Agenda Date: 3/20/13
Agenda Item: 8H

STATE OF NEW JERSEY

Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, THE SOLAR ACT OF 2012	)	DOCKET NO. EO12090832V
IN THE MATTER OF N.J.S.A. 48:3-87(W) – A PROCEEDING TO CONSIDER THE NEED FOR A PROGRAM TO PROVIDE A FINANCIAL INCENTIVE TO SUPPLEMENT SOLAR RENEWABLE ENERGY CERTIFICATES FOR NET METERED PROJECTS GREATER THAN THREE MEGAWATTS	)	DOCKET NO. EO12090863V

Party of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND

On July 23, 2012, L. 2012, c. 24 ("Solar Act") was signed into law by Governor Chris Christie. The Solar Act amends certain provisions of Title 48 governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities ("Board") to conduct proceedings to establish new standards and to develop new programs to implement the directives.

Subsection (w) of the Solar Act provides that:

> No more than 270 days after the date of enactment of [the Solar Act], the board shall, after notice and opportunity for public comment and public hearing, complete a proceeding to consider whether to establish a program to provide, to owners of solar electric power generation facility projects certified by the board as being three megawatts or greater in capacity and being net metered . . . a financial incentive that is designed to supplement the SRECs generated by the

facility to further the goal of improving the economic competitiveness of commercial and industrial customers taking power from such projects. If the board determines to establish such a program pursuant to this subsection, the board may establish a financial incentive to provide that the board shall issue one SREC for no less than every 750 kilowatt-hours of solar energy generated by the certified projects . . . .
[N.J.S.A. 48:3-87(w).]

On October 4, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act (Docket. No. EO12090832V) ("October 4 Order").

On November 9, 2012, consistent with the legislation, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso to allow the public to comment on the various directives of the Solar Act, including N.J.S.A. 48:3-87(w) ("Subsection w"). In addition, the public was invited to submit written comments through November 23, 2012. Board Staff did not circulate a straw proposal for comment on Subsection w.

Staff did, however, describe the market participation statistics for net metered solar projects greater than three megawatts ("MW") during the November 9, 2012 public hearing, and distributed the report from the New Jersey Clean Energy Program ("NJCEP") solar database on the status of these larger net metered solar projects via the Renewable Energy ("RE") list server on Monday November 19, 2012. The NJCEP report on net metered projects[1] three MW or greater through October 31, 2012 shows that ten installations totaling over 55 MW of capacity have been completed comprising approximately 6% of the total installed capacity. Additionally, another eleven installations were under construction for another 61 MW of capacity comprising an additional 8 percent of the solar project pipeline as of October 31, 2012.

SUMMARY OF COMMENTS FROM PUBLIC STAKEHOLDERS

The following summarizes the comments provided regarding the implementation of Subsection (w), as well as the written comments submitted to the Board. The Office of Clean Energy's ("OCE's") responses are also included.

The following persons testified at the November 10, 2010 public hearing:

Katie Rever, Solar Energy Industries Association ("SEIA"); Justin Murphy, Comet Land Development and American Energy and Utility Consultants ("Justin Murphy"); Dennis Wilson, Mid-Atlantic Solar Energy Industries Association ("MSEIA"); Larry Barth, Clean Energy Ventures, New Jersey Natural Resources ("NJR"); Jim Calore, Public Service Electric and Gas ("PSE&G"); Andrew Scher, Greenberg, Traurig; Tom Tuffey, Community Energy; Elliott Shanley, PV One ("PV One"); Pin Su, Blue Sky Technologies ("Blue Sky"); Fred Zalcman, SEIA; Hugh DeFazio; Lyle Rawlings, MSEIA; Paul Raducha, Savannah Energy and Providence Energy Group; Sean Jackson, Bellmawr Borough ("Bellmawr"); Henry King, Reed Smith ("Reed Smith"); Rick Ragan, Solar Wind Energy; Thad Culley, Interstate Renewable Energy Council, Inc. ("IREC"); Jim McAleer, Solar Electric NJ, LLC ("Jim McAleer"); Lance Miller; Greg Handshy, South Toms River.

[1] This report was distributed to the public via the renewable energy listserv.

In addition, written comments were received from the following:

Justin Murphy; Michael Torpey, A.F.T. Associations ("A.F.T."); PV One; SEIA; Ralph Laks, Day Four Solar, LLC; Felicia Thomas-Friel, Division of Rate Counsel ("Rate Counsel"); Michael Maynard, NJ Land, LLC ("NJ Land"); Anthony Favorito, Pittsgrove Solar, LLC ("Pittsgrove"); James J. Dixon, ConEdison Development ("Con-Ed"); Keissler Wong, Rock Solid Realty, Inc. ("Rock Solid"); John Jenks, Quantum Solar ("Quantum"); KDC Solar, LLC ("KDC"); MSEIA; David G. Gil, NextEra Energy Resources, LLC ("NextEra"); Lawrence D. Neuman, EffiSolar ("EffiSolar"); Brian Fratus and Tim Ferguson, Garden Solar, LLC ("Garden Solar"); Brent Beerley, Community Energy Solar, LLC ("Community Solar"); Scott Lewis, Green Energy Solar, LLC ("Green Energy"); Lou Weber, Mohawk Associates, LLC ("Mohawk"); David Van Camp; IREC; Trevan J. Houser, Land Resource Solutions, LLC ("LRS"); Henry King, Reed Smith ("Reed Smith"); Kenneth Bob, RenewTricity; Michael Bruno, EAI Investments ("EAI"); Blue Sky; NJR; T&M Associates; PSE&G; Gary N. Weisman, New Jersey Solar Energy Coalition ("NJSEC"); Michael Bruno, Esq., on behalf of Holmdel Road Solar Project and Elmer Road Solar Project ("Holmdel"); Stephen Pearlman, Gabel Associates and Inglesino, Pearlman, Wyciskala & Tayor ("Pearlman"); George Piper; David Reiss; Jim McAleer, Solar Electric NJ, LLC; Stephen R. Jaffe, Brownfield Coalition of the Northeast ("BCONE"); Ryan J. Scerbo, Esq., on behalf of Beaver Run Solar Project ("BRSP"); Janice S. Miranov, New Jersey State League of Municipalities ("League"); Thomas and Mary Van Windergarden ("Windergarden"); Heather Rek, Pro-Tech Energy Solutions ("Pro-Tech"); and Harlan Vermes, Absolutely Energized Solar Electric ("Absolutely Energized"); Jim Baye.[2]

Comment: SEIA argues that special incentives for net metered projects over three megawatts are not needed, and that the incentive mechanism put forward in Subsection (w), which SEIA characterizes as a "super-SREC,' would be detrimental to the solar market. SEIA asserts that the commercial and industrial customers intended to benefit by such an incentive are already well served by New Jersey's solar industry, that the market for systems over three MW has experienced healthy growth since systems over two MW have been permitted to net meter, and that larger projects generally benefit from economies of scale and the ability to spread fixed costs over a larger number of installed watts. With respect to the incentive suggested for the Board's consideration, SEIA urges that the use of a 'super-SREC' would increase the transaction costs in the market and reduce the overall value of SRECs, in addition to exacerbating the already over-supplied SREC market. Moreover, the commenter states that "three MW" is an arbitrary cut-off line and would tend to result in over-sizing projects that would otherwise be just under three MW, as well as interfering with the market's ability to determine the price of SRECs.

Response: OCE concurs that the market response to the Board's lifting of the two MW cap on net metered projects strongly suggests that net metered projects of three megawatts or more, as they already enjoy the benefits of economies of scale, do not stand in special need of an additional incentive. Since the enactment of the Solar Energy Advancement and Fair Competition Act in 2010, the large commercial and industrial customers which own and/or host these projects have received the benefits of net metering and SRECs, and the OCE does not believe that they must receive a further economic incentive via the solar energy market. Moreover, OCE agrees with the commenter that the introduction of an SREC which would

[2] Only the comments pertaining to subsection (w) are described in this order.

represent a different amount of energy than SRECs have historically represented in the New Jersey market would tend to reduce the overall value of SRECs, add to the existing SREC surplus, and interfere with the optimal functioning of the market by rendering it less transparent and unduly complex.

Comment: Rate Counsel states that an additional incentive for large solar projects is not needed because these projects are already competitive with smaller projects. In addition, Rate Counsel notes that the stated purpose of the incentive is to improve the economic competitiveness of industrial and commercial customers taking power from the solar projects, and argues that such an incentive is not needed and would likely undermine many of the goals underlying N.J.S.A. 48:3-87 (l) including placing greater reliance on competitive markets and promoting the lowest cost to ratepayers.

Response: OCE agrees that large solar projects are already competitive with smaller projects. As noted above, OCE does not believe that a further boost to large commercial and industrial customers is needed. In keeping with the goals set forth in N.J.S.A. 48:3-87(l), the Board has consistently stated its intent to foster the sustained, orderly development of solar in New Jersey at the least cost to ratepayers with broad based participation from all rate classes. An additional incentive for a market segment that by all appearances is thriving, OCE believes would be antithetical to the Board's expressed policies for guiding the development of New Jersey's solar market.

Comment: Quantum Solar argues that if grid-supply projects can be supported with relatively low-cost SRECs, large net metered projects definitely do not need additional support. The commenter states that net metered projects will have income on the avoided cost of electricity of about $0.10 per kilowatt-hour ("kWh"), while grid supply projects will only return about $0.05 per kWh. Since, in Quantum's opinion, net metered projects have twice the energy value of grid supply projects, there can be no need for additional incentives.

Response: OCE agrees that, with everything else being held equal, net metered projects have a greater avoided-cost benefit than grid supply projects since they provide a retail credit to the customer (up to the level of actual usage) as opposed to the wholesale price received by grid supply projects.

Comment: KDC argues that net metered projects over three MW are unique because, in the commenter's opinion, these projects deliver multiple benefits. KDC claims that the host customers of these projects are likely to include some of the largest employers in the state, and that the lowered energy costs produced by net metered projects could be used as a recruitment tool to attract such companies to New Jersey. Acknowledging that these incentives are ultimately paid for by New Jersey ratepayers, KDC agrees that they should be used "sparingly," only in instances where the proposed project can demonstrate both a clear need for the incentive to enable it to reduce energy costs to the customer, and the fact that the proposed project is needed to keep or attract a significant employer to New Jersey.

Response: OCE does not find KDC's claim that the supplemental incentive would serve in any meaningful way to attract or keep large commercial or industrial customers in the State convincing. These customers are already benefitting from the reduction in their energy costs provided by net metering. In the current over-supplied SREC market, any incremental additional benefit provided by an increased number of SRECs is highly unlikely to provide a benefit significant enough to influence a company's decision on whether or not to locate in New

Jersey. In this regard, OCE notes that its renewable energy Market Manager is projecting the SREC market to remain over-supplied for at least the next two energy years. Moreover, even were the Board to agree that the 'super-SREC' might serve as a useful tool to attract employers, this speculative benefit would come at the cost of possibly disrupting and complicating a solar market which the Board has worked to make function as transparently as possible. An SREC based on less than a megawatt-hour of solar energy would also represent a step backward in the Board's efforts to lessen ratepayer subsidization of the solar market.

Comment: MSEIA opposes any supplemental incentive for projects of three MW or greater on the grounds that these projects benefit from economies of scale and thus need no additional incentive. With respect to the savings for the customers involved, MSEIA argues that these customers are generally substantial corporate entities that have more access to capital at lower cost than other classes of customers, and thus any supplemental incentive would serve only to enhance the return on investment for the customer or developer. Garden Solar opposes these incentives on the same grounds.

Response: OCE concurs that larger projects benefit from economies of scale. While OCE does not have direct knowledge of the ease of access to capital of large commercial and industrial customers, as noted above, these customers are already benefitting from the savings in their energy costs produced by net metering.

Comment: NextEra states that any new incentive programs the Board might develop could increase solar development in the short term but at the price of worsening the SREC over-supply situation and signaling to solar developers that New Jersey is not a safe place in which to make long-term investments.

Response: As noted above, OCE concurs that the incentive under consideration could exacerbate the SREC over-supply situation. By potentially disrupting the functioning of the solar market, OCE agrees that such an incentive has the potential to send the negative signals which the commenter fears.

Comment: Land Resource Solutions alleges that approval of the incentive would have a detrimental impact on the SREC market, and asks that the Board consider such an incentive only if has determined that it will not harm this market and would be consistent with the Energy Master Plan.

Response: OCE concurs that approval of this incentive could have a detrimental impact on the current SREC market, and would increase costs for ratepayers. As such, OCE believes that the incentive would not be consistent with the Energy Master Plan's goals of lowering rates and promoting a diverse supply of energy generation within the State.

Comment: PSE&G comments that incremental incentives for large net metered projects will result in the shifting of more fixed distribution costs to those who have not or cannot take advantage of solar net metering to lower their retail energy costs.

Response: OCE believes that the commenter is correct that an additional incentive for net metered projects would result in some degree of cost-shifting to non-net metering customers.

Comment: Jim McAleer states that the market is over-supplied with SRECs and is projected to continue being over-supplied for the next two years. Under these circumstances he avers that there is no need for an additional incentive, and adds that if any market segment should receive an incentive it would be the small business segment.

Response: OCE agrees that the market is currently over-supplied with SRECs, and is projected to remain so for at least the next two years, and that in this situation the addition of an incentive, which will result in increased creation of SRECs, could be detrimental to the market. As the commenter acknowledges, an incentive for the small business market segment is not proposed for consideration, and as such is beyond the scope of this proceeding.

STAFF RECOMMENDATION

The incentive which the Legislature has directed the Board to consider would benefit a segment of the market, large net metered projects serving large commercial and industrial customers, which have displayed a remarkably rapid ability to participate in the SREC market given that New Jersey previously had a cap on net metering of 2 MW through 2009. Since 2010, the New Jersey SREC market has seen ten of these larger projects for over 55 MW dc of capacity complete all requirements for generating SRECs. The RE market managers reported as of October 31, 2012, that the SREC Registration program pipeline of proposed projects contained another eleven such projects totaling 61 MW dc of capacity. If all registered projects are completed, then over twenty-two net metered projects greater than three MW totaling more than 115 MW dc of capacity will have been constructed. OCE believes that this clearly demonstrates that the economics are sufficient to motivate a significant market response for these larger projects without the need for an additional incentive.

DISCUSSION AND FINDINGS

The Board has reviewed the record in this proceeding, including the comments from stakeholders, Staff's responses to those comments, and Staff's recommendation. The Board has also considered the current and projected state of the SREC market and the existing incentives both for large net metered projects and other market segments. Based on this review and after due consideration, the Board **FINDS** that net metered projects of three MW or more benefit from economies of scale, and that the large commercial and industrial customers which these projects serve benefit from significant savings in their energy costs. The Board **FINDS** over 55 MW of net metered large-scale capacity have completed all requirements for generating SRECs since 2009, and that, therefore, these projects are already successfully competing in the solar marketplace. The commercial and industrial projects taking power from this class of projects are thus already receiving the benefit of reduced energy costs. No evidence has been provided that would support a conclusion that provision of an additional incentive would achieve the stated goal of improving these customers' economic competitiveness. Therefore, the Board

FINDS that there is no need for an additional incentive as described in Subsection (w) of the Solar Act, and **HEREBY** **CONCLUDES** that no program to provide a financial incentive to supplement the SRECs generated by these facilities is needed in the current market.

DATED: 3/20/13

BOARD OF PUBLIC UTILITIES
BY:

ROBERT M. HANNA
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
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MARY-ANNA HOLDEN
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ATTEST:

KRISTI IZZO
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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IN THE MATTER OF N.J.S.A. 48:3-87(W) – A PROCEEDING TO CONSIDER THE NEED FOR A PROGRAM TO PROVIDE A FINANCIAL INCENTIVE TO SUPPLEMENT SOLAR RENEWABLE ENERGY CERTIFICATES FOR NET METERED PROJECTS GREATER THAN THREE MEGAWATTS
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