



Agenda Date: 12/1/21
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR)
ASSIGNMENT OF "PREFERRED" TREC FACTOR) ORDER
FOR TWO PILOT DUAL-USE SOLAR PROJECTS)
PURSUANT TO THE BOARD'S TRANSITION)
INCENTIVE ORDER - WASHINGTON SOLAR FARM,)
LLC AND QUAKERTOWN SOLAR FARM, LLC) DOCKET NO. QO21060890

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Mark Bellin, Esq., on behalf of Washington Solar Farm LLC and Quakertown Solar Farm LLC

BY THE BOARD:

This Order concerns a petition by Washington Solar Farm LLC and Quakertown Solar Farm LLC (collectively, "Petitioners") for eligibility to generate Transition Renewable Energy Certificates ("TRECs") on two (2) proposed solar farms in Franklin and Washington Townships ("Projects"). Petitioners propose a pilot program for dual use, agrivoltaic systems that would consist of two (2) proposed photovoltaic systems each expanding upon an existing energized photovoltaic system.

BACKGROUND

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87, into law ("Clean Energy Act" or "CEA"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certificate ("SREC") Program by no later than June 2021, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated that the New Jersey Board of Public Utilities ("Board" or "BPU") close the SREC Registration Program ("SRP") once it determined that 5.1% of the kilowatt-hours sold in the state had been generated by solar electric power generators connected to the distribution system ("5.1% Milestone") or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication

in the New Jersey Register on January 22, 2019.¹ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

On December 6, 2019, the Board established a Transition Incentive (“TI”) Program to provide a bridge between the SRP and a Successor Incentive Program in an orderly and efficient manner.² The TI Program provides eligible projects with TRECs for each megawatt hour of electricity produced. Incentives are tailored to specific project types by the use of factors, which are applied to a base incentive rate to provide a particular project type with the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection (t) receive a factor of 1.0 and thus the full amount of the base incentive.

On January 8, 2020, the Board issued a clarification order in the same docket in which, among other matters, clarified that “New or Innovative solar technologies can file a petition with the Board requesting that these type projects be assigned a TREC factorization level”.³ At a Special Agenda Meeting held on April 27, 2020, the Board approved a TI Rule Proposal⁴ that codified the elements of the TI program laid out in the December 2019 Order at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁵ On September 10, 2020, the Board adopted the rule proposal, and the TI Rules became effective on October 5, 2020 when published in the New Jersey Register.⁶

On July 9, 2021, the Governor signed into law S3484, P.L. 2021, c. 170, codified at N.J.S.A. 48:3-87.13 (“Dual Use Solar Act of 2021” or “Dual Use Act”). The Dual Use Act specifically directs the Board, in consultation with the Department of Agriculture (“NJDOA”), to develop a dual-use solar energy pilot program (“Dual-Use Pilot”) to permit development of solar generation facilities on unreserved farmland while maintaining the affected land in active agricultural or horticultural use. The Dual-Use Pilot is to last for three years and to allow up to 200 megawatts (“MW”) of solar projects on unreserved farmland. The Dual Use Act authorizes and encourages such projects up to 10 MW each and permits land used for a dual-use solar project to be eligible for farmland assessment under certain conditions.

On July 28, 2021, the Board approved a successor program to the SRP, consisting of an Administratively Determined Incentive (“ADI”) and a Competitive Solicitation Incentive (“CSI”).⁷ The TI Program closed to new registrations when ADI launched on August 28, 2021. ADI is presently available to residential projects, to net metered non-residential projects equal to or less than five MW, and to community solar projects.

¹ 51 N.J.R. 138(e) (Jan. 22, 2019).

² In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“December 2019 Order”).

³ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020 (“January 2020 Order”).

⁴ In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253 (“TI Rule Proposal”).

⁵ 52 N.J.R. 1048(a) (May 18, 2020).

⁶ 52. N.J.R. 1850(a) (October 5, 2020).

⁷ In re A Solar Successor Incentive Program Pursuant to P.L.2018, C.17, BPU Docket No QO20020184, Order dated July 28, 2021.

PETITION

On June 4, 2021, Petitioners filed the instant petition. As described by Petitioners, its proposed pilot program would consist of implementing the Projects as grid supply photovoltaic systems developed with and operated over existing farming operations on a long-term basis. The Washington Solar Farm LLC Project is described as capable of generating 10 MW Alternating Current (“AC”) and the Quakertown Solar Farm LLC Project as capable of generating 8.8 MWs AC.⁸ Petitioners ask the Board to find that the Projects constitute an innovative technology as contemplated by the January 2020 Order and to approve the Projects to receive a TREC factor of 1.0.

Petitioners argue that dual-use agrivoltaics will play an important role in New Jersey’s solar future. In support of this contention, Petitioners present a number of articles and studies on the design and use of agrivoltaics which Petitioners believe have established a positive relationship between the use of solar panels and farming. Petitioners claim that a majority of present-day authors, including an office in the US Department of Energy, have concluded that competition between renewable energy and food production is not a zero-sum game. The petition lists a number of benefits from agrivoltaics, including among others steady revenues for farmers; the maintenance of land in agricultural use that might otherwise be lost to development; reduced need for irrigation and mitigation of losses in dry years; and increased ground cover resulting in lowered erosion and sediment in surface waters.⁹ According to Petitioners, solar panel installation is minimally invasive and the Projects will be fully decommissioned and returned to the conventional agricultural use at the end of their useful lives.¹⁰

In addition, Petitioners contend that the Projects proposed in the petition are particularly suited for an individual pilot program, since they have already received most of the necessary municipal land use approvals and have the support of the municipalities in which they are located. Petitioners also state that both sites have already been heavily impacted by solar development and are not being used as farmland. Once approved by the Board, Petitioners project that the projects could be developed before the end of 2021.¹¹

On June 15, 2021, the International Brotherhood of Electrical Workers (“IBEW”) filed a letter in support of the petition, stating that the Projects would have a multitude of benefits for the surrounding area and would create hundreds of jobs for IBEW workers.

On October 19, 2021, for a firm representing Petitioners filed a letter arguing that the passage of the Dual Use Act should have no effect on the petition because it had been filed prior to the new legislation and satisfied “the law in effect at the time” (“October 19 Letter”). The October 19 Letter clarifies that the “law” to which it refers is the above-cited provision in the January 2020 Order which allows new or innovative solar technologies to file a petition requesting a specific TREC factorization level. In addition, the October 19 Letter references a prior appeal regarding the Projects which was withdrawn in April 2020 on the understanding that Board Staff (“Staff”) would engage in discussions regarding alternative solar development plans with counsel’s client.¹² The

⁸ Petitioners apparently intend to speak of the size of the Projects rather than of their generation capacity.

⁹ Petition at 2-3.

¹⁰ Id. at 3-4; Colliers Engineering and Design Report at Appendix 2.

¹¹ Id. at 4-5.

¹² The client referred to here appears to be CEP Renewables, Inc., the appellant in the prior appeal, which is described in the Petition as “a company related to Petitioners.”

October 19 Letter alleges that every proposal made to Staff over the 18 months since has been rejected and requests oral argument, stating that it is necessary to fully inform the Board of this history.

STAFF RECOMMENDATIONS

As noted above, the Dual Use Act passed during the pendency of this petition at the Board. Petitioners argue that their proposed pilot program would allow the BPU to monitor and evaluate the performance of the dual-use solar farm. However, that is precisely the purpose of the statutory Dual-Use Pilot program.

Staff believes that approval of the Projects as a separate pilot program is premature and inconsistent with the statutory Dual-Use Pilot. Among other mandates, the Dual Use Act tasks the Board, in consultation with the Secretary of Agriculture, with developing rules and regulations to establish and operate the Dual-Use Pilot program. The Dual Use Act also requires the Board to consult with the Secretary of Agriculture in reviewing each application, giving consideration to statutory selection criteria. N.J.S.A. 48:3-87.13. The Board's Dual-Use Pilot rulemaking will involve development of robust metrics and requirements for projects seeking to participate in the Dual-Use Pilot program, that are expected to include metrics regarding agricultural or horticultural production, remedies if those agricultural or horticultural targets are not met, requirements to establish baseline agricultural or horticultural production, measurement and verification methods, and other programmatic requirements that cannot be replicated or produced for a single project. Petitioners maintain that solar panel installation is minimally invasive and that the farmland on which their projects would be installed could be returned to agricultural use at the end of the solar panels' useful lives. Staff does not disagree with this contention but notes that it is another facet of agrivoltaics that will be better and more fully explored in the context of the Dual-Use Pilot.

Further, the legislature required that the Board engage in a competitive pilot process that would allow for comparison and evaluation of projects. This type of competitive process ensures that New Jersey ratepayers get the maximum benefit, in terms of environmental benefit, clean energy and agricultural production, and cost. The goals and benefits of establishing a robust dual-use pilot program simply cannot happen in the limited context of evaluating the Projects here, no matter how well intentioned. While Staff is sympathetic to the developer's interest in pushing forward these particular projects, the intervening passage of a new law specifically creating a competitive program for developing dual-use solar projects renders their prior application requesting the board create a pilot program duplicative and moot. However, these developers would appear well-situated to compete in the forthcoming new Dual-Use Pilot program.

Finally, Staff notes that it engaged in all discussions with Petitioners' principal in good faith. Failure to reach a compromise solution pleasing to all parties does not indicate a lack of good faith.

Staff recommends that the Board deny the request for oral argument and deny the petition.

FINDINGS AND CONCLUSIONS

Washington Solar Farm LLC and Quakertown Solar Farm LLC move pursuant to the Board's January 2020 Order, seeking approval of "new or innovative solar technologies" and assignment of a TREC factor for proposed dual-use solar agrivoltaic projects. Specifically, Petitioners request that the Board create a pilot program within the TI Program for its two (2) proposed dual-use grid supply solar projects so that Petitioners may expand their existing solar systems. Petitioners also

request that the Board assign the Projects a TREC factor of 1.0, thereby ensuring that the Projects receive the maximum base compensation TREC value.

The TI Rules, N.J.A.C. 14:8-10.1 to 10.6, limit TI eligibility for grid supply solar installations to certain “Subsection (r)” projects that transferred from the SRP to the TI Program and to “Subsection (t)” projects until such time as the establishment of the registration program for the solar Successor Incentive Program. The TI Rules do not contemplate grid supply solar installations on farmland as proposed by Petitioners. And, as noted above, the TI Program closed to new registrations when ADI launched on August 28, 2021. The closure of the TI Program is pertinent to the Board’s consideration of Petitioner’s request to create a dual-use pilot program with the TI Program. While Petitioners do not advocate for any projects other than theirs to be included in the pilot program they ask the Board to create, the limited scope of Petitioner’s proposed pilot program and any future applicability is further restricted by the closure of the TI Program. Therefore, the Board **FINDS** that creation of a TI pilot program limited in scope to two (2) grid supply dual-use agrivoltaic projects, not otherwise eligible for TI, would not benefit the TI program.

The Board concurs with Staff that development of a dual-use pilot program for agrivoltaics requires careful consideration of numerous metrics for projects seeking to participate in such a program including, but not limited to, metrics regarding agricultural or horticultural baseline production, remedies if those agricultural or horticultural targets are not met, measurement and verification methods, project financial and incentive requirements, and decommissioning and property restoration protocols. While Petitioners proposed that their two (2) projects would be subject to certain terms and conditions, those terms and conditions fail to align with metrics desired by the Board for agrivoltaic projects. The Board therefore **FINDS** that Petitioners’ proposed terms and conditions are insufficient for development of a TI dual-use agrivoltaic pilot program.

Additionally, the Board carefully considered the relief sought by Petitioners here, namely the creation of a limited dual-use agrivoltaic pilot program as part of TI. In the context of the relief requested, the Board must acknowledge the impact of Governor Murphy’s signing the Dual Use Solar Act of 2021 on July 9, 2021, approximately one month after Petitioners filed their petition. The Board is cognizant of its statutory obligation pursuant to the Dual Use Act to, in consultation with the Secretary of Agriculture, create rules and regulations establishing a “Dual-Use Solar Energy Pilot Program” to regulate solar projects on unpreserved farmland while maintaining the land in agricultural or horticultural use. The Board is mandated by the legislature to consult with the Secretary of Agriculture to develop a specific 36-month Dual-Use Pilot program and subsequently convert it to a permanent Dual-Use program to be integrated in the permanent successor solar incentive program established pursuant to N.J.S.A. 48:3-114, et seq. The Board **FINDS** that creation of an additional, limited-scope dual-use pilot program as proposed by Petitioners, is duplicative of the more extensive legislatively mandated Dual-Use Pilot. The Board **FURTHER FINDS** that development of Petitioner’s pilot program in parallel to the formulation of the Dual-Use Pilot could unnecessarily strain agency resources.

The Board will also respond to an argument raised by counsel in the October 19 Letter. Counsel’s representations imply that a contradiction exists between the January 2020 Order allowing “new and innovative” technologies to petition for a specific TREC factor and the Dual Use Act. Such is not the case. The January 2020 Order granted petitioners with new and innovative solar technologies the right to petition the Board for the TREC factor they believed appropriate in the TI program. Petitioner exercised that right and the Dual Use Act did not negate it. Rather, as stated above, the Board considers the mandates of the Dual Use Act when addressing the

substance of the particular relief sought by Petitioners and, as such, the Dual Use Act is both relevant and necessary to the Board's consideration of this petition.

Petitioners also asked for oral argument on the ground that the Projects have a long and unique history and that oral argument would help the Board better understand why the Projects should be assigned a TREC factor of 1.0. If the Board chooses not to grant their request, the Petitioners ask that the Board transfer this matter to the Office of Administrative Law ("OAL").

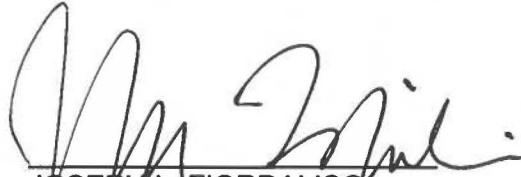
The Board agrees with Petitioners that the history of the Projects is long, but the Board is thoroughly familiar with that history. As noted by Petitioners, one part of that history involved discussions with Staff regarding alternative solar development plans with another company with an interest in the Projects. The Board **FINDS** that that the allegations in the October 19 Letter that Staff did not negotiate in good faith lack any basis in fact. Moreover, the petition lays out both the facts and the reasoning underlying Petitioners' request for relief. The Board **FINDS** that the written record is sufficient to serve as the basis for the Board's decision and that there is no need for oral argument to further develop the record. Petitioners failed to demonstrate that there is a significant dispute of material fact, and thus the Board **FINDS** that there is no basis to transfer this matter to the Office of Administrative Law for an evidentiary hearing. Therefore, the Board **DENIES** the request for oral argument and the request for transfer to the OAL.

Having fully and carefully considered this matter, the Board **DENIES** Petitioners' request to implement its proposed pilot program for the Projects. The within denial is without prejudice to Petitioners' ability to submit applications for the Projects to the Dual-Use Solar Energy Pilot Program upon its opening. Having denied the petition, the Board need not determine an appropriate TREC factor for the proposed pilot program Projects.

The effective date of this Order is December 8, 2021.

DATED: December 1, 2021

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 THE PETITION FOR ASSIGNMENT OF "PREFERRED" TREC FACTOR
FOR TWO PILOT DUAL-USE SOLAR PROJECTS PURSUANT TO THE BOARD'S
TRANSITION INCENTIVE ORDER - WASHINGTON SOLAR FARM, LLC AND
QUAKERTOWN SOLAR FARM, LLC

BPU DOCKET NO. QO21060890

SERVICE LIST

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