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CLEAN ENERGY

IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD BEGINNING JUNE 1, 2019	)	ORDER ON MOTION FOR RECONSIDERATION
	)	
IN THE MATTER OF THE ALLOCATION OF RENEWABLE PORTFOLIO STANDARDS FOR BASIC GENERATION SERVICE BEGINNING JUNE 1, 2019	)	DOCKET NOS. ER18040356 and EO18111250

**Parties of Record:**

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BY THE BOARD:

The Mid-Atlantic Renewable Energy Coalition ("MAREC") filed a motion for reconsideration with the New Jersey Board of Public Utilities ("Board") seeking reconsideration of the Board's December 18, 2018 Order in the above docket, effective December 28, 2018 ("December 18 Order"). For the reasons explained below, the Board denies MAREC's motion for reconsideration.

**BACKGROUND**

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17, codified at N.J.S.A. 48:3-51-87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development; among these was an

increase in the solar portion of the Renewable Portfolio Standards ("RPS"), beginning in Energy Year 2019 ("EY19").<sup>1</sup> Specifically, the CEA provides:

"[T]he board shall . . . adopt . . . renewable energy standards that shall require . . . (3) that the board establish a multi-year schedule, applicable to each electric power supplier or basic generation service provider in this State . . . the following number or percentage, as the case may be, of kilowatt-hours sold in this State by each electric power supplier and each basic generation service provider to be from solar electric power generators connected to the distribution system in this State:

EY 2014	2.050%
EY 2015	2.450%
EY 2016	2.750%
EY 2017	3.000%
EY 2018	3.200%
EY 2019	4.300%
EY 2020	4.900%
EY 2021	5.100%
EY 2022	5.100%
EY 2023	5.100%
EY 2024	4.900%
EY 2025	4.800%
EY 2026	4.500%
EY 2027	4.350%
EY 2028	3.740%
EY2029	3.070%
EY2030	2.210%
EY2031	1.580%
EY2032	1.400%
EY2033	1.100%

[N.J.S.A. 48:3-87(d)(3)]"

The CEA exempts BGS providers' electricity supply from the new, higher solar requirements if the supply is covered by a BGS contract that was executed prior to enactment of the CEA. N.J.S.A. 48:3-87(d)(3)(c). The solar obligation for this exempt electricity is determined under the rules in place when the BGS contract covering it was executed. Ibid. Thus, exempt electricity carries a lower solar obligation than non-exempt electricity. However, the CEA requires that the State-wide solar target for each year must still be met. "Such incremental requirements that would have otherwise been imposed on exempt providers shall be distributed over the providers not subject to the existing supply contract exemption until such time as existing supply contracts expire and all providers are subject to the new requirement[.]" Ibid. Therefore, during EY19, EY20, and EY21, the incremental solar obligation that is not met because of the exemption must be distributed among the non-exempt electricity supplied by BGS providers in each energy year until the prior BGS contracts with exempt suppliers expire. The December 18 Order includes provisions for calculating the obligation of the BGS providers' solar obligation under the new requirements as a

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<sup>1</sup> An Energy Year ("EY") is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

function of whether the electricity supplied is exempt or not. The solar obligations of the TPSs are addressed as well.

On April 25, 2018, prior to the CEA being signed into law, the Board initiated this proceeding to determine how the Electric Distribution Companies would procure the remaining one-third of the State's BGS requirements for residential and small commercial customers ("RSCP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2019. The EDCs proposal consisted of a BGS Auction for both procurements, similar to what had been done for the past several years. In comments submitted to the Board at the BGS Legislative hearing, several stakeholders noted that In light of the Clean Energy Act, bidders should be advised of their RPS requirements prior to the Start of the BGS Auction. They noted that this information is required to allow for a competitive procurement producing the best possible prices.

By Order dated November 19, 2018 in the same docket ("November 19 Order"), the Board approved the EDCs Proposal for the 2019 BGS auction for the BGS-RSCP and BGS-CIEP procurements. Among other things, the November 19 Order directed Staff to conduct a stakeholder meeting on issues raised regarding impacts of the CEA to the RPS requirements and provide recommendations to the Board at the December 2018 Board Agenda Meeting.

On December 7, 2018, Board staff held a public stakeholder meeting to address questions raised in the BGS auction proceeding about the implications of the RPS changes required by the Act and to address RPS rule amendments necessary to implement those changes. Stakeholders were required to submit comments by December 10, 2018. Attached to the Notice were: A) Staff's proposed methodology for calculating the solar RPS obligation for exempt and non-exempt suppliers; and B) Staff's proposed schedule to increase the existing Class I RPS such that it will be 50% in EY30. Specifically, the Notice sought comment on the following three issues:

1. How to allocate the solar RPS obligations of the exempt entities amongst the non-exempt entities [referencing Attachment A];
2. What the RPS requirements should be for Energy Year (EY) 2019, EY 2020, EY 2021, and EY 2022 [referencing Attachment B]; and
3. Whether to consider solar obligations to be included within the overall Class I obligation as a carve-out, such that SRECs submitted to satisfy the solar RPS will also be counted toward the satisfaction of the total Class I RPS rather than being considered additive to the Class I RPS.

Thirteen sets of comments were received, including comments from MAREC. Oral comments were received from Rate Counsel, RESA, MAREC, IEPNJ, Carbon Solutions Group, and Concord Energy Services ("Concord").<sup>2</sup> Written comments on Staff's proposal were received from the EDCs, PSEG Services Corporation ("PSEG") on behalf of PSEG Power LLC and PSEG Energy Resources and Trade, LLC, Rate Counsel, RESA, MAREC, the New Jersey School Board Association ("NJSBA") on behalf of the Alliance for Competitive Energy Services ("ACES"), the Carbon Solutions Group, the New Jersey Solar Energy Coalition ("NJSEC"), Mr. Kenneth Jones, and Ms. Pamela Barroway.

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<sup>2</sup> The comments of RESA and CE addressed the Rule Proposal only.

On December 18 the Board issued an Order providing BGS auction participants guidance on how the CEA's increased solar obligations would be implemented. The December 18 Order addressed the exemption for BGS supply under existing supply contracts; the allocation of the solar obligation for the exempt supply among non-exempt BGS supply; and the ability of non-exempt BGS supply and TPS to treat their solar obligations as a carve-out of their NJ Class I obligation.

Additionally, at the December 18, 2018 agenda meeting under a separate Docket, the Board approved proposed amendments to N.J.A.C. 14:8-2.3 and -2.6 to conform the current RPS rules to provisions in the CEA. The rule proposal includes increases to the Class I RPS obligations on a yearly basis and revises compliance instructions for exempt and non-exempt BGS and TPS supplied electricity. Consistent with the CEA, the rule proposal maintains the solar RPS percentage requirements for exempt BGS supply consistent with the RPS rules as they existed when the law was enacted. However, the rule proposal treats the solar requirements as a carve-out of the NJ Class I requirements for non-exempt BGS supply and TPS.

On January 14, 2019, MAREC filed a motion for reconsideration and clarification of the Board's December 18 Order. MAREC requests that the Board reconsider its decision to make the solar obligation a true "carve out" of the NJ Class I obligation for non-exempt supply such that the solar megawatt hours MWh counted as Solar Renewable Energy Certificates ("SRECs") toward satisfaction of the solar RPS are counted toward the satisfaction of the Class I RPS as well. MAREC asks that the Board state that the carve out rule, if retained, applies only to the 2019 BGS auction, and does not apply, in the absence of further Board action, to any future BGS auction; to the rulemaking the Board is presently undertaking in Docket No. EX18111244; or to any other proceedings the Board convenes implementing the relevant provisions of the CEA.

On March 13, 2019, the Board approved the issuance of a Secretary's Letter which acknowledged receipt of MAREC's motion for reconsideration and extended the 60-day period for the Board's issuance of a final decision pursuant to N.J.A.C. 14:1-8.7(c).

## **DISCUSSION AND FINDINGS**

Upon thorough consideration of MAREC's motion, the documents submitted therewith, and the entire record in this case as a whole, the Board **FINDS** that nothing in MAREC's request requires the Board to modify or otherwise reconsider its decision.

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). N.J.A.C. 14:1-8.6 requires that a request for rehearing or reconsideration be done by a motion that enumerates the alleged "errors of law or fact" that the Board relied on in rendering its decision. Additionally, here an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously.

Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, 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. See, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious, or

unreasonable. D'Atria, 242 N.J. Super. at 401. 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 notice 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).

MAREC argues that the Board's decision to treat the solar RPS obligation as a carve-out rather than as additive obligation was not supported by substantial or credible evidence. This argument is baseless, the Board received numerous comments and recommendations from Board Staff that suggested the obligation should be treated as a carve out rather than being additive. Rate Counsel, for example, commented that treating the solar RPS obligation as additive would, in effect, increase the Class I RPS above the CEA's requirements. Moreover, Rate Counsel stated that such treatment would risk running afoul of the CEA's caps on the compliance costs that can be implemented to meet the CEA's Class I goals. Moreover, MAREC submitted comments in this proceeding in which it made the same arguments that treating Solar obligations as a carve-out within Class I RPS requirements would have a detrimental impact on REC market pricing. The Board considered all comments including MARECs before coming to its decision. Therefore, consistent with the CEA, the Board exercised its expertise based on public input to allocate the RPS requirement balancing the interests of BGS providers, TPS, ratepayers and solar market participants

The CEA requires revision of the schedule of RPS percentage obligations for both solar and New Jersey Class I Renewable Energy. The schedule of solar requirements is increased in the near term before it is reduced and then extended to 2033. Additionally, the NJ Class I requirement is increased to 21% by January 1, 2020, 35% by January 1, 2025, and 50% by January 1, 2030. The law also established cost caps for solar and NJ Class I resources other than offshore wind at nine percent in Energy Year ("EY") 19, 20, & 21 and seven percent thereafter. The CEA directed the Board to take any steps necessary to prevent the exceedance of the cost caps including but not limited to adjusting the Class I renewable energy requirement as it did here.

Additionally, MAREC seeks leave to introduce new additional evidence on the reduction in carbon emissions through the pursuant to N.J.A.C. 14:1-8.6(a)(2). This rule provides: "[w]here opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence." In its motion, MAREC requests that the Board consider a chart and analysis illustrating the impact the carve-out has on demand for Class I RECs and projected level of State carbon emissions. MAREC contends that it did not have sufficient time to submit the evidence previously. Nevertheless, the Board is not persuaded. MAREC had ample opportunity to provide this information previously through its oral and written comments. Further, other commenters proposed similar arguments in their Oral and Written comments. The charts attached to MAREC's motion simply illustrate the Solar RPS Requirement as a Class I Rec Demand and avoided CO2 emission based on publically available data.

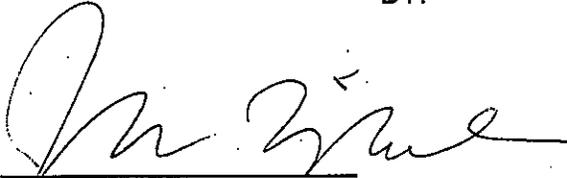
Even if the Board were to accept the new evidence as part of the record, it presents nothing novel or new. The Board understands implications of creating a carve out for solar RPS and believes that its decision is consistent with CEA's requirements as expressed in the December 18 Order.

For the reasons stated herein, the Board **HEREBY DENIES** MAREC's Motion for Reconsideration of its December 2018 Order.

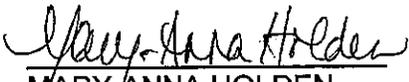
This Order shall be effective on June 7, 2019.

DATED: 5/28/19

BOARD OF PUBLIC UTILITIES  
BY:



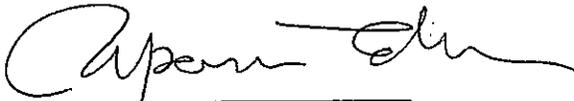
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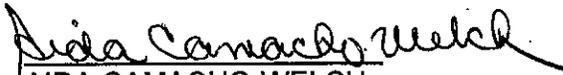


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ROBERT M. GORDON  
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ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

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

**I/M/O THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD  
BEGINNING JUNE 1, 2019**

**AND**

**I/M/O THE ALLOCATION OF RENEWABLE PORTFOLIO STANDARDS FOR BASIC  
GENERATION SERVICE BEGINNING JUNE 1, 2019**

**BPU Docket Nos. ER18040356 and EO18111250**

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