



Agenda Date: 7/14/11  
Agenda Item: VIII C

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
Two Gateway Center, Suite 801  
Newark, NJ 07102  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CLEAN ENERGY

IN THE MATTER OF SUNEDISON, LLC. – EXTENSION ) ORDER  
REQUEST FOR SOLAR RENEWABLE ENERGY )  
CERTIFICATE (SREC) PURCHASE SALE )  
AGREEMENT (PSA) WITH JERSEY CENTRAL ) DOCKET NO. EO11050299V  
POWER AND LIGHT COMPANY )

Parties of Record:

Cindy Burda, Esq., Assistant General Counsel, Sun Edison LLC

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of SunEdison LLC ("SunEdison" 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**

SunEdison is in the process of constructing three 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, SunEdison entered into SREC Purchase and Sale Agreements ("PSAs") with JCP&L for three projects totaling approximately 988 kilowatts (kW), which contemplated project completion by June 28, 2011.

On May 11, 2011, SunEdison filed a formal petition with the Board for a 135 day extension for each project, alleging that it has encountered unexpected delays in proceeding with the installation of three solar energy installations because Petitioner had not previously constructed solar installations on sites owned or controlled by the host entity ("Lord & Taylor" or "Host") and consequently various administrative and procedural details required months to develop. Petitioner also referenced site conditions which it says were not reasonably discoverable prior to commencing construction and which further contributed to the delay.

SunEdison has requested a 135 day extension of the time to complete the projects under the PSAs in order to provide an assurance that construction would be complete before the deadlines for the PSAs. On June 30, 2011, Petitioner provided a supplemental filing verified by its Director of Project Finance and Corporate Development, Rolanda Shine, providing an updated report on the progress made on each of its three projects, with estimated dates for full installation, subject to final inspections and approvals, in July and early August.

By letter dated June 29, 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 supplemental filing that:

Modules are scheduled for delivery within the next few weeks or are in process of installation;  
Interior wiring on two projects is largely complete; and  
Full installation on all three projects, subject to testing, final inspections, and approvals is estimated to be completed within the next month

On the basis of the facts as stated in the petition and verified supplemental filing, 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: the need for the Host to develop internal protocols and processes for construction of a solar installation and site conditions not reasonably discoverable prior to construction. 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. The Board further **FINDS** that in light of the substantial progress made by Petitioner, an extension until September 30, 2011, will provide ample time for Petitioner to place its projects into operation under its contracts with JCP&L.

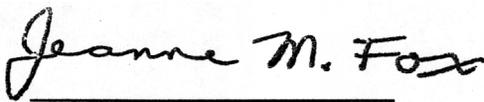
On the basis of the above, the Board **HEREBY GRANTS** the request for an extension of the deadline for completion of the projects under the PSAs with JCP&L to September 30, 2011<sup>1</sup>.

DATED: 7/14/11

BOARD OF PUBLIC UTILITIES  
BY:



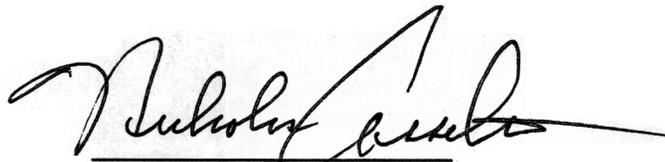
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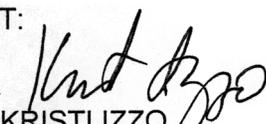
JEANNE M. FOX  
COMMISSIONER

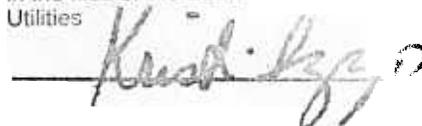


JOSEPH L. FIORDALISO  
COMMISSIONER



NICHOLAS ASSELTA  
COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY  
this document is a true copy  
in the files of the Board  
Utilities  


<sup>1</sup> 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. EO11050299V

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