



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF NAUTILUS SOLAR KMBS, LLC )  
EXTENSION REQUEST FOR SOLAR RENEWABLE )  
ENERGY CERTIFICATE PURCHASE SALE )  
AGREEMENT WITH ROCKLAND ELECTRIC )  
COMPANY )  
ORDER  
DOCKET NOS. EO12100914V  
and EO12100915V

Parties of Record:

**Howard O. Thompson, Esq.**, Russo Tumulty Nester Thompson & Kelly, on behalf of Nautilus Solar Energy, LLC

**John L. Carley, Esq.** Regulatory Counsel, Consolidated Edison, on behalf of Rockland Electric Company

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the request of Nautilus Solar Energy, LLC ("Nautilus") for an extension of time to complete the solar energy projects of its wholly owned subsidiary Nautilus KMBS, LLC under that company's Solar Renewable Energy Certificate ("SREC") long-term financing contracts with Rockland Electric Company ("RECO").

On or about September 11, 2011, as a winning bidder in RECO's SREC financing auction, Nautilus KMBS entered into SREC Purchase and Sale Agreements ("PSA") with RECO for the SRECs from two solar energy projects. One project, for approximately 636 kilowatts (kW) of solar energy, is to be located at 100 Williams Drive in Ramsey, New Jersey ("100 Williams Drive Project"); the other, for approximately 215 kW, is for a neighboring site at 101 Williams Drive, in Ramsey, New Jersey ("101 Williams Drive Project"). Both projects are designed to be located on parking lot canopies owned by Konica Minolta Business Solutions, USA, Inc. ("Konica"), and each will serve a separately metered property owned by Konica.

By letter dated September 24, 2012, Nautilus submitted a request for a nine-month extension of time from the date of the Board's approval to complete the projects under the PSAs. According to the request, and as supported by the certifications of Nautilus's Director of Operations, David Velasco, the primary reason for the delay in proceeding with the projects has been the local permitting process. Petitioner states that it submitted its design work to the Town of Ramsey ("Town") on December 18, 2011. However, the Town then adopted new ordinances for solar installations which Nautilus states led to numerous appearances before the Town Planning Board and necessitated extensive changes to the engineering and design of the projects. As parking lot canopy projects, according to the Nautilus, these installations involve more complicated design and redesign work than ground-mounted projects. Final approval from the Town Planning Board was not received until September 4, 2012, and was not memorialized in writing until the October 2, 2012 meeting, subsequent to the one-year deadline for project completion under the PSAs. Upon receiving Planning Board Approval, Nautilus represents that it prepared and submitted the building and electrical permitting documentation.

Nautilus submits that the delays caused by the local permitting process were unavoidable and unforeseeable at the time that the SREC Agreements for the projects were executed on September 15, 2011. As previously stated, Nautilus has requested the nine-month extension so it can complete the projects as prescribed in the PSAs, if the extension is granted. Nautilus maintains that its commitment to the projects is evidenced by expenditures of over \$1 million on development, engineering, and procurement activities. Nautilus has spent \$767,800 procuring the panels for the two projects, which are being stored at two warehouses in New Jersey.

In addition, Nautilus submits that the complicated canopy re-design work for the 101 Williams Drive Project has now been completed. A new engineering, procurement and construction ("EPC") contractor has been retained to coordinate and expedite the construction process for the 101 Williams Project. This will begin with the drilling and installation of pilings for the steel canopy structures promptly after Board's approval of the requested SREC Agreement extension. Nautilus submits that with the design work completed and substantial materials and expenditures made, it has demonstrated significant progress toward completion of the 101 Williams Drive Project.

With respect to the 636 kW 100 Williams Drive Project, Nautilus has provided a certification stating that the re-design work for this project has also been completed, and its EPC contractor for the project has obtained a canopy construction/structural steel proposal. Because this proposal indicates that the cost will exceed \$800,000, Nautilus states that it is awaiting Board approval before proceeding with construction.

RECO has advised the Board that it has no objection to the Board granting an extension to Nautilus Solar for these projects.

## **DISCUSSION AND FINDINGS**

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

...in the event the Commencement Date has not occurred within one year of the Effective Date, this Agreement shall terminate without further obligation or liability to the Parties and the Parties 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 by Seller 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 request as well as in the certifications that:

- Nautilus has expended in excess of \$1 million on preparatory work and materials for the projects
- Re-design work for both projects has been completed
- The EPC contractor for the 100 Williams Drive Project has obtained a canopy construction/structural steel proposal
- Solar panels have been purchased and are under the company's control.

Based on the representations in the certifications, the Board **FINDS** that Nautilus has documented significant progress toward completion of the projects.

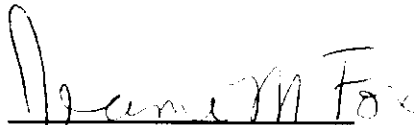
In the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time the company applied for the relevant incentive, in this case, application to the long-term SREC financing program. In the instant matter, Nautilus has certified that unforeseen and unavoidable developments in the local permitting process caused the delays. The Board **FINDS** that the delays caused by the permitting process were unavoidable and unforeseeable at the time Nautilus entered into its PSAs with RECO as part of the SREC long-term financing program.

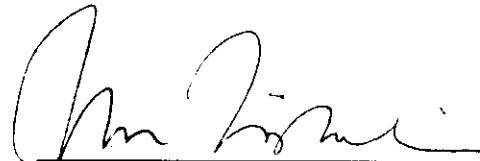
After consideration of the above, the Board **HEREBY GRANTS** the request for an extension of the deadlines for completion of the projects under the PSAs with RECO to November 2, 2013.

DATED: 1/24/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

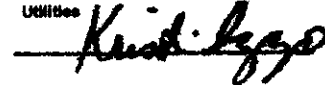
  
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NICHOLAS ASSELTA  
COMMISSIONER

  
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



IN THE MATTER OF NAUTILUS SOLAR KMBS, LLC EXTENSION REQUEST FOR SOLAR RENEWABLE ENERGY CERTIFICATE PURCHASE SALE AGREEMENT WITH ROCKLAND ELECTRIC COMPANY - DOCKET NOS. EO12100914V and EO12100915V

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