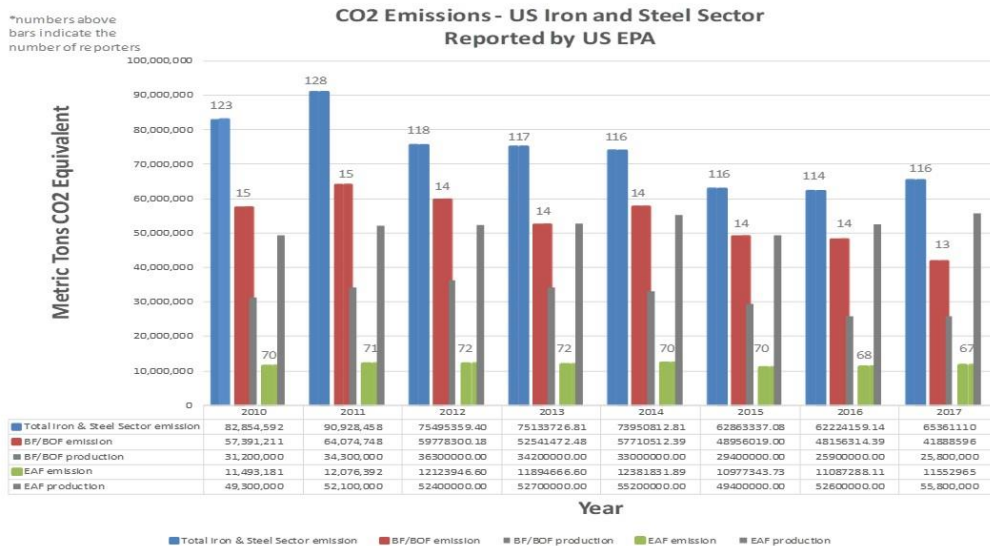
The NJ Steel Mill is also a significant employer in Sayreville and the greater community. It currently employs [REDACTED] motivated employees. These employees, on average, make an \$ [REDACTED] base salary, receive \$ [REDACTED] in benefits, contribute \$ [REDACTED] in payroll taxes, and for FY 2019 received a bonus of [REDACTED] pay. If CMC’s production costs were lower, the NJ Steel Mill could increase its operations (i.e., the number of crews per day) and therefore increase the number of its employees. The biggest drivers of production costs for the NJ Steel Mill are the costs of scrap metal, labor, and electricity.

The NJ Steel Mill also produces some of CMC’s least carbon-intensive steel products for two primary reasons. First, the electric arc furnace used by the NJ Steel Mill is much more efficient than blast furnaces, which are more common throughout the industry.

Why is Steel New Jersey Different?



- CO2 from Electric Arc Furnace vs. Blast Furnace



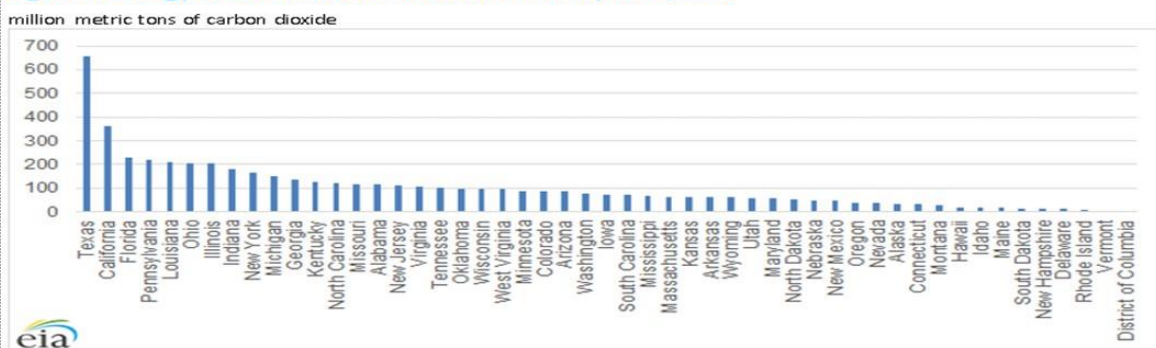
The second reason is that the electric resource mix for New Jersey is much less carbon intense than many other states. Moreover, the carbon intensity of the state’s resource mix will improve as the state transitions to a clean energy future as outline in New Jersey’s 2019 Energy Master Plan.

Summarizing Sayreville



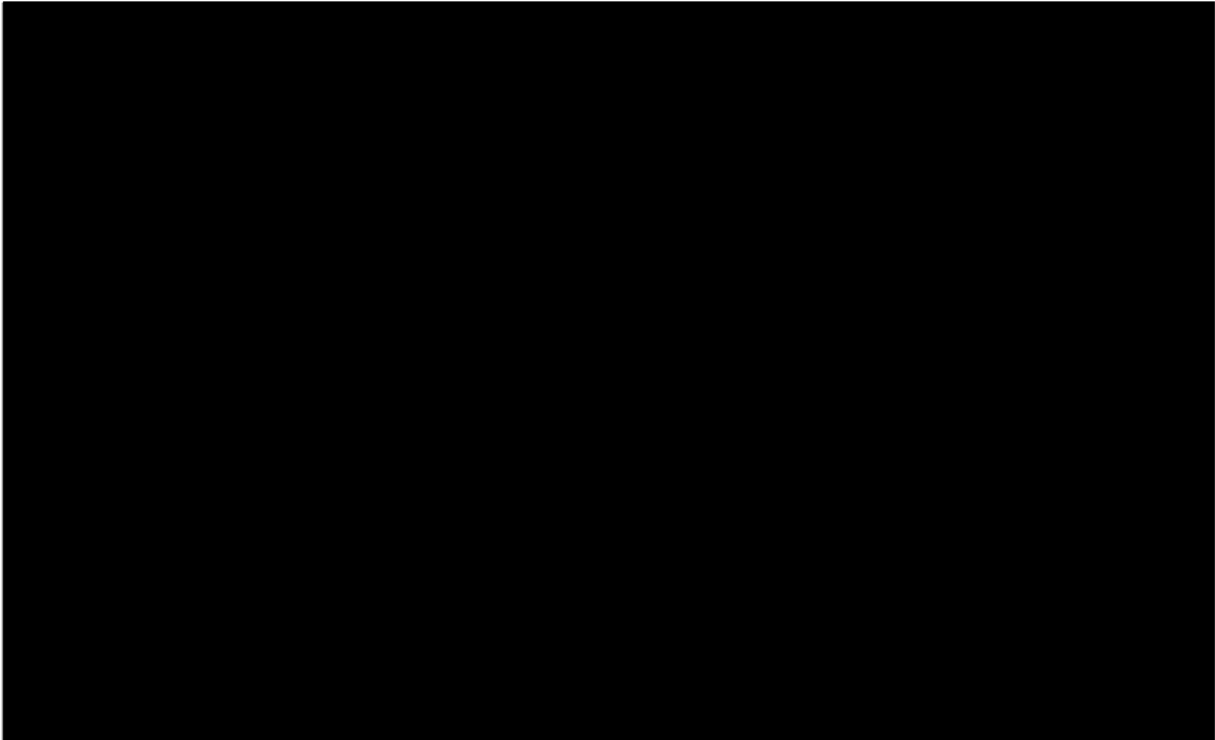
- Lower CO2 than Blast Furnace rebar
- NJ produces less CO2 than other states
<https://www.eia.gov/environment/emissions/state/analysis/>

Figure 1. Energy-related carbon dioxide emissions by state, 2016



Source: EIA, State Energy Data System and EIA calculations made for this analysis.

However, two key changes have taken place since CMC acquired the NJ Steel Mill from Gerdau, which are threatening the viability of the facility. The first is internal competition with CMC’s other steel mills. The second is New Jersey increased renewable portfolio standard (“RPS”) requirements, which has had a disproportionate effect on the NJ Steel Mill because Gerdau was allowed to forego RPS compliance entirely as a self-supply entity. CMC, however, is not a self-supply entity. Rather, it contracts third-party suppliers for its electric supply requirements and is a JCP&L electric distribution customer. The NJ Steel Mill is JCP&L’s largest single-site load as measured by both demand and usage. In 2019, its peak load was greater than [REDACTED] kW and it consumed greater than [REDACTED] kWhs of electricity. Importantly, energy costs—primarily driven by RPS compliance costs—are increasingly making the NJ Steel Mill uncompetitive compared to CMC’s other steel mills in the region.



CMC has an economically viable opportunity to bypass JCP&L’s electric distribution system and to supply its electricity needs directly from the wholesale market. CMC engineers have determined that CMC could build the facilities necessary to directly connect the NJ Steel Mill to the transmission system for an investment in the range of \$ [REDACTED] million and it would be able to fully recoup this investment via lower power costs within [REDACTED] months. The project would require building a transmission line extension of less than a mile and upgrading the transformers at the NJ Steel Mill. CMC already has the property rights necessary to execute the project. If CMC were to directly access the wholesale market, it would not have to pay any electric distribution costs, RPS compliance costs, the Social Benefits Charge, upcoming RGGI costs, Sales and Use Tax, or other similar state-imposed charges. CMC’s strong preference is not to bypass the distribution system, but the NJ Steel Mill requires relief from RPS compliance costs—as it has when owned by Gerdau—to remain competitive. In fact, such relief may enable CMC to increase production at the NJ Steel Mill, which would have associated economic benefits for the state and local community and could lower the carbon intensity of CMC’s products on a company-wide basis.

Accordingly, CMC respectfully petitions the Board for a declaratory ruling that, because it has an economically viable opportunity to bypass the electric distribution system, its load may be exempt from RPS compliance so long as it remains an electric distribution customer of JCP&L. Once granted, CMC would provide the Board order to suppliers when it negotiates its power supply Agreements. This is similar to the process that the Board uses to exempt non-profit entities from paying sales tax for the energy they purchase from third-party suppliers. The Board order would enable the suppliers to pass on the RPS compliance costs savings to CMC without shifting those costs to other customers.

ARGUMENT

N.J.S.A. 52:14B-8 provides, with respect to declaratory rulings, that “an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency.”

The Board has consistently approved discounted energy service rates for customers that have opportunities for “Economically Viable Bypass” of the local distribution company (“LDC”). *See In re the Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions: Public Service Electric and Gas Company’s Compliance Filing To Implement the Tariff Changes*, Docket No. GT11090616 (May 23, 2012). The Board has justified discounted energy service rates because avoiding the loss of load that would otherwise result from the bypass of the distribution system has a financial impact that is beneficial to the public utility’s ratepayers. Specifically, the loss of load would result in reduced revenue that would otherwise benefit ratepayers. *See In The Matter Of Rate Schedule CSG Transportation Service Agreement Between Public Service Electric And Gas Company And Holcim (US) Inc. A/K/A St. Lawrence Cement And The Related Request For A Discount In The Applicable Societal Benefits Charge (SBC)*, Docket No. GR19080894 (Sept. 30, 2019).

The courts have long recognized that the Board has broad discretion in the exercise of its Legislatively delegated rate making authority. *In re Public Service Electric and Gas Company’s Rate Unbundling, Stranded Costs and Restructuring Filings*, 167 N.J. 377, 384 (2001) (“PSE&G Unbundling”). In determining whether to approve any rates, under a tariff or under a special contract, the Board is guided by the statutes and by certain time-honored principles. Ultimately,

public utility rates are valid so long as they enable the utility to operate successfully, maintain its financial integrity, attract capital and compensate its investors for the risk assumed. *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). On the other hand, public utility rates can only be valid if they are “just and reasonable,” N.J.S.A. 48:2-21, and are not “unjustly discriminatory or unduly preferential.” N.J.S.A. 48:3-1.

The Board’s general statutory powers under N.J.S.A. 48:2-21 and N.J.S.A. 48:2-13 provide it with the authority to fix rates and to supervise the property and activities of public utilities. Nothing in the statutes dictates the exact methodology by which the Board establishes utility rates, as long as the result is just and reasonable. The Board has a history of authorizing discounted utility rates when circumstances warrant deviation from the Board-approved tariff, and has enacted a regulation that outlines the procedure and proof required for approval of special contracts. N.J.A.C. 14:3-1.3(e). The courts have recognized the authority of the Board to permit utilities to establish rates by contract subject to the approval of the Board. *In re Application of the Borough of Saddle River*, 71 N.J. 14, 25 (1976).

Under N.J.A.C. 14:3-1.3(e), if a gas, electric, water, or wastewater utility plans to enter into a contract or agreement with a particular customer or group of customers, for service at rates different from those authorized under the utility’s Board-approved tariff, the utility shall file a petition for approval, which shall include four copies of the contract or agreement, at least 30 days prior to the effective date of the agreement or contract.

Here, rather than approve discounted service with JCP&L, CMC requests a declaratory ruling that, because it has an economically viable opportunity to bypass the electric distribution system, its load may be exempt from renewable portfolio compliance so long as it remains an electric distribution customer of JCP&L. CMC would then provide this order to suppliers when it negotiates its energy supply costs. The Board order would enable the suppliers to pass on the RPS compliance costs savings to CMC without shifting those costs to other customers. The request for a declaratory ruling has the same practical effect of approving a special contract and it would allow CMC to continue to shop for its energy supply in New Jersey’s competitive energy supply market.

The Board should grant CMC request and issue an order declaring that CMC’s load may be exempt from RPS compliance because CMC has an economically viable opportunity to bypass JCP&L’s electric distribution system and to supply its electricity needs directly from the wholesale market. CMC engineers have determined that CMC could build the facilities necessary to directly

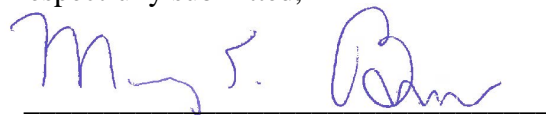
connect the NJ Steel Mill to the transmission system for an investment in the range of \$ [REDACTED] million and it would be able to fully recoup its investment via lower electric supply rates within [REDACTED] months. The project would merely require building a transmission line extension of less than a mile and upgrading the transformers at the NJ Steel Mill. Moreover, CMC already has the property rights necessary to execute the project. Critically, if CMC were to directly access the wholesale market, it would not have to pay any electric distribution costs, RPS compliance costs, the Social Benefits Charge, upcoming RGGI costs, Sales and Use Tax, or other similar state-imposed charges. Accordingly, enabling CMC to receive discounted energy service by exempting its load from RPS compliance and thus RPS compliance costs is beneficial to JCP&L's ratepayers by avoiding the loss of the utility's largest load that would otherwise result from the bypass of the distribution system. Specifically, the loss of the utility's largest load would result in reduced revenue that would otherwise benefit JCP&L ratepayers.

CONCLUSION

For the reasons stated above, CMC respectfully requests that the Board find that, because it has an economically viable opportunity to bypass the electric distribution system, CMC's load may be exempt for RPS compliance purposes so long as it remains an electric distribution customer of JCP&L, or for alternative relief that would provide a commensurate reduction in CMC's energy costs.

Respectfully submitted,

By:



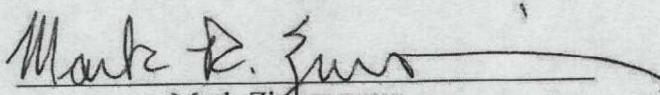
Murray E. Bevan
Bevan, Mosca & Giuditta, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
Tel: (908) 753-8300
Fax: (908) 753-8301
Email: mbevan@bmg.law

Counsel for Commercial Metals Company

Dated: May 11, 2020

VERIFICATION

I, Mark Zimmerman, hereby state that I am the Energy Manager for Commercial Metals Company, the Petitioner in the foregoing Petition; that I am authorized to make this Verification on behalf of Commercial Metals Company; that the foregoing Petition was prepared under my direction and supervision; and that the statements in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

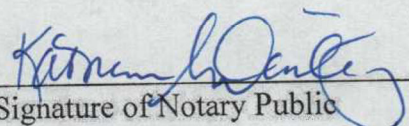


Mark Zimmerman
Energy Manager
Commercial Metals Company

Dated: May 11, 2020

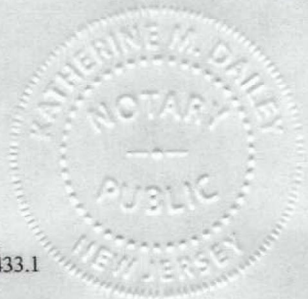
State of New Jersey
County of Morris

On May 11, 2020 before me, Katherine M. Dailey, Notary Public in and for said county, Mark Zimmerman appeared before me using communication technology and has satisfactorily identified himself as the signer to the above referenced document. I have been able to confirm his identity by having personal knowledge of the individual appearing before me based on past dealings. I have confirmed that the record before me is the same record in which Mark Zimmerman made a statement or signed. I have recorded the notarial act. It will be stored at the firm of Bevan, Mosca & Giuditta, P.C. for a period of ten (10) years following the date of the notarial act pursuant to the requirements of P.L. 2020, c. 26 (A-3903) ¶ 1(f).



Signature of Notary Public

My commission expires on _____
KATHERINE M. DAILEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/7/2022



In the Matter of the Verified Petition of Commercial Metals Company for a Declaratory Ruling

BPU Docket No. _____

CERTIFICATE OF SERVICE

I certify that on this 11st day of May, 2020, on behalf of Commercial Metals Company (“CMC”), I caused CMC’s Verified Petition to be served electronically on the following individuals:

NJ Board of Public Utilities

P.O. Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch, Secretary
board.secretary@bpu.nj.gov
aida.camacho@bpu.nj.gov

Abe Silverman
Chief Counsel
Abe.Silverman@bpu.nj.gov

Paul Flanagan
Executive Director
Paul.Flanagan@bpu.nj.gov

Stacy Peterson
Director, Division of Clean Energy
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Kelly Mooij
Deputy Director, Division of Clean Energy
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Division of Rate Counsel

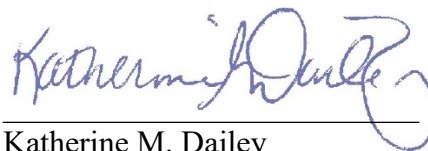
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Stefanie A. Brand, Director
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Division of Law

Division of Law and Public Safety
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Katherine M. Dailey