



Agenda Date: 7/18/12  
Agenda Item: 8D

**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 THE PETITION FOR WAIVER OF )  
N.J.A.C. 14:8-2.9(C) – SUNDURANCE ENERGY<sup>1</sup> )

ORDER

)  
)  
)  
) DOCKET NO. EO12010039V

Parties of Record:

**Edgar Lim**, Sundurance Energy

BY THE BOARD<sup>2</sup>:

Sundurance Energy, LLC, ("Petitioner" or "Sundurance"), a solar developer, has filed a request for a declaratory ruling that one of its installations may be credited with Solar Renewable Energy Certificates ("SRECs") on the basis of estimated energy output for a period of time during which a portion of the solar generation from one of its arrays was not recorded due to a faulty revenue grade meter.

**BACKGROUND**

On February 9, 1999, the New Jersey Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., was enacted. L. 1999, c. 23, § 66. Among other things, EDECA established requirements to advance renewable energy and energy efficiency goals in New Jersey. The New Jersey Board of Public Utilities ("Board") adopted Renewable Portfolio Standards regulations ("RPS"), N.J.A.C. 14:8-2.1 et seq., to implement those provisions of EDECA. N.J.S.A. 48:3-87 and the RPS rules require entities that sell electricity at retail in this State, electric power suppliers and basic generation service providers, to include minimum percentages of qualified renewable energy in the electricity they sell; those minimum percentages increase over time. The rules specify separate minimum percentages for solar

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<sup>1</sup>The Board has amended the relevant rules since the filing of this letter petition, and the applicable rule which was previously located at N.J.A.C. 14:8-2.9 (b) is now located at N.J.A.C. 14:8-2.9(c).

<sup>2</sup>Commissioner Joseph L. Fiordaliso did not participate.

electric generation, for Class I renewable energy, and for Class II renewable energy, as each of these categories of renewable energy is defined by N.J.S.A. 48:3-51 and N.J.A.C. 14:8-1.2.

To comply with the RPS, suppliers and providers obtain and use Renewable Energy Certificates ("REC"), which represent the environmental attributes of one megawatt-hour (MWh) of renewable energy. N.J.A.C. 14:8-2.8. To comply with the solar electric generation portion of the RPS, suppliers and providers obtain and use SRECs.

The letter petition dated January 9, 2012, alleges that Petitioner installed a photovoltaic system of approximately 1.7 MW ("the System") on the grounds of Johnson and Johnson Ortho-Clinical Diagnostics in August 2010. Petitioner states that a 248.17 kW array had a faulty revenue grade energy meter installed and that, as a result, the energy production recorded was less than the actual energy produced by the System. Sundurance provided data for the period when the meter on the array was not functioning properly, and comparison data for that same array for the period after the meter was replaced on July 28, 2011. Petitioner seeks a declaratory ruling that under these circumstances, it may be credited with SRECs on the basis of solar generation which is estimated rather than metered.

## **DISCUSSION AND FINDINGS**

As a threshold matter, the Board notes that this matter arises out of a request for a declaratory ruling<sup>3</sup>. The Board, in its discretion, may render a declaratory ruling which binds the agency and the parties to the proceedings on the facts alleged, but only after the interested parties have been afforded full opportunity for hearing. Sundurance and the staff of the Board's Office of Clean Energy, the only parties to this proceeding, have agreed that there are no facts in dispute. The Board **HEREBY FINDS** that it has sufficient information to proceed, and will make its determination on the basis of the facts as set forth in the letter petition and the applicable Board rules and policies.

RECs and SRECs have a monetary value; over the course of their useful life, they are bought, sold, and ultimately retired to comply with the RPS in New Jersey or another state. N.J.A.C. 14:8-2.9 describes the conditions that must be satisfied for energy generated by a solar facility in this State to qualify for the issuance of RECs and SRECs. During the time at issue, N.J.A.C. 14:8-2.9(b) required that energy produced by a solar electric generation facility greater than 10 kilowatts, such as the System, must be reported through "[p]eriodic readings of a meter that records megawatt-hour production of electrical energy." The rule also provided that solar systems less than ten kW had the option of submitting engineering estimates in lieu of actual metered data; however, the Board has recently eliminated this option even for small systems.

At its May 1, 2012 Agenda meeting, the Board voted to approve a rule amendment which requires that all RECs and SRECs be based upon actual metered data. These rules became effective upon publication on June 4, 2012. 44 N.J.R. 1703(a). This recent elimination of the exemption for small solar systems evidences the Board's policy that the most accurate measurement possible must underlie all claims for RECs and SRECs. As stated on the New Jersey Clean Energy Program website at the page addressing the metering requirements for renewable systems, "A revenue grade meter is required to be installed and is the only acceptable method of determining SREC generation." [www.njcleanenergy.com](http://www.njcleanenergy.com). Under revised N.J.A.C. 14:8-2.9 (c), as of December 4, 2012, a qualifying meter must also satisfy the American

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<sup>3</sup> Declaratory rulings are governed by N.J.S.A. 52:14B-8.

National Standards Institute Standard C12.1-2008 and additional PJM-EIS Generation Attribute Tracking System requirements.

Moreover, the owner/operator of a renewable energy system is responsible for the proper installation and maintenance of its equipment. The Board's rules define "customer-generator facility" as "the equipment used by a customer-generator to generate, manage and/or/monitor electricity." N.J.A.C. 14:8-4.2 (emphasis added). A customer-generator that seeks the benefits of the rules, must assume the responsibility to comply with those rules.

Sundurance seeks a waiver of the rules requiring that only metered data be used as the basis for the issuance of SRECs. The Board may, in special cases and for good cause shown, permit deviation from its rules. N.J.A.C. 14:1-1.2(b)(1). Under the first prong of the waiver test the Board considers whether Petitioner's request supports the general purpose and intent of the rules. In this instance, as noted above, the Board's rules governing SRECs are designed to promote and secure maximum accuracy in the measurement of the energy underlying all claims for SRECs. Permitting Petitioner to claim SRECs on the basis of an engineering estimate would not support the purpose and intent of these rules. The second prong of the waiver test requires that the Board also consider whether full compliance with the rules would adversely affect the interest of the public. Clearly, the interest of the public in the promotion of clean solar generation, and specifically the interest of the ratepayers who ultimately bear the cost of the SRECs based on that generation, would not be served by permitting the use of a less accurate methodology – engineering estimates – in place of the metering required by the Board's rules. Malfunction of a customer's equipment thus does not constitute sufficient cause to waive the rules requiring use of actual metered energy as the basis for the issuance of RECs and SRECs.

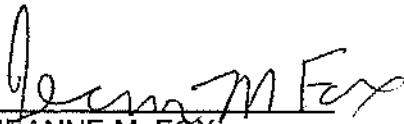
Therefore, based on the information provided, the Board **ACCEPTS** that Petitioner installed a photovoltaic system of approximately 1.7 MW on the grounds of Johnson and Johnson Ortho-Clinical Diagnostics, and that the System included a 248.17 kW array which had a faulty revenue grade energy meter installed and that, as a result, the energy production recorded was less than what Petitioner represents was the actual energy produced by the System. The Board **FINDS** that Petitioner and/or the Customer was responsible for the proper installation and functioning of the System. The Board also **FINDS** that given the size of the System, the Board's rules require that issuance of SRECs be based upon metered rather than estimated generation, and that Petitioner has failed to establish a basis for waiver of that requirement.

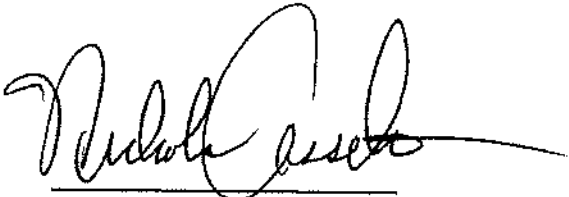
Accordingly, the request for a declaratory ruling that SRECs be credited for the estimated production of a portion of the System under the factual circumstances presented is HEREBY DENIED.

DATED: 7/18/12


BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

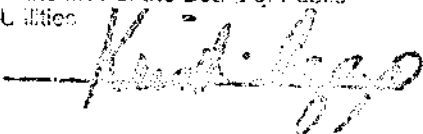
  
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COMMISSIONER

  
NICHOLAS ASSELTA  
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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.



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