



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/

ENERGY

IN THE MATTER OF THE PETITION OF
COMMERCIAL METALS COMPANY FOR A
DECLARATORY RULING

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ORDER ON MOTION
TO INTERVENE

BPU DOCKET NO. EO20050352

Parties of Record:

Murray Bevan, Esq., Bevan, Mosca and Giuditta, P.C. on behalf of Commercial Metals Company
Stefanie A. Brand, Esq., Director, Division of Rate Counsel
Josh Eckert, Esq., on behalf of Jersey Central Power and Light Company

BY COMMISSIONER DIANNE SOLOMON:

On May 12, 2020, Commercial Metals Company ("CMC") filed a petition requesting that the New Jersey Board of Public Utilities ("Board") issue a declaratory ruling exempting CMC's load from renewable portfolio standards ("RPS") compliance. CMC currently receives electric service from Jersey Central Power and Light Company ("JCP&L") at its electric arc furnace mini mill in Sayreville, New Jersey ("Sayreville Mill").

In the petition, CMC asserted that it has an economically viable opportunity to bypass the electric distribution system. CMC stated that it could build the facilities necessary to directly connect the Sayreville Mill to the transmission system. According to CMC, if it directly accessed the wholesale market, it would not have to pay any electric distribution costs, RPS compliance costs, the Societal Benefits Charge, upcoming RGGI costs, Sales and Use Tax, or other charges.

Accordingly, CMC petitioned 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. CMC indicated that if granted, it would provide the Board's order to suppliers when it negotiates its power supply agreements. CMS asserted that the Board order would enable the suppliers to pass on the RPS compliance costs savings to CMC without shifting those costs to other customers.

By Order dated July 15, 2020, the Board determined that the petition should be retained by the Board for hearing pursuant to N.J.S.A. 48:2-32 and designated the undersigned as the presiding commissioner. The Board authorized me to establish and modify schedules, decide all motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

The Board also directed all entities seeking to intervene or participate in this matter to file the appropriate application with the Board by August 5, 2020 and directed any party wishing to file a motion for admission of counsel, pro hac vice, to do so concurrently with any motion to intervene or participate.

MOTION

On July 14, 2020, JCP&L, filed a motion to intervene pursuant to N.J.A.C. 1:1-16.1. JCP&L argued that a Board decision could substantially impact JCP&L and its customers. In particular, JCP&L asserted that the decision in this matter could significantly impact its revenues as CMC is a very large customer and CMC stated that its continuing economic viability in New Jersey is threatened. JCP&L adds that its interest in this matter is distinct from that of any other entity; that it can add measurably and constructively to the proceeding; and that its intervention in this matter will not cause undue confusion and delay. JCP&L also raises substantive concerns regarding the merits of Petitioner's arguments and the legality of the relief sought, which will not be addressed in this Order.

On July 24, 2020, CMC filed an answer stating that it does not oppose the motion for intervention. Petitioner does, however, object to the comments included in the motion for intervention, which contains arguments for denial of CMC's petition. CMC argues that JCP&L's comments are essentially a motion to dismiss that is premature and procedurally inappropriate, since JCP&L is not yet a party. CMC requests that the "comments" portion of JCP&L's motion be stricken.

DISCUSSION AND FINDINGS

In deciding whether to grant a motion for intervention, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider: (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.

As the Board has stated in previous proceedings, the application of these standards involves an implicit balancing test. The Board must balance the need and desire to allow for the development of a full and complete record to ensure consideration of a diversity of interests, with New Jersey Administrative Code requirements, recognizing a 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, e.g., Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control and Related Authorizations, BPU Docket No. EM05020106, Order dated May 23, 2006.

I note that JCP&L provides electric service to CMC. I **FIND** that JCP&L, as the Petitioner's electrical distribution company, will add measurably and constructively to the scope of this proceeding. Additionally, granting the motion is unlikely to give rise to confusion or delay.

After considering the motion to intervene and given the lack of opposition from Petitioner, I **HEREBY FIND** pursuant to N.J.A.C. 1:1-16.3 that JCP&L will be directly affected by the outcome of this proceeding, its interests are unlike others in the case, and its intervention would contribute to the development of a full and complete record for review by the Board in its evaluation. Accordingly, I **GRANT** JCP&L's motion to intervene pursuant to the authority granted to me by the Board under the July 15, 2020 Order.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: September 21, 2020

BY:

A handwritten signature in blue ink that reads "Dianne Solomon". The signature is written in a cursive style and is positioned above a horizontal line.

DIANNE SOLOMON
COMMISSIONER

IN THE MATTER OF THE PETITION OF COMMERCIAL METALS COMPANY FOR A DECLARATORY RULING - DOCKET NO. EO20050352

SERVICE LIST

<p><u>Commercial Metals Company</u></p> <p>Mark Zimmerman Commercial Metals Company 1 Crossman Road N. Sayreville, NJ 08872 mark.zimmerman@cmc.com</p> <p>Murray E. Bevan Bevan, Mosca & Giuditta, P.C. 222 Mount Airy Road, Suite 200 Basking Ridge, NJ 07920 mbevan@bmg.law</p> <p><u>New Jersey Division of Rate Counsel</u> 140 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003</p> <p>Stefanie A. Brand, Esq., Director sbrand@rpa.nj.gov</p> <p>Brian O. Lipman, Esq., Litigation Manager blipman@rpa.nj.gov</p> <p>Ami Morita, Esq., Managing Attorney amorita@rpa.nj.gov</p> <p><u>Division of Law</u> Richard J. Hughes Justice Complex Public Utilities Section 25 Market Street, P.O. Box 112 Trenton, NJ 08625</p> <p>Terel Klein, DAG terel.klein@law.njoag.gov</p> <p>Michael Beck, DAG michael.beck@law.njoag.gov</p> <p>Pamela Owen, ASC Pamela.owen@law.njoag.gov</p> <p>Daren Eppley, DAG daren.eppley@law.njoag.gov</p>	<p><u>JCP&L</u></p> <p>Joshua R. Eckert, Esq. FirstEnergy Service Company 300 Madison Avenue Morristown, New Jersey 07962 jeckert@firstenergycorp.com</p> <p><u>Board of Public Utilities</u> 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Board Secretary board.secretary@bpu.nj.gov</p> <p>Paul Flanagan, Executive Director paul.flangan@bpu.nj.gov</p> <p>Robert Brabston, Deputy Executive Director robert.brabston@bpu.nj.gov</p> <p>Christine Sadovy, Chief of Staff christine.sadovy@bpu.nj.gov</p> <p><u>Counsel's Office</u></p> <p>Abraham Silverman, General Counsel abe.silverman@bpu.nj.gov</p> <p>Rachel Boylan, Legal Specialist rachel.boyland@bpu.nj.gov</p> <p><u>Division of Energy</u></p> <p>Stacy Peterson, Director stacy.peterson@bpu.nj.gov</p> <p><u>Division of Clean Energy</u></p> <p>Kelly Mooij, Director kelly.mooij@bpu.nj.gov</p> <p>Benjamin Scott Hunter benjamin.hunter@bpu.nj.gov</p> <p>Ronald Jackson ronald.jackson@bpu.nj.gov</p>
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