



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu

ENERGY

IN THE MATTER OF INCREASED SOLAR) DECISION AND ORDER
ALTERNATIVE COMPLIANCE PAYMENTS)
("SACP") IMPACTING THE 2006 AND 2007)
BGS SUPPLIER MASTER AGREEMENTS) DOCKET NO. EO11040215

(E-SERVICE LIST ATTACHED)

BY THE BOARD:

As part of its annual review of the procurement process proposed by the electric distribution companies to obtain electric supply needed by customers who do not purchase that supply from third parties, on January 25, 2008 ("January 25, 2008 Order"), the Board found it was appropriate to allow Basic Generation Service ("BGS") suppliers with contracts that were approved in previous auctions to have an opportunity to recover increased Solar Alternative Compliance Payments ("SACP") resulting from the Board's decision in the September 12, 2007 Solar Transition Order in BPU docket number EO06100744 ("Solar Transition Order") to raise the SACP from \$300 to \$711 for all electricity to be delivered beginning on June 1, 2008. The Division of Rate Counsel appealed, maintaining that the Board did not provide proper notice of its intention to rule on that issue within the BGS proceeding. The Appellate Division upheld the Board's action, finding that Rate Counsel was aware of the open issue from its active participation in the Solar Transition proceeding which carried over into the related BGS proceeding.

On March 10, 2011, the New Jersey Supreme Court reversed the Appellate Division decision finding that the Board had a responsibility to provide notice of its intention to consider the SACP pass through issue, and remanded the matter to the Board for a new "legislative-type" proceeding. To comply with the decision, Staff is recommending that the Board initiate a proceeding that provides for public notice and comment to consider whether the increased SACP costs should be passed through to ratepayers. Staff further recommends that the Board approve a preliminary procedural schedule.

BACKGROUND

In the Solar Transition Order, the Board voted to approve a plan for transition of the Board's solar program that reduces the emphasis on rebates as an incentive to spur solar installations, and that relies more heavily on market-based incentives. Specifically, rebates for larger solar

projects were eliminated; instead, the incentive would come from the value of tradable Solar Renewable Energy Credits ("SRECs") created for each megawatt-hour of electricity generated by an eligible solar electric generating facility. As part of that process, the Solar Transition Order also increased the SACP from \$300 to \$711 for energy provided beginning June 1, 2008, with the SACP declining about three percent annually thereafter through Reporting Year June 1, 2015—May 31, 2016. Because the price of SRECs is effectively capped by the SACP, it was expected that the higher SACP would allow SREC prices to increase substantially above then-current levels.

Each BGS supplier, as part of its "all requirements" obligation under a BGS contract, must do either of the following to satisfy its portion of the solar Renewable Portfolio Standard ("RPS"): (1) procure a sufficient number of SRECs; or (2) pay the SACP. The increase in the SACP that resulted from the Solar Transition Order, and the corresponding increase in SREC prices, affected two sets of BGS contracts which had been entered into by winning BGS suppliers: those covering the period from (1) June 1, 2008 through May 31, 2009 for the BGS contracts covering June 1, 2006 through May 31, 2009; and (2) June 1, 2008 through May 31, 2010 for the BGS contracts covering June 1, 2007 through May 31, 2010. In its January 25, 2008 Order, the Board approved the pass through to ratepayers of the prudently incurred cost of SRECs above \$300 per megawatt-hour for those BGS contracts, after additional notice and hearing.

In deciding to pass the costs onto ratepayers, the Board noted its concern that suppliers may bear significant additional costs for SRECs beyond what they had planned upon when they entered into these contracts. While the suppliers were on notice that the SACP could change, the Board was concerned that requiring the suppliers to bear this cost could discourage them from participating in future Auctions.

Rate Counsel appealed the January 25, 2008 Order, maintaining that the Board had not provided notice that it was going to rule on the SREC pass through issue within the BGS proceeding. The Appellate Division upheld the Board's action finding that Rate Counsel was aware of the issue from its active participation in the Solar Transition proceeding, which carried over into the related BGS proceeding. Rate Counsel then petitioned for certification to the New Jersey Supreme Court, which granted the petition.

New Jersey Supreme Court Decision

On March 10, 2011, the Supreme Court held that the Board failed to provide adequate notice and opportunity for comment before taking an action, by administrative order that was not integral to its decision on the BGS process and which paved the way for potentially \$50 million in increased energy supplier costs to be passed through to ratepayers. Rate Counsel had claimed that, the Board failed to allow interested parties an opportunity to comment and be heard prior to making its decision. The Court found that the Board's action was somewhat akin to a rulemaking, and therefore relied heavily on rulemaking procedures under the Administrative Procedure Act, finding that the Board did not provide adequate notice of its intention to rule on the request to insulate BGS suppliers from the increased solar costs by allowing possible recovery from ratepayers within the BGS proceeding. Although the Supreme Court also criticized Rate Counsel for failing to move for reconsideration or a stay, the Court reversed the Appellate Division decision and remanded to the Board for a new "legislative-type" proceeding on the possible pass through of the increased SREC costs. To comply with the decision, the Board will open a new proceeding which provides for public notice and for comment.

Preliminary Procedural Schedule

Therefore, to begin a review of the potential pass through of the specified SREC costs to ratepayers, the Board HEREBY DIRECTS Staff to initiate a proceeding to determine whether the Board should allow the pass through to ratepayers of the cost of SRECs above \$300 per megawatt-hour for those BGS contracts covering the period from (1) June 1, 2008 through May 31, 2009 for the BGS contracts covering June 1, 2006 through May 31, 2009; and (2) June 1, 2008 through May 31, 2010 for the BGS contracts covering June 1, 2007 through May 31, 2010, provided that the suppliers can show that these costs were prudently incurred. To expedite this process, the Board HEREBY ADOPTS the following preliminary procedural schedule:

Initial Comments Due	June 1, 2011
Oral/legislative Hearing	To be announced
Final Comments Due	July 1, 2011

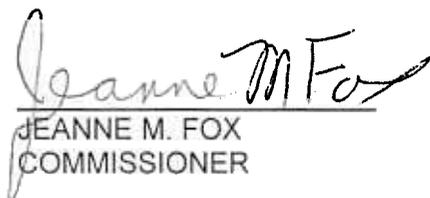
All comments must be filed with the Board's Secretary and be electronically served via email to parties on the attached e-service list. Parties wishing to be added to the e-service list may do so by emailing John Garvey at John.Garvey@bpu.state.nj.us. Parties should adhere to the above schedule unless otherwise directed. Parties will be advised of the time and place of the legislative-style hearing electronically via email and through a posting on the Board's webpage. The Board and/or Staff will also notify parties through the electronic service list and, when possible, through the BPU webpage, of the time and location of any meetings or hearings as well as of any schedule changes

DATED: 4/27/11

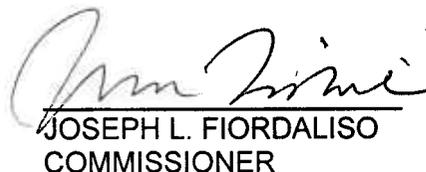
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ATTEST: 
KRISTI IZZO
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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

