



Agenda Date: 7/10/19
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF FORMOSA PLASTICS, U.S.A. -) ORDER
VERIFIED PETITION FOR EMERGENT RELIEF TO)
EXTEND CONSTRUCTION DEADLINE)
) DOCKET NO. QO19040444

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Howard O. Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, LLP, on behalf of
Formosa Plastics, U.S.A.
Joshua A. Eckert, Esq., Jersey Central Power & Light Company

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Formosa Plastics, U.S.A. ("Formosa" or "Petitioner") for an extension of time to complete a solar energy project ("Project") under its Solar Renewable Energy Certificate ("SREC") long-term financing contract with Jersey Central Power & Light Company ("JCP&L").

On or about January 17, 2018, as a winning bidder in JCP&L's SREC II Financing Program auction ("SREC II"),¹ Formosa entered into an SREC Purchase and Sale Agreement ("PSA") with JCP&L for the SRECs from the Project. The Project, for approximately 999.74 kilowatts ("kW") of solar energy, is to be located at Formosa's commercial property at 9 Peach Tree Hill Road in Livingston, New Jersey ("Site") and is intended to be net metered. The Project is designed to be located partly as a roof-mounted installation of approximately 350 kW and partly as a canopy-mounted installation of approximately 650 kW. On April 28, 2018, Formosa retained Solar Landscape, LLC ("Solar Landscape") to install the Project.

Formosa Plastics applied for and received an initial six-month extension of the twelve-month completion deadline for the Project from JCP&L. JCP&L provided the extension on January 16, 2019, noting that the new deadline was July 22, 2019 and that any further extension would have to be sought from the Board by petition.

¹ The Board approved the second Electric Distribution Company ("EDC") SREC-based financing program was by Order dated December 18, 2013 in Docket Number EO12080750.

Under cover of a letter dated April 2, 2019, Formosa submitted a petition requesting an additional extension time of December 22, 2019 to complete the Project under the PSA ("Petition"). According to the request, and as supported by the certifications of Peter J. Limone, Director of Corporate Human Resources and Corey Gross, Managing Director of Solar Landscape, the primary reason for the delay in proceeding with the project has been the local permitting process. Petitioner states that a major site plan application was submitted on August 15, 2018. After a partial redesign to address flood plain issues raised by the township's planning board, Petitioner states that the application was re-submitted on October 12, 2018. According to the petition, the Township of Livingston voted to approve the application in November 2018, but a series of re-scheduled hearings and a press of other business resulted in issuance of a written permit being delayed until the April 16, 2019 Planning Board meeting. In a supplemental certification, Corey Gross attests that a forty-five day appeal period must run before building permits may be issued, meaning that Solar Landscape will not receive these permits and be able to commence construction until June 1, 2019. (Gross Supplemental Certification at Par. 2). At that time, only six weeks will remain until the current July 22, 2019 deadline occurs.

Formosa submits that the delays caused by the municipal permitting process were unavoidable and unforeseeable at the time that Formosa received the PSA. Petitioner notes that not only construction but also inspections, testing, and JCP&L's interconnection approval process must transpire before the project will be complete as required by the PSA. Formosa says that it has requested the five-month extension "in an abundance of caution" so that it can complete the Project as prescribed in the PSA. Formosa points to the investment of time and money it has made, while Corey Gross of Solar Landscapes asserts that Solar Landscapes has now executed purchase orders in excess of \$1,000,000 for panels and other equipment. (Gross Certification at Par. 9 and Exhibit 1).

DISCUSSION AND FINDINGS

The Board notes, first, that extensions of time to complete under an SREC financing contract are subject to the terms of the Board-approved stipulation setting the terms of JCP&L's SREC II Financing Program ("Stipulation"). With respect to extensions for completion of projects greater than 50 kilowatts up to 2 megawatts, the Stipulation provides:

The Board shall have the sole authority to grant any additional extensions in any of the three segments. A request for a second extension shall be made prior to the expiration of the first extension. The Parties recommend that a second extension shall be for one month for projects of 10 kW and less and for three months for projects over 10 kW. A second extension will only be granted if all criteria for a first extension have been met and, in addition, all modules and other equipment are on site and completion is imminent.

[In The Matter Of The Verified Petition Of Jersey Central Power & Light Company Concerning A Proposal For A Solar Renewable Energy Certificate-Based Financing Program Under N.J.S.A. 48:3-98.1 ("Srec II"), Dkt. No. EO12080750, at p23 (December 18, 2018) (emphasis added).]

Petitioner's request for a five-month extension thus amounts to a request for a waiver of the Stipulation's terms. In considering a request for a waiver of program requirements, the Board applies the two-prong analysis provided for in N.J.A.C. 14:1-1.2(b)(1). See In The Matter Of Magrann Associates' Appeal For The Residential New Construction Program Incentive Determination Regarding The Westville Senior Housing Project, Dkt. No. QO18020119

(September 17, 2018). In that analysis, the Board first considers whether the applicant's request is in accordance with the general purpose and intent of the program requirements. The Board then considers whether requiring full compliance with the requirements "would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interest of the general public." N.J.A.C. 14:1-1.2(b)(1).

In the present case, the general purpose and intent of the SREC II program requirements has been to incentivize the installation of solar generation while maintaining accountability for the ratepayer's dollar. The Board **FINDS** that granting the requested five-month extension so that the Project may be eligible for SRECs does not accord with the general purpose of controlling the demands on public funds. As to the second prong of the test, whether requiring full compliance with the requirements would adversely affect the ratepayer, the previous finding answers that inquiry. The Board **FINDS** that full compliance with the Stipulation's conditions would protect the ratepayer. Accordingly, the Board **DENIES** the request for a waiver.

The Board turns to the question of whether Petitioner is entitled to the three-month extension which is permitted under the Stipulation. In addressing Petitioner's request for an extension of time to complete construction, the Board looks to its previous rulings under the SREC financing program. 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. See I/M/O Smart Energy Capital, LLC. – Extension Request for SREC Purchase Sale Agreement with JCP&L, BPU Dkt. No. EO12010081V (February 10, 2012) ("Smart Energy"); I/M/O GLC (NJ) NACR2, LLC - Extension Request for SREC PSA with Rockland Electric Company, BPU Dkt. No. EO12060555V (August 15, 2012); In The Matter of Nautilus SWBOE – Extension Request for Solar Renewable Energy Certificate (SREC) Purchase Sale Agreement with Jersey Central Power and Light Company, BPU Dkt. No. EO13070687V (April 15, 2015).

Applying the standard to the matters at hand, the Board looks at the representations made in the petition as well as in the Certification that: 1) that Petitioner has engaged a solar contractor which is ready to complete the Project; 2) that the Project has been re-designed in response to municipal concerns and received municipal approval; and 3) that approximately \$1,000,000 worth of purchase orders have been executed for solar panels and other equipment. Therefore, the Board **FINDS** that Petitioner has made significant progress toward completion.

Turning to the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner executed the PSA on January 17, 2018. Petitioner states that subsequent to submitting a major site plan application, the Livingston Planning Board apprised Petitioner's contractor of flood plain concerns and that the contractor resubmitted the application within three months. Petitioner also states and provides certifications to the five or six months that passed between the Planning Board's oral approval of the revised application and the issuance of the written approval necessary to begin the clock on the 45-day appeal period. The Board **FINDS** that the delays caused by the municipal planning process were unavoidable and unforeseeable at the time Petitioner entered into its PSA with JCP&L. The Board therefore **CONCLUDES** that Petition has met the Board's criteria for granting an extension to complete the Project and maintain its eligibility under the PSA. The Board **GRANTS** Petitioner a three-month extension from the expiration of the current extension, to October 22, 2019. Finally, the Board notes that Formosa's SRP application expires on August 14, 2019, so Petitioner will need to request an extension from the SRP team in addition to the extension of the PSA.

The effective date of this Order is July 20, 2019.

DATED: 7/10/19

BOARD OF PUBLIC UTILITIES
BY:



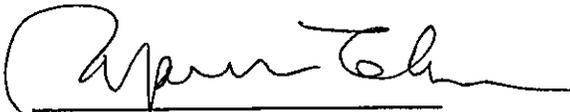
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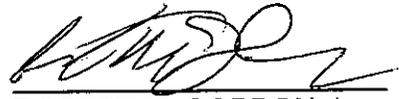
MARY ANNA HOLDEN
COMMISSIONER



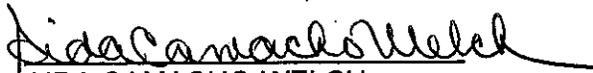
DIANNE SOLOMON
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UPENDRA J. CHIVUKULA
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ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
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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