



Agenda Date: 2/10/12  
Agenda Item: 8A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF SMART ENERGY CAPITAL, LLC )  
EXTENSION REQUEST FOR SOLAR RENEWABLE )  
ENERGY CERTIFICATE (SREC) PURCHASE SALE )  
AGREEMENT (PSA) WITH JERSEY CENTRAL )  
POWER AND LIGHT COMPANY )  
ORDER  
DOCKET NO. EO12010081V

**Parties of Record:**

**Howard O. Thompson, Esq., Russo Tumulty Nester Thompson & Kelly**, on behalf of Smart Energy Capital, LLC  
**Robert Krugel**, Smart Energy Capital, LLC  
**Michael Connolly, Esq. Morgan, Lewis & Bockius, LLP**, on behalf of Jersey Central Power and Light Company

**BY THE BOARD:**

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Smart Energy Capital, LLC ("Smart Energy" or "Petitioner") for an extension of time to complete the solar energy projects of its wholly-owned subsidiary under that company's Solar Renewable Energy Certificate ("SREC") long-term contracts for financing with Jersey Central Power & Light Company ("JCP&L").

On or about February 25, 2011, as a winning bidder in JCP&L's SREC financing auction, Smart Energy entered into a SREC Purchase and Sale Agreement ("PSA") with JCP&L for the SRECs from approximately 500 kilowatts (kW) of solar energy to be produced by roof-top and ground-mounted solar equipment which will be owned by Livingston Circle Associates, an affiliate of Eastman companies, with contemplated project completion by February 25, 2012. On January 23, 2012, Smart Energy filed a formal petition with the Board requesting expedited review of its request for a six-month extension for completion of the project, alleging that a number of factors had contributed to unforeseeable and unavoidable delays. According to the petition, Smart Energy's first supplier declared bankruptcy, necessitating re-sourcing of the supplier as well as a redesign. This in turn delayed necessary re-roofing to support the roof-top solar portion of the project. This re-roofing is now nearly completed. In addition, the Petition states that pre-construction engineering work determined that there was insufficient land available for the ground-mounted portion of the system and the negotiation of a land-swap with the Township of Livingstone further delayed construction so that a final design was not completed until

November 2011. Due in part to the delays caused by the change in supplier and the land swap, the original financing partner withdrew and another had to be found. As a result of the above-described developments, Petitioner states that engineering, procurement, and construction agreement was not finalized until December 2011. The Petition also states that its contractor has informed it that construction can commence and be completed in March 2012, with testing and inspections in April 2012 and project interconnection in May 2012 – all subsequent to the existing PSA deadline of February 25, 2012.

Smart Energy requested the six-month extension so it can complete the project as prescribed in the PSA, if the extension is granted. Smart Energy maintained that its commitment to the project is evidenced by its expenditure of seven percent of project costs in irrevocable orders for solar components in order to meet the “safe harbor” requirements of Section 1603 of the American Recovery and Reinvestment Act. Petitioner also alleges that purchase orders have been executed for all solar panels and that the panels have been delivered to the project location. Petitioner provided a supplemental certification signed January 20, 2012 by a managing partner, Robert Krugel, attesting to the specific progress made on the project and providing further explanations of the reasons for the delays (“Certification”). By letter dated January 26, 2012, JCP&L has confirmed that it has no objection to the requested extension.

## **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 requests for an extension made by participants in long-term SREC contracts. In reviewing such requests, the Board has 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 execution of the PSA. 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); I/M/O Dykes Lumber Company. – 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, Docket No. EO11060350V (July 14, 2011).

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:

- Petitioner has expended seven percent of project costs in irrevocable orders for solar components
- Solar panels have been purchased and are on-site.


The Board **FINDS** that Petitioner has documented significant progress toward completion of the project.

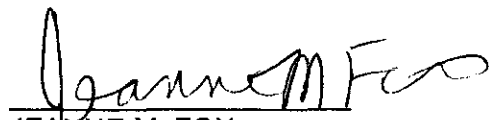
In the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner applied for the relevant incentive, in this case, application to the long-term SREC financing program. In the instant matter, Petitioner avers that the bankruptcy of its first contractor, the delay this caused in necessary roofing work, and the withdrawal of its first financing partner caused the delay. The Board **FINDS** that the delay caused by the permitting process was unavoidable and unforeseeable at the time Petitioner entered into its PSA with JCP&L as part of the SREC long-term financing program.

After consideration of the above, the Board **HEREBY GRANTS** the request for an extension of the deadline for completion of the projects under the PSAs with JCP&L to July 23, 2012.<sup>1</sup>

DATED: 2/10/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

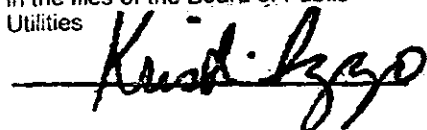
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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



<sup>1</sup> 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.

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FOR SOLAR RENEWABLE ENERGY CERTIFICATE (SREC) PURCHASE SALE  
AGREEMENT (PSA) WITH JERSEY CENTRAL POWER AND LIGHT COMPANY

DOCKET NO. EO12010081V

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