



Agenda Date: 9/18/13  
Agenda Item: 8C

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
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 SUSSEX-WANTAGE )  
BOARD OF EDUCATION (SWBOE) – EXTENSION ) ORDER  
REQUEST FOR SOLAR RENEWABLE ENERGY )  
CERTIFICATE (SREC) PURCHASE SALE )  
AGREEMENT WITH JERSEY CENTRAL POWER & )  
LIGHT COMPANY (JCP&L) ) DOCKET NO. EO13020078V

**Parties of Record:**

**Howard Thompson, Esq.**, on behalf of Nautilus SWBOE  
**Stefanie A. Brand, Esq.**, Director, Division of Rate Counsel  
**Michael J. Connolly, Esq.**, on behalf of Jersey Central Power & Light Company

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities (“Board”) considers the petition of Nautilus Sussex-Wantage Board of Education (“SWBOE”) (“Nautilus” 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 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.<sup>1</sup> The Project, for approximately 255 kilowatts (“kW”) of solar energy, is to be located at the Sussex-Wantage Regional Board of Education’s (“BOE”) Sussex Middle School (“Host”). The Project is designed to be located partially upon the roof, partially upon a parking lot canopy, and partially upon ground at the Host location.

By petition dated February 4, 2013, Nautilus submitted a request for a six-month extension of time from the date of the Board’s approval of the extension to complete the Project under the

<sup>1</sup> Petitioner asserts that notwithstanding the December 30, 2011 date of execution, it finally received a copy of the PSA from JCP&L under a cover letter dated February 20, 2012. Petitioner believes that February 20, 2012 should be deemed the date from which the contract period runs. JCP&L disputes this claim, and in its August 8, 2013 letter (“August 8 Letter”) states that Nautilus was notified of the need to make a deposit in November 2011. JCP&L states that Petitioner signed and returned the PSA to JCP&L on January 13, 2012 but did not pay the requested deposit until January 23, 2012 and that this is the reason Nautilus did not receive its copy of the fully executed PSA until February 20, 2012.

PSA. According to the request, and as supported by the certifications of David Velasco, Director of Operations for Petitioner's parent company, Nautilus Solar Energy, LLC, there are two primary reasons for the delay in proceeding with the project: structural issues with the roof, originally intended as the sole location of the Project, and the local permitting process. Petitioner states that extensive redesign work was necessary to reconfigure the Project to its current design of two roof arrays, a parking lot canopy, and a ground-mounted portion; and that the redesign resulted in a lengthy additional review process by the BOE, the town, and a Stage agency before building permits were finally issued on January 23, 2013. According to the petition, this date fell outside Petitioner's twelve-month time to complete if that time is calculated from the date the PSA was executed, and only a few weeks before that time would run out if the time to complete is calculated on the basis of the date Petitioner states that it received its copy of the executed PSA. 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 re-design of the project and the subsequent multi-jurisdictional permitting process were unavoidable and unforeseeable at the time that the SREC Agreements for the projects were executed or at the time Nautilus received the PSA. As previously stated, Nautilus has requested the six-month extension so it can complete the Project as prescribed in the PSA, if the extension is granted. Nautilus maintains that its commitment to the project is evidenced by its engagement of an Engineering, Procurement, and Construction ("EPC") contractor and by its expenditures of approximately \$142,000, or 15% of total costs, on development, engineering, and procurement activities. Nautilus asserts that it has procured the panels for the Project, which are being stored at a warehouse in New Jersey. Mr. Velasco has submitted a supplemental certification, dated August 5, 2013, in which he states that "the Project has its designs completed, all of the Project's permits are in place, the Project's financing is in place, and the Project is ready to be completed[.]"

Petitioner states that it first sought an extension from JCP&L, pursuant to the Board's March 12, 2012 Order.<sup>2</sup> The General Terms and Conditions of the PSAs with JCP&L ("General Terms"), as amended by the March 12 Order, provide that:

...in the event the Commencement Date has not occurred within one year of the Effective Date, . . . . the Seller may request a first extension from the Purchaser without need of Board approval. The duration of this first extension shall be up to four months if the Seller's project has a system size equal to or less than 10.0 kW, or six months if the Seller's project has a system size greater than 10.0 kW. The Seller shall submit to Purchaser, at least fifteen (15) days prior to the expiration of such one-year period, a certification in the form of Appendix A-1 hereto. . . .

Seller may seek review by the Board of a denial by Purchaser of an extension request, which shall be the Seller's exclusive remedy in the event of a denial.

[Exhibit A to PSA, General Terms at Par. 3]

<sup>2</sup> I/M/O Atlantic City Electric Company Renewable Energy Portfolio Standards in Connection with Solar Financing, Dkt. No. EO08100875, I/M/O the Verified Petition of Jersey Central Power & Light Company Concerning a Proposal an SREC-Based Financing Program under N.J.S.A. 48:3-98.1, Dkt. No. EO08090840, I/M/O the Verified Petition of Rockland Electric Company Concerning a Proposal for an SREC-Based Financing Program under N.J.S.A. 48:3-98.1 – Order on Changes to the Purchase Sale Agreement regarding Extension Requirements ("March 12 Order").

The certification required from the Seller includes statements that: engineering and design work have been completed; construction permits have been granted or are not required; and that a majority of panels, inverters, and mounting system are on site or under the Seller's control. Appendix A-1 to PSA.

Petitioner represents that JCP&L informed Petitioner that the Company could not grant an extension under the terms set forth above.<sup>3</sup> In the August 8 Letter JCP&L has advised the Board that it has no objection to the Board granting an extension to Nautilus Solar for this project. However, JCP&L notes that the grant of an extension could extend the Commencement Date to more than two years after the date originally contemplated when the PSA was awarded in December 2011.

### **DISCUSSION AND FINDINGS**

As a threshold issue, the Board notes the disagreement over the PSA's effective date. Petitioner requests an effective date of February 20, 2012, the date on which it says it received its copy of the fully executed contract. JCP&L has stated that the reason Petitioner did not receive its fully executed copy of the PSA until on or about February 20, 2012 was Petitioner's failure to make the requisite deposit until January 23, 2012. The Board **FINDS** that the contract speaks for itself and that the effective date is the date of execution. The long-term contracts provided to participants in JCP&L's SREC financing program are ultimately funded by ratepayers. These contracts are not intended to be of indefinite length. Therefore, the Board **ORDERS** that the effective date of the PSA is December 30, 2011.

In addressing Petitioner's request for an extension of time to complete pursuant to its SREC financing contract with JCP&L, 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. I/M/O Smart Energy Capital, LLC. – Extension Request for SREC Purchase Sale Agreement with JCP&L, Dkt. No. EO12010081V (2/10/12) ("Smart Energy"); I/M/O GLC(NJ) NACR2, LLC - Extension Request for SREC PSA with Rockland Electric Company, Docket No. EO12060555V (August 15, 2012).

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) Petitioner has purchased and placed in storage all of the solar panels for the Project; 2) that Petitioner has engaged an Engineering Procurement and Construction ("EPC") contractor which is ready to complete the Project; 3) that re-design of the Project has been completed; and 4) that approximately 15% of total costs have been expended. See, e.g. Smart Energy, supra. (The Board found substantial progress where approximately 7% of total costs had been expended and all solar panels had been purchased and were on site). 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 December 30,

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<sup>3</sup> JCP&L states that it never received an executed request for an extension from Petitioner and is silent regarding whether an extension would have been granted had it received such a request with the appropriate certifications. August 8 Letter at 2.

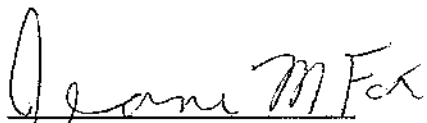
2011, or received it on or about February 20, 2012. Petitioner states that subsequent to its receipt of the PSA, it learned that the Host could not accommodate the Project as originally designed and that the time required for re-design and the acquisition of new approvals constituted an unforeseeable and unavoidable delay. The Board **FINDS** that the delays caused by the re-design of the Project and need to obtain new approvals 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 and **GRANTS** Petitioner's request for a six month extension from the date of this Order to complete the Project and maintain its eligibility under the PSA.

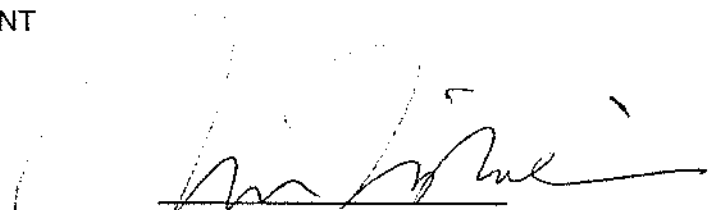
With respect to the determination of the Commencement Date under Petitioner's PSA with JCP&L, the Board notes that the Petitioner entered into a PSA to commence commercial operations within one year of the effective date of that PSA. The cost of the SRECs which are the subject of that PSA are ultimately borne by ratepayers. The Board **FINDS** that ratepayers should not bear any additional cost as the result of Petitioner's inability to complete the Project within the time frame established in the PSA. Therefore, the Board **ORDERS** that the Commencement Date shall be deemed to be December 31, 2012, and shall not be changed by the approval of this extension.

DATED: 9/18/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

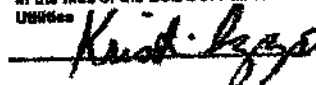
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
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 SUSSEX-WANTAGE BOARD OF EDUCATION (SWBOE) –  
EXTENSION REQUEST FOR SOLAR RENEWABLE ENERGY CERTIFICATE (SREC)  
PURCHASE SALE AGREEMENT (PSA) WITH JERSEY CENTRAL POWER & LIGHT  
COMPANY (JCP&L)  
DOCKET NO. EO13020078V

SERVICE LIST

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