



STATE OF NEW JERSEY
Board of Public Utilities
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Newark, NJ 07102
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OFFICE OF CLEAN ENERGY

IN THE MATTER OF ATLANTIC CITY ELECTRIC)
COMPANY RENEWABLE ENERGY PORTFOLIO)
STANDARD- AMENDMENTS TO THE MINIMUM FILING)
REQUIREMENTS FOR ENERGY EFFICIENCY,)
RENEWABLE ENERGY, AND CONSERVATION)
PROGRAMS; AND FOR ELECTRIC DISTRIBUTION)
COMPANY SUBMITTALS OF FILINGS IN CONNECTION)
WITH SOLAR FINANCING)

ORDER
DOCKET NO. EO08100875

IN THE MATTER OF THE VERIFIED PETITION OF)
JERSEY CENTRAL POWER AND LIGHT COMPANY)
CONCERNING A PROPOSAL FOR AN SREC-BASED)
FINANCING PROGRAM UNDER N.J.S.A 48:3-98.1)

ORDER
DOCKET NO. EO08090840

(SERVICE LIST AND STIPULATION ATTACHED)

BY THE BOARD:

BACKGROUND AND PROCEDURAL HISTORY

The New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA"), provided for the New Jersey Board of Public Utilities ("Board") to adopt Renewable Energy Portfolio Standards ("RPS"), and authorized the Board to amend those standards by regulation. The RPS requires retail electricity suppliers and providers to include a minimum percentage of qualified renewable energy in the electricity they sell during each one-year period ending May 31 (a "Reporting Year").

Suppliers and providers may comply with solar RPS requirements by submitting Solar Renewable Energy Certificates ("SRECs"), or by paying a Solar Alternative Compliance Payment ("SACP"). Thus, a supplier or provider who holds too few SRECs to comply with the RPS can make up for the shortfall by paying the SACP for each megawatt hour ("MWh") of the shortfall. Because a supplier or provider has the option of either paying the SACP or obtaining SRECs to comply with the solar RPS, the cost of the SACP, in practice, becomes the upper limit on the market price of an SREC.

In May 2006, Board Staff ("Staff") began a stakeholder process to consider various models to enhance the ability of energy suppliers and providers to meet the targets for solar electric generation established in the RPS rules and to support the continued growth of New Jersey's solar market. The stakeholder process made clear that, for the time being, the growth of the solar sector will continue to depend upon the availability of incentives above and beyond pure market forces. Equally clear is that rebate-type incentives were not sustainable in the long term. Accordingly, the Board's Order, dated December 6, 2007 *I/M/O the Renewable Energy Portfolio Standards, Alternative Compliance Payments and Solar Alternative Compliance Payments* Docket No. EO06100744 ("December 6 Order"), set a course towards reducing New Jersey's reliance on rebates and transitioning to a more market-based means of providing solar incentives. The Board's primary considerations in that transition included: the cost that ratepayers bear; fairness and equity to all ratepayer classes; job growth; improved reliability and security of New Jersey's electricity infrastructure; the ability to achieve sustained orderly development of the solar portion of that infrastructure; reducing transaction costs; and supporting other policy goals, especially with respect to environmental protection and public health.

In the December 6 Order, the Board established a rolling, eight-year SACP schedule, setting a price for the SACP for each of the eight Reporting Years, up to and including the year ending May 31, 2016. This SACP schedule is designed to send an important signal of pricing predictability to financial markets. Furthermore, the Board provided more flexibility in the trading of SRECs by establishing a two-year SREC trading life, and allowed each solar electric generation system to continue generating SRECs over a 15-year qualification life. The Board also put controls in place to limit the overall cost of solar incentives. To facilitate these changes, the Board adopted amendments to the RPS rules. *I/M/O Adopted Amendments to the Renewable Portfolio Standards N.J.A.C. 14:8-2*, Docket No. EX08040255 ("Solar Transition Rules"). The Solar Transition Rules were published and became operative on March 16, 2009. 41 N.J.R. 1261(a).

Recognizing that SREC-based financing depends not only upon certainty about long-term maximum prices for SRECs but also on greater certainty about the minimum cash flow that a project can generate from the creation and sale of SRECs, the December 6 Order stated that "there is a widespread consensus that an additional mechanism or mechanisms will be necessary for the market to achieve levels of growth sufficient to meet RPS requirements at an acceptable cost." The Board directed the Office of Clean Energy ("OCE") to initiate a proceeding to explore whether additional securitization was needed, and if so, to provide specific recommendations regarding the methods and costs of providing such securitization.

On August 7, 2008, the Board issued an Order *I/M/O the Renewable Energy Portfolio Standard: Amendments to the Minimum Filing Requirements for Energy Efficiency, Renewable Energy, and Conservation Programs, and for Electric Distribution Company Submittals of Filings in Connection with Solar Financing* Docket No. EO06100744 ("August 7 Order"). Among other things, the August 7 Order directed Jersey Central Power and Light Company ("JCP&L") and Atlantic City Electric Company ("ACE") to file with the Board a solar financing plan by September 30, 2008, which had to comply with certain project-design and filing requirements.

JCP&L filed on September 30, 2008 its solar financing program *I/M/O the Verified Petition of Jersey Central Power & Light Company Concerning a Proposal for an SREC-Based Financing Program under N.J.S.A. 48:3-98.1* Docket No. EO08090840. On October 1, 2008 ACE filed its solar financing program *I/M/O the Renewable Energy Portfolio Standard – Amendments to the Minimum Filing Requirements for Energy Efficiency, Renewable Energy, and Conservation*

Programs; and for Electric Distribution Company Submittals of Filings in Connection with Solar Financing Docket No. EO08100875.

Staff sent administrative completeness notices to JCP&L on October 31, 2008 and to ACE on November 3, 2008. ACE and JCP&L responded to the data requests propounded by both Staff and the Department of Public Advocate, Division of Rate Counsel ("Rate Counsel") during the discovery process. On December 30, 2008, the Solar Alliance ("SA") moved to intervene in these proceedings. On January 7, 2009, Rate Counsel filed testimony addressing some concerns with ACE's and JCP&L's filings, including frequency of SREC payments, costs on deferred balances, administrative costs, evaluation of developer proposals, target SREC levels, market segmentation, the SREC Purchase and Sale Agreement ("PSA"), the regulatory-out clause, and the Solicitation Manager ("SM") responsibilities.

SA was granted intervenor status by Board Order dated February 11, 2009 ("Procedural Order"). The Procedural Order also established a provisional procedural schedule and designated Commissioner Fiordaliso as presiding Commissioner. ACE, JCP&L, Staff, Rate Counsel and the SA (collectively "Parties") discussed the ACE and JCP&L filings in the course of eleven settlement meetings held during February and March 2009. Over the course of those settlement discussions ACE and JCP&L filings took the shape of one program model ("Program") with similar positions in all issues including cost recovery mechanism and incentives. On February 18, 2009, JCP&L and ACE submitted their rebuttal testimonies, explaining some of the issues the parties had agreed upon during the early settlement meetings and revising original incentive proposals. JCP&L proposed "additional recoveries" to be calculated in terms of the number of kilowatt hours ("kWh") associated with the SRECs purchased under the program, multiplied by JCP&L's average fixed cost component of the distribution rate for the year in question. ACE joined JCP&L in this revised incentive proposal.

On March 4, 2009, Commissioner Fiordaliso approved a modified procedural schedule in compliance with the 180-day deadline established by N.J.S.A. 48:3-98.1 also known as the RGGI Act ("Modified Procedural Order"). On the same date, Rate Counsel filed surrebutal testimony explaining its position with regard to certain issues that the Parties to the settlement discussions could not agree upon. On March 10, 2009, SA submitted pre-filed testimony explaining its position on including Rate Counsel's change-in-law proposed language in the master SREC PSA.

As a result of the settlement discussions, ACE, JCP&L, Staff and SA reached agreement on all the relevant issues of the Program and signed a stipulation on March 13, 2009 ("Stipulation"). Rate Counsel signed the Stipulation as well, but reserved its right to contest three specific issues: (i) additional recoveries; (ii) the portfolio approach allowing for SREC PSA terms between 10 to 15 years or the Net Present Value ("NPV") ranking methodology in case the portfolio approach is approved; and (iii) the SREC environmental attributes clause of the master PSA. These three topics were identified in the Stipulation as "Contested Issues."

In order to build sufficient record for a Board decision on the Contested Issues, and to provide an appropriate forum for discussion of these issues, the Board held an Evidentiary Hearing on March 16, 2009. Andrea Crane testified for Rate Counsel, and James Torpey testified for the SA. The Parties agreed that JCP&L witness Christopher W. Siebens and Rate Counsel witness David E. Dismukes would not be subject to cross-examination and that their pre-filed testimonies would be moved into evidence and become a part of the record. Finally, on March 24, 2009, the Parties filed post-hearing briefs.

DISCUSSION

In the Stipulation, the Parties reached a settlement on a number of "Uncontested Issues" but left open the Contested Issues for the Board to decide upon.

Uncontested Issues

Program Size

The Program size in Megawatts ("MWs") per year, as set forth in the Stipulation, is as follows:

Reporting Year	JCP&L	ACE	Total
2009/10 (06/2009 – 05/2010)	23	10	33
2010/11 (06/2010 – 05/2011)	10	5	15
2011/12 (06/2011 – 05/2012)	9	4	13
Total	42	19	61

The number of MWs to be solicited in each year will be subject to an annual review by the Board based, in part, on its review of recommendations of the SM, the SREC requirements under the August 7 Order, and the inventory of New Jersey solar project commitments developed pursuant to the Program and independent markets.

Segmentation

The August 7 Order established that the RPS percentage requirements, determining the size of the Program, should be applied to two market segments: projects less than or equal to 50 kilowatts ("kW") and projects greater than 50kW and less than or equal to 500kW. Because the capacity of these segments to compete in the solicitation process is as yet unknown, the Parties agreed to support the establishment of an "aspirational goal" that approximately 25% of the 61 MW to be solicited are to be provided by the small project segment (i.e., projects less than or equal to 50 kW).

Frequency of Solicitations and MW to Be Solicited

Three solicitations will occur in the first year of the Program. The first and second rounds will each solicit projects for up to 50% of the first year goal (i.e. 11.5MW for JCP&L and 5MW for ACE). The third round would solicit projects for the balance of the first year MW goal that remains uncommitted after the first two rounds. The third solicitation may also include all or a portion of the second year goal, based on an assessment of, among other things, the results of the first two solicitation rounds and the market's ability to respond effectively with competitive bids.

In addition, the Stipulation established a schedule of solicitations for ACE and JCP&L with the caveat that the Board may revise the schedule based on experience and the recommendations of the SM.

JCP&L					
Year	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
2009	N/A	April Approval	R1: 11.5MW (est. July)	R2: 11.5MW (est. Nov)	23
2010	R3: MW TBD (est. Feb)	R4: 5MW (est. June)	R5: 5MW (est. Sept)	0	10
2011	R6: MW TBD (est. Jan)	R7: 5MW (est. June)	R8: 4MW (est. Sept)	R9: MW TBD	9
2012	TBD	TBD	TBD	TBD	0
TOTAL					42

ACE					
Year	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
2009	N/A	April Approval	R1: 5MW (est. July)	R2: 5MW (est. Nov)	10
2010	R3: MW TBD (est. Feb)	R4: 3MW (est. June)	R5: 2MW (est. Sept)	0	5
2011	R6: MW TBD (est. Jan)	R7: 2MW (est. June)	R8: 2MW (est. Sept)	R9: MW TBD	4
2012	TBD	TBD	TBD	TBD	0
TOTAL					19

Timing of Solicitations

The Stipulation established the following timetable for the occurrence of events in the solicitation process:

When	Action
Approximately 60 days from the date of this Order	SM Solicitation & Award
Day 1	Round 1 Solicitation <i>(the sooner of 105 Days from Order or 45 days after SM Award)</i>
Day 46	Round 1 Bids due
Day 55	SM reviews preliminary recommendations with Staff, EDCs, Rate Counsel for input
Day 65	Deadline for any opportunity for input – SM develops final recommendations to the Board
Day 75	SM submits Round 1 recommendations to Board <i>[with findings on: (a) competitiveness of process, (b) recommended awards, (c) Round 2 MW, and (d) any special treatment of the small project segment relative to the Board's aspirational goal]</i>
Day 80	Board Meeting and Written Order <i>(Addressing R1 awards, R2 MW; EDCs and SM prepare notification documents and announcement materials reflecting Board decisions)</i>
Day 85	Round 1 Final Awards <i>(Announce results, Notify all bidders)</i>
Day 110	Round 2 Solicitation
Day 125	Execute Agreements with Round 1 Winners
Day 155	Round 2 Bids Due

Solicitation Process

The Request For Proposals (“RFP”) shall: (i) articulate that projects will be ranked by price; (ii) state that prices will be reviewed for competitiveness; (iii) reference an unspecified price limit; and (iv) clearly articulate that the full MW solicited may or may not be awarded based on an assessment of the competitiveness of pricing resulting from the solicitation. The SM will be responsible for finalizing the terms of the RFP and the solicitation process.

The names of bidders in the RFP will not be disclosed to the SM. Instead, the SM will see only numbers or other identifiers assigned to bidders under a system developed and administered by Staff. Published award results will include: __ bids received totaling __ MW; __ awards totaling __ MW; __ bids totaling __ MW were rejected for reasons such as developer caps, price, etc. Submitters of rejected bids will be advised by the SM as to the basis for rejection, and eligibility for subsequent rounds (i.e., relative to developer cap compliance). The pricing in the proposals

submitted in response to the RFP must be the same for the entire term of the SREC PSA. Individually accepted prices will not be posted. However, the low and average price for all accepted projects will be posted on the Board's website.

ACE/JCP&L will not bid SREC projects into this process. However, unregulated affiliates of ACE/JCP&L may bid up to the 20% cap established in the August 7 Order. The SM will review preliminary results and recommendations with ACE, JCP&L, Staff and Rate Counsel for input. The Solar Alliance will not participate in the review process. Staff will present the final recommendations of the SM to the Board. Staff presentation to the Board will be based on its own independent assessment of the SM's comments and review. All solicitation awards and the execution of SREC PSAs with awarded bidders will be explicitly approved by the Board within approximately 5 days after submission of SM recommendations. The SM will be available during the Board's deliberations to respond to its inquiries about its recommendations.

Each SREC PSA will be executed no sooner than 45 days after the issuance of the written Board Order approving the relevant solicitation award and execution of the related SREC PSA. Within 14 days of Board approval of the solicitation award, the winning bidder must provide a cash deposit equal to \$75 per project kW, but not less than \$500 and not more than \$20,000.

Project Ranking

Although Rate Counsel proposed a different ranking methodology in case the Board decides to accept a portfolio approach regarding the term of the SREC PSAs, the Parties reached an agreement on two ranking issues. First, the bid outlier rejection process whereby ACE, JCP&L, Staff and Rate Counsel will send to the SM their recommendations for a pricing "soft cap" (i.e., guidance as to the price above which bids should not be accepted). The soft cap recommendations to be considered by the SM will consider, among other things, the lowest SREC price bid, the SACP, and the distribution of SREC prices for all projects submitted. Second, the SM's review process will not include review of the financial basis for proposed pricing.

The Master SREC PSA

The Parties made some changes to the filed master SREC PSA as a result of the settlement discussions. Among these changes the Parties: (i) provided that construction of awarded projects must occur within 12 months of an executed SREC PSA unless an extension for project completion is granted by the Board following formal petition to the Board for such an extension; (ii) established quarterly payments to SREC sellers; (iii) changed the regulatory-out provision; and (iv) added an SREC environmental attributes provision, the change-in-law portion of which was contested.

Cost Recovery

In addition to Program administrative costs, ACE and JCP&L are allowed to recover all amounts paid to purchase SRECs under the PSAs. The recovery of costs will be effected through a rate element of a rider ("RGGI Rider") equal to a per kWh charge applicable to all customers in all customer classes, whether full service BGS customers or delivery service shopping customers. As net Program costs for the first year are uncertain, and may be more or less than zero (depending on the relationship between the SREC purchase prices resulting from the solicitations and the sales prices resulting from the SREC auctions), the RGGI Rider rate for the

initial year will be zero. ACE and JCP&L will revisit the RGGI Rider rate within 12 months of the awards from the first solicitation.

Revenues received from the auction of the SRECs that ACE and JCP&L purchase as part of the SREC Program will be applied to reduce the costs to be recovered through the RGGI Rider. The interest rate on over and under recoveries will be the interest rate based on a two-year constant maturity Treasuries as published in the Federal Reserve Statistical Release on the first day of each month (or the closest day thereafter on which rates are published), plus sixty basis points, but will not exceed the overall rate of return for ACE or JCP&L as authorized by the Board. The interest rate will be reset each month and its calculation will be based on the net of tax beginning and end average monthly balance. ACE and JCP&L will accrue simple interest with an annual roll-in at the end of each year.

Metering

Customers will be required to install the appropriate meter enclosure adjacent to the existing ACE or JCP&L meter. ACE and JCP&L will: (i) provide and install the meter to record the SREC generation of the solar project at the customer's or project developer's cost; (ii) book the costs of meters and associated installation costs as contributions in aid of construction; (iii) read meters; and (iv) register SRECs using the PJM GATS platform.

Contested Issues

During the settlement process three Contested Issues were identified and addressed in the Evidentiary Hearing: (i) the additional recoveries; (ii) the portfolio approach allowing for SREC PSA terms between 10 to 15 years or the NPV ranking methodology in case the portfolio approach is approved; and (iii) the change-in-law language of the SREC PSA environmental attributes clause.

Additional Recoveries

In their rebuttal testimonies, ACE and JCP&L revised their original proposals seeking additional recoveries to compensate for the reduced distribution deliveries that would likely result from the Program. These additional recoveries are equal to the number of kWhs associated with the SRECs purchased under the Program multiplied by JCP&L's or ACE's respective average fixed cost component of the distribution rate for the year in question. Staff, SA, JCP&L and ACE agreed to this proposal in the Stipulation. Rate Counsel contested this point.

Rate Counsel's position, expressed in its testimony, surrebutal testimony and post-hearing brief, is that no additional recoveries should be allowed because: (i) the recovery of lost revenues is not dependent on performance; (ii) ACE and JCP&L will not suffer loss of distribution revenues as a result of the Program because the solar energy developments are a function of the Board's RPS and not the SREC contracts; (iii) the August 7 Order only refers to incentives for customers and developers to participate in the solar market, not for EDCs; (iv) this is a single ratemaking issue that should be avoided; and (v) an earnings test should be applied before additional recoveries could be included in rates.

In the post-hearing briefs, ACE and JCP&L rejected the notion that additional recoveries would constitute a single issue ratemaking because these recoveries are designed simply to make the companies whole for the acknowledged reduction in sales as a direct consequence of the

Program. Moreover, according to ACE and JCP&L, the additional recoveries represent nothing more than an element of cost recovery as defined in the RGGI Act.

Staff recommended in its post-hearing brief that the Board adopt the Stipulation provisions granting additional recoveries to ACE and JCP&L. ACE and JCP&L distribution assets are subject to reduced recoveries by the nature of the Program because on-site solar generation financed under the Program will displace a certain amount of ACE and JCP&L electricity deliveries. These additional recoveries will be included in the recovery of projected revenue requirements associated with the SREC Program through the RGGI Rider, subject to periodic true-up, with interest at the rate set forth above for actual over-recoveries and under-recoveries. In order to differentiate this case from prior lost revenue cases, Staff recommends that the Board rename these additional recoveries "Societal Contribution to Distribution for Customer-Generators."

Staff further noted in its post-hearing brief that the Board is statutorily mandated to ensure the provision of safe, adequate and proper service at just and reasonable rates. N.J.S.A. 48:2-21; N.J.S.A. 48:2-23. Under N.J.S.A. 48:3-98.1(a)(3), the Board "may also direct electric public utilities and gas public utilities to undertake energy efficiency, conservation, and renewable energy improvements, and shall allow the recovery of program costs and incentive rate treatment pursuant to subsection b. of this section." Also, all electric public utility and gas public utility investment in energy efficiency and conservation programs or Class I renewable energy programs "may be eligible for rate treatment approved by the board, including a return on equity, or other incentives or rate mechanisms that decouple utility revenue from sales of electricity and gas." N.J.S.A. 48:3-98.1(b). In addition, N.J.S.A. 48:3-98.1(d) defines "program costs" as follows:

all reasonable and prudent costs incurred in developing and implementing energy efficiency, conservation, or Class I renewable energy programs approved by the board pursuant to this section. These costs shall include a full return on invested capital and foregone electric and gas distribution fixed cost contributions associated with the implementation of the energy efficiency, conservation, or Class I renewable energy programs until those cost contributions are reflected in base rates following a base rate case if such costs were reasonably and prudently incurred.

Staff asserts that Title 48 gives the Board the discretion to grant the additional recoveries set forth in the Stipulation. Any concerns regarding single issue ratemaking should therefore be rejected since the Legislature has specifically allowed the Board to consider additional recoveries. Moreover, because these additional recoveries will be included in the recovery of projected revenue requirements associated with the SREC Program through the RGGI Rider, subject to periodic true-up, both ACE and JCP&L must still bear the burden of proof with respect to all elements of its RGGI program costs and expenses that they seek to pass through in rates to their customers. See In re Public Service Electric and Gas Co., 304 N.J. Super. 247 (App. Div. 1997), certif. den., 152 N.J. 12 (1998); Public Service Coordinated Transport v. State, 5 N.J. 196 (1950). Moreover, the Board has the authority to conduct audits of electric utilities. N.J.S.A. 48:2-16.1. Staff remarks that, Rate Counsel's fears about the additional recoveries should be allayed by the true-up mechanism in the Stipulation and possible Board audits of ACE's and JCP&L's RGGI Rider costs.

Term of the SREC PSA

The August 7 Order established that one of the characteristics of the long-term SREC PSA shall be a contract term of 15 years, unless the Electric Distribution Companies (“EDCs”) elect to consider a portfolio approach in which the EDC enters into contracts with terms between 10 and 15 years. Pursuant to this option given to the EDCs in the August 7 Order, ACE and JCP&L filed programs allowing for a portfolio approach.

Rate Counsel opposes the portfolio approach proposed by ACE and JCP&L and believes it is in the best interest of ratepayers to limit the eligibility of projects to those bidding for a 15-year SREC PSA term. Rate Counsel believes that a 15-year term approach would be a form of “insurance” or “hedge” for ratepayers in an area with substantial market uncertainty. Furthermore, Rate Counsel argues that because the Program only locks certain percentages of the RPS requirements with long-term SREC PSAs, the rest of the RPS requirements can be met through open market spot or bilateral transactions. Thus Rate Counsel believes this would represent a relatively balanced portfolio of short-term and long-term deals. Furthermore, in the post-hearing brief, Rate Counsel remarked that, pursuant to the August 7 Order, the Board finds the 15-year contract term to be “preferable” to a ten-year contract term. In the event that the Board permits bids for projects with proposed SREC PSA terms from 10 to 15 years, Rate Counsel asserts that the bids should be ranked based on the NPV of the payments over the proposed term of the SREC PSA for each SREC generated by the project over the proposed term of the SREC PSA. Rate Counsel concedes, however, that under their proposed methodology, ratepayers may pay more or less depending on the market price of SRECs in years not under a long-term SREC PSA.

ACE and JCP&L support the portfolio approach because they claim it is consistent with the Board’s desire to transition to a more market-based means of supporting solar development. ACE and JCP&L claim in their rebuttal testimony and post-hearing briefs that the Board should allow market forces to govern the desired length of the long-term SREC contracts. Additionally, both companies argue that requiring all contracts to be 15 years would lock the EDCs and ratepayers into a longer contract, creating a SREC pricing risk in those years not covered under the term of the SREC PSAs. Regarding Rate Counsel’s alternative NPV ranking methodology, ACE and JCP&L assert in their post-hearing brief that Rate Counsel’s methodology “creates a strong bias in favor of long-term proposals, with the result that it would achieve essentially the same objective as would Rate Counsel’s underlying argument that only 15-year proposals be permitted.”

As stated in the post-hearing brief, Staff understood Rate Counsel’s position to hedge the risk and to reduce ratepayer’s uncertainty in years not covered under a long-term SREC PSA. However, it must be acknowledged that locking in a fixed SREC price for the full 15 years would prevent ratepayers, ACE, and JCP&L from diversifying the risk of future SREC prices within the Program. Therefore, Staff asserts, Rate Counsel’s 15-year approach may require ratepayers, ACE and JCP&L to pay more for SRECs in years not covered under a long-term SREC PSA in the event that SREC market prices fall below the fixed SREC contracted price. By the same token with a 15-year term approach, neither ACE, JCP&L or ratepayers would be able to take advantage of lower market prices. Additionally, Staff believes that allowing market forces to dictate what contract terms are appropriate would provide the flexibility needed to facilitate investments in the solar sector and be consistent with the Board’s direction to promote a market-based solar industry. Regarding Rate Counsel’s proposed NPV methodology in case the Board allows a portfolio approach, Staff believes that because this methodology calculates a price per SREC rather than the total cost that the utility would pay over the life of the contracts;

this methodology distorts the ranking system and over-values longer-term SREC PSAs over shorter-term SREC PSAs.

SREC Environmental Attributes – Change-in-Law Language

During the Settlement process the Parties agreed to add a new clause identifying the environmental attributes of SRECs subject of the master SREC PSA. Rate Counsel favored this addition but recommended language requiring that additional benefits or value created over the term of the PSA as a result of changes in local, state or federal laws or regulations and with impact on the contracted SRECs or the solar projects financed under the Program, be transferred to the SREC purchaser and credited against the Program costs. The language proposed by Rate Counsel is: *“If a change in local, state or federal laws or regulations, including but not limited to changes in tax laws or regulations, becomes effective between the time of contract award and the end of the Delivery Period, and such change increases the value of Seller’s Project or increases the value of contracted SRECs to Seller during the Delivery Period as a result of the renewable character of Seller’s Project, then, at Purchaser’s request, Seller shall cooperate with Purchaser to transfer such increased value to Purchaser. In such cases, Seller shall continue to receive payments from Purchaser pursuant to the terms of this Agreement, adjusted for such benefit”.*

SA opposed Rate Counsel’s proposed language on the grounds that the uncertainty this language would introduce in the master SREC PSA would impair its value as a useful financing vehicle for solar projects. Rate Counsel remarked in the Evidentiary Hearing that no financing risk would be introduced by such language because the adjustment proposed would not apply retroactively to the economic revenues originally considered in financing solar projects but only to any surplus economic benefit thereafter. Furthermore, Rate Counsel claims in its post-hearing brief that the testimony of the witness presented by SA in the Evidentiary Hearing cannot form the basis of a Board decision on this contested issue because the witness lacks the necessary qualifications to serve as an expert.

CORE Rebates

The August 7 Order establishes that projects receiving a rebate from CORE program in 2001 through 2008 were sufficiently supported by a rebate method of delivering solar incentives and therefore EDC’s long-term contracts for those projects would not serve the Board’s goals. By Board Order dated January 8, 2009 *I/M/O Comprehensive Energy Efficiency and Renewable Resource Analysis for 2009-2012: 2009 Programs and Filings: Compliance Filings* Docket No. EO07030203 (“January 8 Order”), the Board decided to extend the use of 2008 CORE rebates funds into 2009. Therefore, Staff requested the Board to clarify the combined interpretation of the August 7 and January 8 Orders in terms of Program eligibility of projects.

FINDINGS

Based upon the above discussion and the record on these proceedings presented to the Board, the Board **HEREBY FINDS** that the uncontested provisions of the Stipulation adequately satisfy the program requirements set forth in the August 7 Order, are reasonable and appropriate under the circumstances, and represent an appropriate settlement and stipulation on the part of all parties.

On the contested additional recoveries issue, the Board **HEREBY FINDS** that the specific characteristics of ACE and JCP&L Program will likely result in reduced electricity deliveries that

will impact ACE's and JCP&L's earnings, and therefore allowing for additional recoveries is just and reasonable in this particular case. The reduction flows from this Program, in that the Board expects the SREC financing to increase the overall use and installation of solar facilities. The Board **FURTHER FINDS** that Rate Counsel's concerns with regard to the additional recoveries can be addressed by means of Board audits, rate cases, and the true-up mechanism established in the Stipulation. The Board **FURTHER FINDS** those additional recoveries in the Program should not result in additional revenues because the additional recoveries are designed to simply replace existing revenues from displaced distribution deliveries, thus resulting in no net change in utility revenues.

On the contested term of the SREC PSA, the Board **HEREBY FINDS** that the ACE and JCP&L portfolio approach to the SREC PSA term is consistent with the Board's August 7 Order and with the Board's goal to promote a market-based solar industry. The Board **FURTHER FINDS** that ratepayers, ACE and JCP&L should be allowed to diversify the risk of future SREC prices in years 10 to 15 within this Program and that the proposed Rate Counsel's NPV ranking methodology may give advantage to longer-term SREC PSAs over shorter-term SREC PSAs. The Board **FURTHER FINDS** that the risk associated with the prices over years 11 to 15 can be best estimated and reflected by the market rather than through mandated contract lengths in the particular situation.

On the contested language issue, the Board **HEREBY FINDS** that two ways exist for transferring future benefits or value to the SREC purchaser as suggested by Rate Counsel. The first way would be to offset the cost of the surplus benefits or enhanced project value by reducing the SREC fixed price under the SREC PSA. This option would directly affect the value of the SREC PSA as a financing vehicle because the revenue stream of the contract would be subject to the uncertainty of future changes in laws or regulations affecting the value of the contracted SRECs or the solar projects financed under the Program. The second way of implementing Rate Counsel's proposal would be to establish in the SREC PSA an unsecured obligation upon the SREC seller to transfer these benefits to the SREC purchaser. Putting the SREC purchaser in a situation where it would have to initiate claims for these unsecured obligations on a case-by-case basis is likely to significantly increase the administrative cost of the Program. The Board **HEREBY FINDS** that Rate Counsel's proposed change-in-law language may undermine the purpose of the Program to support the incipient solar industry by facilitating market-based financing of solar projects and that Rate Counsel's proposed language may result in higher costs to ratepayers if as a result of future claims the administrative costs of the Program are increased. Nevertheless, the Board believes that Rate Counsel's concerns are well founded and **HEREBY DIRECTS** Staff to monitor the situation and to bring this issue to the Board in the event any future changes in laws and/or regulations create a significant and measurable surplus benefit or enhanced value affecting the SRECs purchased and/or the projects financed under the Program.

Accordingly, the Board **HEREBY ADOPTS** the Stipulation provisions as part of the Program and **HEREBY APPROVES** the master SREC PSA (attachment A), incorporating the changes agreed in the Stipulation with the Solar Alliance's proposed language for the SREC environmental attributes clause and the understanding that contract terms between 10 to 15 will be permitted. The Board **FURTHER APPROVES** the additional recoveries pursuant to the terms specified in the Stipulation.

Finally, the Board **HEREBY CLARIFIES** that projects receiving rebates under the January 8 Order are not eligible to participate in the Program.

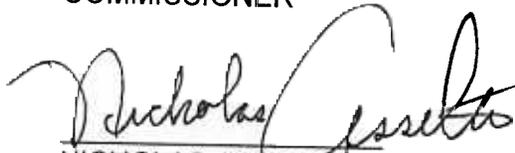
DATED: 3/27/09

BOARD OF PUBLIC UTILITIES
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FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


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ELIZABETH RANDALL
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

