



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE RENEWABLE ENERGY) ORDER ON MOTION FOR
PORTFOLIO STANDARDS – AMENDMENTS TO THE) RECONSIDERATION
MINIMUM FILING REQUIREMENTS FOR ENERGY)
EFFICIENCY, RENEWABLE ENERGY AND)
CONSERVATION PROGRAMS; AND FOR ELECTRIC)
DISTRIBUTION COMPANY SUBMITTALS OF FILINGS IN)
CONNECTION WITH SOLAR FINANCING – MOTION FOR)
RECONSIDERATION OF SOLAR FINANCING ORDER) DOCKET NO. EO06100744

(SERVICE LIST ATTACHED)

BY THE BOARD:

On August 27, 2008, Rockland Electric Company (RECO or the Petitioner) filed a Motion for Reconsideration, or, in the alternative, for clarification of some portions of the Board's decision in In the Matter of the Renewable Energy Portfolio Standards – Amendments to the Minimum Filing Requirements for Energy Efficiency, Renewable Energy, and Conservation Programs; and for Electric Distribution Company Submittals in Connection with Solar Financing, Docket No. EO06100744 (August 7, 2008) (August 7 Order or Order).

In the August 7 Order, the Board determined the overall nature of the Solar Financing program; established additional minimum filing requirements for energy efficiency, renewable energy, and conservation programs; and directed each energy distribution company (EDC) to submit a filing for solar financing consistent with the amended minimum filing requirements. RECO was directed to submit a petition indicating that it had selected to participate in the Solar Renewable Energy Certificate-based (SREC-based) financing program submitted by either Jersey Central Power & Light (JCP&L) or Atlantic City Electric (ACE), by no later than January 31, 2009.

RECO seeks reconsideration of the requirement to join a SREC-based financing program as directed in the August 7 Order and instead seeks to submit a petition for a solar loan program, as well as a number of requests for clarification. For the reasons set forth more fully below, the Board finds that granting this request would be contrary to the policies underlying the Renewable Energy Portfolio Standards (RPS) program and thus denies the motion to the extent

it would allow RECO to develop a solar loan program instead of an SREC-based financing program, but grants one of the clarifications requested by the Petitioner.

As stated in the August 7 Order, the Board is committed to the solar RPS program and has determined that a transition to a market-based approach of delivering incentives for solar electric generation will best support achieving the solar RPS. Encouraging the development of SREC-based financing, in order to provide greater certainty about the minimum cash flow that a project may be expected to generate, is an important component of the transition, and the Order details the extensive public stakeholder process pursued by the Board in exploring the optimal method of doing so.

A solar loan program was among the options the Board considered to support the transition to a market-based approach of delivering incentives. In finding that contracting for SRECs for terms of 15 years would be more effective than the other options put forward by stakeholders, the Board looked first to the ability of each proposal to support that transition. August 7 Order at 4, 7. While acknowledging the apparent achievements of the PSE&G solar loan program approved in April, the Board noted that "as currently designed and implemented, it may lack some of the elements the Board believes necessary in a market-based system of delivering incentives to support solar development." Specifically, the Board expressed its concern that the existing loan program appeared to offer minimal encouragement for non-utility lenders to enter the market. August 7 Order at 8; I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Solar Energy Program and an Associated Cost Recovery Mechanism, Dkt. No. EO07040278, (4/16/08). Thus, it offers minimal support to a market-based system of incentives. The Petitioner alleges that a solar loan program would more effectively foster a competitive SREC market than the Petitioner's entrance into 15-year contracts for SRECs and that any solar loan program it develops would address the Board's concerns. However, RECO points to no facts which support these claims and the Board's experience and review leads it to believe that a solar loan program will not result in the appropriate level of market development. In light of the Board's experience with PSE&G's loan program, the Petitioner's claims are not currently supported by the record.

The Petitioner also argues that because PSE&G is being permitted to continue its pre-existing solar loan program beyond the start of the SREC-based financing program timeframe, RECO should be given the same opportunity. This claim is insufficient to convince the Board to modify its Order. The PSE&G solar loan program is approved for only Energy Reporting Years 2009 and 2010. PSE&G had filed its solar loan program with the Board prior to the enactment of the Global Warming Response Act (GWRA) amendments and the Board had approved that program prior to issuing the Order implementing those amendments. P.L. 2007, c. 340, section 13 (codified at N.J.S.A. 48:3-98.1) and the August 7 Order. I/M/O Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Renewable Energy Resources, and Offering Class I Renewable Energy Programs in their Service Territories on a Regulated Basis Pursuant to N.J.S.A. 48:3-93.1. Docket No. EO08030164 (5/12/08) (May 12 Order). Based upon these changes, and in light of the Board's overall direction, the Board has directed PSE&G to submit an SREC-based financing plan, as required of all other EDCs, for Reporting Years 2011 and 2012. This plan may be structured as a modification to its solar loan program only if "the modifications are sufficient to enable the loan program to support the transition to a market-based approach of delivering incentives for solar electric generation." August 7 Order at 17.

RECO, by contrast, has no preexisting Board approved solar loan program in place. Instead, RECO falls under the general direction and mandate provided by the Board to participate in SREC-based financing consistent with the amended minimum filing requirements. RECO's request would require the Board to set aside the changes and amendments brought about by the GWRA and the direction set by the Board following significant input and consideration. Moreover, the Board notes that RECO is not prohibited from pursuing a solar loan program as well as an SREC financing plan. While the Petitioner contends that it would be difficult for it to pursue both, the August 7 Order does not foreclose that option. Any choice not to pursue both options at this time is a business judgment by the Petitioner rather than an imposed limitation set by the Board, and therefore the Board does not find this a compelling foundation for reconsideration of its policy decision. Motion at 6; Aug 7 Order at 7, 8.

Lastly, RECO alleges that a residential solar loan program will result in the development of solar generation within its service territory, while long-term SREC contracts will not necessarily do so. This argument fails. While the development of solar generation within a particular service territory may be a worthy goal for an individual EDC, the Board seeks to foster an increase in the solar generation capacity within the entire State. August 7 Order at 7. This policy is in keeping with those underlying the RPS, which include "encourage[ing] the development of renewable sources of electricity and newer, cleaner generation technology[.]" N.J.A.C. 14:8-2.1(q).

In short, the Petitioner has raised no arguments sufficient to cause the Board to reconsider its directive in the August 7 Order.

The Board has also considered the four requests for clarification made by the Petitioner. The Petitioner first requests that it be permitted to file its own plan for SREC-based financing rather than a plan for participating in a solar financing plan submitted by JCP&L or ACE. Having considered this request, the Board believes that such a filing by the Petitioner may be consistent with the Board's policy goals. RECO's filing, like those of JCP&L and ACE, would be subject to the amended minimum filing requirements set out in the August 7 Order. The Board sees no reason to foreclose this option to the Petitioner, and therefore agrees to modify the preexisting Order to make clear the understanding that RECO may file either in conjunction with JCP&L or ACE, or may instead file on its own.

The Petitioner has also asked that it be allowed to retain a certain number of SRECs procured by it through the SREC-based financing program rather than sell those SRECs through the auction process established by the August 7 Order. The Petitioner notes that a small portion of its territory is located outside of PJM and that in that area it acts as the load serving entity. As such, it is responsible for procuring SRECs associated with that load.¹ Asserting that it would be more efficient for it to apply SRECs acquired through long-term contracting to its BGS obligation rather than to sell those SRECs and acquire others to meet its obligations as a load serving entity, RECO requests that the Board permit it to withhold from the auction process the number of SRECs required under its obligations.

¹Approximately 400 customers are served in that portion of RECO's service territory which is not included in PJM. RECO advises that it required approximately 92 SRECs to meet its RPS obligation in the last Reporting Year.

Permitting the Petitioner to withhold SRECs from the newly established auction process would be directly contrary to the Board's goal of moving to a more market-based system of incentive delivery. The auction process provides a mechanism for setting SREC prices in a transparent, market-based manner. Should RECO be permitted to retain its SRECs for its own use, it will of necessity set an arbitrary value on them outside of this process. In addition, to the extent the Petitioner refrains from participation in the auction process, it reduces the scope of the auction and restricts the play of market forces in the SREC program, indirectly increasing the cost of SRECs and thus the potential impact on rates for ratepayers throughout the State. In addition, the Board based the requirement that an auction process be used to sell SRECs acquired through long-term contracts on administrative efficiency. August 7 Order at 15. To carve out an exception for the convenience of a single EDC would be incompatible with that rationale.

Petitioner appears to assert that its request for an exemption at a public hearing constitutes a matter 'not previously considered or properly weighed,' justifying agency reconsideration. Motion at 3, 10, citing In re Trantino Parole Application, 89 N.J. 347, 364 (1982). While the Petitioner references a legal standard for rehearing, however, it has not alleged facts which meet that standard. Trantino dealt with the impact of a judicial determination that an agency had misunderstood the law regarding one aspect of its final decision on the agency's consideration of other aspects in the resulting remand to the agency. Petitioner, on the other hand, posits its own greater administrative efficiency as a rationale for exempting some of the SRECs it procures from the statewide auction. RECO's administrative convenience does not justify a reconsideration of the policy rationales noted above. Motion at 3, 10.

In a third request for clarification, Petitioner seeks an explicit statement by the Board that RECO is entitled to recover the costs associated with its long-term SREC contracts through the Societal Benefits Charge (SBC) and that RECO will be allowed to earn incentives on the funds used in the program as detailed in utility filings. The Petitioner cites the GWRA Amendments as the support for this request.

The GWRA Amendments provide, in pertinent part, that "[t]he board may also direct electric public utilities and gas public utilities to undertake energy efficiency, conservation, and renewable energy improvements, and shall allow the recovery of program costs and incentive rate treatment pursuant to subsection b. of this section." Subsection (b) in turn establishes the filing requirements for utilities seeking cost recovery, enumerates the factors the Board may take into consideration, and sets out the type of ratemaking treatment which may be afforded by the Board, "including, but not limited to, the societal benefits charge[.]" All programs "may be eligible for . . . incentives or rate mechanisms that decouple utility revenues from sales of electricity and gas." GWRA Amendments at section 13(a), (b) (emphasis added). As the statutory language indicates, utilities will recover their costs. However, the statute does not mandate recovery from SBC funds. Both the use of SBC funds and the use of incentives is discretionary and dependent upon the Board's evaluation of several factors in the context of a specific utility filing. The following subsection of the amendments directs the Board to issue an order establishing the procedural requirements for utility filings; in response, the Board issued the May 12 Order, which sets forth the process to be followed and the information to be provided when a utility files programs and seeks cost recovery. The Board's consideration of cost recovery and incentives is to be made on the basis of the information filed, and until all information has been provided the filing is not deemed administratively complete. May 12 Order at 3-4 and Appendix A at IV.

The August 7 Order provides that “[t]he EDCs would sell the aggregated SRECs to the LSEs to recover costs associated with contract payouts, and recover from ratepayer funds losses incurred upon resale.” This language is fully consistent with the statutory language summarized above. (August 7 Order at 9). Until RECO makes its filing, the Board cannot make any determination as to how recovery will be made.

In its fourth request for clarification, RECO asks the Board to affirm that it will pre-approve all long-term SREC forms of contract and approve the winning bids before specific SREC contracts are executed, in a process the Petitioner describes as analogous to the process used in the BGS auction. RECO argues that such pre-approval will “streamline” the negotiation process and expedite the Board’s approval of the contracts by leaving nothing but pricing terms to be reviewed prior to execution. While this may be the case, the difficulty of negotiating the various aspects of these contracts is as yet unknown. The length of the SREC contracts will be significantly greater than the three-year term of the contracts associated with the BGS auction. Staff advises that a commitment to the pre-approval of form contracts would be premature at this time. Similarly, the negotiating which has yet to occur over contract terms and the specifics of the EDCs’ filings will enable a more informed decision on whether to approve winning bids before specific SREC contracts are executed. As such, the Board is not currently in a position to make a definitive statement as to the process it may use for approval of the SREC contracts, but does commit to taking an active role in providing appropriate assistance to the parties.

Having considered the Petitioner’s arguments, the history of this matter, and Staff’s recommendations, the Board HEREBY FINDS that Petitioner has not alleged sufficient factual support for its contention that its implementation of a solar loan program would more effectively foster competition than its filing of a plan for SREC-based financing in accordance with the amended minimum filing requirements. The Board FURTHER FINDS that Petitioner is not prohibited from pursuing a solar loan program in addition to a plan for SREC-based financing in accordance with the amended minimum filing requirements. The Board FURTHER FINDS that such a plan is consistent with the promotion of solar generation in Petitioner’s service territory. The Board FURTHER FINDS that Petitioner’s entrance to SREC-based financing in accordance with the amended minimum filing requirements will more effectively foster the transition to a market-based system of delivering incentives for solar generation than Petitioner’s development of a solar loan program.

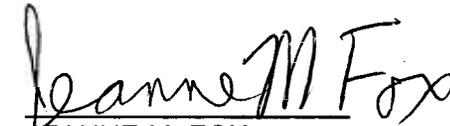
In addition, the Board FINDS that the filing of a plan for SREC-based financing by Petitioner, rather than a petition to participate in a plan filed by JCP&L or ACE, would be subject to the same amended minimum filing requirements set forth in the August 7 Order and would be consistent with encouraging the transition to a market-based system of delivering incentives for solar generation. The Board FURTHER FINDS that withholding any SRECs from the auction process established by the August 7 Order removes those SRECs from a transparent process for setting their price and, would reduce the possibility of lowering their cost and the ultimate cost to the ratepayer.

The Board also FINDS that the GWRA Amendments state that the Board may grant cost recovery from the SBC or from other funding sources and that the Board may, but is not required to, grant incentives for such programs. The Board FINDS that RECO has received an assurance in the August 7 Order that costs not recovered upon resale of SRECs will be recovered from ratepayer funds. The Board FINDS that requirements would be more appropriately addressed in the context of individual SREC financing filings, and thus are not an appropriate element of the current discussion.

Now, therefore, the Board HEREBY REAFFIRMS its directive to Petitioner in the August 7 Order, modified to permit Petitioner the option of submitting its own proposed solar financing plan by January 31, 2009. The Board HEREBY DENIES Petitioner's request to withhold certain of the SRECs acquired through its SREC-based financing, Petitioner's request for a statement that losses associated with the resale of SRECs will be recovered through the Societal Benefits Charge, and Petitioner's request for a statement that Petitioner will be granted incentives for its SREC financing.

DATED: 12/10/08

BOARD OF PUBLIC UTILITIES
BY:


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FREDERICK F. BUTLER
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COMMISSIONER


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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

