



Agenda Date: 7/29/09
Agenda Item: 2L

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

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)	DECISION AND ORDER
SERVICE ELECTRIC AND GAS COMPANY FOR)	APPROVING MODIFICATION
APPROVAL OF A SOLAR ENERGY PROGRAM)	OF PROGRAM RULES FOR
AND ASSOCIATED COST RECOVERY MECHANISM)	JULY SREC SALES AND
)	ALLOWING FORBEARANCE
)	AGREEMENTS
)	
)	DOCKET NO. EO07040278

(SERVICE LIST AND STIPULATION ATTACHED)

BY THE BOARD:

By this Decision and Order, the New Jersey Board of Public Utilities ("Board") considers the stipulation ("Stipulation") executed by Public Service Electric and Gas Company ("PSE&G" or "Company"), the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), Board Staff ("Staff"), and the Mid-Atlantic Solar Energy Industries Association ("MSEIA") (jointly the "Parties") filed with the Board on July 16, 2009. Under the Stipulation, the Parties agreed to modify for the purpose of these specific proceedings two requirements of the March 24, 2008 Settlement ("Program Settlement") approved by the Board on April 16, 2008 in this docket; ("April 16 Order"), as modified by the November 7, 2008 Order, also in this docket ("SREC Auction Order").

BACKGROUND AND PROCEDURAL HISTORY

On April 19, 2007, PSE&G filed with the Board a petition requesting Board approval to implement a 30 megawatt ("MW") solar photovoltaic development program (the "Program") within its electric service territory across all customer classes, with segments for residential, low-income residential, municipal/public entities, and commercial/industrial and not-for-profit customers.

After extensive discovery and settlement meetings, the Program Settlement was executed by the Company, Staff, Rate Counsel, MSEIA, NJNG, and South Jersey Gas Company ("SJG"). On April 16, 2008, the Board issued an Order adopting the Settlement and approving the Program as a pilot for a period of 2 years. One of the provisions of the Program Settlement requires PSE&G to obtain security interests in the equipment financed in any part by the Program. PSE&G has implemented the Program pursuant to the April 16 Order and, according to the Company, has received a robust response, especially in the commercial and industrial sector. As previously stated, on November 7, 2008, the Board issued the SREC Auction Order

approving an agreement among certain parties to the Program Settlement that an auction process would be used to sell the Solar Renewable Energy Credits ("SRECs") associated with the Program.

By letter dated September 5, 2008, PSE&G requested that the Board authorize PSE&G to enter into agreements not to foreclose on its security interests on project equipment for a period of time under certain circumstances ("Forbearance Agreements"). On July 16, 2009, PSEG filed the Stipulation with the Board supported by a certification from Alfred Z. Matos, PSE&G Vice President of Renewables and Energy Solutions dated June 22, 2009 ("Certification"), seeking Board approval to enter into Forbearance Agreements, and to sell those Program SRECs produced prior to June 1, 2009 in an alternative auction process to the one previously approved by the Board in the SREC Auction Order¹.

STIPULATION AND CERTIFICATION

According to the Stipulation and the Certification, PSE&G will (subject to Board approval of the Stipulation):

- Not hold an SREC auction in July, 2009 as described in the SREC Auction Order, and instead will conduct the initial sale of the small number of Program SRECs, approximately 765, via an internet-based SREC trading platform. The first SREC auction was expected to occur in July 2009 if PSE&G had at least 2,000 SRECs. It is not possible to wait and sell these SRECs until the next auction contemplated by the SREC Order because the trading life of these pre June 1, 2009 SRECs will expire by October 1, 2009 pursuant to N.J.A.C. 14:8-2.8(b)(2). The extended two years SREC life trading period under N.J.A.C. 14:8-2.8(b)(1) - as opposed to the one year trading period under N.J.A.C. 14:8-2.8(b)(2) - applies only to SRECs based on energy generated on or after June 1, 2009.
- Report the results of the internet-based sale of SRECs to the Board and send copies of the Report to the Parties within one month after the internet sale is conducted.
- Sell the SRECs generated after June 1, 2009 via the auction process unless the Parties agree otherwise in writing.
- Have the right - but not the obligation - to enter into forbearance agreements under commercially reasonable terms and conditions with Program applicants and their tax equity investors. Certain applicants to the Program have located tax equity investors willing to invest in solar projects financed in part by the Program. These tax equity investors seek to utilize a significant energy tax credit for investing in certain solar energy projects. However, under Section 50 of the Internal Revenue Code of 1986 the taxpayer must repay the tax credit if the solar energy project is disposed of or otherwise ceases to be investment credit property within 5 years after it is placed in service ("Recapture Event"). Accordingly, certain applicants requested PSE&G to forbear its rights as a secured creditor to foreclose on the project equipment if there is a default within the initial five and one-half years of the loan agreement ("Forbearance Period"). According to the Certification these applicants have stated that forbearance agreements are critical to attracting tax equity investors, who need assurance that the solar project will remain in service and that there will be no Recapture Event. PSE&G asserts that many significant solar projects will not be financeable solely with the Program, and assures that the Company would continue to have a security interest on the project equipment throughout the term of the loan, and will be able to foreclose on

¹ SJG and NJNG did not sign the Stipulation, but indicated that they do not support or oppose the Stipulation by letters dated July 15, 2009 and July 13, 2009, respectively.

the project equipment (if necessary) at the end of the Forbearance Period. Furthermore, PSE&G clarifies that during the forbearance period PSE&G would have other rights and remedies available to secure its interest such as accelerating the payment in full under the note and instituting legal proceedings against the applicant in the event of a default under the loan.

DISCUSSION AND FINDINGS

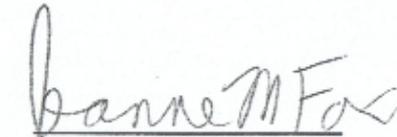
In reaching its determination herein the Board has carefully reviewed the record in this matter, including the Stipulation and the Certification.

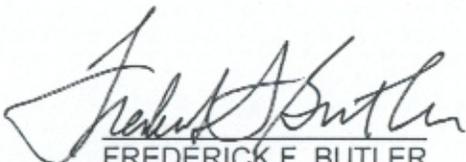
Based on that review, the Board **FINDS** that an internet based sale of SRECs as described in the Stipulation is justified considering the reduced number of SRECs produced under the Program as of June 1, 2009 and the expiration of their trading life in October 1, 2009, subject to review of the costs and results after the filing of the required report. The Board further **FINDS** that in the current economic climate participation of tax equity investors in the financing of certain solar projects may be the determining factor when the solar projects cannot be solely financed under the Program, and that the execution of Forbearance Agreements with limited duration will help to address the legal concerns of tax credit investors. Therefore, the Board **FINDS** that the Stipulation represents a fair and reasonable resolution of this matter.

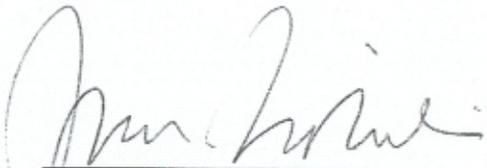
In consideration of the record and the discussions and findings reflected above, the Board **HEREBY ADOPTS** the attached Stipulation in its entirety and **HEREBY INCORPORATES** its terms and conditions as through fully stated herein.

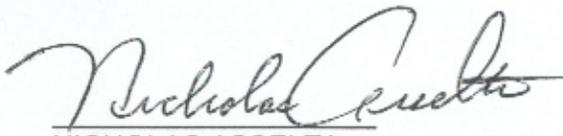
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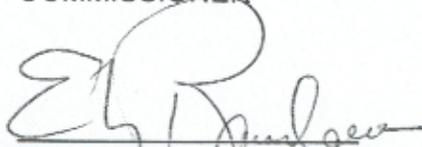
BOARD OF PUBLIC UTILITIES
BY:

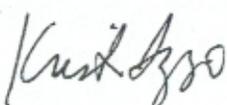

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COMMISSIONER

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
