



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

MINUTES OF THE REGULAR MEETING OF THE BOARD OF PUBLIC UTILITIES

A regular Board meeting of the New Jersey Board of Public Utilities was held on October 11, 2023 and at the Board's Hearing Room at 44 South Clinton Avenue, Trenton and via online @ <https://www.youtube.com/watch?v=n3FOqI9bBEU>

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 newspapers of broad circulation in the State of New Jersey.

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

Christine Guhl-Sadovy, President
Mary-Anna Holden, Commissioner
Dr. Zenon Christodoulou, Commissioner
Marian Abdou, Commissioner

President Guhl-Sadovy presided at the meeting and Sherri L. Golden, 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 October 25, 2023 at 10:00 a.m. and would be a hybrid meeting at the Board's Hearing Room at 44 South Clinton Avenue, Trenton and livestreamed via YouTube.

EXECUTIVE SESSION

After appropriate motion, the following matters, which involved N.J.S.A. 10:4-12(b)(7) attorney-client privilege and/or contract negotiations exceptions, were discussed in Executive Session.

8. CLEAN ENERGY

A. Docket No. QO20030262 – In the Matter of the Charge Up New Jersey Electric Vehicle Incentive Program

Jack Streppone, Division of Clean Energy , presented this matter.

BACKGROUND: This matter concerns an extension of the contract with Center for Sustainable Energy (“CSE”), who administers the Charger Up New Jersey Program. In addition, it also concerns a contract modification to have CSE administer the MUD EV and Clean Fleet Incentive Programs.

8. CLEAN ENERGY

G. Docket No. QO23090671 – In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023 .99

Michael Beck, General Counsel, presented this matter.

BACKGROUND: This matter pertains to Legislation signed by Governor Murphy on July 6, 2023, which allows Ocean Wind, LLC (or “Ocean Wind”) to retain certain federal tax benefits for its Ocean Wind 1 project (or the “Project”). Section 4.a.(4) of the Legislation specifically requires that Ocean Wind, on behalf of the Project, post a performance security in the form of a parent company guarantee or other financial security reasonably acceptable to the board in the amount of \$100,000,000. The performance security was required to be posted no later than 90 days after the Legislation’s enactment, or on or before October 4, 2023.

On October 4, 2023, Ocean Wind filed a parent company guaranty (“Parent Company Guaranty”), executed by Ørsted A/S, as permitted by the Legislation. By the terms of the Parent Company Guaranty, Ørsted A/S unconditionally and irrevocably guarantees to BPU that the Ocean Wind 1 Project shall reach commercial operation within twelve (12) months of its board-established Commercial Operation Date.

The New Jersey Division of Law reviewed the terms of the Parent Company Guaranty, finds it to be reasonable and advised that performance security satisfies the requirements of the Legislation.

The Parent Company Guaranty is required by statute. Staff recommends that the Board approve the Ørsted A/S Parent Company Guaranty and authorize the President to execute it on behalf of the Board.

CONSENT AGENDA

I. AUDITS

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

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|----------------------------|---------------------------|---------|
| EE23070435L | CGE Renewables LLC | I-EA |
| EE23080574L GE23080575L | Bioengy LLC | I-EA/EC |
| EE23080555L GE23080556L | Rise Energy Services, LLC | I-EA/EC |

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

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|----------------------------|-----------------|------------|
| EE21081060L GE21081061L | Breakerbox, LLC | R-EA/PA/EC |
|----------------------------|-----------------|------------|

Electric Power and/or Natural Gas Supplier Renewal Licenses

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|-------------|---|---------|
| EE19020265L | Constellation NewEnergy, Inc. | R – ESL |
| GE19020267L | Constellation NewEnergy – Gas Division, LLC | R – GSL |

BACKGROUND: The New Jersey Board of Public Utilities (“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. N.J.S.A. 48:3-78 to -79. 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 (“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. N.J.A.C. 14:4-5.8(g); N.J.A.C. 14:4-5.11(e). Any registration renewal application that was filed prior to the effective date of the licensing and registration rule amendments, September 20, 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 timely file annual information update forms and renewal fees for their licenses and registrations in order to continue to do business in New Jersey. N.J.S.A. 48:3-78 to -79; N.J.A.C. 14:4-5.6 to -5.7; N.J.A.C. 14:4-5.8 to -5.9, and N.J.A.C. 14:4-5.11.

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

- CGE Renewables LLC
- Bioengy LLC
- Rise Energy Services LLC

In addition, Staff recommends that the following applicant be issued renewal registrations as an energy agent, private aggregator, and energy consultant:

- Breakerbox, LLC

Lastly, Staff recommends that the following applicants be issued renewal licenses as an electric power and/or natural gas supplier:

- Constellation NewEnergy, Inc.
- Constellation NewEnergy - Gas Division, LLC

B. Docket No. TE23030140 – In the Matter of the Petition of Planet Fiber NJ LLC for Authorization to Provide Local Exchange and Interexchange Telecommunications Services Through the State of New Jersey

BACKGROUND: On March 15, 2023, Planet Fiber NJ, LLC (“Petitioner” or “Planet Fiber”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking authority to provide facilities-based and resold local and non-dominant interexchange telecommunications services throughout the State of New Jersey (“Petition”). In the Petition, Planet Fiber also requested a waiver of N.J.A.C. 14:10-1A.13, which requires that financial records be maintained in accordance with the Uniform System of Accounts (“USOA”).

Board Staff (“Staff”) recommends approval, subject to certain conditions. Staff also recommends that the Board approve the request for waiver from its requirements that Petitioner maintain its financial books and records in accordance with USOA.

II. ENERGY

There were no items presented in this category

III. CABLE TELEVISION

- A. Docket No CE23070437 – In the Matter of the Verified Petition of CSC TKR, LLC for Renewal of a Certificate of Approval to Continue to Operate and Maintain a Cable System in the Township of Knowlton, County of Warren, State of New Jersey.**

BACKGROUND: This matter relates to a petition filed with the New Jersey Board of Public Utilities (“Board”) requesting a Renewal Certificate of Approval be issued to CSC TKR, LLC (“Cablevision”) for the Township of Knowlton (“Township”) for a term of 10 years.

Board Staff (“Staff”) recommends approval.

- B. Docket No. CE22060388- In the Matter of the Petition of Comcast of Ocean County, LLC, for a Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Television System in and for the Borough of Point Pleasant, County of Ocean, State of New Jersey**

BACKGROUND: This matter relates to a petition filed with the New Jersey Board of Public Utilities (“Board”) requesting an Automatic Renewal Certificate of Approval to Comcast of Ocean County, LLC (“Comcast”) for the Borough of Point Pleasant (“Borough”) for a term of 10 years.

Board Staff (“Staff”) recommends approval.

- C. Docket No. CE22020109- This matter relates to a petition filed with the New Jersey Board of Public Utilities (“Board”) requesting a Renewal Certificate of Approval be issued to Comcast of Monmouth County, LLC (“Comcast”) for the Borough of Deal (“Borough”) for a term of 10 years.**

BACKGROUND: This matter relates to a petition filed with the New Jersey Board of Public Utilities (“Board”) requesting a Renewal Certificate of Approval be issued to Comcast of Monmouth County, LLC (“Comcast”) for the Borough of Deal (“Borough”) for a term of 10 years.

Board Staff (“Staff”) recommends approval.

IV. TELECOMMUNICATIONS

- A. Docket No. TF23050297 – In the Matter of the Verified Petition of Level 3 Communications, LLC, Broadwing Communications, LLC, Global Crossing Telecommunications, Inc., TelCove Operations, LLC, and Wiltel Communications, LLC for Approval to Participate in a Financing Arrangement.**

BACKGROUND: This matter related to a petition filed with the New Jersey Board of Public Utilities (“Board”) requesting to participate in debt financing.

Board Staff (“Staff”) recommends approval.

V. WATER

There were no items presented in this category

VI. RELIABILITY AND SECURITY

- A. Docket No. GS23090645K, GS23090646K, GS23090647K, GS23090648K, GS23090649K, GS23090650K, GS23090651K, GS23090652K, GS23090653K, GS23090654K, GS23090655K, GS23090656K, GS23090657K, GS23090658K, GS23090659K, GS23090660K, GS23090661K, GS23090662K, GS23090663K, GS23090664K, GS23090665K, GS23090666K, GS23090667K, GS23090668K, and GS23090669K – In the Matter of Alleged Violations of the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq**

BACKGROUND: This matter involves 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 include failure to use reasonable care, failure to properly mark and not having a valid markout at the time of excavation. There are 25 settlements in the attached Appendix, which total \$75,000.

Staff of the New Jersey Board of Public Utilities (“Board”) (“Staff”) recommends approval of the settlements provided in the attached Appendix so that these cases can be brought to closure.

VII. CUSTOMER ASSISTANCE

There were no items presented in this category.

VIII. CLEAN ENERGY

There were no items presented in this category.

IX. MISCELLANEOUS

- A. Approval for the January 25, 2023 Minutes;
Approval for the February 8, 2023 Minutes; and
Approval for the February 17, 2023 Minutes.**

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

After appropriate motion, consent agenda items IA, IB, IIIA, IIIB, IIIC, IVA, and VIA

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

After appropriate motion, consent agenda items IXA

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| Roll Call Vote: | President Guhl-Sadovy | Abstain |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Abstain |

AGENDA

1. AUDITS

NO ITEMS FOR CONSIDERATION

2. ENERGY

A. Docket No. GR17070776 – In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program and Associated Cost Recovery Mechanism (“GSMP II”); and

Docket No. GR23030102 – In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program and Associated Cost Recovery Mechanism (“GSMP III”).

Dean Taklif, Division of Energy, presented this matter.

BACKGROUND: On March 1, 2023 Public Service Electric and Gas Company filed a petition with the Board seeking approval of the next phase of its Gas System Modernization Project, I'm sorry, Modernization Program and Associated Cost Recovery Mechanism. The company proposed a three year program with a total investment level of approximately \$2.54 million, which would allow the company to replace 1,140 miles of leak prone gas main, invest in a hydrogen blending project, and conduct a renewable natural gas project.

On February 15, 2023, Governor Murphy issued an Executive Order 317 ordering the BPU to initiate a formal stakeholder process regarding development of natural gas utility plans that reduce emissions from the natural gas sector to levels that are consistent with achieving the State's 50 percent reduction in greenhouse gas emissions below 2006 levels by 2030 as directed in Executive Order number 274.

On October 3, 2023, following initial discovery and several settlement conferences, the company, Board Staff, the New Jersey Division of Rate Counsel, the New Jersey Large Energy Users Coalition, and NRG Energy, Incorporated executed a stipulation of settlement in this matter, which was intended to defer any action on the proposed GSMP III program until the Board issues its finding within its pending Future of Natural Gas Proceeding initiated in response to Executive Order 317. The Environmental Defense Fund, an intervenor in this matter, did not execute the stipulation, but submitted a letter of non-objection to the settlement. The stipulation would authorize the company to conduct a two year extension GSMP II, through which the company would invest up to \$752 million to replace at least 400 miles of utilization pressure cast iron and unprotected steel gas main. PSE&G would spend an additional \$104 million within stipulated base spending to conduct additional gas main replacement projects. Additionally, the GSMP III petition would be held in abeyance while the Board continues to engage in a stakeholder process pursuant to Executive Order 317, with the parties convening for a status conference to initiate the restart of GSMP III no later than January 13, 2025. There is no bill impact related to the stipulation at this time. However, PSE&G estimated that at the end of the program the cumulative monthly bill impact on a typical residential gas customer using an average of 87 therms monthly, I'm sorry, using an annual average of 87 therms monthly is an increase of approximately \$3.51 or 3.8 percent.

Staff recommends that the Board issue an order approving the stipulation.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Recuse |

3. ENERGY

- A. Docket No. CE23080569 – In the Matter of the Petition of Comcast of Northwest New Jersey, LLC for a Certificate of Approval to Construct, Operate and Maintain a Cable Television System in and for the Township of Greenwich, County of Warren, State of New Jersey.**

Lawanda Gilbert, Director Office of Cable Television, presented this matter.

BACKGROUND: This matter involves the approval of an initial cable television franchise application filed by Comcast Northwest New Jersey to provide service in the Township of Greenwich. The township is currently served by Service Electric Cable TV of Hunterdon. This petition is a request for Comcast to expand its neighboring system into the township to provide cable service and will establish a second cable operator in the township, which is an overbuild to the incumbent operator. On or about March 9, 2022, Comcast filed an application with the township for initial municipal consent. The township adopted an ordinance granting municipal consent to Comcast on July 20, 2023. On August 3, 2023, Comcast formally accepted the terms and conditions of the ordinance. Comcast filed the instant petition with the Board for a certificate of approval for the township on August 17, 2023. Approval will provide an alternative operator to serve the residents of the township, along with competitive choice that is sought by many residents throughout the State.

Staff recommends approval of the proposed certificate of approval for a ten year term to expire on October 18, 2033, which will include reporting requirements, detailing the status of construction of the system to be submitted to Board Staff.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

4. TELECOMMUNICATIONS

A. Docket No. TO23090715– In the Matter of the Broadband Equity Access and Deployment 5-Year Action Plan

Valarry Bullard, Office of Broadband, presented this matter.

BACKGROUND: This matter relates to a request for authorization for the release of the State of New Jersey's amended five-year action plan to the National Telecommunications and Information Administration. Submission of the amended five-year action plan is required pursuant to the Broadband Equity Access and Deployment Program, or BEAD, authorized pursuant to the Infrastructure Investment and Jobs Act. Consistent with NTIA's instructions surrounding the BEAD program, the Office of Broadband Connectivity submitted a draft of New Jersey's five-year action plan to NTIA on August 28, 2023. On September 15, 2023 NTIA returned the plan with comments and feedback. After approving the request for extension, NTIA required submission of the amended five-year action plan by September 29, 2023. The OBC addressed NTIA's feedback amended version was submitted September 29, 2023.

Due to the timing of the amended five-year action plan submission date, Staff was unable to present the amended five-year action plan to the Board prior to its release to NTIA.

Staff accordingly requests that the Board authorize the release of the amended plan to remain compliant with requirements of the BEAD program.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

5. WATER

There were no items presented in this category

6. RELIABILITY AND SECURITY

A. Docket No. GS23080612- In the Matter of Alleged Violations of the Underground Facility Protection Act, N.J.S.A. 48:2-73 to 91 by Greenwood Tree Service, Inc

Shawn McIvor, Dep. Director, Reliability and Security, presented this matter

BACKGROUND: Item 6A is a Staff recommendation for the issuance of a final order of penalty assessment for an alleged violation of the Underground Facilities Protection Act by Greenwood Tree Service, an excavator as defined by the Act. On February 7, 2022, Greenwood Tree Services damaged a natural gas facility at East 12th street in Barnegat Light, New Jersey. After investigating this matter, Staff found that Greenwood failed to call for a mark out before commencing excavation in violation of One Call the Rules. Staff issued a notice of probable

violation and an offer of settlement to Greenwood via certified mail and regular mail advising the company to respond within 21 days of the offer of settlement. To date, Staff has no record of response to the notice of probable violation. Greenwood is, therefore, in default and the Board is not bound by the offer of settlement. In determining the appropriate penalty amount to be assessed, the Board is required to consider the penalty assessment factors that are listed in N.J.A.C. 14:2-6.2(c), including, but not limited to, the nature, circumstances, and gravity of the violation. In this matter, Greenwood damaged a high consequence natural gas facility and created an unnecessary risk by not calling for a mark out before commencing excavation. Staff is, therefore, recommendation that the Board approve a final penalty assessment of \$6,000.00 through the issuance of a final order of penalty assessment.

7. CUSTOMER ASSISTANCE

There were no items presented in this category

8. CLEAN ENERGY

A. Docket No. QO20030262– In the Matter of the Charge Up New Jersey Electric Vehicle Incentive Program.

Jack Streppone, Division of Clean Energy, presented to this matter.

BACKGROUND: This matter concerns a one-year extension of the contract with Center for Sustainable Energy, or CSE, who administers the Charge Up New Jersey point-of-sale rebate program and a modification to CSE's contract for them to administer the Multiunit Dwelling EV Charger Incentive Program and the Clean Fleet EV Incentive Program.

Staff recommends that the Board exercise the option to extend the contract with CSR and approve the contract modification as discussed in executive session, subject to Treasury Approval.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

B. Docket No. QO23070463 – In the Matter of the Clean Energy Program Authorization of Commercial and Industrial Energy Efficiency Incentives Exceeding \$500,000 – Bristol-Myers Squibb

Dustin Wang, Division of Clean Energy, presented to this matter.

BACKGROUND: Bristol-Myers Squibb submitted an application under the Large Energy Users Program requesting Board approval of a financial incentive of \$707,065.77 for energy conservation measures at three facilities in New Jersey. This proposed project has an anticipated total cost of \$3,909,563.51. If approved, this application would cover an LED upgrade, a boiler control upgrade, and a boiler plant reverse osmosis system upgrade at the Summit facility; an HVAC upgrade facility at Warren facility; and a hot water pump variable speed drive retrofit and a low temperature chiller upgrade at the Princeton facility. Annually this project would conserve

1,035,919 kilowatt hours of electricity, 97,390 therms of natural gas, and 19 kilowatts in peak demand. The proposed project has an estimated energy cost savings of \$157,337.00.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Recused |

C. Docket No. QO19010068 – In the Matter of a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17; and

Docket No. QO22080544 – In the Matter of the Verified Petition of PowerFlex Systems LLC for an Order Approving the Waiver and Extension of the Solar Transition Renewable Energy Certificate Program Deadline for United Natural Food Inc's Rooftop Solar Generation Projects in Howell NJSTRE1547462345 NJSTRE1547522643.

Sawyer Morgan, Division of Clean Energy, presented this matter

BACKGROUND: This item relates to a motion for reconsideration filed on December 1, 2022 by PowerFlex Systems, LLC on the order dated November 9, 2022, which denied the petitions of multiple entities seeking extensions of time for registrations within the Transition Incentive Program, including PowerFlex's two solar projects in Howell, New Jersey. The petitioner requested the Board reconsider its denial of an extension for these two projects and argued that the November 2022 order contains the following errors.

The Board misapplied the good cause standard of N.J.A.C. 14:1-1.2 and amounted to an arbitrary denial of the petitioner's request for extension; that criteria set by the Board in the June 8, 2022 Gibbstown Order set a standard for administrative extensions without a petition, but did not define the only circumstances, only such circumstances for an extension and should not be construed as a replacement for the good cause standard; that the Board's denial will result in an injustice to the petitioner for which the Board may reconsider its petition, because requiring petitioner to register in the Administratively Determined Incentive Program would reduce its expected revenue; and, finally, the petitioner argued that had the extension been granted, it would have been able to achieve permission to operate well within the timeframe of the requested extension.

Staff carefully reviewed the petitioner's arguments, the TI Program design, and requirements as established in the regulations and the Board's findings and pursuant to the November 2022 order and notes the following. First, the good cause argument was made by other petitioners and that the Board addressed it in the November 2022 order. As the Board stated, Gibbstown was an adjudication on the specific facts that presented in that petition and applied only to projects that had similar facts, rather than applying to every TI project seeking an extension. Second, the Gibbstown criteria do not function as a standard for all other projects. The Board applied the good cause standards to the petitioner's request, fully examined its individual circumstances, and fully considered the delays resulting from requirements imposed by the electric distribution company. Third, the project timeline more appropriately aligned with that of the ADI program rather than the

now closed TI program. The updates to the project status do not introduce new information which warrants the reevaluation of the Board's decision on the original extension request. And, finally, the petitioner had ample notice that the TI program existed only as a bridge between the legacy SREC and the Successor Solar Incentive Program and, as such, knew or should have known that the one year TI program timeline did not provide for extensions. Based upon review of the petitioner's arguments and the November 2022 order denying further extensions under the TI program.

Staff recommends that the Board deny the motion and continue to waive for any such petition the requirement at N.J.A.C. 14:8-11.4(b) that necessitates projects in the ADI Program to obtain a notice of conditional registration prior to beginning construction.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

D. Docket No. QO19010068 – In the Matter of a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17;

Docket No. QO22010024 – In the Matter of the Verified Petition of ESNJ-PF-Logan, LLC for a One-Year Extension of the Expiration Date of the Conditional Acceptance in the Solar Transition Incentive Program NJSTRE1547451208; and

Docket No. QO22010025 – In the Matter of the Verified Petition of Powerflex Solar, LLC for a One-Year Extension of the Expiration Date of the Conditional Acceptance in the Solar Transition Incentive Program NJSTRE1547408589

Sawyer Morgan, Division of Clean Energy, presented this matter

BACKGROUND: This item relates to two motions for reconsideration filed on November 22, 2022 by PowerFlex Solar and ESNJ-PF-LOGAN on the order dated November 9, 2022 which denied the petitions of multiple entities seeking extensions of time for registrations in the Transition Incentive Program, including the movants' two solar projects in Logan Township. The movants requested the Board reconsider its denial of extension for these two projects and argued that the November 2022 order's denial was arbitrary, capricious, and unreasonable and that the movants believed the Board would grant additional extensions, because it had granted prior extensions. The movants further argued that the order's characterization of the projects maturity was incorrect, that movants had a good cause for a waiver, and that there was a potential discrepancy regarding solar costs in the Board's order and a subsequent order. Finally, the movants argued that it would be discriminatory and otherwise unlawful to grant blanket extensions to certain classes of projects, but not those facing similar delays.

Staff reviewed the movants' arguments, the TI program design, and requirements as established in the regulations and the Board's findings pursuant to the November 2022 order and notes the following. The movants do not present new information to show that the Board made any error of fact or law in the November 2022 order or failed to appreciate the significance of the arguments made; the motion and the record do not establish a sufficient good cause to provide a waiver of

the rules; and the TI program was clearly communicated to stakeholders as a bridge between the SREC Registration Program and the Successor Solar Incentive Program, with rules that intentionally do not provide for extensions to the one-year timeframe. With the SuSI Program open, the petitioner may apply for incentives for projects. These do allow for extensions. Based on careful review of the petitioner's arguments and the November 2022 order denying under further extensions under the TI Program, Staff recommends the Board deny the motion.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

E. Docket No. QO19010068 – In the Matter of a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17;

Docket No. QO22070462 – In the Matter of the Petition of Canal Road Solar Partners for an Extension of the Expiration Date in the Transition Incentive Program for its Ground Mount Project at 701 Randolph Road NJSTRE1547265156; and

Docket No. QO22070471 – In the Matter of the Petition of Canal Road Solar Partners for an Extension of the Expiration Date in the Transition Incentive Program for its Ground Mount Project at 701 Randolph Road NJSTRE1547265757.

Sawyer Morgan, Division of Clean Energy, presented this matter

BACKGROUND: 8E relates to a motion for reconsideration filed November 30, 2022 by Canal Road Solar Partners, LLC on the order of November 9, 2022 which denied the petitions of multiple entities seeking extensions of time for registration in the Transition Incentive Program, including with this petitioner's two solar projects in Franklin Township, New Jersey. The petitioner requested the Board reconsider its denial of an extension for these two projects and argued that the November 2022 order denying extensions under the TI program failed to appreciate the significance of the initial arguments. The petitioner further argued that their customer, New Jersey American Water, should be granted special deference as a regulated public utility and the petitioner's projects should be treated as near equivalent to public entity projects eligible for a public entity waiver. Finally, the petitioner argued that the Board's decision to deny the extension was arbitrary and unreasonable. It reflected the Board's inconsistency in administering the program, it led to a significant reduction in revenue for the petitioner, and allowed no avenue by which to finish the project. Staff reviewed the petitioner's arguments, the TI program design and requirements as established in the regulations and the Board's findings pursuant to the November 2022 order and notes the following. The petitioner does not present new information to show that the Board made any error of fact or law in the November 2022 order or failed to appreciate the significance of the arguments made; the Board considers that classifying the petitioner's customer, New Jersey American Water, as a public entity would stretch the definition at N.J.A.C. 14:8-11.2 beyond reason, and the project is not eligible for public entity relief; the TI program was clearly communicated to stakeholders as a bridge between the legacy SREC Program and the Successor Solar Incentive Program with rules that intentionally do not provide for extensions to

the one-year timeframe; and with the SuSI Program open, the petitioner may apply for incentives for both large and small projects. These programs do allow for extensions.

Based upon careful review of the petitioner's arguments and the November 2022 order denying further extensions under the TI Program, Staff recommends that the Board deny the motion and continue to waive for any petition the requirement at N.J.A.C. 14:8-11.4(b) that necessitates projects in the ADI or CSI program to obtain a notice of continual registration prior to completing construction.

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

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| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

F. Docket No. QO20020184 – In the Matter of a Successor Solar Incentive Program Pursuant to P.L. 2021, c. 169;

Docket No. QW23040243 – In the Matter of Order Waiving ADI Program Eligibility Rules for the Customers of Solar Installers That Have Filed for Bankruptcy; and

Docket No. QO23070429 – In the Matter of Request for Determination of Eligibility in the Administratively Determined Incentive Program by Customer of Bankrupt Installer – James Purdon and Vanessa Rosa Zenernet Installation Company, LLC

This item was deferred.

G. Docket No. QO23090671 In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99 – Executive Session

Mike Beck, General Counsel, presented this matter

BACKGROUND: This matter pertains to legislation signed by Governor Murphy of July 6 this year, that being Public Law 2023, Chapter 99. This legislation allows Ocean Wind, LLC to retain certain federal tax benefits towards Ocean Wind 1 project, subject to conditions. Section 4.a.(4) of the legislation specifically requires that Ocean Wind, on behalf of the project, post a performance security in the form of a parent company guaranty or other financial security reasonably acceptable to the Board in the amount of \$100 million. This performance security was required by statute to be posted with the Board no later than 90 days after the legislation's enactment or on or before October 4 of this year. On October 4 Ocean Wind filed with the Board a parent company guaranty executed by Orsted A/S as permitted by the legislation. Orsted A/S is the ultimate parent company of Ocean Wind, By the terms of the parent company guaranty, Orsted A/S unconditionally and irrevocably guarantees to BPU and the State of New Jersey that the Ocean Wind 1 project shall reach commercial operation within 12 months of the Board established commercial operations date or any subsequent date approved by the Board.

By the terms of the legislation, the performance security shall be forfeited if the Board determines that the project failed to reach commercial operation within 12 months of the date approved by

the Board, including any extensions. If the performance security were to be forfeited, the Board may elect to return funds to ratepayers or may utilize the forfeited funds to support infrastructure necessary to advance the offshore wind industry. The New Jersey Division of Law reviewed the terms of the parent company guaranty and find it to be reasonable and advised that the performance security satisfies the requirements of the legislation. The parent company guaranty is required by statute and was timely filed.

Staff recommends that the Board approve the Orsted A/S parent company guaranty and authorize the President to execute it on behalf of the Board.

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

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|------------------------|-----------------------------------|------------|
| Roll Call Vote: | President Guhl-Sadovy | Aye |
| | Commissioner Holden | Aye |
| | Commissioner Christodoulou | Aye |
| | Commissioner Abdou | Aye |

9. MISCELLANEOUS

There were no items presented for this matter.

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



SHERRI L. GOLDEN
BOARD SECRETARY

Date: 01-31-24