



Agenda Date: 7/12/23
Agenda Item: 8D

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

CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR ASSIGNMENT)
OF "PREFERRED" TREC FACTOR FOR FLOATING)
PHOTOVOLTAIC SOLAR) ORDER
DOCKET NO. QO21010069

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Alice M. Bergen, Esq., on behalf of Clayton Companies, LLC.

BY THE BOARD:¹

By this Decision and Order, the New Jersey Board of Public Utilities ("Board") considers a stipulation of settlement ("Stipulation") executed by Clayton Companies ("Clayton" or "Petitioner") and Board Staff ("Staff") (collectively, "Parties"), which resolves the above-captioned matter.

BACKGROUND

Clean Energy Act

On May 23, 2018, the Clean Energy Act ("CEA") was signed into law and became effective immediately. Among many other mandates, the CEA directed the Board to adopt rules and regulations to close the Solar Renewable Energy Certificate ("SREC") Registration Program ("SREC Program" or "SRP") to new applications once the Board determines that 5.1 percent of the kilowatt-hours sold in the State by each Third Party Supplier/Basic Generation Service provider has been generated by solar electric power generators connected to the distribution system ("5.1 % Milestone"). The CEA 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. By Order dated April 6, 2020 the Board determined that the 5.1% Milestone would be attained by April 30, 2020, and the SRP closed on that date.²

¹ Commissioner Christodoulou has recused himself from voting on this matter and Commissioner Marian Abdou did not participate.

² In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17; In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Calculation of 5.1% Milestone for SREC Program Closure, 2020 N.J. PUC LEXIS 259 (Apr. 6, 2020).

Replacing the SRP

The Board decided to implement the replacement of the SREC Program in two phases. Phase 1 was the development of the Transition Incentive (“TI”) Program, open to projects that filed a complete SRP registration after October 29, 2018 but failed to reach permission to operate by the date the 5.1% Milestone has been attained; and to new projects until the Board establishes a registration program for the Successor Program. Phase 2 is the Successor Program, which opened to new registrations on August 28, 2021.

The Board approved the TI Program on December 6, 2019, following a yearlong iterative process.³ As described in more detail in the Transition Incentive Order, the Board approved a transition incentive to be delivered via a Transition Renewable Energy Certificate (“TREC”). A TREC has a base incentive value of \$152/MW-hour. That base value is 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. In other words, the factors allow the TREC to provide differentiated financial incentives for different installation types with the goal of ensuring that ratepayers are providing the minimum necessary financial incentive to develop diverse types of projects.

The Board identified eight market segments and assigned each a factor, ranging from 0.6 to 1.0, as set forth below:

Project Type	Factor
Subsection (t): landfill, brownfield, areas of historic fill.	1.0
Grid supply (subsection (r)) rooftop	1.0
Net-metered non-residential rooftop and canopy	1.0
Community solar	0.85
Grid supply (subsection (r)) ground mount	0.6
Net-metered residential ground mount	0.6
Net-metered residential rooftop and canopy	0.6
Net-metered non-residential ground mount	0.6

In an Order issued on January 8, 2020 to clarify certain aspects of the TI Program, the Board stated that “new or innovative solar technologies can file a petition with the Board requesting that these type projects be assigned a TREC factorization level.”⁴

The New Jersey American Water Company, Inc. (“NJAW”) subsequently filed a petition in Docket No. QO20020111 requesting a TREC factor of 1.0 for an 8.5 MW floating solar project located on a raw water reservoir and for floating solar generally. On July 15, 2020, the Board rejected the request and instead assigned a preliminary TREC factor of 0.6 to NJAW’s project; it also allowed

³ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, 2019 N.J. PUC LEXIS 471 (Dec. 6, 2019) (“Transition Incentive Order”).

⁴ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU No. QO19010068 at 3, final decision, (Jan 8, 2020), <https://nj.gov/bpu/bpu/pdf/boardorders/2020/20200108/1-8-20-8F.pdf>.

other floating solar projects to request similar relief.⁵ Staff noted that although floating solar could have an important role in the State's solar future, there was limited experience with floating solar and a lack of data representative of floating solar as a class. The Board found that NJAW had not adequately demonstrated that the costs or benefits of its project or of floating solar generally merited a specific TREC factor. The Board ordered that floating solar projects "may petition the Board to request a factor greater than 0.6 based upon the specific facts and circumstances attributable to an individual project" and it encouraged settlement discussions with the aim of reaching a satisfactory incentive level.

PETITION

On January 26, 2021, Clayton filed a petition requesting that the Board assign a TREC factor of 1.0 for its proposed 3.2 MW net-metered solar project on a dredge pond at its sand mine in Jackson Township, New Jersey. Clayton stated that floating solar provides "a second use for these mining sites without the need to cause further disruption or destruction to the area of installation" ("Petition"). Petitioner noted that in an Order affirming the application process for Pilot Year Two of the Community Solar Pilot Program, the Board clarified that floating solar projects proposed on mining sites with little or no established floral and faunal resources would receive the highest point preference, on par with rooftops, landfills and solar canopies, with respect to siting. The Petitioner also referenced the July 15, 2020 Board Order's statement that that a project's revenue streams are relevant to determining an appropriate TREC factor and that there is little data on the revenue streams for floating solar, saying that Petition would welcome the opportunity to present specific economic information on its own project.

Pursuant to the July 20 Order, Clayton subsequently requested and received a 0.6 factor for its project.

Staff released a draft Capstone Report for the Board's Administratively Determined Incentive ("ADI") Program, developed in consultation with Cadmus Group, LLC ("Cadmus"). Staff also released underlying modeling spreadsheets that employed the System Advisor Model ("SAM"). One use of SAM is to determine a solar project's anticipated internal rate of return ("IRR") or, alternatively, an incentive level required to provide a given IRR.

The Parties engaged in discovery on the petition during the spring and summer of 2021. Staff's discovery included a request that the Petitioner use the illustrative SAM case developed for the non-residential ground-mounted market segment within the ADI Program and present results for the project on a confidential basis. On May 7, 2021, Clayton presented their modeling of their project using SAM. On September 10, 2021, they answered supplemental discovery requests. Staff reviewed the submissions and made adjustments to the modeling assumptions in consultation with Cadmus.

During the pendency of its petition, Clayton pursued development of the subjection project. In November 2021, Clayton completed construction and began operation of the project.

⁵ In re New Jersey-American Water Company for "Preferred" TREC Factor for Floating Photovoltaic Solar Pursuant to the Board's Transition Incentive Order, 2020 N.J. PUC LEXIS 201 (July 15, 2020) ("July 2020 Order").

STIPULATION

Following a review of the Petition and discovery, the Parties and the New Jersey Division of Rate Counsel (“Rate Counsel”) participated in settlement discussions. Subsequently, on June 23, the Parties executed the Stipulation, which provides in relevant part the following:⁶

1. In relation to the floating solar project, the Parties acknowledge and agree that under the SAM modeling, the inputs provided by Petitioner, as adjusted by Staff and its consultant, have resulted in a TREC factor of 0.72.
3. Based on the SAM modeling presented, as well as prior discovery answers and discussions among the Parties, the Parties recommend that the Board enter an Order determining that the floating solar project receive TRECs based on a 0.72 TREC factor, contingent upon the floating solar project otherwise complying with the Board’s solar renewable energy project regulations and requirements associated with registration, construction and interconnection. The 0.72 TREC factor shall not be deemed precedent for any other floating solar project, including, but not limited to, any project in the TI Program or in the Successor Program. Each floating solar project with a pending TI registration shall remain at the 0.6 TREC factor set forth in the Board’s July 2020 order absent submission, agreement upon discovery and SAM modeling unique to each such floating solar project, and ultimately, Board approval.

On June 28, 2023, Rate Counsel filed comments on the Stipulation. Noting that it had not performed an independent study of the additional analysis submitted to Staff by Clayton in support of a 0.72 TREC factor, Rate Counsel stated that in the absence of its own analysis it was unable to verify whether that factor was appropriate. As a result, Rate Counsel did not signed the Stipulation. Rate Counsel also referenced its understanding that Clayton was prepared to move forward with the project with a TREC factor of 0.6 if the Board did not grant a higher factor. However, deferring to Staff’s expertise, Rate Counsel did not oppose the Board’s approval of the Stipulation.

DISCUSSION AND FINDINGS

The Board believes that floating solar represents a potentially positive development in renewable energy technology. As it is also a novel technology in New Jersey, the Board commends the Parties’ work to determine a rational foundation for an appropriate incentive level.

After careful review of the SAM modeling and Staff’s analysis of same, the Board **FINDS** that the record supports a TREC factor of 0.72 for Clayton’s project. The Board further **FINDS** that, because the TI Program is closed, the TREC factor established for the project should not be considered precedential for any other parties.

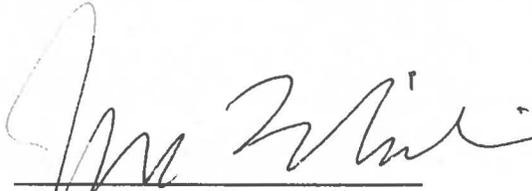
The Board, having carefully reviewed the Stipulation, **HEREBY FINDS** the Stipulation to be reasonable, in the public interest, and in accordance with the law. Accordingly, the Board **HEREBY APPROVES** the attached Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully stated herein.

⁶ Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Paragraphs are numbered to coincide with the Stipulation.

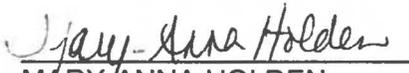
The effective date of this Order is July 19, 2023.

DATED: July 12, 2023

BOARD OF PUBLIC UTILITIES
BY:



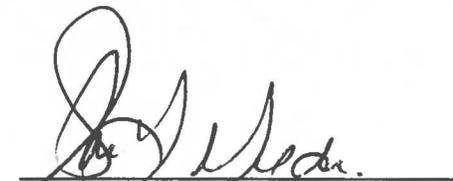
JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER

ATTEST: 

SHERRIL L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF CLAYTON COMPANIES "PREFERRED" TREC FACTOR FOR
FLOATING PHOTOVOLTAIC SOLAR
DOCKET NO. QO21010069

SERVICE LIST

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**I/M/O CLAYTON COMPANIES “PREFERRED”
TREC FACTOR FOR FLOATING
PHOTOVOLTAIC SOLAR**

DOCKET NO.: QO21010069

STIPULATION OF SETTLEMENT

APPEARANCES:

Ryan J. Scerbo, Esq. and **Alice M. Bergen, Esq.**, DeCotiis, Fitzpatrick, Cole & Giblin, LLP, counsel for Petitioner, Clayton Companies

Maura Caroselli (Deputy Rate Counsel) and **Sarah H. Steindel, Esq.** (Assistant Deputy Rate Counsel), for New Jersey Division of Rate Counsel (**Brian O. Lipman, Esq.**, Director)

Matko Ilic, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (**Matthew J. Platkin**, Attorney General of New Jersey)

THIS STIPULATION OF SETTLEMENT (“Stipulation”) is made as of March __, 2023 by and among Petitioner Clayton Companies (“Clayton”) and Staff of the New Jersey Board of Public Utilities (“Staff”) (referred to herein individually as a “Party” and collectively as the “Parties”). The Parties hereby join in recommending that the New Jersey Board of Public Utilities (“Board” or “BPU”) issue a Decision and Order approving this Stipulation in its entirety.

BACKGROUND AND PROCEDURAL HISTORY

On December 6, 2019, following a yearlong study incorporating significant stakeholder input, the Board issued an Order creating the Transition Incentive program, designed to bridge the

gap between the Legacy SREC Program and a still to-be-determined Successor Program.¹ The Transition Incentive (“TI”) was designed to provide a seamless transition for projects submitted to the Board prior to the adoption of the Successor Solar Incentive program. This included projects that submitted an application to the Legacy Solar Renewable Energy Certificate (“SREC”) Registration Program (“SRP”) after October 29, 2018, that had yet to commence commercial operations, and that remained in the SRP pipeline at the time the 5.1% Milestone is achieved. Pursuant to a January 8, 2020 Order, this also included qualifying projects that enter the SRP pipeline after the attainment of the 5.1% Milestone but prior to the Board’s implementation of a registration program for the Successor Program.²

The Transition Incentive was designed to maintain compliance with the statutory cost cap mandated by the Clean Energy Act. The TI Order approved a valuation structure for the Transition Renewable Energy Certificate (“TREC”) that set a base compensation (“Base Compensation”), i.e., the value of a TREC prior to a project factor being applied. The Base Compensation value was set to be \$152/MWh.³ The TI Order specified that “the TRECs would be designed to provide solar producers differing financial incentives tied to the estimated cost and revenue expectations for different types of solar facilities. Thus, the TREC would provide a higher incentive value to projects with the largest gap between project cost and revenue - in the terms of the program design, they would receive a factor of 1.0 (i.e., the full incentive value of the base compensation set by the Board). Projects in segments where there is a smaller gap between costs and revenues would be

¹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“TI Order”).

² In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020, at 3 (“January 8, 2020 Order”).

³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – TREC Base Compensation Schedule, BPU Docket No. QO19010068, Order dated March 9, 2020.

assigned a percentage factor. The overall goal of factorization would be to ensure that ratepayers are providing the minimum necessary financial incentive to develop diverse types of projects consistent with maintaining a healthy solar industry in New Jersey.” TI Order at 6.

Thereafter, by Order dated April 6, 2020, the Board determined that the 5.1% Milestone would be attained by April 30, 2020, and the SRP closed on that date.⁴ The Board implemented the replacement of the SREC Program in two phases: Phase 1 was the development of the Transition Incentive Program, described above; Phase 2 is the Successor Program, which opened to new registrations on August 28, 2021.⁵

In order to clarify certain aspects of the Transition Incentive Program, the Board stated that “new or innovative solar technologies can file a petition with the Board requesting that they be assigned a TREC factorization level.” January 8, 2020 Order at 3. Subsequently, the Board found that “floating solar projects are a unique class of projects and merit distinct treatment in the TREC program.”⁶ The Board also found that there was reasonable amount of support already in the record for the proposition that floating solar will be at least as expensive as a comparable ground mount project, and a similar 0.6 factor may be appropriate for floating solar projects. Ibid.

To ensure that other floating solar projects receive comparable treatment to the Project in Canoe Brook, the Board established a policy that floating solar projects may request from Staff

⁴ In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17 and In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Calculation of 5.1% Milestone for SREC Program Closure, BPU Docket Nos. QO18070698 and QO19010068, Order dated April 6, 2020.

⁵ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO20020184, Order dated July 28, 2021.

⁶ In re the Petition of New Jersey American Water Company for “Preferred” TREC Factor for Floating Photovoltaic Solar Pursuant to the Board’s Transition Incentive Order, BPU Docket No. QO20020111, Order dated July 15, 2020, at 6.

assignment of a preliminary 0.6 TREC factor and may petition the Board to request a factor greater than 0.6 based upon the specific facts and circumstances attributable to an individual project. Ibid.

Additionally, in a subsequent Order, the Board clarified that if a community solar project is proposed as a floating solar project on a site that has little to no established floral and faunal resources, such site will receive the highest point preference in the Community Solar Pilot Program with respect to solar siting.⁷ Rooftops, landfills and solar canopies receive the same point preference. The Clayton Companies requested and received a 0.6 TREC Factor for the within Project.

CLAYTON'S VERIFIED PETITION

On January 26, 2021, Clayton filed a Verified Petition (“Petition”) with the Board in support of its request for assignment of “Preferred” Transition Renewable Energy Certificates (“TREC”) Factor of 1.0 for its 3.2 MWdc floating solar array located in Jackson Township, New Jersey (“Floating Solar Project”). The Floating Solar Project is owned and operated by SolMare, LLC at Clayton Sand Company’s sand mining facility and provides power needs for that facility through New Jersey’s net metering program. RETTEW is the EPC Contractor for the Floating Solar Project. The Floating Solar Project is a standard Level 3 Interconnection and net metering arrangement for an industrial customer with primary service from Jersey Central Power and Light Corporation (“JCP&L”).

⁷ In re the Community Solar Energy Pilot Program and In re the Community Solar Energy Pilot Program Year 2 Application Form and Process – Motion for Reconsideration, BPU Docket Nos. QO18060646 and QO20080556, Order dated January 7, 2021, at 6.

Following the filing of the Petition, Staff served Rate Counsel and JCP&L with the Petition on April 20, 2021.⁸ Thereafter, the parties engaged in extensive written discovery, including a SAM Model with site-specific costs and constraints.

On October 20, 2022, the Parties held a settlement conference via video (*i.e.*, via Teams). The Parties have reviewed the Petition, discovery, and information exchanged during the period of settlement discussions. As a result, the Parties have agreed to enter into this Stipulation, the terms of which are set forth below. In consideration of the recitals and mutual promises and covenants set forth herein, the Parties hereby **STIPULATE AND AGREE** as follows:

STIPULATED MATTERS

1. In relation to the Floating Solar Project, the Parties acknowledge and agree that under the SAM modeling, the inputs provided by Petitioner, as adjusted by Staff and its consultant, have resulted in a TREC factor of 0.72.

FURTHER PROVISIONS

2. Voluntariness. The Parties agree that this Stipulation is voluntary, consistent with law, and fully dispositive of the issues addressed herein. The Parties have entered this Stipulation after consideration of the Petition and discovery in this matter.

3. Based on the SAM modeling presented, as well as prior discovery answers and discussions among the Parties, the Parties recommend that the Board enter an Order determining that the Floating Solar Project receive TRECs based on a 0.72 TREC factor, contingent upon the Floating Solar Project otherwise complying with the Board's solar renewable energy project regulations and requirements associated with registration, construction and interconnection. The

⁸ While JCP&L was served with Petition and discovery, it did not actively participate in the proceedings.

0.72 TREC factor shall not be deemed precedent for any other floating solar project, including, but not limited to, any project in the TI Program or in the Successor Program. Each floating solar project with a pending TI registration shall remain at the 0.6 TREC factor set forth in the Board's July 2020 Order absent submission, agreement upon discovery and SAM modeling unique to each such floating solar project, and ultimately, Board approval.

4. Waiver of Rights of Appeal. Each Party specifically waives any right it may have to seek reconsideration of or to appeal an order by the Board that approves this Stipulation in the manner provided for herein without modification.

5. Rights Upon Disapproval or Modification. This Stipulation contains mutually balancing and interdependent provisions and is intended to be accepted and approved in its entirety. This Stipulation is an integral settlement and the various parts hereof are not severable without upsetting the balance of agreements and compromises achieved among the Parties. In the event the Board disapproves this Stipulation as a whole, it shall be null and void. In the event that any particular aspect of this Stipulation is not accepted and approved by the Board in its entirety, without modification, or is modified by a court of competent jurisdiction: (i) the Parties are not waiving any legal or procedural rights, arguments or claims they may have before the Board or in any forum including rights to appeal the Board decision, and (ii) this Stipulation shall, at the option and discretion of any Party aggrieved thereby, exercised by written notice to the other Parties within ten days after receipt of any such adverse decision, be deemed null and void in which case the Parties shall be placed in the same position that they were in immediately prior to its execution, and the Parties may proceed to litigate issues addressed herein to a conclusion and pursue other available legal remedies as though this Stipulation had not been signed.

6. Party Reservations. This Stipulation represents a negotiated compromise resolution that has been made exclusively for the purpose of resolving the issues addressed in the above-captioned case and docket. Although binding on the Parties with respect to the issues resolved herein in this proceeding, this Stipulation, in total or by specific item, is in no way binding upon the Parties and is not to be considered or cited as precedent in favor of or against their respective positions on any issue in any other proceeding, except to enforce the terms of this Stipulation. The Parties agree that the resolution of the issues herein shall apply only to the above-captioned case and that any similar future cases shall be reviewed by the Board on an individual basis. This Stipulation is without prejudice to the positions of the respective Parties with respect to any future proceedings involving the Company. Further, by executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation or Board Order, except where the terms of this Stipulation supersede such prior Stipulation.

7. Amendment. This Stipulation represents the full scope of the agreement between the Parties. This Stipulation may only be modified by a further written agreement executed by all of the Parties to this Stipulation.

8. Governing Law. This Stipulation shall be governed and construed in accordance with the laws of the State of New Jersey.

9. Execution. This Stipulation may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by each of the Parties. Each Party has caused its duly authorized representative to execute below and deliver this Stipulation.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF
NEW JERSEY
Attorney for the Staff of the Board of Public
Utilities

By: Matko Ilic

Matko Ilic

Title: Deputy Attorney General

Date: June 23, 2023

DECOTIIS, FITZPATRICK COLE
& GIBLIN, LLP
Attorneys for Petitioner

By: /s Alice M. Bergen

Alice M. Bergen

Title: Counsel

Date: June 8, 2023