



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF NAUTILUS SOLAR SW BOE, LLC)
FOR AN EXTENSION OF A SOLAR RENEWABLE)
ENERGY CERTIFICATE (SREC) PURCHASE AND)
SALE AGREEMENT REGARDING SUSSEX WANTAGE)
NJ BOARD OF EDUCATION (SRP-04900) WITH)
JERSEY CENTRAL POWER AND LIGHT) DOCKET NO. EO13020078V

Parties of Record:

Howard O. Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, on behalf of Nautilus Solar SW BOE, LLC
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Michael J. Connolly, Esq., Windels Marx, on behalf of Jersey Central Power & Light Company

BY THE BOARD¹:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Nautilus Solar SW BOE, LLC ("Nautilus" or "Petitioner") for an additional extension of time to complete the solar energy project ("Project") under its Solar Renewable Energy Certificate ("SREC") long-term financing contract with Jersey Central Power & Light ("JCP&L") intended to serve the Sussex-Wantage Regional Board of Education's ("SWBOE") Sussex Middle School at 10 Loomis Avenue in Sussex, New Jersey. Petitioner is requesting a second extension of the construction completion deadline to coincide with the actual completion date of the Project construction.

On or about December 30, 2011, as a winning bidder in JCP&L's SREC financing auction, Nautilus entered into an SREC Purchase and Sale Agreement ("PSA") with JCP&L for the SRECs from the Project. The Project, for approximately 255 kilowatts ("kW") of solar energy at the Sussex Middle School, is located partially upon the roof, partially upon a parking lot canopy, and partially upon the ground at the School.

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

By petition dated September 22, 2014, Nautilus requested an additional three-month extension of time to complete construction from the date the Board set in its September 18, 2013 Order. In the September 18, 2013 Order, the Board granted Nautilus a six-month extension of the construction deadline under the PSA to March 18, 2014 but did not extend the end date of the PSA. Petitioner stated that re-designs and the need for new approvals had caused the initial delays in meeting the first construction deadline.

According to the current petition, subsequent to entry of the September 18, 2013 Order, Petitioner and its contractor encountered lengthy delays due to snow, ice and rain at the Sussex location (Verified Petition at para. 3). The winter snow season of 2013-2014 was one of the heaviest on record with northern New Jersey getting over 57 inches of snow. See www.njweather.org (information maintained in conjunction with Rutgers): See March 6, 2015 Certification of Andrew P. Rice Regarding Construction Delays in SREC Purchase and Sale Agreement by Nautilus Solar SWBOE, LLC, at para. 3. In northern New Jersey, December 2013 saw nearly a foot of snow, January 2014 saw more than a foot of snow, and February saw nearly three feet of snow – with 20 snow events according to the site’s summary. *Ibid.* The Sussex-Wantage part of northern New Jersey is a particularly heavy snow-ice area because of its northern, hilly location, and it is just a couple of miles from High Point, New Jersey, which had the highest snow total at 77 inches. *Ibid.* Petitioner explained that the Project involved both roof-top installation and ground drilling, and that the snow and ice severely affected the ability of the contractor to work. *Ibid.* In short, Nautilus represented that when there were snow events and for the cold and melting periods thereafter, everything had to shut down. There also was a heavy rain event (more than 3 inches) from April 29-May 1 which stopped work see National Weather Service report on www.erh.noaa.gov. *Ibid.*

Petitioner also explained that with respect to the site location, the Sussex Middle School, installation work on roofs was focused on non-educational hours; but when the winter weather delays occurred, installation pressed into the spring of 2014. *Ibid.* at para 4. During the week of March 31 to April 4, Sussex Middle School conducted its quarterly exams. Statewide NJASK testing was conducted during the week of April 28 to May 1 for 7th and 8th graders, and the week of April 5 to 9 for 6th graders. During the week of June 2 to June 6, Sussex Middle School conducted its Final Exams. All of these periods required limiting construction to quiet activities, including no heavy machinery, limited roof work, and no activities outside of classrooms where testing was being conducted. Testing the system then took place, leading to inspection by the town in late June 2014. *Ibid.*

Petitioner represents that the Project is complete and tested. The local electrical inspector issued a final certificate on June 26, 2014. (Verified Petition at para. 4 and Exhibit B). Construction on the Project was completed approximately three months after the deadline approved in the September 18, 2013 Order, on June 26, 2014. JCP&L completed its review and issued a Level 2 Interconnection Approval to Operate the Project on August 8, 2014 (Verified Petition at para. 4 and Exhibit C).

In addition, Petitioner applied for final New Jersey Clean Energy Program (“NJCEP”) approval. (Verified Petition at para. 4). All of Petitioner’s documentation was submitted to the NJCEP, and the only outstanding item is for Petitioner to obtain the Board’s approval for a three-month extension of the construction deadline. (March 4, 2015 E-mail from Petitioner’s Counsel, Howard Thompson, Esq. to William P. Agee, Esq., NJBPU, Office of Chief Counsel, “March 4, 2015 E-mail”).

Nautilus additionally represents that it expended in excess of \$900,000 on materials and other expenses, and that the Project will provide lower cost electricity to the Sussex Middle School, saving money for community taxpayers. (Verified Petition at para. 11).

By letter dated November 21, 2014, JCP&L advised the Board that it does not take a position on the Board granting Nautilus an extension of time to complete the Project (“JCP&L Letter”). JCP&L noted that it understands that the Project’s ability to produce SRECs commenced on June 26, 2014, the actual construction completion date (JCP&L Letter at 2). Based upon the petition and the Board’s September 18, 2013 Order, JCP&L understands that, if the Board grants the extension requested in the petition, the SREC-PSA by its terms, and JCP&L’s obligations to purchase SRECs from the Project, will expire on December 31, 2022 based upon the December 31, 2012 Commencement Date established in the September 2013 Order. Ibid.

Prior to submitting the petition, Petitioner sought to have approvals from both the local inspector and the utility in place (March 6, 2015 Certification of Andrew P. Rice Regarding Post-Construction Delays in SREC Purchase and Sale Agreement by Nautilus Solar SWBOE, LLC, at para. 4, “March 6, 2015 Rice Certification”). As explained above, both were obtained on June 26, 2014 and August 8, 2014 respectively. After obtaining the approval, Petitioner entered into discussions with JCP&L in an attempt to resolve the matter under the Board’s September 2013 Order without further petition to the Board. Ibid. Petitioner understood that while JCP&L did not object to Petitioner’s position regarding this final extension of the construction deadline and proceeding with SREC purchases, JCP&L reviewed the Board’s September 2013 Order and determined that it did not have the authority on its own to proceed with the SREC purchases. As a part of submitting the petition, Nautilus submitted all necessary paperwork to the NJCEP, including the final permit package from the town showing that the Project passed final local inspections. In addition, the paperwork included signed “as built” from the engineer, a shading analysis, and the completed commissioning forms as called for by the Market Manager on its technical worksheet². (April 2, 2015 E-mail from Petitioner’s Counsel, Howard Thompson, Esq. to William P. Agee, Esq., NJBPU, Office of Chief Counsel).

Preparation of the paperwork was delayed due to the Labor Day holiday. (“March 6, 2015 Rice Certification”). Nautilus represents that it submitted the NJCEP approval application with the required paperwork over the weekend of September 19-22, 2014. Nautilus then directed its counsel to prepare a formal petition for the Board, which was submitted on September 22, 2014. Ibid.

On November 18, 2014, the Market Manager advised Petitioner that the New Jersey State Certification Number for the project, SRP-04900, expired in September 2012 (November 18, 2014 E-mail from Theresa Baker to Andrew Rice). The Market Manager asked Petitioner whether it had resubmitted the Project for a new SRP number. Ibid. Petitioner responded that the Project was extended due to the SREC-based financing program. Ibid. The Market Manager advised Petitioner that it could not grant an extension without a Board Order (see March 12, 2015 E-mail from Petitioner’s Counsel Howard Thompson, Esq. to William P. Agee, Esq., New Jersey Board of Public Utilities). The Market Manager advised Board Staff that Petitioner never submitted the Final As-Built Packet for the Project. Accordingly, the Market

² The Market Manager administers the SREC Registration Program (“SRP”) process subject to the oversight of Board Staff and, ultimately, of the Board.

Manager de-activated the Project and advised Board Staff that no extension request was submitted by the Petitioner. Ibid. (March 11, 2015 E-mail from Tammy Gray to Benjamin Hunter, New Jersey Board of Public Utilities).

Under the Board's rules, construction of a solar electric generating facility shall be completed prior to expiration of the conditional SRP registration, which is issued after submission of a properly completed registration application. The registrant may request one extension prior to the expiration of the conditional SRP registration, and shall include an updated schedule for completion of construction. Board Staff may authorize one extension for the project on a case-by-case basis, based on the likelihood of timely and successful completion of the solar facility. An extension shall provide a new expiration date, six months from the expiration of the original conditional registration. If the conditional registration, or extension, expires before construction is complete, the Board's rules require the registrant to begin the registration process again by submitting a new registration application. Board Staff is required to treat the new application as if it were a first-time submittal, and to issue a new SRP number. N.J.A.C. 14:8-2.4.

Petitioner concedes that it did not re-register this Project with the Market Manager as required under the rules because the PSA is tied to the original SRP number. (March 12, 2015 E-mail from Petitioner's Counsel Howard Thompson, Esq. to William P. Agee, New Jersey Board of Public Utilities). Accordingly, Petitioner explained that when construction of the Project was completed, on June 26, 2014, that it made a submission to the Market Manager, hoping to be considered under the Board's September 2013 Extension Order. Ibid. However, a new Board Order, granting a second extension, was required to do this. On September 22, 2014, Petitioner submitted the instant petition, requesting a second extension of the construction deadline, more than 6 months after the original extension expired on March 18, 2014, and nearly 3 months after completion of the construction on June 26, 2014. Furthermore, Petitioner never submitted a request for extension of the original SRP number.

DISCUSSION AND FINDINGS

In addressing Petitioner's request for an additional extension of time to complete the Project pursuant to its PSA with JCP&L, the Board first examines 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).

Applying the above standard, the Board examined the representations made in the petition, the Verification in lieu of Certification attached to the petition, the additional certifications, and JCP&L's response providing that:

- Nautilus has expended in excess of \$900,000 in panels, racking, inverters, wiring and other expenses for the Project.
- The Project has been completed.

- The local electrical inspector issued a final certificate for the Project on June 26, 2014 (“Exhibit B”).
- The SREC meter was installed on June 17, 2014 and interconnection approval was granted by JCP&L on August 8, 2014.

In applying the second prong of the above analysis, Nautilus certified that winter weather and school scheduling caused delays, and provided detailed information regarding the severe winter weather and the school’s events schedule that causing further construction delays during the time-period in question. Petitioner additionally explained the reasons it failed to timely submit a petition requesting a second extension of approximately three months of the construction deadline.

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 a Petitioner’s request supports the general purpose and intent of the rules. In this instance, the SREC financing program’s rules governing the construction of solar projects under PSAs, and the Board’s rules governing registration of a solar project in the SRP, are designed to ensure that projects proceed on a timely basis and that the safety and reliability of the State’s electric grid system is protected and secure. Permitting Petitioner to extend the construction deadline in this instance, by approximately three months, would not jeopardize the purpose and the intent of the rules or overly burden ratepayers, as the term of the PSA will not be extended. The second prong of the waiver test requires that the Board consider whether full compliance with the rules would adversely affect the interest of the public. Here, the interest of the public is the promotion of clean solar generation, and the interest of ratepayers who ultimately bear the cost of the SRECs based upon that generation, are served by allowing the Sussex Middle School in the Sussex-Wantage School District to benefit from the approximate three-month extension of the construction deadline for this project.

The Board must also consider whether the Project’s original registration in the SRP should be extended, notwithstanding the clear time limitations in N.J.A.C. 14:8-4.2. Based upon what appears to have been a misunderstanding about the effect of the September 18, 2013 Order, Nautilus failed to seek any extension of its SREC registration prior to its expiration. However, based on what the Board sees as the public good that will be supported by allowing the Project to benefit from the PSA, the Board **HEREBY FINDS** grounds to direct that the original SRP be extended so that Nautilus can sell SRECs to JCP&L under the PSA. See I/M/O GLC (NJ) NACR 2, LLC Extension Request for Solar Renewable Energy Certificate (SREC) Purchase Sale Agreements (PSA) with Jersey Central Power & Light Company, Docket No. EO12010066V (September 18, 2013).

Therefore, based on the information provided, in the representations contained in the petition, the verification in lieu of certification, Petitioner’s additional certifications of March 6, 2015, and JCP&L’s response, the Board **HEREBY FINDS** that Nautilus has documented significant progress toward completion of the Project. The Board notes that the Project is now complete, received a final certificate from the local electrical inspector, and that JCP&L installed the SREC meter and granted interconnection approval.

The Board **FURTHER FINDS** that the delays caused by the severe winter weather and the scheduling of school events were unavoidable and unforeseeable at the time Nautilus entered into its PSA with JCP&L as part of the SREC long-term financing program.

In addition, the Board **HEREBY FINDS** that due to the special circumstances involved in this case, and for good cause having been shown, that waiver of the SREC registration rules to re-register an expired project and of the rules governing the JCP&L SREC financing program is warranted in this limited instance.

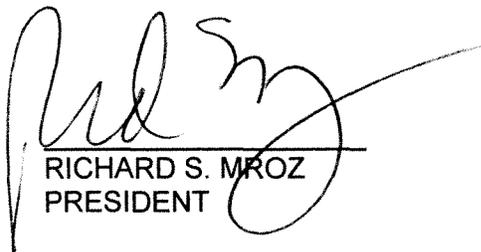
In consideration of the above, the Board **HEREBY GRANTS** the request for an extension of the deadline for completion of the Project under the PSA with JCP&L to June 26, 2014, with the right to earn SRECs commencing no earlier than August 8, 2014, with JCP&L's obligation to purchase SRECs commencing no earlier than October 1, 2014 as agreed to by Petitioner. Furthermore, the Board **HEREBY GRANTS** an extension of the original SRP number.

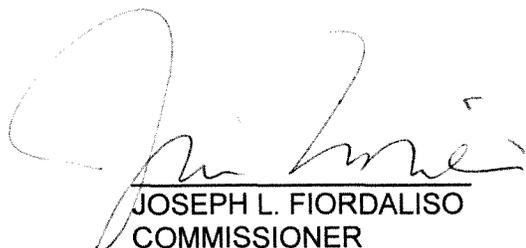
Nothing in this Order shall change the Commencement Date under the PSA or in any way extend the obligations of JCP&L under that agreement.

The ruling in this matter is limited to the facts of this case and should not be considered as precedential.

DATED: 4/15/15

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

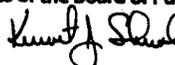

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


KENNETH J. SHEEHAN
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 SWBOE, LLC EXTENSION REQUEST
FOR SOLAR RENEWABLE ENERGY CERTIFICATE (SREC) PURCHASE SALE
AGREEMENT (PSA) WITH JERSEY CENTRAL POWER & LIGHT
DOCKET NO. EO13020078V

SERVICE LIST

Howard O. Thompson, Esq.
Russo Tumulty Nester Thompson & Kelly
240 Cedar Knolls Road, Suite 306
Cedar Knolls, NJ 07927
hthompson@russotumulty.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
Sbrand@rpa.state.nj.us

Michael J. Connolly
Windels Marx Lane & Mittendorf, LLP
One Giralda Farms
Madison, NJ 07940
mconnolly@windelsmarx.com

James C. Meyer, Esq.
Ryker Danzig, Schere, Highland & Perretti
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07960
Jmeyer@riker.com

Babette Tenzer, Esq.
Division of Law
Department of Law and Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
Babette.tenzer@doj.lps.state.nj.us

Kenneth J. Sheehan, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office 350
Trenton, NJ 08625-0350
Kenneth.sheehan@bpu.state.nj.us

Elizabeth Ackerman, Acting Director
Division of Economic Development and
Energy Policy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office 350
Trenton, NJ 08625-0350
Elizabeth.ackerman@bpu.state.nj.us

Scott Hunter
Division of Economic Development and
Energy Policy
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office 350
Trenton, NJ 08625-0350
b.hunter@bpu.state.nj.us

Allison E. Mitchell
Division of Economic Development and
Energy Policy
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office 350
Trenton, NJ 08625-0350
Allison.mitchell@bpu.state.nj.us

William P. Agee, Esq.
Office of Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
William.agee@bpu.state.nj.us

Rachel Boylan, Esq.
Office of Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Rachel.boylan@bpu.state.nj.us