



Agenda Date: 12/21/06  
Agenda Item: 8F

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

CLEAN ENERGY

IN THE MATTER OF THE RENEWABLE PORTFOLIO  
STANDARD

- ) RECOMMENDATIONS FOR
- ) ALTERNATIVE COMPLIANCE
- ) PAYMENTS AND SOLAR
- ) ALTERNATIVE COMPLIANCE
- ) PAYMENTS FOR ENERGY
- ) YEAR 2008, A STAKEHOLDER
- ) PROCESS REGARDING
- ) ALTERNATIVE COMPLIANCE
- ) PAYMENT AND SOLAR
- ) ALTERNATIVE COMPLIANCE
- ) PAYMENT LEVELS FOR
- ) ENERGY YEARS 2009 AND
- ) 2010 OR LONGER, AND A
- ) SOLAR REC-ONLY PILOT

DOCKET NO. EO06100744

(SERVICE LIST ATTACHED)

BY THE BOARD<sup>1</sup>:

This Order memorializes action taken by the Board at its December 21, 2006 agenda meeting in connection with the Board's Clean Energy Program (CEP) and the Renewable Portfolio Standard. At that meeting the Board voted to 1) set Alternative Compliance Payment (ACP) and Solar Alternative Compliance Payment (SACP) levels for the 2007-2008 Energy Year (EY 2008) at their current levels of \$50 per megawatt hour and \$300 per megawatt hour, respectively; 2) establish a procedural schedule for a stakeholder process to set ACP and SACP levels going forward after EY 2008; 3) direct Staff of the Office of Clean Energy (OCE) to obtain an independent economic analysis of the effect of variations in ACP and SACP levels; and 4) direct the OCE to develop a limited pilot program to allow New Jersey customer-generators to participate in the solar Renewable Energy Certificate (REC) market without participating in the CORE rebate program.

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<sup>1</sup> Commissioner Connie O. Hughes recused herself from this matter due to the potential of a conflict of interest.

## BACKGROUND AND PROCEDURAL HISTORY

The Renewable Portfolio Standard (RPS) rules at N.J.A.C. 14:8-2 implement provisions of the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49, et seq. (EDECA). The RPS rules require retail electricity supplier/providers to include at least a minimum percentage of qualified renewable energy in the electricity they sell each reporting year. Supplier/providers may submit Renewable Energy Certificates, or RECs, as defined in the rules, to meet the percentages required each year. A REC represents the renewable energy attributes of one megawatt-hour of generation from an eligible renewable energy facility. The requirements and conditions for the creation and use of RECs in the RPS are defined by the rules.

RECs are procured by supplier/providers from renewable energy facility owners, brokers and aggregators. The price of a REC used to satisfy the RPS requirements is a function of its perceived and relative scarcity. Factors that affect the price of a REC include:

- the supply available from eligible facilities,
- the demand established by the State's RPS mandate,
- other demand from uses such as other state compliance markets plus voluntary markets, and
- the level established for the alternative compliance payment.

Alternative Compliance Payment provisions to the RPS were recommended by Governor McGreevey's Renewable Energy Task Force in a report submitted to the Governor on April 24, 2003. The ACP provisions were incorporated into the RPS rules via Board Order signed on December 18, 2003. This Board Order established the ACP and SACP levels at \$50 per MWH and \$300 per MWH respectively. Revised RPS rules with the ACP provisions became effective on April 5, 2004. The Board extended the ACP and SACP at their existing levels on December 23, 2004 and again in December 2005.

As discussed in the 2003 Board Order establishing the ACP and SACP, these tools provide a 'back-stop' mechanism that protects suppliers, as well as consumers, from the cost implications of excessive market risk. The ACP and SACP set an upper limit for the cost of RPS compliance, limit a regulated entity's exposure to financial penalties for any renewable energy shortfalls, and provide protection against the possibility of market power exertion, unforeseen scarcity of renewable energy, or REC shortages, and give suppliers some flexibility in complying with RPS requirements.

The Board established ACP and SACP levels in 2003 were based upon modeling of the Class I renewable energy and solar markets. Factors and assumptions considered in the ACP analysis included the expected:

- impacts on REC markets,
- development of new renewable energy generation,
- suppliers' behavior in meeting the RPS,

- supplier compliance costs, and
- the Basic Generation Service (BGS) auction.

The compliance payment effectively sets a ceiling to the price the owner of a REC may demand. The rules allow supplier/providers to choose to submit alternative ACPs or SACP in lieu of supplying the percentage of renewable energy required. It is commonly accepted that since supplier/providers may choose to submit compliance payments in lieu of purchasing RECs, they will do so whenever REC prices approach the level of the compliance payment. Since the acquisition of RECs involves some transaction costs, REC price levels are generally expected to remain below the ACP levels by at least the costs required to purchase a REC.

The proceeds from the sale of RECs provide renewable energy facility owners a source of financial return for their investment. REC income provided to the facility owner is a performance-based incentive, since it is related to the amount of energy produced. The other common sources of financial incentive to invest in renewable energy facilities include:

- an electric bill credit for customer-generated electricity through a net metering tariff,
- capacity-based rebate such as the CORE rebate program,
- grant and/or loans, such as through the Renewable Energy Project Grants and Finance program,
- the federal Investment Tax Credit, and
- Modified Accelerated Cost Recovery or depreciation expensing for federal tax purposes.

One of the challenges to setting the ACP level is to anticipate the level needed to motivate the installation of adequate capacity to balance the supply of RECs with the RPS percentage requirements. Even though financial incentives are not evenly applied to every participant or rate class, widespread adoption of renewable energy facilities across the state and across rate classes is a desired outcome. An additional challenge is created when one or more of the other available financial incentives have changed or are expected to change. For example, the CORE rebate program funded through the Societal Benefit Charge has changed significantly since 2004. The early investors in solar technology received as much as 70 percent of their initial investment in the form of a rebate. The rebate has been subsequently reduced, and now provides only up to 50 percent of the initial investment. Roughly concurrent with the latest rebate reductions, the federal Investment Tax Credits have been improved. In addition, the cost of electricity has also increased, which provides the owners of net metered, renewable generators an increased rate of return from the avoided cost of purchasing electricity.

The Board is obligated to review ACP and SACP levels on an annual basis. N.J.A.C. 14:8-2.10 provides, in pertinent part:

- (b) The President of the Board shall appoint an ACP advisory committee to provide recommendations to the Board regarding the appropriate cost of ACPs, as well as other characteristics of their use. The Board shall consider the

advisory committee's recommendations and shall, through Board order, set prices for ACPs and SACP. At a minimum, the price of an ACP or an SACP shall be higher than the estimated competitive market cost of the following:

1. The cost of meeting the requirement through purchase of a REC or a solar REC; or
2. The cost of meeting the requirement through generating the required renewable energy.

(c) The Board shall review the amount of ACPs and SACP at least once per year, in consultation with the ACP advisory committee, and shall adjust these amounts as needed to comply with (b)1 and 2 above and to reflect changing conditions in the environment, the energy industry, and markets.

OCE engaged in a series of discussions with the ACP Advisory Committee regarding the development of recommendations on Alternative Compliance Payment and Solar Alternative Compliance Payment levels. Following these discussions, which did not result in a committee recommendation, the Board at its November 9, 2006 agenda meeting directed OCE to solicit comments from the public on a proposed schedule and straw proposal for the ACP and SACP levels for RPS Reporting Years 2008, 2009, and 2010. A public notice was distributed via several email lists managed by the OCE and posted to the website for New Jersey's Clean Energy Program at [www.njcep.com](http://www.njcep.com) on or immediately after November 9, 2006, with a closing date for comments of December 11 2006. The Board sought public comment specifically on two proposed actions:

1. That the Board announce a schedule for a stakeholder process, possibly to include public hearings, regarding ACP and SACP levels for EY 2009-2010, and
2. That the Board order that the SACP and ACP remain at their current levels for EY 2008.

#### SUMMARY OF STAKEHOLDER COMMENTS

OCE received fourteen responses to the Request for Public Comments. All responses have been posted on the New Jersey Clean Energy Program webpage; a general summary of the responses received follows.

The New Jersey Department of the Public Advocate, Division of Rate Counsel (Rate Counsel) strongly supports initiating a stakeholder process that would include public hearings, not only to address the question of appropriate ACP/SACP levels, but also to address what Rate Counsel identified as existing uncertainties in the rebate program. In this context, Rate Counsel urges the Board not to "prejudge" the need to fix or increase the ACP/SACP level. Rate Counsel makes an additional recommendation that Staff establish a broader procedural and hearing schedule to consider such issues as: the goals of the CORE program in connection with the development of solar energy, the definition of a future market structure and how such a structure would fit with CORE program development, and mechanisms for addressing any anticipated capacity shortfalls. Rate Counsel supports the proposal to keep ACP/SACP amounts at current

levels in EY2008, stating that more information is needed prior to ordering a change in the ACP/SACP levels.

Pepco Energy Services, Inc. (Pepco) supports a stakeholder process and would like to participate in any process that is ordered. Pepco further supports setting the ACP and SACP at current levels for EY2008.

Constellation Energy Commodities Group (CCG), a wholesale power marketer, winning bidder in prior auctions and current BGS provider, submitted comments in support of a stakeholder process, but urges that the process be scheduled such that the Board could issue a final decision on ACP/SACP levels for EY 2009-2010 by February 1, 2007 in order to provide certainty with respect to the RPS requirements associated with serving BGS load to the bidders in the auction. CCG supports setting the ACP and SACP at current levels for EY2008.

Dennis Wilson, on behalf of the Solar Center, a solar integrator, strongly supports a stakeholder process, pointing to the many and unpredictable changes that have already occurred and are continuing to occur in the market in such areas as energy prices, federal tax benefits, consumers' interest level in renewable energy, and availability of financial markets. These, in the Solar Center's opinion, could permit the Board to lower current solar rebate levels. The Solar Center supports setting the SACP at its current level in EY2008 because of its belief that the rapidly changing conditions in the renewable energy market make prediction of future trends difficult. If and when an insufficient amount of solar capacity installation occurs, the Board, in the Solar Center's view, would have the opportunity to respond accordingly. The Solar Center recommends that any SREC pilot program be open to all customer segments, with the amount supplied by each segment equal to its relationship to total electric consumption.

PSE&G and JCP&L (electric distribution utilities), in their joint comments, support a stakeholder process for the purpose of determining SREC prices for EY2009 and EY2010 for those projects unable to obtain a rebate due to funding limitations. The utilities state that the transition from a rebate/SREC funding mechanism to a fully market-based system would probably result in a higher SACP and recommend that the Board obtain an updated rate impact analysis, including updated information on installations, pricing, and capacity, for the solar portion of the RPS. PSE&G and JCP&L also support the proposal to maintain the ACP at \$50 per MWH and the SACP at \$300 per MWH in 2008. The utilities argue that the ACP was created in order both to spur transactions in the renewable energy market and to prevent unduly burdensome compliance costs and that the current price levels accomplish those goals effectively. The utilities further argue for maintaining the ACP at \$50 for EY 2009 and 2010 and for setting the SACP level at \$300 for rebated projects, stating that winners of BGS-FP tranches in the 2006 and 2007 BGS auctions should be protected from unanticipated spikes in solar RPS compliance costs. The utilities rely on Staff's estimation of future renewable energy capacity installation to support this position and also point to the need for stability in the energy market. The utilities state that, based on the Board's ability to subsidize 84 MW of PV, it will be possible to fully grandfather the BGS FP tranches won in the 2006 and 2007 BGS auctions with RECs available from PV projects that received CORE rebates.

PSEG Energy Resources & Trade LLC (PSEG) supports maintaining the current ACP and SACP levels in EY2008, and also setting levels for 2009-2010 to enable bidders to limit the risk premium they apply to the renewable component of their bids and potentially reduce costs to ratepayers. If the Board cannot set these levels at this time, PSEG recommends that tranches won in the EY2008 BGS Auction be “grandfathered” with respect to the ACP and SACP component of the bid.

PV Now, a coalition of nine manufacturers of solar equipment, limited its comments to the Solar Alternative Compliance Payment portion of the straw proposal. It opposes a stakeholder process, stating that there had already been substantial discussion of the proposed actions in public forums, and that if the multi-year schedule it proposed was adopted there would be little or no cost to ratepayers. If the Board decides to conduct a stakeholder process, PV Now recommends that the scope be broadened to include consideration of splitting the RPS requirement for solar energy into two sub-classes of SREC, one for rebated projects and one for non-rebated projects. PV Now supports setting the SACP at \$300 for EY2008-2012 for rebated projects and opposes such action for non-rebated projects, proposing instead a \$750 level, with no grandfathering of load tranches won in previous auctions. In support of its position, PV Now relies upon its interpretation of the financial model used by the original ACP committee and Rutgers, its claim that the SACP must reflect the cost of installing solar generation, its assertion that the Staff Pilot requires higher SACP levels in the immediate future to provide useful data, and industry data showing a solar generation shortfall in EY2008. PV Now further argues that the widely divergent economics of rebated and non-rebated projects require differing SRECs, and hence differing SACP levels, and that publishing a five-year SACP schedule would promote market stability and avoid risk premiums. In general, PV Now urges the Board to “enlist impartial economic experts to provide input to the Staff as they develop transition programs [.]”

Mid-Atlantic Solar Energy Industries Alliance (MSEIA), a trade association of solar industry manufacturers, suppliers, installers and others, limited its comments to the SACP portion of the request for comment. MSEIA does not support a stakeholder process, stating that there had already been several opportunities for discussion in public forums both actual and virtual. MSEIA urges the Board, if it chose to order such a process, to schedule it to end in the first quarter of 2007. MSEIA also states its strong support for a multi-year schedule of SACP levels because of the signal that such a schedule would send the market regarding future SREC values and value it would have in defining risk levels for investors. In addition, MSEIA joins in PV Now's recommendation that the Board consider a two-tier system of SRECs, one for rebated projects and one for non-rebated projects. MSEIA opposes setting the SACP at its current level and recommends an SACP price of at least \$750 in EY2008 for non-rebated projects. The coalition relies upon economic models showing that an SACP of two and a half to three times the current value will be necessary to drive consumer and investor interest in non-rebated projects. MSEIA also comments upon Staff's proposed pilot project, recommending that the Board place administrative mechanisms in place immediately and accompany the program with a statement that the trial is transitional and not a replacement for an eventual market-based program.

PowerLight, a solar integrator, opposes a stakeholder process on the ground that there has already been adequate opportunity for stakeholder input; if the Board were to order such a process, PowerLight urges that it be commenced and concluded as soon as possible. PowerLight opposes setting the SACP at its current level, and claims that there is a solid consensus supporting a REC-only incentive structure as the means of moving beyond rebates and higher SACP levels as necessary to make a REC-only program work. PowerLight supports the MSEIA and PV Now recommendation of SACP levels of \$750 beginning in EY2008, as well as their recommendation to set a multi-year SACP schedule.

Sun Farm Network (SFN), a solar installer, limited its comments to the SACP portion of the notice and supports the immediate commencement of a stakeholder process for determining SREC and SACP value for, at a minimum, non-rebated projects. As a precursor to this recommendation, it recommends the creation of a two-tier SREC system, based on whether certificates were generated by rebated or non-rebated projects. SFN also recommends that the Board establish multi-year SACP schedules, preferably 5 to 10 years, to send the optimum signals to the financial markets. SFN recommends that the Board clarify its rules on how long a project can sell its SRECS, as recent statements by the Board and OCE, according to SFN, appear to have created some confusion and the current rules are silent on this subject. SFN supports keeping the SACP at its current level for rebated projects. For non-rebated projects, SFN opposes maintaining the current SACP level and recommends increasing the SACP level in EY2008 to \$750-\$850 per megawatt hour. If the Board declines to take such action, SFN suggests that non-rebated projects be permitted to "migrate" to the SREC-only class of projects, with its associated higher SACP level, in EY2009 and going forward.

Pfister Energy (Pfister), a solar installer, opposes keeping the SACP level constant in EY2008. Pfister argues that the economics of the solar power industry require moving away from a rebate-based program more rapidly than will be possible if the SACP is not raised immediately. Pfister also points to the environmental benefits of the RPS. Pfister opines that the project financing gap for PV projects must be closed, and that the SACP must be raised to reasonable levels in order to accomplish this.

SunEdison states that aggressive RPS targets require exponential growth on new projects beginning in 2007. SunEdison believes that the development of New Jersey's PV industry is currently threatened by its inability to carry out new sales due to inadequate incentives. The industry is also, according to the commenter, in need of regulatory predictability. SunEdison recommends a significant increase in SACP levels to \$750 to compensate for decreasing rebate levels, to permit adequate competitive pricing of SRECs. SunEdison further recommends sending a long term signal to the solar market regarding future SREC levels, such that long range industry planning becomes possible.

Whole Foods, a retailer which has a vested interest in New Jersey's renewable energy market, opposes keeping the SACP at its current level. Whole Foods argues that it could not qualify for a CORE rebate for a project of its own and that entities such as itself require SRECs of at least \$750 and an SACP set higher than that level in order for the economics of solar generation to work for them.

Jonathan A. Tobert, a private citizen with an application in the CORE rebate queue, submitted comments in which he recommended an immediate increase of the SACP to two to three times its current amount. In support of his position, Mr. Tobert points to the possibility that funding for rebates will fail and asserts that without a rapid, substantial increase in SREC prices, which would be furthered by an increased SACP, investment in solar installations would become so unprofitable that the solar market in New Jersey would virtually shut down.

### STAFF RECOMENDATIONS

OCE has reviewed and considered these comments, as discussed below, and has formulated recommendations regarding compliance payment levels and a procedural schedule for Board review of the broader, far reaching issues related to the ACP and SACP.

#### ACP and SACP Levels for Energy Year 2008

The OCE believes that the conditions and assumptions that supported establishing different prices for ACP and SACP and set those prices at \$50 and \$300 per MWH respectively in 2003 remain in effect and valid today. The markets for RECs produced by Class I renewable energy and SRECs produced by solar photovoltaic (PV) facilities have, as exhibited by their prices, remained steady and below the ACP and SACP levels. The balance between supply and demand in REC and SREC markets for reporting years 2007 and 2008 is expected to remain stable. The installed capacity of each type of eligible generating resource is expected to continue growing at roughly the same rate of increase as the State's RPS percentages.

The OCE estimated that the RPS solar percentage of 0.017% for reporting year 2006 would require 7 MW of renewable power capacity to be installed by June 1, 2005 if no other installed capacity came on line. By June 1, 2005, approximately 4.8 MW of solar PV was installed in New Jersey. However, over 2.5 MW of installed capacity were added in the next quarter alone. By year's end, the installed capacity of solar PV exceeded 9 MW, with another five months remaining in RPS reporting year 2006. The compliance reports submitted by RPS regulated entities on September 1, 2006 indicated that 10,723 SRECs were retired for an estimated obligation of 10,449 SRECs, with 163 SACP's paid. This compares with 3316 SRECs retired and 2640 SACP's paid in the previous reporting year 2005. Reporting Year 2005 was the first year of the solar RPS percentage requirement and the first operational year of the SREC trading platform.

The OCE estimated that the RPS percentage of 0.0393% for reporting year 2007 would require 29 MW installed by June 1, 2006 if no other installed capacity came on line. By June 1, 2006, 18 MW of eligible solar PV capacity had been installed in New Jersey. By September 30, installed capacity had grown to 24 MW of solar PV capacity, and by December 1, installed capacity exceeded 30 MW. The OCE expects no disruptions in the current pace of installation activity, which is primarily driven by the CORE rebate program. There are currently over 440 approved applications for CORE rebates supporting over 23 MW of potential capacity. Historic installation rates suggest that approximately 18 MW of this capacity will be installed within the next year. The OCE

expects at least one more year of balance between supply and demand for SRECs and continued stability in SREC prices used to meet reporting year 2007 requirements.

The OCE further estimates that the RPS percentage of 0.0817% for reporting year 2008 will require 51 MW installed by June 1, 2007 if no other installed capacity comes on line. From the above analysis, approximately 48 MW of solar PV capacity is expected by June 1, 2007. As of December 1, 2006, the CORE rebate program currently had over 1471 applications in queue awaiting rebate commitment approvals for over 48 MW of solar capacity. It is not anticipated that the entire list of queued applications will receive rebate commitments in 2007, but may receive commitments in 2008 depending upon installation completion rates and budget availability.

The CORE rebate constraints are not expected to impact the capacity available to meet the RPS percentage requirements until reporting year 2009. The RPS requirement for solar PV of 0.16% is expected to require approximately 119 MW of solar PV capacity by June 1, 2008, assuming no further capacity is installed after this date. The OCE has estimated that the CORE budget can accommodate approximately 85 MW of solar PV capacity, leaving a potential shortfall of approximately 34 MW needed in the June 2008 to May 2009 timeframe.

It is this anticipated shortfall that has prompted OCE Staff to initiate the development of a Solar REC-only pilot project, as discussed below. Such a pilot would be designed to provide an opportunity for entities wishing to enter the solar generation market to bypass the CORE rebate program and also to test the hypothesis that the solar PV market has matured to the point that investment in and installation of solar PV without the use of a CORE rebate is viable. Staff believes that an adequate response via migration of projects from the CORE rebate program application queue to and enrollment of new projects in this pilot will require increasing the level of SREC payments available to investors in the 34 MW of capacity required.

However, no increase in the ACP and SACP at this time is required to meet the near term RPS goals. In fact, increasing them now may limit the Board's ability to do so in the future, when such increases may be truly needed. To the extent that ACP and SACP levels establish the upper limit for the cost of RPS compliance, raising the rate while the market is in balance is not recommended. The potential for over-subsidizing the solar marketplace in New Jersey is a very real concern. Such action could lead to SREC oversupply, which might render solar facility owners unable to market their SRECs.

No additional rate impacts will result from the recommendation to keep the ACP and SACP levels for Energy Year 2008 at their previously established levels. These costs and impacts have been previously reviewed and evaluated by the Board in prior Orders. Moreover, no rate increase will result from the Solar REC-only pilot (as proposed below), since the SACP level will remain constant.

OCE Staff has developed a model (attached hereto), from the 2004 ACP Advisory Committee process, which estimates the rate impacts of steady ACP and SACP levels. As recommended by the ACP Committee, with ACPs set at \$50/MWH for non-solar

renewable energy required by the RPS, and \$300/MWH for required solar renewable energy, the rate impact in EY2008 would be as follows:

- if a supplier relies on the \$50/MWH ACP for non-solar renewable energy to meet the RPS requirements and passes this cost through to customers, the impact on the average residential household would be approximately \$10.53 per year, or a rate impact of \$0.00146/kWh;
- if a supplier relies on the \$300/MWH SACP for solar renewable energy to meet the RPS requirements and passes this cost through to customers, the impact on the average residential household would be approximately \$1.64 per year, or a rate impact of \$0.00023/kWh.

These estimates are the maximum costs or impacts if all suppliers relied on the ACP and SACP to meet all their RPS requirements. Based on the current availability of Class I renewable energy within the PJM region, and the current prices of RECs in regions that rely on such systems, the suppliers' compliance costs should be significantly lower, because it is likely that suppliers, as intended, will rely on the ACP and SACP to meet unexpected circumstances, and not as a routine regulatory compliance strategy.

Based on the foregoing, Staff believes that the \$50/MWH ACP and the \$300/MWH SACP remain reasonable amounts that balance the need to support renewable energy generation and to protect the State's ratepayers and electricity consumers. Furthermore, Staff believes that these amounts would not have a negative impact on the 2007 Basic Generation Service (BGS) auction.

Some commenters opposed a stakeholder process on the ground that the need for an immediate increase in the SACP is too pressing. However, the variety of issues and range of opinions raised in the comments themselves demonstrate the need for such a process. Several solar advocates argued for setting multiple year schedules for ACP and SACP levels. This suggestion, as well as the recommendation that rebated solar projects and non-rebated solar projects should receive different SREC prices, should be examined through the stakeholder process. Moreover, some auction participants supported establishing the ACP and SACP levels for EY2009 and 2010 prior to the 2007 BGS Auction, as well as "grandfathering" the tranches won by winning bidders in the 2006 and 2007 BGS auctions with respect to the SACP component of the bid. PV Now, on the other hand, recommended against "grandfathering" of 2009 and 2010 load by 2007 BGS Auction winners.

With respect to the claim that the solar industry requires an immediate increase in the SACP level, as discussed above, over-subsidization of the industry is a serious concern. In addition, meeting near-term RPS goals does not require an increase at this time.

Several commenters recommended that the Board retain an independent consultant to provide additional economic analysis for its decisions concerning moving from a rebate-based to a REC-based program. This analysis will, with the Department of Treasury's

approval, be provided by Summit Blue, through an expansion of its existing scope of work, as set forth in detail below.

Staff has also considered Rate Counsel's recommendation that Staff initiate what Rate Counsel characterized as a broader procedural schedule, to cover matters such as the goals of the CORE program in connection with the development of solar energy, the definition of a future market structure, and how such a structure would fit with CORE program development. Rate Counsel appears to premise its comments upon the assumption that the CORE program is an end in itself rather than one means to foster the goal of promoting the renewable energy market within the state of New Jersey. The purpose of the stakeholder proceeding proposed here is to consider whether other means may also and possibly more effectively help to achieve that goal. Moreover, Staff has concluded that the stakeholder process as contemplated does address the issues identified by Rate Counsel. By opening the question of the appropriate ACP/SACP level for public debate, the OCE has implicitly raised all of the questions raised by Rate Counsel, as indicated by many of the comments already received in response to the Public Notice. The goals of the CORE program are implicitly addressed in comments discussing the RPS requirements and the future of rebate funding. Recommendations to set ACP and SACP for EY2009-2010 now, or to publish a 5-year schedule of SACP rates, attempt to define a future market structure.

The OCE recognizes that the Board's decisions regarding ACP and SACP levels on a going forward basis will have profound, long-term effects on the renewable energy market in New Jersey such that maximum public input is appropriate. Moreover, completion of the stakeholder process will allow time for completion of the Renewable Energy Market Assessment more fully described below. For these reasons, OCE recommends that the Board conduct a formal stakeholder process to solicit a wide range of opinion regarding these decisions.

#### Procedural Schedule for Public Comment on ACP and SACP Levels for 2009 and 2010 or Longer

The OCE recommends that the Board hold two public hearings on the need for increasing the SACP for Reporting Years 2009 and 2010 or longer. Data, technical reports and other information will be solicited on the following issues:

1. What is the expected shortfall in solar PV capacity required to meet the RPS if the SACP levels for 2009 and 2010 remain at their current level of \$300 per MWh?
2. What is the optimal SACP level required to ensure that sufficient solar PV capacity will be installed to meet the RPS goals at the least cost to the New Jersey ratepayer?
3. For what number of years should the SACP be established? Should it be established only for the Reporting Years of the next BGS auction timeframe of RY 2008-2010, longer, or shorter? What timeframe is reasonable?
4. Should the ACP and SACP in RY 2009 start at a higher level and decrease over subsequent Reporting Years, or should it start at a relatively low level, but higher than the RY 2008 level, and increase over multiple Reporting Years?

5. Can the SACP be structured to enable different SREC prices for solar electricity delivered by rebated and non-rebated solar facilities?
6. Should the SACP and the subsequent SREC have a life for payment to the renewable energy generator? Should the SREC continue only until the system is "paid for"? How long should that timeframe be?
7. What are the advantages and disadvantages to the Board's posting a multi-year schedule for SACP levels?
8. What are stakeholders' views regarding the Board's detailed economic analysis of the customer bill costs and the rate impacts of transitioning to a certificate-based financing system without rebates?

Public hearings are proposed to be held in Trenton in mid-April and in Newark in late April, after the detailed economic analysis is completed and distributed to the public for review, evaluation and comment. The OCE suggests that Commissioner Joseph Fiordaliso serve as Hearing Officer. The OCE further recommends that written comments be required to be submitted at least five days prior to the hearing, and that the Board provide 15 days for written rebuttals of all comments posted. All written information or reports submitted at a hearing would be posted on the New Jersey Clean Energy Program website. Staff anticipates that recommendations arising from this proceeding would be presented to the Board before the end of July 2007.

#### Independent Economic Analysis

In August, 2006, the Board approved the selection of Summit Blue Consulting (Summit Blue) to perform a Renewable Energy Market Assessment, following a competitive selection process. On October 4, 2006, OCE Staff held the Renewable Energy Market Assessment kick-off meeting with Summit Blue. The market assessment will include an independent, in-depth analysis of New Jersey's solar PV market as well as recommendations regarding the future direction of the CEP renewable energy programs. These recommendations were emphasized by Staff as the first priority for the market assessment team with, preliminary results required before the end of 2006.

The OCE recommends that the Board obtain the services of an independent economic consultant to assist in answering the questions to be considered in the aforementioned stakeholder process. Given the scope and importance of these questions, OCE believes that such an analysis will positively add to the record before the Board and inform its decision making. The required analysis is, in Staff's opinion, closely related and incidental to the analysis already being undertaken by Summit Blue. This expansion would include a more detailed scenario-based analysis of potential SACP schedules and their associated impacts on: 1) ratepayer costs; and 2) their ability to stimulate the level of development needed to meet RPS requirements. The OCE has received an amended scope of work from Summit Blue setting forth the additional tasks required to complete this analysis, and proposing the additional fee of \$46,158.00. Staff therefore recommends that it be permitted to seek Department of Treasury (Treasury) authorization to officially solicit Summit Blue to expand its existing scope of work, consistent with all relevant Treasury requirements and guidelines. Staff further recommends that it be permitted to work with Treasury to facilitate the execution of a Treasury-approved contract amendment to allow the aforementioned analysis to be

conducted, and that the Board Chief of Staff be authorized to execute said contract amendment on behalf of the Board. The final report on this analysis would be expected prior to the conclusion of the stakeholder process.

### Initiation of a Solar REC-Only Pilot Program

OCE Staff believes that a Solar REC-Only Pilot should be designed primarily to enable projects to bypass the CORE rebate queue and proceed to construction and participation in the solar REC markets. Moreover, Staff anticipates that the Pilot will reduce the expected solar generation capacity shortfall in EY2009-2010. As an additional benefit, the Pilot will provide OCE Staff and the Board with data regarding the potential for self-financing of solar generation projects, in order to better inform the Board in monitoring the solar energy market and setting the level of the ACP and SACP going forward.

Staff recommends that under the Solar REC-Only Pilot, participation in which would be entirely voluntary, any person may register to participate, forego a CORE rebate, obtain an OCE inspection of a solar generation system, and, if eligible, receive a certification that the solar electricity the system generates will be eligible for SRECs. In exchange for this certification, the registrant would agree to submit complete information regarding the energy generated and the financing of the solar energy system. The Board would register projects for inspection/certification during a period of 120 days commencing with the Board's approval of the Pilot. At the end of that time, OCE Staff would evaluate the data collected under the Pilot and present it to the Board, which would use this data in determining what modifications, if any, are required to the ACP/SACP or the CEP programs themselves, to assist in furthering the Board's goal of a vibrant, self sustaining renewable energy market in New Jersey.

The OCE suggests that to be eligible for participation in the Solar REC-Only Pilot, a solar energy system shall meet both of the following criteria. First, the system for which an inspection is sought shall be self-financed; that is, it shall be constructed, installed and operated without any NJCEP rebates or grants, such as those available through CORE or the Renewable Energy Project Grants and Finance Program. A registrant may utilize any non-BPU funding, including but not limited to federal tax credits, federal grants, any other State agency grants, and/or any other grant, loan or rebate funding. Secondly, the system's output shall be remotely monitored at all times, and the amount of energy generated shall be automatically and directly communicated to the Board designated REC tracking system at least monthly, or once per MWH generated, whichever is more often.

Staff further recommends that a registration for participation in the Solar REC-Only pilot shall include a description of the system's capacity and the expected average amount of energy that will be produced per year. The registration should also include the expected start and completion dates of construction. A registrant shall certify that the solar energy system shall be constructed, installed and operated consistent with all Board rules and other applicable laws; and with all Board Policies and Procedures for the Customer On-Site Renewable Energy program that are in effect at the time of the registration. A registration shall also include a financial statement that generally

describes all sources of the project's financing for the entire life of the project. If any portion of the registration submittal includes information that the registrant believes is confidential or proprietary, the registrant shall include with the registration submittal a request for confidentiality under the Board's OPRA rules at N.J.A.C. 14:1-12.

## CONCLUSION

After consideration of the recommendations of the OCE and the comments submitted by the stakeholders, the Board **FINDS** that existing economic conditions and modeling support maintaining the ACP and SACP at current amounts in EY2008. The Board **FURTHER FINDS** that in order to determine the appropriate level for EY2009 and EY2010 or longer, a stakeholder process as outlined in this order is appropriate. In addition, the Board **FINDS** that a Solar REC-Only Pilot should be implemented to provide OCE Staff and the Board with data as more fully described above, and in order to reduce any expected shortfall of solar generation capacity in Energy Years 2009 and beyond.

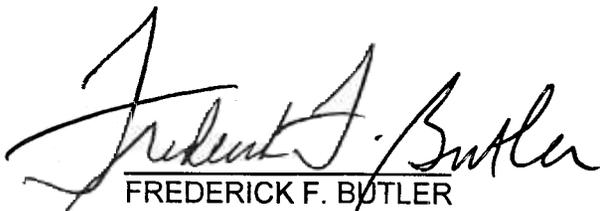
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Based on the foregoing, and consistent with the OCE Staff's recommendation as set forth in detail above, the Board **HEREBY ORDERS** that the Alternative Compliance Payment be set for the Energy Year 2008 at \$50 per megawatt hour, and that the Solar Alternative Compliance Payment be set for the Energy Year 2008 at \$300 per megawatt hour. The Board **FURTHER ORDERS** OCE Staff to conduct a stakeholder proceeding, consistent with the schedule set forth herein, and to present policy recommendations for the Board's consideration before the end of July 2007. The Board **FURTHER ORDERS** OCE Staff to facilitate the execution of a contract amendment with Summit Blue Consulting, consistent with the analysis discussed herein and all relevant legal and administrative requirements and guidelines. The Board **AUTHORIZES** the Board Chief of Staff to execute said contract amendment on its behalf. The Board **FURTHER ORDERS** that a Solar REC-only Pilot Program be initiated, consistent with Staff's recommendation herein, and that the results of said Pilot Program be presented to the Board concurrently with the OCE Staff's final policy recommendations in this matter.

DATED: 1/19/07

BOARD OF PUBLIC UTILITIES  
BY:

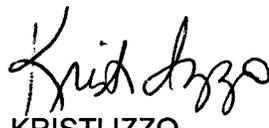
  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
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

