



Agenda Date: 7/14/11
Agenda Item: VIII B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

OFFICE OF CLEAN ENERGY

IN THE MATTER OF DYKES LUMBER CO. –) ORDER
EXTENSION REQUEST FOR SOLAR RENEWABLE)
ENERGY CERTIFICATE (SREC) PURCHASE SALE)
AGREEMENT (PSA) WITH JERSEY CENTRAL) DOCKET NO. EO11060350V
POWER AND LIGHT COMPANY

Parties of Record:

James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A., for Petitioner

Charles Kreyer, President, Dykes Lumber Co.

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Dykes Lumber Co. ("Dykes Lumber" or "Petitioner") for an extension of time to complete its solar energy projects in its New Jersey Clean Energy Program Solar Renewable Energy Certificate ("SREC") long-term contracts for financing with Jersey Central Power & Light Company ("JCP&L").

BACKGROUND

Dykes Lumber has filed a verified petition stating that it is in the final stages of installing a solar electric installation upon the roof of a newly constructed retail store. Petitioner has filed registrations with the Board's Office of Clean Energy ("OCE") for the Solar Registration Program ("SRP"). On June 28, 2010, as a winning bidder in JCP&L's SREC financing auction, Dykes Lumber entered into a SREC Purchase and Sale Agreement ("PSA") with JCP&L for this project totaling approximately 191 kilowatts (kW), which contemplated project completion by June 28, 2011.

On June 8, 2011, Dykes Lumber filed a formal petition with the Board for a ninety-day extension for the project, alleging that the severe winter weather delayed construction of its new retail store such that the roof could not be completed to permit construction of the rooftop solar installation during the first quarter of 2011.

Dykes Lumber requested an extension of the time to complete the project under the PSA to September 28, 2011, in order to provide an assurance that construction would be complete before the deadlines for the PSA. Petitioner provided a supplemental certification signed June 7, 2011 by its president, Charles Kreyer, attesting to the specific progress made on the projects and providing further explanations of the reasons for the delays ("Certification").

By letter dated June 27, 2011, JCP&L stated that it took no position on the extension request as it related to the PSAs.

DISCUSSION AND FINDINGS

In addressing Petitioner's request for an extension of time to complete pursuant to its SREC financing contracts with JCP&L, the Board looks to the language of the General Terms and Conditions of the PSAs with JCP&L ("General Terms"). The General Terms provide that:

...in the event the Commencement Date has not occurred within one year of the Effective Date, Purchaser shall have the right, exercisable upon written notice to Seller, to terminate this Agreement without further obligation or liability to Seller and shall be under no further obligation to advance this Agreement. Such one-year period may be extended only by Order of the Board following formal petition to the Board for such an extension.

Exhibit A to PSA, General Terms at Par. 3

The Board has previously ruled upon a request for an extension made by a participant in a long-term SREC contract. In reviewing this request, the Board looked first at whether the applicant could document significant progress toward completion of the project, and, second, whether the delay was unavoidable and unforeseeable at the time of the rebate application. I/M/O Dobco, Inc. – Request Extension for SREC Purchase Sale Agreement with JCP&L and I/M/O Request for Extensions of Project Completion in the SREC Registration Program REIPNR-06120, REIPNR-06121 REIPNR-06621 REIPNR-06631 REAPNO-06744 REIPNR-06745, Docket Nos. EO11050269V and EO08090840 (July 1, 2011) ("Dobco Order"); see also, Customer On-site Renewable Energy ("CORE") Program Update, 13-14 (Aug. 17, 2006) (applying this two-prong standard to requests for extensions under the CORE rebate program).

In applying this standard to the matter at hand, the Board looks at the representations made in the petition as well as in the Certification that:

- all design and engineering work is finished;
- all components are timely ordered and paid; and
- "approximately 95%" of physical installation is complete, with all panels installed, all wiring and inverters in place, and meters on order.

On the basis of the facts as stated in the petition and Certification, the Board **FINDS** that Petitioner has demonstrated significant progress toward completion of its projects.


The second prong of the Board's analysis looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner applied for the relevant incentive, in this case, application to the long-term SREC financing program. In the instant matter, Petitioner

avers the primary reason for the construction delay was due to impacts of severe winter weather. The Board **FINDS** that the delay caused by the severe winter weather was unavoidable and unforeseeable at the time Petitioner entered into its PSA with JCP&L as part of the SREC long-term financing program.

On the basis of the above, the Board **HEREBY GRANTS** the request for an extension of the deadline for completion of the project under the PSA with JCP&L to September 28, 2011¹.

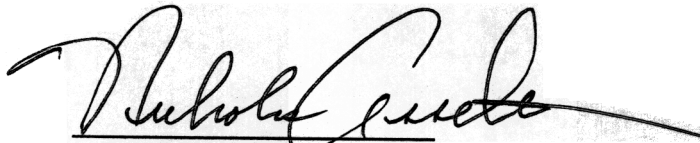
DATED: 7/14/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

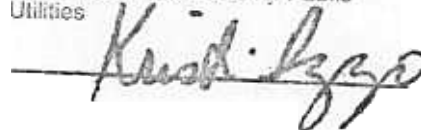

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

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



¹ Petitioner will need to re-register the referenced project in the SREC Registration Program in order to maintain its eligibility to generate SRECs. See Dobco Order, supra, at 3.

IN THE MATTER OF DYKES LUMBER CO. – EXTENSION REQUEST FOR SOLAR
RENEWABLE ENERGY CERTIFICATE (SREC) PURCHASE SALE AGREEMENT (PSA)
WITH JERSEY CENTRAL POWER AND LIGHT COMPANY

DOCKET NO. EO11060350V

SERVICE LIST

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Babette Tenzer, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102

Andrew Dembia
Div. Economic Development & Energy Policy
Board of Public Utilities
P.O. Box 350
Trenton, NJ 08625-0350

James H. Laskey, Esq.
Norris, McLaughlin & Marcus, P.A.
721 Route 202-206, Suite 200
Bridgewater, NJ 08807-5933

Michael Winka
Office of Clean Energy
Board of Public Utilities
P.O. Box 350
Trenton, NJ 08625-0350

Charles Kreyer
President
Dykes Lumber Co.
1899 Park Avenue
Weehawken, NJ 07086

Rachel Boylan
Office of Clean Energy
Board of Public Utilities
2 Gateway Center
Newark, NJ 07102

Allison E. Mitchell
Office of Clean Energy
Board of Public Utilities
P.O. Box 350
Trenton, NJ 08625-0350

Benjamin Scott Hunter
Office of Clean Energy
Board of Public Utilities
P.O. Box 350
Trenton, NJ 08625-0350