



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

**MINUTES OF THE REGULAR MEETING OF THE
BOARD OF PUBLIC UTILITIES**

A regular Board meeting of the Board of Public Utilities was held on March 9, 2022, via online @ <https://youtu.be/Kb9qBJElerw>

Public notice was given pursuant to N.J.S.A. 10:4-18 by posting notice of the meeting at the Board's Trenton Office, on the Board's website, filing notice of the meeting with the New Jersey Department of State and the following newspapers circulated in the State of New Jersey:

Asbury Park Press
Atlantic City Press
Burlington County Times
Courier Post (Camden)
Home News Tribune (New Brunswick)
North Jersey Herald and News (Passaic)
The Record (Hackensack)
The Star Ledger (Newark)
The Trenton Times

The following members of the Board of Public Utilities were present:

Joseph L. Fiordaliso, President
Mary-Anna Holden, Commissioner
Dianne Solomon, Commissioner
Upendra J. Chivukula, Commissioner
Robert M. Gordon, Commissioner

President Fiordaliso presided at the meeting and Aida Camacho-Welch, Secretary of the Board, carried out the duties of the Secretary.

It was also announced that the next regular Board Meeting will be held on March 23, 2022 at 10:00 a.m. via livestream on YouTube.

CONSENT AGENDA

I. AUDITS

A. Energy Agent, Private Aggregator and/or Energy Consultant Initial Registration

| | | |
|-------------|---|--------|
| EE22020037L | CustomerFirst Renewables, LLC d/b/a CustomerFirst Renewables | I – EA |
|-------------|---|--------|

Energy Agent, Private Aggregator and/or Energy Consultant Renewal Registrations

| | | |
|-------------|--------------------------------|--------------|
| EE21050848L | Integrity Energy Services, LLC | R – EA/PA |
| GE21050849L | | |
| EE21010033L | Apollo Edison, LLC | R – EA/PA/EC |
| GE21010034L | | |
| EE21050845L | Harris Energy Solutions, LLC | R – EA/EC |
| GE21050850L | | |

BACKGROUND: The Board must register all energy agents, private aggregators, and energy consultants, and the Board must license all third party electric power suppliers and natural gas suppliers. On May 10, 2019, P.L. 2019, c. 100-101 was signed into law providing that third party electric power and natural gas supplier licenses issued by the Board may be renewed without expiring if certain conditions are met. An electric power supplier and/or natural gas supplier license shall not expire so long as the licensee pays to the Board a license renewal fee accompanied by an annual information update on a form prescribed by the Board. The renewal fee and annual information update form must be submitted within 30 days prior to the anniversary date of the last approved licensing application. P.L. 2019, c. 100-101 became operative 60 days following the date of enactment.

As such, any third party suppliers (TPSs) with a license expiring prior to July 9, 2019 were still required to submit the previous renewal application form. Any TPS renewal application that was filed prior to July 9, 2019 has been, and will continue to, be processed by Board Staff for approval or denial in accordance with N.J.A.C. 14:4-5.7. The anniversary date for companies with a pending application will be the date that the renewal application receives Board approval.

At its regular agenda meeting of August 18, 2021, the Board approved the final adoption of proposed amendments to N.J.A.C. 14:4 et seq., concerning energy competition and specifically to subchapter 5, N.J.A.C. 14:4-5 et seq., Energy Licensing and Registration.

In accordance with the rule amendments, an energy agent, private aggregator, or energy consultant registration shall not expire so long as a registration renewal fee accompanied by an annual information update form is submitted to the Board within 30 days prior to the registrant's annual anniversary date. Any registration renewal application that was filed prior to August 18, 2021 has been, and will continue to, be processed by Staff for approval or denial in accordance with N.J.A.C. 14:4-5.9. The anniversary date for companies with a pending application will be the date that the renewal application receives Board approval. Annually thereafter, licensed electric power suppliers and natural gas suppliers, as well as energy agents, private aggregators, and energy consultants, are required to renew timely their licenses and registrations in order to continue to do business in New Jersey.

Staff recommended that the following applicant be issued an initial registration as an energy agent:

- CustomerFirst Renewables LLC d/b/a CustomerFirst Renewables

Staff also recommended that the following applicants be issued renewal registrations as an energy agent, private aggregator and/or energy consultant:

- Integrity Energy Services LLC
- Apollo Edison LLC
- Harris Energy Solutions, LLC

DECISION: The Board adopted the recommendation of Staff as set forth above.

B. Non-docketed Matter – In the Matter of Trenton Water Works – Request for Two Month Extension to File Calendar Year (CY) 2021 Annual Report.

BACKGROUND: Pursuant to N.J.A.C. 14:3-6.3, every utility shall file with the Board, on or before March 31st of each year, an annual report summarizing its finances and operations for the preceding Calendar Year (CY). A utility may file a request with the Board Secretary for an extension of up to 30 days for filing the annual report. Each additional 30-day extension, after the initial extension is granted, requires the submission of a separate request for extension. Current policy requires Board approval for an extension of time to file an annual report, which extends the filing date by more than 30 days.

On January 6, 2022, the City of Trenton, on behalf of Trenton Water Works (TWW), requested two months extension to file CY 2021 annual report. Per letter, TWW finance office is in the process of converting its current fiscal year reporting to CY reporting which requires time-consuming work. With this extension, the CY 2021 annual report will be due on or before June 1, 2022.

After, Staff recommended that the Board waive the provision in N.J.A.C. 14:3-6.3, which requires that each 30-day extension be a separate submission. Staff also recommended that the Board extend the deadline by two months until June 1, 2022 and authorize the Secretary to issue a letter consistent with the same.

DECISION: The Board adopted the recommendation of Staff as set forth above.

C. Docket No. TE21121250 – In the Matter of the Petition of BAI Communications US Holdings NJ, LLC for Authority to Provide Competitive Local Exchange Telecommunications Services in the State of New Jersey.

BACKGROUND: By letter dated December 20, 2021, BAI Communications US Holdings NJ, LLC (Petitioner or BAI) filed the Petition with the Board requesting authority to provide facilities-based and resold competitive local exchange telecommunications services in the State of New Jersey.

BAI is a privately held Limited Liability Company organized under the laws of the State of Delaware. Its operations will be managed by its affiliate, Mobilitie, LLC. In addition, in 2016, the Board granted competitive local exchange carrier (CLEC) authority to BAI's

other affiliate, Mobilitie Management, LLC. BAI is majority owned indirectly by Frequency Infrastructure Australia Holdings Pty Limited (FIAHPL). In turn, FIAHPL is ultimately owned and controlled by the Canada Pension Plan Investment Board, which holds a wide variety of investments in a multitude of business segments across the globe. The Petitioner's principal office is located at 660 Newport Center Drive, Suite 200, Newport Beach, California 92660.

The Petitioner asserted that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. The Petitioner also asserted that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

BAI stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. The Petitioner has submitted the professional biographies of its key personnel, who it claims are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

The Petitioner sought authority to offer facilities-based and resold telecommunications services to transmit voice and/or data traffic from customer sites to points of interconnection and traffic exchange using a combination of facilities-based and resold fiber optic networks and microwave facilities to business customers in the State of New Jersey. In conjunction with its service offering, the Petitioner plans to construct and operate communications infrastructure, including towers, mini-macro structures, distributed antennas system networks, Wi-Fi systems, other wireless transmitters and antennas, and related fiber optic networks in and around sites and venues such as arenas, convention centers, transportation centers and associated transit systems, hotels, education campuses, office buildings, hospitals, and housing facilities. Through this Petition, BAI is seeking authority to transmit traffic from such sites and venues to points of interconnection and traffic exchange using fiber optic networks and microwave facilities. The Petitioner intends to solicit customers for these services from its existing customer base, and through business-to-business marketing such as professional trade shows.

The Petitioner also requested a waiver of N.J.S.A. 48:3-7.8, which require that books and records be kept within the State of New Jersey. For administrative efficiencies, the Petitioner requested permission to maintain and keep all financial books, records, documents and other writings incident to the conduct of the Petitioner's business in the State of New Jersey at Petitioner's business offices located in Newport Beach, California.

By letter dated January 10, 2022, the New Jersey Division of Rate Counsel (Rate Counsel) submitted comments to the Board stating that, based on its review, the Rate Counsel is satisfied that the Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity. The Rate Counsel did not object to granting the waivers requests in connection with record-keeping by the Petitioner.

After review, Staff recommended that the Board grant the Petitioner authority to provide competitive local exchange telecommunications services in the State of New Jersey. Staff's recommendation does not pertain to Non-CLEC Services. Staff also recommended that the Board approve the request for waiver from its requirements that the Petitioner maintain its financial books and records within New Jersey with the understanding that the

Petitioner upon written request from the Board, will produce such books and records for any investigation or examination the Board undertakes in connection with the Petitioner services at the Petitioner's expense.

The Petitioner's tariff detailing the terms, conditions, and prices of its proposed service offerings has been filed simultaneously with the Petition. Staff recommended that to ensure service quality, the Petitioner should notify the Board within 10 days from the date it begins service to New Jersey customers. If in the future, BAI plans to provide switched voice or dial tone local exchange telecommunications services and E-9-1-1 services to residential and business customers, Staff also recommended that the Board order BAI to:

1. Provide the Board notice of its website link or file initial tariffs which contain the rates and general terms and conditions prior to commencing these services to end-users, and
2. Notify the Board within 10 days from the date it begins providing such services to New Jersey customers.

DECISION: The Board adopted the recommendation of Staff as set forth above.

II. ENERGY

There were no items in this category.

III. CABLE TELEVISION

There were no items in this category.

IV. TELECOMMUNICATIONS

There were no items in this category.

V. WATER

A. Docket No. WE21081065 – In the Matter of the Petition of New Jersey-American Water Company, Inc. for Approval of a Municipal Consent Granted by the Township of Mansfield, Burlington County.

BACKGROUND: On August 13, 2021, New Jersey-American Water Company Inc. (NJAWC or Company or Petitioner) filed a petition with the Board seeking approval of the following: (1) a municipal consent, Ordinance No. 2021-11(Ordinance), adopted July 21, 2021 by the Township of Mansfield (Township) to allow Petitioner to provide wastewater service to the customers in the Township (Proposed Franchise Area); and (2) the expansion of NJWAC's service territory to include customers in the Proposed Franchise Area.

NJAWC agreed to Mansfield Township's franchise term, which shall be perpetual and the use of surrounding streets, which is limited by a statute to 50 years. NJAWC provides drinking water services to the Township.

The New Jersey Division of Rate Counsel filed comments on February 17, 2022 indicating that it did not object to the determination requested in this matter.

On February 8, 2022, a duly noticed municipal consent hearing on the Company's petition was held via teleconference. Suzanne Patnaude, Esq., Legal Specialist, presided over the hearing at which representatives of the Company, the New Jersey Rate Counsel, and Staff appeared. No members of the public appeared at the hearing or filed written comments.

Staff recommended that the Board approve the municipal consent, Ordinance No. 2021-11, adopted July 21, 2021, granted to NJAWC by the Township, the expansion of NJWAC's service territory to include customers in the Proposed Franchise Area, and the use of NJAWC's existing wastewater tariff applicable in the new service territory.

DECISION: The Board adopted the recommendation of Staff as set forth above.

VI. RELIABILITY AND SECURITY

A. Docket Nos. AS22010010K, AS22010011K, GS22010012K, GS22010013K, GS22010014K, GS22010015K, and GS22010016K – In the Matter of Routine One Call Settlements Pursuant to N.J.S.A.48:2-73 to -91.

BACKGROUND: This matter involved settlements of alleged violations of the Underground Facility Protection Act (Act) by both excavators and operators of underground facilities. This matter does not contain settlements involving catastrophic situations, death, or major property damage. The categories of infraction are failure to provide proper notice, failure to use reasonable care, and mismarking of facilities. The cases have been settled in accordance with a penalty strategy, which escalates in relationship to aggravating factors, such as injury, property damage, fire, evacuation, road closure, and other public safety concerns. Moreover, the strategy seeks to establish appropriate disincentives for actions which violate the Underground Facility Protection Act.

Pursuant to the Act, the Board, through the Bureau of One-Call, supervises and enforces the One-Call Underground Damage Prevention System. The Act subjects violators of its provisions to civil penalties of not less than \$1,000.00 and not more than \$2,500.00 per violation per day, with a \$25,000.00 maximum for a related series of violations. N.J.S.A. 48:2-88. Violations involving a natural gas or hazardous liquid underground pipeline or distribution facility are subject to civil penalties not to exceed \$200,000.00 for each violation for each day with a \$2,000,000.00 maximum for any related series of violations.

The number of settlements are 7 with a total penalty of \$21,000.00.

Staff recommended that the Board approve all those cases in which offers of settlement and payment have been received.

DECISION: The Board adopted the recommendation of Staff as set forth above.

VII. CUSTOMER ASSISTANCE

There were no items in this category.

VIII. CLEAN ENERGY

There were no items in this category.

IX. MISCELLANEOUS

A. Approval of the following Minutes:

- **October 28, 2021 – Item 8A Executive Session Minutes;**
- **December 15, 2021 – Items 8E, 8F, and 9A Executive Session Minutes; and**
- **January 26, 2022 Minutes.**

BACKGROUND: Staff presented the Executive Session minutes from October 28, 2021, item 8A, December 15, 2021, items 8E, 8F and 9A and the regular agenda minutes of January 26, 2022, and recommended that they be accepted.

DECISION: The Board adopted the recommendation of Staff as set forth above.

After appropriate motion, the consent agenda was approved.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

AGENDA

1. AUDITS

There were no items in this category.

2. ENERGY

Paul Lupo, Acting Director, Division of Energy, presented these matters.

A. Docket No. ER22010028 – In the Matter of the Provision of Basic Generation Service, the Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff – January 28, 2022 Filing.

BACKGROUND AND DISCUSSION: On January 28, 2022, Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company (collectively, EDCs) filed a joint petition with the Board requesting recovery of Federal Energy Regulatory Commission (FERC) approved changes in firm transmission service related charges (January 2022 Petition).

The EDCs requested authorization to implement revised Basic Generation Service (BGS) Residential/Small Commercial Pricing (BGS-RSCP) and Commercial and Industrial Energy Pricing (BGS-CIEP) transmission tariff rates with an effective date of March 1, 2022. The proposed rates included in the amended tariff sheets for each EDC reflect costs effective on January 1, 2022 for TECs and Network Integration Transmission Service Rate (NITS) costs resulting from FERC-approved filings.

Because the EDCs began to pay the modified transmission charges in January 2022, the EDCs requested a waiver of the 30-day filing requirement. The EDCs filed the January 2022 Petition with the Board for approval to recover TECs and NITS charges from BGS customers, and to pay PJM for costs assigned to them by PJM for the load served in the respective EDC service territories. Any differences between payments to PJM and charges to customers would flow through BGS Reconciliation Charges.

According to the EDCs, the proposed BGS tariff rates have been modified in accordance with the Board-approved methodology contained in each EDC's Company-Specific Addendum and in conformance with each EDC's Board-approved BGS tariff sheets.

Staff recommended Board approval of the changes to the BGS-RSCP and BGS-CIEP transmission rates requested by each EDC for its transmission charges resulting from the FERC-approved changes to the TECs and NITS rate in the January 2022 Petition, effective April 1, 2022. Staff also recommended the Board authorize the EDCs' request to collect from, or refund to, BGS customers, the costs associated with the January 2022 Petition. Staff also recommended that the Board waive the 30-day filing requirement as requested by the EDCs in the January 2022 Petition. Staff further recommended that the Board directed the EDCs to file tariffs and rates consistent with the Board's findings by April 1, 2022.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

B. Docket No. GR21060950 – In the Matter of the Petition of South Jersey Gas Company for Approval to Revise the Cost Recovery Charge Associated with Energy Efficiency Programs (EET Charge).

BACKGROUND AND DISCUSSION: On June 30, 2021, South Jersey Gas Company (SJG or Company) filed a petition with the Board seeking authorization to decrease its Energy Efficiency Tracker (EET) rate from \$0.027800 to \$0.026330 per therm, including Sales and Use Tax and/or public utility assessment (collectively, Taxes), as well as to reconcile the Company's Energy Efficiency Program (EEP) costs and cost recoveries for the period of October 1, 2020 to September 30, 2021, and to recover forecasted revenues for the period October 1, 2021, through September 30, 2022 (June 2021 Petition).

According to the June 2021 Petition, the proposed rate decrease was estimated to recover \$12,830,807 which includes \$9,319,187.00 of actuals through April 2021 and projected expenses through September 2022, and incorporated an under-recovered balance of \$3,511,620.00, excluding Taxes.

Through discovery, SJG updated its revenue requirement to include actual data through November 2021 (December 2021 Update). Based upon the December 2021 Update, the updated revenue requirement would be \$12,435,725.00, which includes \$9,180,294.00 of actual and projected expenses through September 2022 and incorporated an under-recovered balance of \$3,255,431.00 as of September 30, 2021, exclusive of Taxes. According to the December 2021 Update, the proposed per therm EET rate would decrease from \$0.026330 to \$0.025519 per therm, including Taxes.

The Company, Board Staff (Staff) and the New Jersey Division of Rate Counsel (collectively, Parties) engaged in discovery in this matter, which SJG answered and provided all the requested documentation. As a result, the Parties executed a stipulation of settlement (Stipulation) that recommended approval of the Company decreasing its current EET rate of \$0.027800 to \$0.025427 per therm, including Sales and Use Tax and excluding the public utility assessment, resulting in a revised total EET rate of \$0.036254 per therm, including Sales and Use Tax, as reflected in the Stipulation.

Staff recommended that the Board approve the Stipulation of the Parties. Staff further recommended that the Board direct SJG to file revised tariffs consistent with the Stipulation by March 31, 2022.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

C. Docket No. GR21060880 – In the Matter of the Petition of South Jersey Gas Company for Approval to Revise the Rider “H” Rate Associated with the Tax Cuts and Jobs Act of 2017.

BACKGROUND AND DISCUSSION: On June 1, 2021, South Jersey Gas Company (SJG or Company) filed a petition with the Board seeking approval to revise its Rider H rate.

SJG sought approval to implement a proposed per therm Rider H credit rate of \$0.022930 for the period October 1, 2021 through September 30, 2022. This proposed credit rate reflects a per therm decrease of \$0.008262 per therm from the current per therm Rider “H” credit rate of \$0.031192. The June 2021 Petition was based upon actual information through April 30, 2021, and projected information through September 30, 2022.

Through discovery, the Company updated its proposed Rider H credit rate to \$0.023301 to reflect actual data through September 30, 2021.

Following further review and discussions, SJG, the New Jersey Division of Rate Counsel, and Board Staff (collectively, Parties) executed a stipulation of settlement (Stipulation). As a result, a typical residential heating customer will experience an increase of \$0.79 in their monthly bill.

Staff recommended that the Board issue an Order approving the Stipulation of the Parties. Staff also recommended that the Board direct SJG to file tariffs consistent with its Order prior to April 1, 2022.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

D. Docket No. ER22010003 – In the Matter of Federal Energy Items for 2022 – FERC Docket No. ER22-902 – PJM Interconnection, LLC

David Schmitt, Esq., Legal Specialist, Office of General Counsel, presented this matter.

BACKGROUND AND DISCUSSION: On January 27, 2022, PJM submitted to the Federal Energy Regulatory Commission (FERC or the Commission) the executed State Agreement Approach (SAA) Term Sheet as Schedule 49 (SAA Agreement) of PJM's Tariff. The SAA process allows states to formally incorporate their state policy goals into PJM's Regional Transmission Expansion Plan.

The Board entered into the SAA process in November 2020 when it formally requested that PJM began the SAA process to explore potential efficient and effective transmission solutions to interconnect offshore wind generation. The SAA Agreement is a negotiated agreement between PJM and the Board that establishes the obligations of the Board under the SAA process but also allows New Jersey and its ratepayers to be reimburse by any future

Staff, on the Board's behalf, filed on comments on February 11, 2022 supporting FERC's approval of the SAA Agreement. Accordingly, Staff recommended that the Board ratify the comments, filed February 11, 2021.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

E. Docket No. EO19020226 – In the Matter of the Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through Solar RPS Costs Under the Clean Energy Act, P.L. 2018, c. 17; and

Docket No. EO20100654 – In the Matter of the Cease and Desist and Refund Instructions Letter of January 22, 2019 to Third Party Suppliers.

Paul Youchak, Deputy Attorney General, Division of Law, presented this matter.

BACKGROUND AND DISCUSSION: This matter involved an appeal filed by the Retail Energy Supply Association (RESA) with the Superior Court of New Jersey, Appellate Division (Appellate Division or Court) seeking a ruling from the Appellate Division on its Verified Petition (Petition) filed with the Board on the grounds that the Board's inaction on the Petition constituted a de facto denial of the relief sought by RESA.

In 2018 the Legislature passed the Clean Energy Act and amended the State's renewable portfolio requirements. Shortly after, Board Staff learned that some third-party suppliers were charging customers who had fixed rate contracts new rates to account for the added costs associated with these requirements. However, Board regulations at N.J.A.C. 14:4-7.6 expressly prohibits a third-party supplier from a change in rates in fixed rate contracts.

In January 2019, Board Staff issued a cease and desist letter informing that third-party suppliers to not raise the rates in their fixed rate contracts.

In response, the RESA, an industry group whose members are entities that offer retail electric and gas service filed a petition with the Board and argued that the 2018 Clean Energy Act amendments expressly allowed them to pass on the costs of complying with the new renewable portfolio requirements to customers. They asked the Board to withdraw the cease and desist letter. More than a year later, in December 2020, Board Staff attempted to settle the dispute by offering third-party suppliers a road to compliance. While some third-party suppliers participated in a settlement, RESA filed a petition, an appeal to the New Jersey Appellate Division. RESA argued that the Board improperly failed to act on its petition and it argued that the Clean Energy Act did allow their costs to be passed through.

In November 2021, the Appellate Division issued an order to remand the issue to the Board. The Appellate Division directed the Board to act on RESA's petition within 60 days. Board Staff obtained consent from RESA and rate counsel to extend this deadline another 60 days.

Given this precise language, the Division of Law recommended that the Board now grant RESA's petition and withdraw Staff's 2019 cease and desist letter.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

3. CABLE TELEVISION

A. Docket No. CX21010010 – In the Matter of Proposed Readoption with Substantial Amendments N.J.A.C. 14:18 - Regulations of Cable Television.

Lawanda R. Gilbert, Esq., Director, Office of Cable Television & the Office of Telecommunications, presented this matter.

BACKGROUND AND DISCUSSION: This matter involved the Board considering the final readoption of the rules governing Cable Television providers codified at N.J.A.C. 14:18, with substantial amendments proposed to address consumer concerns, including the addition of a new section implementing service quality standards for cable television services.

The regulations governing the operations of cable TV providers in the State codified at N.J.A.C. 14:18 are due to expire on March 30, 2022. Following two stakeholder meetings held by the Staff of the Office of Cable Television and Telecommunications (OCTV&T) to solicit input from the industry and public, as well as two rounds of extensive written comments, the Board approved the rule readoption proposal published in the New Jersey Register on October 4, 2021. The rule readoption proposal recommended substantial changes to the rules to address industry and technology changes, as well as customer concerns that have arisen over the past seven years since the last review of the rules conducted in 2014.

A virtual public hearing was held on November 3, 2021, where Commissioner Chivukula presided, followed by submission of written comments by interested parties through December 3, 2021.

Comments were filed by Altice, Comcast, Verizon, the New Jersey Cable Television Association (NJCTA), the Township of Montville, and the New Jersey Division of Rate Counsel (Rate Counsel). Comments from the industry generally opposed the readoption of the rules, while Rate Counsel was in support of the readoption.

Staff reviewed the voluminous written comments filed by parties (totaling over 100 pages by one party alone), providing extensive comments explaining the rationale for the proposed changes.

Staff recommended approval of its readoption proposal of the Board's Cable TV regulations at NJAC 14:18, with substantial amendments, and submission to the OAL for publication in the New Jersey Register on April 4, 2022.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

4. TELECOMMUNICATIONS

There were no items in this category.

5. WATER

Michael Kammer, Director, Division of Water, presented these matters.

A. Docket Nos. BPU WC20070488 and OAL PUC 09146-20 – In the Matter of Kimberly A. Ratai, Petitioner v. Middlesex Water Company, Respondent.

BACKGROUND AND DISCUSSION: On July 15, 2020, Kimberly A. Ratai (Petitioner) filed a petition with the Board appealing the denial of her application for water service at her residential property located at 18 Beekman Avenue, Colonia, New Jersey (Property) by Middlesex Water Company (Middlesex or Company).

The Board transmitted this matter to the Office of Administrative Law (OAL) for determination as a contested case on October 8, 2020. The matter was assigned to Administrative Law Judge (ALJ) Judith Lieberman.

The Petitioner resides in a single-family house in Colonia, New Jersey. A private well has been the home's sole source of water since it was constructed in 1951. The Petitioner applied for water service from Middlesex on June 30, 2020. Middlesex denied the Petitioner's request on July 10, 2020.

Middlesex currently serves 62,000 retail customers and provides water service under wholesale contracts to the City of Rahway, the Townships of Edison and Marlboro, the Borough of Highland Park and the Old Bridge Municipal Utilities Authority. The only customer affected by this Petition is the Petitioner.

The Company filed a motion to dismiss this matter on November 13, 2020. The Petitioner filed a cross motion opposing Middlesex' motion on November 16, 2020. Middlesex replied to Petitioner on November 19, 2020. The motions were denied by ALJ Lieberman on April 20, 2021.

ALJ Lieberman conducted an evidentiary hearing on November 1, 2021 and the record closed on that day. ALJ Lieberman filed her Initial Decision with the Board on December 9, 2021. Middlesex filed its Exceptions to the Initial Decision on December 20, 2021. The Petitioner filed her Reply Exceptions on December 23, 2021.

The Board requested an additional 45-day extension of time for issuing its Final Decision in order to adequately review the record in this matter by Order dated January 12, 2022. The OAL granted the Board's request by Order dated January 12, 2022.

ALJ Lieberman filed her Initial Decision on December 9, 2021, concluding that a blanket prohibition is inconsistent with controlling law, and thus was an insufficient basis for denial application. ALJ Lieberman further found that Middlesex should determine based on particularized assessment of the facts specific to the Property and well, determine if the Company can safely and appropriately provide service to the Property.

Middlesex filed Exceptions to the Initial Decision and the Petitioner filed Reply Exceptions.

Staff recommended that the Board adopt the Initial Decision without modification.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

B. Docket Nos. BPU WO21060896 and OAL PUC 05575-21 – In the Matter of the Town of Clinton, Petitioner v. Borough of Lebanon, Respondent.

BACKGROUND AND DISCUSSION: By Order dated November 17, 2021, the Board denied a Motion for Interlocutory Review filed by the Borough of Lebanon (Borough) of a October 19, 2021 Letter Order issued by Administrative Law Judge (ALJ) Jacob S. Gertsman’s which found that the Board has jurisdiction over a dispute between Town of Clinton (Petitioner, Clinton or Town) and the Borough of Lebanon (Borough) regarding the application of municipal ordinance 2020-05 (Ordinance) passed by the Borough on July 5, 2020, which requires that certain road restoration standards be employed on Main Street following excavations.

The Borough appealed the November 17, 2021 Order of the Board and by Order dated January 4, 2022, the Appellate Division reversed the Board’s Order denying the Borough Motion for Interlocutory Review of ALJ Gertsman’s ruling. The Appellate Division directed the Board “to review the ALJ’s holding that BPU has jurisdiction to consider and resolve Clinton’s petition.” The Appellate Division expressed no opinion on the merits of jurisdictional question, but directed the matter to be heard expeditiously in the public interest.

In addition to question of jurisdiction, before the Board was a motion filed by Clinton on January 11, 2022 seeking interlocutory review following a case management conference before ALJ Gertsman on January 4, 2022.

Staff recommended that the Board hold that it does, in fact, have jurisdiction over this dispute and Staff also recommended that the Board affirm ALJ Gertsman’s order and remand this matter back to OAL for further proceedings.

Finally, Staff recommended that the Board deny a January 11, 2022 motion for interlocutory review filed by Clinton following a January 11 case management conference with ALJ Gertsman.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

C. Docket Nos. BPU WR21091141 and OAL PUC 08167-2021S – In the Matter of the Petition of Shore Water Company for an Increase in Rates and Charges for Water Service, and Other Relief.

BACKGROUND AND DISCUSSION: On September 23, 2021, Shore Water Company (Petitioner, Shore or Company) filed a petition with the Board seeking to increase rates for water service. Shore requested an increase in revenues of \$251,522.00 or approximately 38.53% above the annual level of present rate revenues for the test year ending December 31, 2021. Shore proposed to implement the news rates effective for service rendered on and after November 1, 2021. The Petitioner currently serves the South Seaside Park section of Berkeley Township, Ocean County, New Jersey.

The Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case and the matter was assigned to ALJ Gertsman.

On October 28, 2021, the Board issued an Order suspending the proposed rate increase until March 1, 2022. On February 23, 2022, the Board issued an Order further suspending the proposed rate increase until July 1, 2022.

ALJ Gertsman conducted a telephonic pre-hearing conference on November 15, 2021, at which time dates for virtual public hearings and evidentiary hearings were scheduled.

A virtual public hearing took place on January 18, 2021, via zoom due to the ongoing COVID-19 pandemic. No members of the public appeared at either hearing and no written comments have been received by the Board.

The parties executed a Stipulation of Settlement (Stipulation), which was approved by Administrative Law Judge Gertsman. Staff recommended that the Board adopt the initial decision.

As a result of the Stipulation, the average bill for a typical flat rate, fixed-charged customer with a ¾" meter, will go from \$454.00 to \$600.00, an increase of \$146.00 per year, or 32.16%.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

6. RELIABILITY AND SECURITY

A. Docket No. ES21030639 – In the Matter of Allegations of Violations of Law by Elizabethtown Gas Company with Respect to an Incident at 107 King George Road in Pennington, NJ on October 30, 2019.

This matter was deferred.

7. CUSTOMER ASSISTANCE

There were no items in this category.

8. CLEAN ENERGY

A. Docket No. QO21040720 – In the Matter of Clean Energy Programs and Budget for Fiscal Year 2022 – True-Up, Revised Budgets and Program Changes.

Matthew J. Rossi, Esq., Administrative Analyst, Division of Clean Energy, presented this matter.

BACKGROUND AND DISCUSSION: Commissioner Gordon recused himself from this matter. This matter involved the proposed Fiscal Year 2022 budget true-up, budget reallocations, and program changes to the New Jersey Clean Energy Program. The Fiscal Year 2022 New Jersey Clean Energy Program budget was approved by the Board on June 24, 2021. The budget was established, in part, based upon an estimate of expenses expected to be incurred during the fiscal year 2021. Once actual expenses become known on an annual basis, the Board typically approves a true-up budget, trueing up the differences between expenses estimated for budgetary purposes and the expenses actually incurred.

Consistent with this practice, and now that all expenses actually incurred during FY21 are known, Board Staff is making a true-up recommendation which results in an additional \$599,396.00 available to the New Jersey Clean Energy Program. Additionally, a review of FY22's first quarter program expenditures shows that some program spending is tracking above and below the original projections. Other program budgets have been adjusted due to timeline changes. Therefore, the proposed true-up budget also suggests the below redistributions to align budgets with program performance and other initiatives.

On January 12, 2022, Staff released a proposal for the draft true-up budget, revised budgets, and program revisions. Staff held a virtual informational session on the proposed true-up budget and program revisions on January 22, 13 2022. Public comments were accepted through January 28, 2022. Of the \$599,396.00 from FY21, Staff recommended the available funds be distributed as follows: \$599,396.00 to program evaluation.

In addition to the distribution of the available funds, Staff proposed the following reallocation among programs to align budgets with program performance. Staff recommended the following increases: \$1.5 towards the residential and new construction program; an additional \$100,000.00 for the energy efficient products program; \$4 million to the direct install program; in addition to the \$599,396.00 proposed for program evaluation, Staff recommended another \$2.4 million to be reallocated to this program; \$75,000.00 towards Sustainable Jersey; and \$25,000.00 towards the Outreach budget.

In consideration to timing and reviewing budget trends, Staff proposed the following reductions: \$2 million from the Residential Retrofit Program; \$6 million from the Commercial and Industrial Buildings Program; and \$100,000.00 from the Offshore Wind Program.

Staff also proposed a reallocation within the Comfort Partners Program budget amongst the previously accrued allocations to each utility. The total budget for the total Comfort Partners Program will remain unchanged. The reallocation is being proposed as a result of the fluctuation of program demand in response to current participation rates. Also, a small program change has been proposed to improve the administrative efficiency of the Charge Up New Jersey Program by providing a flat incentive amount for phase three of the Electric Vehicle Charger Incentive.

Staff recommended the Board adopt and approve the proposed FY22 budget true-up, budget reallocations, and program changes to the New Jersey Clean Energy Program.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |

B. Docket No. QO22010021 – In the Matter of the Clean Energy Program Authorization of Commercial and Industrial Energy Efficiency Incentives Exceeding \$500,000 – Equinix, LLC.

Dustin Wang, Program Specialist Trainee, Division of Clean Energy, presented this matter.

BACKGROUND AND DISCUSSION: Equinix LLC submitted an application under the Large Energy Users Program requesting Board approval of a financial incentive of \$2,450,094.87 for energy efficiency upgrades at data centers in Carteret, Secaucus, and North Bergen. This proposed project has a total cost of \$8,843,399.33. If approved, this application will cover the following energy efficiency upgrades:

At the Carteret Data Center, 70 existing constant speed 30-ton computer room air conditioning units will be replaced with new units outfitted with variable speed fans, variable speed scroll compressors, and network controls with economizer capability. Fourteen existing humidifiers will be replaced with adiabatic style humidifiers with direct evaporated wet polymer media and electronically computed fans.

At the Secaucus Data Center, new sensors will be installed to update economizer sequence of operations to maximize cooling opportunities.

At the North Bergen Data Center, seven data halls will be retrofitted with full cold aisle containment systems which enclose IT equipment in order to more efficiently deliver cold air and reduce required fan energy. Supply air temperature controls will be added to computer room air handlers in order to modulate fan speeds and cooling stages.

Annually, this project would conserve 10,453,782 kilowatt hours of electricity and reduce peak demand by an anticipated 1,021.17 kilowatts. The proposed project has an estimated annual energy cost savings of \$1,058,636.00 and an estimated annual operational and maintenance cost savings of \$151,000.00.

Staff recommended approval of the application for the total estimated incentive amount.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

C. Docket No. QO21111234 – In the Matter of the Request for Waiver an Extension of Time to Complete in Transition Incentive Program – Centrica Business Solutions, Inc.

Kelly Mooij, Director, Division of Clean Energy, presented this matter.

BACKGROUND AND DISCUSSION: This matter involved a request from Centrica Business Solutions, Inc. (Centrica) for an extension of time to complete nine solar projects in the Transition Incentive Program (TI Program).

On November 30, Centrica submitted a petition requesting at least a six-month extension of the expiration dates for nine registrations submitted during the final three days of the TI Program, which closed to new registrations on August 27.

According to the petition, the extensions are needed due to long delays in supply change for steel, including structural steel for carports, as well as solar panel racking, roofing materials, solar panel systems, and electrical components caused by the COVID-19 pandemic and the current shortage of electricians and other skilled labor to install these solar projects.

Centrica filed the nine TI Program registrations for projects ranging from 590 kilowatts to 6.2 megawatts for nonresidential, net metered rooftop or canopy-mounted solar electric generation facilities. The program administrator issued an acceptance letter for the nine projects from August 26 through September 13.

To support their petition, Centrica submitted various news articles on supply chain as early as April 2021 as Exhibit A. The Petitioner's Exhibit B includes e-mails from a roofing contractor discussing supply chain issues dated prior to the submission of the project registration. Exhibit C through I include the TI acceptance letters and conditional approvals to interconnect various projects.

Many of the supporting documents demonstrate that Centrica was aware of the challenges to develop projects due to supply chain issues prior to submitting its registration. Staff noted that the Transition Incentive Program was intended as an interim measure until a successor program was available. No opportunities for extension of project deadlines were provided in the TI Program design. In addition, the TI incentive levels were based upon solar costs in the SREC program as early as 2018, whereas petitioner seeks an extension until late 2023. The Board closed the TI Program on August 27 after an extensive stakeholder process and an order providing 30-day's notice.

The Solar Successor Incentive Program's administratively determined program opened on August 28. The ADI program provides projects with one year to complete program requirements and includes an opportunity for a six month extension.

Based upon the review of the petition, Staff recommended the Board take the following three actions: 1) Find that the petitioner had not provided grounds for waiving its rules and granting an extension to the nine registrations; 2) deny the petition; and 3) encourage the Petitioner to pursue an incentive through the ADI program or in the case where the system size exceeds 5 megawatts, pursue the Competitive Solar Program if the Petitioner believes it cannot complete a project by the deadline provided in the TI program acceptance letters.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

D. Docket No. QO18060646 – In the Matter of the Community Solar Energy Pilot Program; and

Docket No. QO21020147 – In the Matter of Community Solar Energy Pilot Program Year 2 – Pennsville Landfill Solar, LLC – for Approval of an Extension of the Community Solar Energy Pilot Program Year 2 Deadline for Pennsville Landfill Solar Project (A) and (C).

Ariane Benrey, Solar Manager, Division of Clean Energy, presented this matter.

BACKGROUND AND DISCUSSION: On October 28, 2021, the Board granted conditional approval to 105 projects to participate in the Program Year Two of the Community Solar Energy Pilot Program.

Applicants with a conditionally approved project were directed to submit an initial TI program registration package within 14 days of the effective date of the October 2021 order, i.e., on or before November 18, 2021. Among the approvals were two projects proposed on the landfill under the names Pennsville Landfill Solar Project A and Pennsville Landfill Solar Project C, with systems sizes of 2.7 megawatts and 3 megawatts respectively. Pennsville Solar filed initial TI registration projects for both projects on November 24, 2021, which was six days after the deadline.

On December 13, 2021 Pennsville Solar filed a petition asking the Board to extend Pennsville's deadline to submit its initial TI program registration packages and in light of the particular circumstances of the project, the Staff recommended that the Board allow Pennsville Solar to re-register the two projects in the TI program and if the registration packages are complete, the projects be assigned a transition incentive program expiration

date 18 months from the effective date of the October 2021 order, which would be the same expiration date as the Board granted to all the other conditionally approved Program Year Two projects.

Staff recommended that the Board advise Pennsville Solar that this allowance to submit a TI initial registration package does not include an extension to the project's deadlines to complete construction and that the failure to submit a timely initial registration package and this resultant petition will not be regarded as a legitimate basis for requesting a future extension to the project's TI registration and expiration dates.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

E. Docket No. QO20020109 – In the Matter of the United States Department of Energy – State Energy Program – July 1, 2020-June 30, 2021; and

Docket No. QO21020626 – In the Matter of the United States Department of Energy – State Energy Program – July 1, 2021-June 30, 2022 – Modification of Programs and Funding Allocation.

Stacy Ho Richardson, Esq., Deputy Director, Division of Clean Energy, presented this matter.

BACKGROUND AND DISCUSSION: This matter pertains to New Jersey's 2021, 2022 State Energy Program Plan Modification. Staff proposed to modify the scope of work to include the development of the State's Energy Security Plan and the Emergency Response Plan Update. This will involve reallocation of \$250,000.00 in unexpended funds from the State's non-IOU program, IOU standing for investor owned utility, which is no longer accepting applications due to the transition of administration of energy efficiency programs for most existing buildings by the State's utility companies.

This modification will enable the Board, in partnership with one of New Jersey's state universities, to develop a comprehensive, forward-leaning State Energy Security Plan to replace the current Energy Assurance and Emergency Response Plan. This new plan will assist the State in understanding its current and projected energy infrastructure capabilities, threats, and hazards.

It will layout strategies for collectively working with public and private stakeholders to anticipate, mitigate, or respond to strategic energy incidents impacting the energy assurance of the State using a planned framework that is collaborative and adaptive. It will be beneficial in other sectors for study, analysis, and supporting planning, such as State mitigation, preparedness, response, and recovery initiatives.

Staff recommended the Board approval to submit the modified scope of work for the 2021, 2022 State Energy Program plan to the United States Department of Energy.

DECISION: After discussion, the Board adopted the recommendation of Staff as set forth above.

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| Roll Call Vote: | President Fiordaliso | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Solomon | Aye |
| | Commissioner Chivukula | Aye |
| | Commissioner Gordon | Aye |

9. MISCELLANEOUS

There were no items in this category.

There being no further business before the Board, the meeting was adjourned.


CARMEN D. DIAZ
ACTING SECRETARY

Date: April 6, 2022