



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY)
PROGRAMS AND BUDGET FOR FISCAL YEAR 2017:)
BLOOM ENERGY CORPORATION)
)
) ORDER DENYING MOTION
FOR RECONSIDERATION
DOCKET NO. QO16040353

Party of Record:

Murray E. Bevan, Esq., Attorney for Bloom Energy Corporation

BY THE BOARD:

This order concerns a Motion for Reconsideration (Motion) by Bloom Energy Corporation (Bloom or Petitioner) requesting that the Board of Public Utilities (Board) reconsider the portion of the Board's June 29, 2016 Order (2017 Budget Order) suspending incentives for Fuel Cells without Heat Recovery ("All-Electric" or "Electric Only" Fuel Cells) pending further analysis by the Board and its Office of Clean Energy Staff (OCE Staff).¹

BACKGROUND

On February 9, 1999, the Electric Discount and Energy Competition Act (EDECA or the Act) was signed into law, creating the societal benefits charge (SBC) to fund programs for the advancement of energy efficiency (EE) and renewable energy (RE) in New Jersey. The Act also provided for the Board to initiate proceedings and undertake a comprehensive resource analysis (CRA) of EE and RE programs in New Jersey every four years. The CRA is then used to determine the appropriate programs and levels of funding over the next four years for the EE and Class I RE programs that will be part of what is now known as New Jersey's Clean Energy Program (NJCEP). Accordingly, since 1999, the Board has determined the EE and RE programs that will be part of NJCEP and the budgets for each of those programs – through

¹ I/M/O the Clean Energy Programs and Budget for Fiscal Year 2017; In the Matter of Revisions to New Jersey's Fiscal Year 2017 Protocols to Measure Resource Savings, Dkt. Nos. QO16040353 and QO16060525 (July 1, 2016) (2017 Budget Order).

Fiscal Year 2017 (FY17).² The Board's determination of the FY17 programs is set forth in its 2017 Budget Order.

In April 2015, the Board issued RFP 16-X-23938 (2015 RFP) seeking proposals for a Program Administrator (PA) to provide the services necessary to manage and administer NJCEP and, on December 1, 2015, the New Jersey Department of Treasury awarded the PA contract (Contract) to Applied Energy Group (AEG). The Contract requires AEG to participate in the annual CRA process, participate in the annual budget process, prepare draft annual Compliance Filings for NJCEP, design and implement improvements to NJCEP's programs, obtain and consider stakeholder comments, coordinate annual NJCEP evaluations, and implement the agreed-upon recommendations flowing from those evaluations, among other things.

On May 31, 2016, OCE Staff, with the assistance of AEG, distributed to the EE and RE listserv and posted to the BPU website a notice of the availability of the proposed FY17 Program Descriptions and Budgets for NJCEP (FY17 Compliance Filings) as well as related documents. OCE Staff invited comments on the foregoing documents. A public hearing regarding these documents was held on June 10, 2016 and the documents were discussed at the EE Committee and the RE Committee on June 14, 2016.

A portion of the proposed FY17 Compliance Filings included a proposal to suspend NJCEP incentives for All-Electric Fuel Cells (Suspension Proposal) pending an evaluation of their costs, emissions and benefits. The FY17 compliance filings cited several reasons for the Suspension Proposal, including the following:

- Concerns raised by BPU Commissioners at recent agenda meetings regarding the costs and benefits of All-Electric Fuel Cells.
- The higher cost for the benefit of All-Electric Fuel Cells compared to the lower cost for the benefit of other distributed generation technologies, including those with lower emissions that are not currently supported by NJCEP.
- Issues raised in a recent report by California Public Utility Commission (CPUC) staff <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M156/K013/156013203.PDF> regarding both the costs and benefits of All-Electric Fuel Cells, as well as CO² emission levels.³

On June 17, 2016, Bloom submitted written comments regarding the FY17 Compliance filings. Generally, Bloom supported the idea of an evaluation of All-Electric Fuel Cells but opposed the Suspension Proposal. Bloom also noted that CPUC did not accept its staff's recommendation to eliminate funding for All-Electric Fuel Cells within California's Self Generation Incentive Program (SGIP). Additionally, at the June 10, 2016 public hearing, Bloom as well as several other entities, commented opposing the Suspension Proposal. Rate Counsel submitted comments generally supporting the proposed suspension of incentives for All-Electric Fuel Cells and recommending that, if any such fuel cells are allowed to participate in NJCEP, it should be only those that include heat recovery. OCE Staff's responses to these comments were memorialized in the FY17 Budget Order.

² Previously, the budgets and programs were based on calendar years, but, in 2012, the Board determined to begin basing the budgets and programs on fiscal years in order to align with the overall State budget cycle.

³ CPUC staff recommended eliminating incentives for All-Electric Fuel Cells as part of California's SGIP.

After considering the FY17 Compliance Filings and the written and public hearing comments thereto, OCE Staff recommended that the Board suspend incentives for All-Electric Fuel Cells. In addition, OCE Staff proposed that an independent evaluation of the costs, emissions and benefits of All-Electric Fuel Cells be performed, which OCE staff could subsequently use to make further recommendations to the Board regarding the technology.

In the FY17 Budget Order, after reviewing OCE Staff's recommendations and the comments submitted regarding the FY17 Compliance Filings, the Board found that the "Revised FY17 Compliance Filings and Budgets will benefit customers and are consistent with the EMP goal of reducing energy usage and associated emissions, will provide environmental benefits beyond those provided by standard offer or similar programs and are otherwise reasonable and appropriate." (FY17 Budget Order at page 16). Consequently, the Board approved the FY17 Compliance Filings.⁴

On July 13, 2016, Bloom filed a motion for reconsideration seeking the Board's reconsideration of the portion of the FY17 Budget order suspending incentives for All-Electric Fuel Cells.

Pursuant to N.J.A.C. 14:1-8.7 the Board must grant or otherwise act upon a motion for reconsideration within 60 days of its filing or it will be deemed denied. Accordingly, on August 24, 2016, the Board authorized the issuance of a letter from the Board Secretary to Bloom, informing Petitioner that the Board was continuing its review and would act on it beyond the 60-day time limit.

DISCUSSION AND FINDINGS

A motion for reconsideration requires the moving party to allege "errors of law or fact" that were relied upon by the Board in rendering its decision. N.J.A.C. 14:1-8.6(a)(1). The Board "will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board failed to take note of a significant element of fact or law." In the Matter of the Implementation of L. 2012, c.24, the Solar Act of 2012, Docket No. E012090832 (July 19, 2013) at 5; In the Matter of Michael Manis and Manis Lighting, LLC - New Jersey Clean Energy Program Renewable Energy Incentive Program, Docket No. QS14040316 (April 15, 2015) Additionally, N.J.S.A. 48:2-40 expressly provides that the Board at any time may revoke or modify an order made by it. Twp. Of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 428 (1969); see also, N.J.A.C. 14:1-8.6(b).

An applicant's dissatisfaction with a decision does not provide justification for the Board to modify its order. D'Atria v. D'Atrla, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Instead, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent "evidence." Ibid. See, e.g., M. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (motion for reconsideration rejected when Plaintiff merely proposed a new legal theory based on facts known at time Plaintiff responded to motion for summary judgment); In the Matter of the Implementation of L.2012, c.24, The Solar Act of 2012, Docket Nos. E012090832V, E012090862V, E013050387V, E013050429V (May 21, 2014) (The Board rejected Movants' motions for reconsideration where no relevant new facts

⁴ In a separate July 1, 2016 order, the Board reviewed and approved a Comprehensive Energy Efficiency and Renewable Energy Resource Straw Proposal including the New SBC funding amount for FY17. I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the Fiscal Year 2017, Dkt. No. QO16040352 (July 1, 2016).

were alleged). The moving party must demonstrate that the action was arbitrary, capricious, or unreasonable. D'Atria, supra, 242 N.J. Super. at 401. Simple disagreement, even if based on opposing expert opinions, is not enough to overcome the presumption of reasonableness ascribed to an agency's findings. Animal Prot. League of N.J. v. N.J. Dept. of Env'tl. Prot., 423 N.J. Super. 549, 562 (App. Div. 2011) (citations omitted). As set forth below, the standard for granting a motion for reconsideration has not been met here.

Bloom argues that the 2017 Budget Order was based on a "demonstrably incorrect interpretation of the CPUC final decision" which rejected the CPUC staff's recommendation to eliminate All-Electric Fuel Cells and therefore "the Board's reliance on the rejected CPUC report means that the Board failed to appreciate the significance of competent evidence. (Bloom, Brief in Support of Motion for Reconsideration at page 5). Bloom fails to explain or support this contention. As referenced in the 2017 Budget Order, the Board considered the CPUC's final action and determined that, notwithstanding the CPUC's decision, the suspension of NJCEP incentives All-Electric Fuel Cell incentives in FY2017 was appropriate.

In addition, Bloom contends that the Board "misconstrued" the CPUC proceedings by determining the final CPUC determination was distinguishable from the Suspension Proposal in that "the subject CPUC program, i.e., its [SGIP], was designed to support self-generation, not EE or RE like NJCEP." Bloom disagrees with the Board's decision. Specifically, Bloom argues that the SGIP and NJCEP are similar because they share a common goal of reducing Greenhouse Gas emissions.

This argument fails to meet the standard for reconsideration under N.J.S.A. 14:1-8.6(a)(1). The Board's characterization of its Program as different from the CPUC's program does not constitute a basis for its decision to be reconsidered. Bloom has not shown that the Board's characterization of its program is based upon a "palpably incorrect or irrational basis." Further, the Board is not bound by the actions that California or other states may take related to fuel cells. The Board has authority to make its own determinations regarding inclusion or elimination of All-Electric Fuel Cell incentives in NJCEP and properly did so in this matter.

Last, Bloom argues that the suspension of All-Electric Fuel Cell incentives should be reconsidered because it was based upon the "assumption that All-Electric Fuel Cells are more expensive than competing technologies and have a payback period longer than [their] expected equipment life." (Bloom Brief in Support of Motion for Reconsideration at page 5). In support of its argument, Bloom submits a conclusory statement that the Board's determination "fails to consider the federal investment tax credit and a variety of other financing factors." This unsupported statement is insufficient to rebut the Board's concern about the "higher cost for the benefit of All-Electric Fuel Cells Compared to the lower cost for the benefit of other distributed generation technologies including those with lower emissions" and therefore, does not provide a basis for reconsideration. 2017 Budget Order at 56-58, 77. In short, Bloom has failed to provide any probative, competent evidence that the Board has failed to consider.⁵

As discussed above, Bloom has failed to meet the burden for reconsideration and has failed to provide a proper basis to challenge the Board's finding that the FY17 compliance filings will benefit the customer and are consistent with the EMP goal of reducing energy usage and associated emissions.

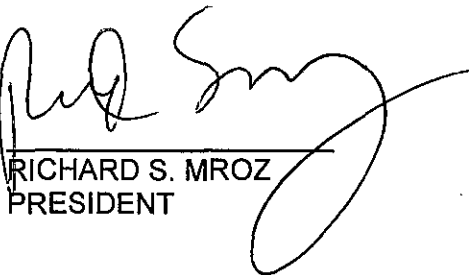
⁵ The CPUC decision was based primarily on CPUC Staff's erroneous application of an SGIP metric. In contrast there is no indication that OCE Staff or the Board erroneously applied any metric.

Based on its review of the record, the Board **FINDS** that Bloom has not demonstrated that the Board acted in an arbitrary, capricious, or unreasonable manner. The Board **FINDS** that nothing in Bloom's motion causes or requires the Board to reconsider its FY17 Budget Order suspending All-Electric Fuel Cells, pending further analysis and recommendation. Accordingly, the Board **HEREBY DENIES** Bloom's Motion for Reconsideration.

This Order shall be effective on October 3, 2016.

DATED: 9/23/16

BOARD OF PUBLIC UTILITIES
BY:



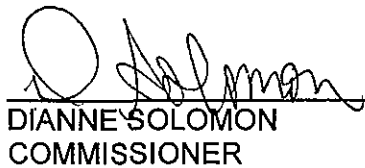
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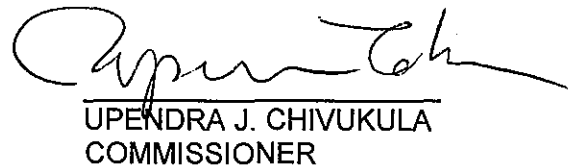
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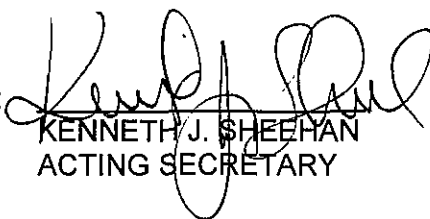
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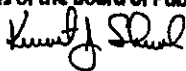
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ATTEST: 
KENNETH J. SHEEHAN
ACTING SECRETARY

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



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FISCAL YEAR 2017 - DOCKET NO. QO16040353**

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