



Agenda Date: 06/10/20
Agenda Item: 8B

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/

CLEAN ENERGY

IN THE MATTER OF A NEW JERSEY SOLAR) ORDER
TRANSITION PURSUANT TO P.L. 2018, C.17 – NEW)
JERSEY SCHOOL BOARDS ASSOCIATION MOTION)
FOR RECONSIDERATION) DOCKET NO. QO19010068

Party of Record:

Carl Tanksley, Jr., Esq., New Jersey School Boards Association

BY THE BOARD:

On December 27, 2019, pursuant to N.J.A.C. 14:1-8.6, the New Jersey School Boards Association (“NJSBA” or “Movant”) filed a motion for reconsideration and clarification (“Motion”) of the Board’s December 6, 2019 Order, docketed above (“Transition Incentive Order”) and clarified on January 8, 2020 (“Clarification Order”).¹ NJSBA asked the Board to reconsider the factor assigned to net metered ground mounted projects in its Transition Incentive Order.

BACKGROUND

Transition Incentive Program

On May 23, 2018, the Clean Energy Act was signed into law and became effective immediately. Among many other mandates, the Clean Energy Act directed the Board to adopt rules and regulations to close the SREC Registration Program (“SREC Program” or “SRP”) to new registrations once the Board determines that 5.1 percent of the kilowatt-hours sold in the State by each TPS/BGS Provider has been generated by solar electric power generators connected to the distribution system (“5.1 % Milestone”). The Clean Energy Act also directed the Board to complete a study that evaluates how to modify or replace the SREC program to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State.

¹ The Motion also sought clarification of two issues raised by the Transition Incentive Order: whether there would be a gap for solar development between the end of the Transition Incentive and the opening of the Successor program; and how multipliers would be applied to a project that fell into more than one category. These issues were resolved in the Clarification Order and are now moot, so they will not be addressed here.

Additionally, the Clean Energy Act established a statutory cost cap that prohibits the cost of Class I RECs (excluding the cost of offshore wind renewable energy certificates, or “ORECs”) from amounting to more than 9% of the total electricity paid by customers in the State during Energy Years (“EY”) 2019, 2020, and 2021 or from amounting to more than 7% of that cost during subsequent energy years. The Legislature imposed this cap in an effort to reduce the burden on ratepayers of subsidizing clean energy. The tension between continuing the solar industry’s “orderly and efficient development,” on the one hand, and controlling ratepayer costs, on the other, constitutes a challenge inherent to the development of the Transition Incentive program approved by the Board in December 2019, and to the ongoing development of a solar Successor Program.²

The Board decided to implement the replacement of the SREC Program in two phases. Phase 1 was the development of the Transition Incentive Program, open to projects that filed a complete SRP registration after October 29, 2018 but failed to reach PTO by the date the 5.1% Milestone has been attained; the Transition Incentive Program will remain open until the Board establishes a registration program for the Successor Program. Phase 2 is the ongoing development of the Successor Program.

As more fully set forth in the Transition Incentive Order, the Transition Incentive resulted from a year-long iterative process which included multiple stakeholder meetings. Staff issued three Staff straw proposals for comment between August and November of 2019³ that were revised and updated in response to stakeholder feedback and updated modeling. Stakeholder responses were summarized in the Transition Incentive Order. In its final form, the Transition Incentive is delivered via a Transition Renewable Energy Certificate (“TREC”). A TREC has a base incentive value of \$152, which was tailored to various solar market segments by the application of factors “tied to the estimated costs of building the different types and to their varying revenue expectations [.]” Transition Incentive Order at 30. Two of the eight market segments identified and assigned a factor to ground mount net metered projects: one market segment for net metered non-residential ground-mounted solar, and one market segment for net metered residential ground-mount solar. Both for these market segments were assigned a TREC factor of 0.6. In other words, net metered ground-mounted solar projects eligible for TRECs (whether residential or non-residential) will receive an incentive of \$91.20/MWh, which is \$152 multiplied by 0.6.

FACTUAL AND PROCEDURAL HISTORY

The NJSBA is authorized by statute to represent New Jersey’s public schools, all of whom are members of NJSBA. N.J.S.A. 18A:6-45 et. seq. NJSBA also operates a program called “ACES Plus” which helps schools districts develop solar projects for the stated purposes of reducing costs to local taxpayers and supporting New Jersey sustainability efforts.

On December 27, 2019, NJSBA submitted the Motion.

² In re New Jersey Solar Transition Pursuant to P.L. 2018, c17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“Transition Incentive Order”).

³ Staff straws were issued on August 22, 2019; October 3, 2019; and November 14, 2019.

<https://www.nj.gov/bpu/pdf/publicnotice/Revised%20Transition%20Incentive%20Straw%20Proposal%202019-10-03%20clean.pdf>

<https://njcleanenergy.com/files/file/Solar%20Act/Revised%20Transition%20Incentive%20Staff%20Straw%20Proposal%202019-11-14-merged.pdf>

On February 19, 2020, the Board voted to approve a Secretary's Letter advising NJSBA that the Board intended to continue its review of the motion for reconsideration beyond the 60-day period allowed under its rules. N.J.A.C. 14:1-8.7(c) provides that "[a]ny motion [for rehearing or reconsideration] which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof, shall be deemed denied." Having taken such action, the Board noted that accordingly, the motion for reconsideration was not deemed denied and remained open pending the Board's issuance of a final decision upon the completion of its review.

MOTION FOR RECONSIDERATION

NJSBA asks the Board to reconsider the multiplier to be applied to net metered ground-mounted solar projects and to revise that multiplier to a level of 1.0, the multiplier assigned to net metered roof-mounted and canopy solar projects. In the Movant's opinion, the Board did not give appropriate weight to the strong public policy favoring New Jersey solar development; did not provide due process by sharing in full the staff and Consultant analysis that led to the recommendation of an 0.6 multiplier for net metered ground projects; and erred in not recognizing and including in its analysis the alleged need of "school districts and many other users" for savings greater than 25% to support the development of solar projects. Motion at 6-7. According to the Movant, the Board's denial of its motion would materially and significantly inhibit solar development in the State.

STAFF RECOMMENDATION

As a threshold matter, Staff notes that NJSBA's motion is unclear. Its references to "net metered ground-mounted solar projects" could apply to two different TREC factor categories, both of which were assigned a TREC factor of 0.6: net metered non-residential ground mount solar, and net metered residential ground mount solar. The motion states that revising the factor to 1.0 would make the factor consistent with its treatment of net metered roof-mounted and canopy solar projects. Net metered non-residential rooftop and carport projects have a factor of 1.0, while net metered residential rooftop and carport projects have a factor of 0.6. In light of this comparison, Staff therefore is making the assumption that Movant is requesting reconsideration of the net metered non-residential ground mount category, not of the net metered residential ground mount category. This assumption is further supported by the fact that NJSBA's motion is made on behalf of public school districts, which are non-residential electric utility customers.

NJSBA asserts that public school districts would use available vacant property on school property to develop solar projects and claims numerous benefits for such products: reducing energy costs for school districts, presenting educational opportunities for students, and reducing taxes for the local residents and businesses. To realize these benefits, however, NJSBA claims that these projects must receive the full base value of the TREC, i.e. a TREC factor of 1.0.

In support of its position, NJSBA first asserts that it has commented "substantially" on this issue throughout the stakeholder engagement process for the Transition Incentive, but that the Transition Incentive Order does not address or respond to those comments. Staff readily acknowledges that the Movant has actively participated in the public stakeholder process that led to the Transition Incentive Order and that its participation included arguing for a higher factor for net metered ground mounted projects. However, Staff notes that while every comment was carefully considered, not every stakeholder position was automatically incorporated into the

Transition Incentive Order; the fact that Movant's position was not reflected in the Board's approval of the Transition Incentive program does not mean that Movant's comments were not considered. As described above, the Transition Incentive Order represented the culmination of a lengthy, iterative process. Stakeholder comments, including those of the Movant, were responded to throughout that process with revised straw proposals as well as opportunities to question both Staff and its consultants, The Cadmus Group, LLC and Sustainable Energy Advantage, LLC ("Consultant"). The factors approved by the Board were determined by an in-depth cost build-up, as more fully described in the Transition Incentive Order. Costs constituted a fundamental piece of the equation that produced those factors. See, e.g., "Cost of Entry" slides from Solar Transition Workshop 2 (June 14, 2019); Transition Incentive Supporting Analysis & Recommendations (attached to Staff Straw released August 22, 2019, reissued with updates on October 3, 2019 and November 14, 2019); "Modeling Workshop" slides from Technical Work Session (September 6, 2019)). The Transition Incentive Order itself references NJSBA's comments at pages 17, 22, 23, and 25, as well as the comments of other stakeholders that argue for a higher factor for a specific sector. Transition Incentive Order at pages 22-25, generally. Staff's multi-part recommendation constituted the response to these and the other comments received. In short, the decision not to award Movant the factor for which it advocated does not show disregard of its comments.

Second, Movant critiques the analysis provided by the Consultant on the ground that the analysis "did not recognize that school districts and [others] will simply not develop solar projects if the project does not carry with it a substantial level of estimated savings [.]"⁴ Motion at 7. More specifically, NJSBA asserts that the forecasted savings must exceed 25% before most school districts will consider investing in solar energy. Movant bases this claim on its statement that the steep discount is needed to tempt school districts because they cannot predict that they will save money, or how much they will save, over the price they would otherwise pay to a utility over the lifetime of a solar facility (fifteen years or longer.) Motion at 8. According to NJSBA, "[t]his is simply a reality of the marketplace." However, Movant provides nothing in the way of proofs; even the comments submitted during the stakeholder proceeding, although Movant references these, do not supply further information on or documentation of this claim. NJSBA's bald assertion does not provide an adequate basis to reject the Consultant's analysis or conclusions. Additionally, Staff notes that schools represent only a small fraction of non-residential customers eligible for net metering in the state. While Staff strongly supports solar for public schools, for the policy reasons identified by Movant, Staff notes that the requested change to the TREC factor would impact all non-residential net metered ground mount systems, not just systems serving public schools. In developing said TREC factor, the Board needed to consider the costs associated with the entire class of projects, not just a narrow subset.

Third, Movant criticizes the analysis supporting the 0.6 multiplier for not being fully disclosed. While acknowledging that the Consultant provided some of the data on which it relied, Movant argues that the Consultant's analysis was not as transparent as it should have been. In particular, Movant points to the fact that "the actual modeling and adjustments made by Cadmus [to the CREST⁵ model]" were not provided. Motion at 8. NJSBA also objects to the fact that the manner in which the CREST results were synthesized into the "ultimate outputs" was not disclosed, characterizing the process as a "black box approach." Motion at 9. Movant relies upon the fact that "the full derivation" was not provided to support its argument that neither the Board nor the stakeholders can conclude that the 0.6 multiplier is reasonable. This reliance is misplaced. It is

⁴ Staff notes that although NJSBA references "other" entities several times in the Motion, these other entities are never specified.

⁵ Cost of Renewable Energy Spreadsheet Tool

true that the model used was a proprietary one and as such not susceptible to full public disclosure. However, Staff published many of the underlying assumption models and facilitated opportunities for stakeholders to speak directly with the Consultant to discuss the modeling. Thus, to the extent compatible with protecting proprietary information, access to the underlying calculations was provided. There was no “black box” and the Board had a sound basis for concluding that the factors, including those for net metered ground-mounted projects, were reasonable.

Staff recommends that the Board deny the Motion for Reconsideration and affirm the existing factorization scheme that assigns a factor of 0.6 to all net metered ground-mounted projects.

DISCUSSION AND FINDINGS

In considering a motion for reconsideration, the Board looks first to the standards of N.J.A.C. 14:1-8.6 and the relevant case law. N.J.A.C. 14:1-8.6 requires a motion for rehearing or reconsideration to enumerate the alleged errors of law or fact, and where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. The Motion substantially conforms to the rule. However, the Board also looks to the relevant case law that sets out the substantive standard which must be met.

Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. E.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious or unreasonable. D'Atria, supra, 242 N.J. Super. at 401. This Board will not modify an Order in the absence of a showing that the Board’s action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law.

NJSBA has not made the showing required by New Jersey law to compel reconsideration of an agency action. Staff demonstrated the deficiencies in NJSBA’s arguments based upon the record and on the Consultant’s analysis, and the Board adopts Staff’s recommendations as set forth above. The Board will now address Movant’s policy arguments.

NJSBA contends that the multiplier for net metered ground-mounted solar projects does not reflect “the importance and prominent standing that net-metered solar projects must take” to advance New Jersey’s energy policy. Motion at 9. In the Movant’s estimation, net metered projects represent “the one tool available” for ratepayers to reduce their electricity costs, because New Jersey does not allow discount rates. This argument lacks merit. Energy efficiency has long been the most cost-effective means for most ratepayers to reduce their electricity bills. Moreover, and in particular since the passage of the Clean Energy Act, New Jersey offers a number of options to customers interested in the benefits of renewable energy, including but not limited to remote net metering, community solar, use of a Third Party Supplier, and Local Government Energy Aggregation.

Movant also argues that the Board cannot achieve its solar goals unless it recognizes that school districts require a savings forecast of 25% and provides the 1.0 factor to net metered ground mounted projects. Movant points to the fact that while other states have driven solar development through large scale grid supply projects, New Jersey has limited such projects on open space.

“New Jersey’s solar success story,” according to NJSBA, consists of thousands of customer-scaled net-metered projects that reduce individual customer costs.

The Board concurs with Movant that net metering has long been an important part of State solar policy. The Board does not concur with Movant’s apparent belief that in approving the 0.6 factor for non-residential net-metered ground mount projects the Board has rung their death knell. Movant also notes that ground-mounted solar projects occur on school property that is contiguous to school buildings and will not undermine New Jersey’s goal of preserving open space. The Board does not disagree with this statement, but more is needed to support increasing the factor for these projects than the fact that they do not conflict with land use goals. As previously noted, the factors approved by the Board were determined by an in-depth cost build-up that looked to the costs incurred as well as to anticipated revenue streams such as those provided by net metering.

In addition, Movant contends that the 0.6 multiplier runs counter to “the Governor’s efforts to help counties, school districts, and other public units reduce and stabilize property taxes and to promote sustainable markets.” Motion at 7. The Board declines to discuss this policy assertion as it is not supported by explanation or analysis.

By contrast, the existing factors in the Transition Incentive program resulted from a significant stakeholder process and reflect a substantial amount of stakeholder input. The year-long process is briefly summarized above and at more length in the Transition Incentive Order. When weighed against the substantial input received during the development of the Transition Incentive and the modelling done by the Board’s Consultant, the motion provides no basis to award a higher factor to net metered ground-mount solar facilities.

Finally, the Board believes that to alter the outcome of the public stakeholder process after the fact would be both inappropriate and unfair. The factors assigned in the Transition Incentive Order reflect the lengthy and iterative public process that was designed to allow all stakeholders a chance to state their views and present their evidence. The Board declines to alter the results of the public process at the behest of a single party after the fact, particularly when the change requested to an entire TREC project category is disproportionate to the narrow type of solar development that Movant is arguing on behalf of.

After carefully reviewing the record and Staff’s recommendation, the Board **FINDS** that nothing in NJSBA’s motion for reconsideration causes or requires the Board to reconsider its December 6 Order or the factors assigned to the various types of solar projects. NJSBA’s request for reconsideration provides no legal or factual basis which would compel the Board to reverse its decisions. For the aforementioned reasons, the Board **AFFIRMS** that 0.6 remains the appropriate factor for net-metered ground mount projects and **DENIES** the Motion.

The effective date of this order is June 20, 2020.

DATED: June 10, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO,
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17 –
NEW JERSEY SCHOOL BOARDS ASSOCIATION FOR RECONSIDERATION

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SERVICE LIST

New Jersey School Board Association

Carl Tanksley, Jr., Esq.
Director, Legal and Labor Relations
New Jersey School Boards Association
413 West State Street
Trenton, New Jersey 08618
ctanksley@njsba.org

Publication on Clean Energy Program
Renewable Energy listserv

Division of Rate Counsel

140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.nj.gov

Division of Law

R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, N.J. 08625

Darren Eppley
Darren.eppley@law.njoag.gov

Pamela Owen
pamela.owen@law.njoag.gov

Michael Beck
michael.beck@law.njoag.gov

Board of Public Utilities

Post Office Box 350
Trenton, NJ 08625-0350

Abe Silverman, General Counsel
abe.Silverman@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Rachel Boylan, Legal Specialist
rachel.boylan@bpu.nj.gov

Suzanne Patnaude, Esq.
suzanne.patnaude@bpu.nj.gov

Grace Power, Chief of Staff
grace.power@bpu.nj.gov

Paul Flanagan, Executive Director
paul.flanagan@bpu.nj.gov

Robert Brabston, Deputy Executive Director
Robert.brabston@bpu.nj.gov

Division of Clean Energy

Kelly Mooij, Director
Kelly.Mooij@bpu.nj.gov

Scott Hunter
benjamin.hunter@bpu.nj.gov

Ronald Jackson
ronald.jackson@bpu.nj.gov

Office of Policy and Planning

Hannah Thonet
Hannah.thonet@bpu.nj.gov

Ariane Benrey
ariane.benrey@bpu.nj.gov