



Agenda Date: 2/17/23
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 OF NEW JERSEY)
AMERICAN WATER, INC. FOR ASSIGNMENT OF)
"PREFERRED" TREC FACTOR FOR FLOATING)
PHOTOVOLTAIC SOLAR PURSUANT TO THE)
BOARD'S TRANSITION INCENTIVE ORDER) DOCKET NO. QO20020111

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Donald C. Shields, Vice President, New Jersey American Water Company, Inc.
Howard Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, LLP on behalf of Solar Renewable Energy

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 New Jersey American Water Company, Inc. ("NJAW") 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 TPS/BGS 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

¹ Commissioner Christodoulou recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

the 5.1% Milestone would be attained by April 30, 2020, and the SRP closed on that date.²

Replacing the SRP

The Board chose to implement the replacement of the SREC Program in two (2) 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 (8) 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

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).

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>.

PETITION

By letter dated February 4, 2020, NJAW filed a petition seeking a “preferred siting,” or 1.0 Factor, for floating solar arrays generally and for a specific project, a floating 8.5 megawatt (“MW”) photovoltaic array proposed for NJAW’s Canoe Brook water treatment facility (“Canoe Brook Project”). By letter dated February 10, 2020, Solar Renewable Energy, LLC, (“SRE”), RETTEW, and New Jersey Resources Clean Energy Ventures (“NJRCEV”) (collectively, “Project Supporters”) filed a letter in support of the petition.⁵ These entities identified themselves as, respectively, the developer, the energy performance contractor, and the financier/owner-operator and state that SRE formed a separate entity, Canoe Brook Solar Partners, LLC for the Canoe Brook Project. Following execution of a non-disclosure agreement, the parties engaged in discovery on the petition during the spring of 2020.

On July 15, 2020, the Board entered an order finding that Petitioner had not adequately demonstrated that the costs or benefits of the Canoe Brook Project merited a specific TREC factor. However, the July 2020 Order allowed the parties to continue discovery and encouraged the parties to engage in settlement discussions with the aim of reaching a satisfactory incentive level for the Canoe Brook Project.⁶ The Board directed that the Canoe Brook Project receive a preliminary assignment of a 0.6 TREC factor.

While the petition was pending, 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.

Following release of the draft Capstone Report, Staff proposed to the Project Supporters that they use the illustrative SAM case developed for the non-residential ground-mounted market segment within the ADI program and present results for the Canoe Brook Project on a confidential basis.

On September 11, 2020, the Project Supporters presented their modeling of the Canoe Brook Project using SAM. On November 10, 2020, they answered supplemental discovery requests. Staff has reviewed the submissions and made adjustments to the modeling assumptions in consultation with Cadmus.

⁵ Although styled as a “joint petition” in the text, the attorney for these entities subsequently identified this filing as a “letter in support” of the NJAW petition in an email to Board staff and it is so considered here.

⁶ 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 December 22, 2022, the Parties executed the Stipulation, which provides in relevant part the following:⁷

- A. In relation to the Canoe Brook Project, the Parties acknowledge and agree that under the SAM modeling the inputs provided by Petitioner and the Parties, as adjusted by Board Staff and its consultant, have resulted in a TREC factor of 0.76.
- B. The Parties agree that submission of modeling by the Project Supporters and settlement of this matter based on the SAM modeling and prior discovery is a reasonable mechanism for the efficient resolution of the TREC factor for the Canoe Brook Project.
- C. 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 Canoe Brook Project receive TREC factors based on a 0.76 TREC factor, contingent upon the Canoe Brook Project otherwise complying with the Board’s solar renewable energy project regulations and requirements associated with the registration, construction, and interconnection. The Parties also recommended that the 0.76 TREC factor not be deemed precedent for any other floating solar project, including any project in the TI Program or in the Successor Program, and that floating solar projects with pending TI registrations should remain at the 0.6 TREC factor set in the July 2020 Order absent submission, agreement upon discovery, and SAM modeling unique to each such floating solar project and, ultimately, Board approval.

On January 18, 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 NJAW and the Project Supporters in support of a 0.76 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, it had not signed the Stipulation. Rate Counsel also referenced its understanding that NJAW and the Project Supporters had been prepared to move forward with the Canoe Brook 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 0.76 for the Canoe Brook Project. The Board further **FINDS** that, because the TI Program is closed, the TREC factor established for the Canoe Brook Project should not be considered precedential for any other parties.

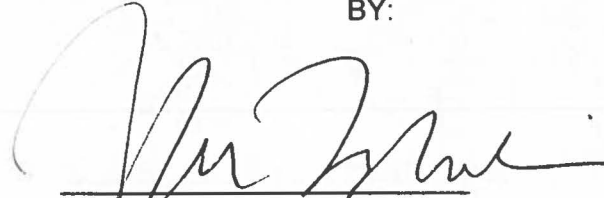
⁷ Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Each paragraph is numbered to coincide with the paragraphs of the Stipulation.

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.

The effective date of this Order is February 24, 2023.

DATED: February 17, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

CARMEN D. DIAZ
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.

IN THE MATTER OF THE PETITION OF NEW JERSEY AMERICAN WATER, INC. FOR
ASSIGNMENT OF "PREFERRED" TREC FACTOR FOR FLOATING PHOTOVOLTAIC SOLAR
PURSUANT TO THE BOARD'S TRANSITION INCENTIVE ORDER

DOCKET NO. QO20020111

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January 17, 2023

BY E-MAIL

New Jersey Board of Public Utilities
Attn: Board Secretary
44 South Clinton Avenue
Trenton, NJ 08625-0350

**RE: IN THE MATTER OF 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**

Dear Madam Secretary:

The undersigned represents Canoe Brook Solar Partners, LLC, the Petitioner in BPU Docket QO20020111. In furtherance of the Board's July 15, 2020 Order (Item 8F) in this matter, the Petitioner engaged in further discussions with the Board Staff and Rate Counsel. The Petitioner reached agreement with the Board Staff on an increased TREC factor for the Petitioner's solar project, which project will serve New Jersey American Water's Canoe Brook Water Treatment Facility. The undersigned was advised that Rate Counsel declined to sign the draft Stipulation of Settlement.

We hereby file the Stipulation of Settlement reached in this matter among Petitioner, RETTEW Field Services Inc., NJR Clean Energy Ventures III Corporation, New Jersey American Water Company, Inc., and the Board Staff for the Board's consideration.

Copies of the Stipulation of Settlement are being served on Board Staff and New Jersey Rate Counsel electronically. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,

RUSSO TUMULTY NESTER
THOMPSON & KELLY, LLP


HOWARD O. THOMPSON

Enclosure
c. Board Staff and NJ Rate Counsel

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

IN THE MATTER OF THE PETITION OF : **STIPULATION OF**
NEW JERSEY-AMERICAN WATER :
COMPANY FOR “PREFERRED” TREC : **SETTLEMENT**
FACTOR FOR FLOATING :
PHOTOVOLTAIC SOLAR PURSUANT TO :
THE BOARD’S TRANSITION INCENTIVE :
ORDER : BPU DOCKET NO. QO20020111

This Stipulation of Settlement (“**Stipulation**”) is hereby made and executed as of December 21, 2022, by and among New Jersey American Water Company, Inc. (“**NJAW**” or “**Petitioner**”), NJR Clean Energy Ventures III Corporation (“**NJRCEV**”), Canoe Brook Solar Partners, LLC (“**CBSP**”), Solar Renewable Energy, LLC (“**SRE**”), RETTEW Field Services, Inc. (“**RETTEW**”), the Staff of the New Jersey Board of Public Utilities (the “**Board Staff**”), the New Jersey Division of Rate Counsel (“**Rate Counsel**”), (each, a “**Party**” and, together, the “**Parties**”) in settlement of the above-captioned matter.

The Parties join in recommending that the New Jersey Board of Public Utilities (“**Board**”) issue an Order approving this Stipulation in its entirety

BACKGROUND

1. Petitioner filed a letter petition on February 4, 2020 (the “**Petition**”), which was assigned Docket No. QO20020111, requesting a 1.0x TREC factor in the Board’s Transition Renewable Energy Certificate (“**TREC**”) program for the Canoe Brook Project (as defined below).
2. Petitioner owns and operates the Canoe Brook Water Treatment Facility in Millburn Township, New Jersey.
3. SRE has been developing a floating 8.92 megawatt (“**MW**”) photovoltaic solar array project to be located on Reservoir 1 of the Canoe Brook Water Treatment Facility to serve the treatment facility (the “**Canoe Brook Project**”). CBSP has developed and RETTEW is the engineering, procurement and construction contractor for the Canoe Brook Project. NJRCEV has financed the Canoe Brook Project with the ultimate intent to own and operate it. SRE, RETTEW, and NJRCEV (collectively the “**Project Supporters**”) filed a letter in support of the Petition on February 10, 2020.
4. On March 19, 2020, NJAW, Rate Counsel, the Board Staff, SRE and NJRCEV executed a Non-Disclosure Agreement.
5. Discovery was served and answered in April and June 2020.

6. On July 15, 2020, the Board entered an Order in this Docket (Agenda Item 8F)(the “July 2020 Order”). While finding, at page 6, “that floating solar projects are a unique class of projects and merit distinct treatment in the TREC program,” the Board also found that “Petitioner and the Project Supporters failed to demonstrate that floating solar projects, as a class, warrant a 1.0 Factor at this time.”
7. In the July 2020 Order, at page 6, the Board established “a policy that floating solar projects may request from Staff 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.”
8. Further, at page 7 of the July 2020 Order,

With respect to the Canoe Brook Project, the Board **FINDS** that Petitioner and the Project Supporters have not adequately demonstrated to date that the costs or benefits merit a specific factor, but will allow the parties to continue discovery and, potentially, will assign the matter to a presiding commissioner at a future date. In the meantime, the Board encourages Staff, the Movant, Rate Counsel, and all parties, to engage in settlement discussions with the aim of reaching a satisfactory incentive level for the Canoe Brook project. The Board **DIRECTS** that the Canoe Brook project receive a preliminary assignment of a 0.6 TREC factor.

9. In furtherance of the Board’s aforementioned encouragement to engage in settlement discussions, the Project Supporters requested delineation of additional information that could be provided, such that the Canoe Brook Project might receive a higher TREC factor than 0.6x.
10. During the pendency of this proceeding, Board Staff, in consultation with Cadmus Group, LLC, released a draft Capstone Report for the Board’s Administratively Determined Incentive (“ADI”) Program, along with 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.
11. Board Staff proposed to the Project Supporters that they use the illustrative SAM case developed for the non-residential ground-mounted market segment within the ADI program and present results for the Canoe Brook Project on a confidential basis. Board Staff stated that the modeling would allow comparison to other types of solar projects and could demonstrate whether or not a TREC factor higher than 0.6 was appropriate for the Canoe Brook Project.
12. The Project Supporters have presented their modeling of the Canoe Brook Project using SAM and have also provided answers to supplemental discovery requests in November 2020. Board Staff has reviewed the submissions and made adjustments to the modeling assumptions in consultation with the Board Staff’s consultant.

AGREEMENT

- A. In relation to the Canoe Brook Project, the Parties acknowledge and agree that under the SAM modeling the inputs provided by Petitioner and the Parties, as adjusted by Board Staff and its consultant, have resulted in a TREC factor of 0.76.
- B. The Parties agree that submission of modeling by the Project Supporters and settlement of this matter based on the SAM modeling and prior discovery is a reasonable mechanism for the efficient resolution of the TREC factor for the Canoe Brook Project.
- C. 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 Canoe Brook Project receive TREC factors based on a 0.76 TREC factor, contingent upon the Canoe Brook Project otherwise complying with the Board's solar renewable energy project regulations and requirements associated with registration, construction and interconnection. The 0.76 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.

MISCELLANEOUS

1. Voluntariness. The Parties agree that this Stipulation is voluntary, consistent with law, and, if approved by the Board in its entirety, fully dispositive of the issues addressed herein.
2. Expeditious Board Approval. Each Party agrees to use its best efforts to ensure that this Stipulation is submitted in a timely fashion to the Board for its approval without modification or condition. The Parties further acknowledge that a Board Order approving this Stipulation will become effective upon such date as the Board may specify.
3. Confidentiality. The SAM modeling presented by the Project Supporters has been claimed as confidential by the Project Supporters pursuant to the NDA and should be handled consistent with the terms of the NDA.
4. Rights upon Disapproval. This Stipulation represents a mutual balancing of interests and, therefore, is intended to be accepted and approved in its entirety. If the Board does not adopt this Stipulation in its entirety in an Order, any Party hereto is free to pursue its then-available legal remedies with respect to all issues in this Stipulation as though this Stipulation had not been signed.
5. Party Reservations. Although binding on the Parties with respect to the issues resolved herein in these proceedings, this Stipulation, in total or by specific item, is in no way binding upon the Parties (or non-signatories) 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 unique resolution of the issues relating to the Petition shall apply only to the Petition and the Canoe Brook Project. The Parties acknowledge and agree that any similar future cases shall be reviewed by Board Staff on an individual basis. This Stipulation specifically is without prejudice to the positions of the respective Parties or of the Board with respect to any other proceedings involving floating solar projects and their eligibility for incentives such as TRECs.

6. Captions. The subject headings of the sections of this Stipulation are inserted solely for the purpose of convenient reference and are not intended to, nor shall they, affect the meaning of any provision of this Stipulation.

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

8. Counterparts. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties.

WHEREFORE, the Parties have duly executed and do respectfully submit this Stipulation to the Board and recommend that the Board issue a final Decision and Order adopting and approving this Stipulation.

SOLAR RENEWABLE ENERGY, LLC

By: _____
Howard O. Thompson, Esq.
Russo Tumulty Nester Thompson & Kelly, LLP

Date: December __, 2022

RETTEW FIELD SERVICES, INC.

By: _____

Date: December __, 2022

NJR CLEAN ENERGY VENTURES III CORPORATION

By: _____
DocuSigned by:
Robert Pohlman
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Robert Pohlman
Vice President

Date: December 21, 2022

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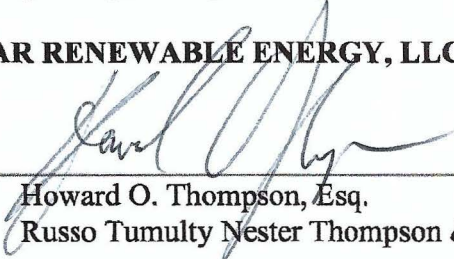
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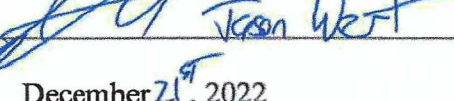
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SOLAR RENEWABLE ENERGY, LLC

By: 
Howard O. Thompson, Esq.
Russo Tumulty Nester Thompson & Kelly, LLP

Date: December 21, 2022

RETTEW FIELD SERVICES, INC.


By: 
Date: December 21st, 2022

NJR CLEAN ENERGY VENTURES III CORPORATION

By: _____


Date: December __, 2022

**NEW JERSEY-AMERICAN WATER
COMPANY, INC.**

By: 
Donald Shields
Vice President, Engineering

Date: December 21, 2022

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

By: 
Tere Klein
Deputy Attorney General

Date: December 22, 2022