



Agenda Date: 7/14/11
Agenda Item: VIIIA

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

OFFICE OF CLEAN ENERGY

IN THE MATTER OF RENEWABLE POWER, INC. –) ORDER
EXTENSION REQUEST FOR SOLAR RENEWABLE)
ENERGY CERTIFICATE (SREC) PURCHASE SALE)
AGREEMENT (PSA) WITH JERSEY CENTRAL) DOCKET NO. EO11040211V
POWER AND LIGHT COMPANY

Parties of Record:

R. William Potter, Esq., Potter and Dickson, for Petitioner
Dennis Wilson, President and Chief Executive Officer, Renewable Power, Inc.

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Renewable Power, Inc. ("Renewable Power" or "Petitioner") for an extension of time to complete its solar energy projects in its New Jersey Clean Energy Program Solar Renewable Energy Certificate ("SREC") long-term contracts for financing with Jersey Central Power & Light Company ("JCP&L").

BACKGROUND

Renewable Power is in the process of constructing two solar installations. Petitioner has filed registrations with the Board's Office of Clean Energy ("OCE") for the Solar Registration Program ("SRP"). On June 28, 2010, as a winning bidder in JCP&L's SREC financing auction, Renewable Power entered into SREC Purchase and Sale Agreements ("PSAs") with JCP&L for two projects totaling approximately 791.56 kilowatts (kW), which contemplated project completion by June 28, 2011.

On April 11, 2011, Renewable Power filed a formal petition with the Board for a six-month extension for each project, alleging that due to design constraints, a portion of the capacity must be located on parking awning structures on each property, delaying development and construction due to various factors beyond Petitioner's effective control; particularly, structural limitations of the buildings required each roof-located solar system to be reduced in size by approximately 20%.

Renewable Power requested an extension of the time to complete the projects under the PSAs to December 28, 2011, in order to provide an assurance that construction would be complete before the deadlines for the PSA. Petitioner provided a supplemental certification signed April 8, 2011 by its president and chief executive officer, Dennis Wilson, attesting to the specific progress made on the projects and providing further explanations of the reasons for the delays ("Certification").

By letter dated June 28, 2011, JCP&L stated that it took no position on the extension request as it related to the PSAs.

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 a request for an extension made by a participant in a long-term SREC contract. In reviewing this request, the Board 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 rebate application. 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) ("Dobco Order"); see also, Customer On-site Renewable Energy ("CORE") Program Update, 13-14 (Aug. 17, 2006) (applying this two-prong standard to requests for extensions under the CORE rebate program).

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:

- all solar materials have been purchased;
- designs are complete such that a portion of the capacity will be located on a parking awning structure on each property, with each roof-located solar system reduced in size by approximately 20%; and
- solar systems are under construction for each building system

On the basis of the facts as stated in the petition and Certification, the Board **FINDS** that Petitioner has demonstrated significant progress toward completion of its projects.

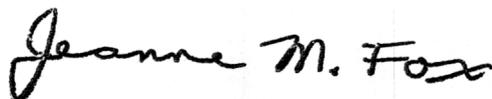
The second prong of the Board's analysis looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner applied for the relevant incentive, in this case, application to the long-term SREC financing program. In the instant matter, Petitioner avers two primary reasons for the delay: changes in design due to structural limitations, as well as related necessity for a reduction in size. The Board **FINDS** that the delay caused by the design constraints was unavoidable and unforeseeable at the time Petitioner entered into its PSAs with JCP&L as part of the SREC long-term financing program.

On the basis 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 December 28, 2011¹.

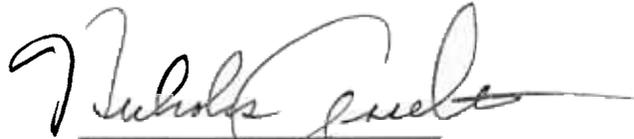
DATED: 7/14/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

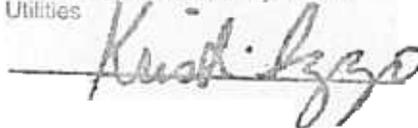

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
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



¹ Petitioner will need to re-register the referenced projects in the SREC Registration Program in order to maintain its eligibility to generate SRECs. See Dobco Order, supra, at 3.

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

DOCKET NO. EO11040211V

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