



Agenda Date: 3/19/14  
Agenda Item: 8B

**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 SUMMIT ENERGY )  
DEVELOPMENT GROUP, LLC EXTENSION REQUEST ) ORDER  
FOR SOLAR RENEWABLE ENERGY CERTIFICATE )  
PURCHASE SALE AGREEMENTS WITH JERSEY )  
CENTRAL POWER & LIGHT COMPANY ) DOCKET NO. EO12121067V

**Parties of Record:**

**Craig Engler, Director**, Summit Energy Development Group, LLC  
**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 Summit Energy Group, LLC ("Summit" or "Petitioner") for an extension of time, as within time, to complete a solar energy project under its Solar Renewable Energy Certificate ("SREC") long-term contract for financing with Jersey Central Power & Light ("JCP&L").

On or about December 30, 2011, as a winning bidder in JCP&L's SREC financing auction, Summit entered into a SREC Purchase and Sale Agreement ("PSA") with JCP&L for the SRECs from a solar electric generating facility Summit would build at 901 Route 10, Whippany, New Jersey, at a site owned, or controlled, by the United Jewish Communities (the "Host"). The PSA provided for completion within one year of the date of the PSA, or by December 31, 2012 ("Commencement Date"). By petition dated December 7, 2012, Summit requested an extension of time to complete the project, and represented that it had made substantial progress toward completion and that the delays encountered in the local permitting process had been unavoidable and unforeseeable at the time of entering into the PSA.

Petitioner states that it has already spent more than \$100,000 on the development of the project. Petitioner further states that, although it has made diligent efforts to complete the project by the Commencement Date as required by the PSA, it has encountered unavoidable delays. Petitioner states that these delays were beyond its reasonable control and not due to any party's negligence or misconduct. Petition at 3.

According to the petition, Summit submitted its application to the Planning Board for the Township of Hanover ("Hanover") on August 16, 2011. Summit states that Hanover notified

Summit of its intent to grant approval to Summit to construct the project and waive certain zoning regulations, subject to Summit meeting certain requirements that Hanover listed in its notice which is attached to Summit's petition as Exhibit A. Summit states that it ran into several weeks of delay with the final design for the project due to the impact of Hurricane Sandy. Petition at 3.

Summit states that if the extension of the PSA is granted, it should be able to complete construction and have the Project ready to be placed into operation within approximately six months. Summit states that, in the absence of an extension, it must cancel the project resulting in the loss of competitively bid SRECs from this system, as well as significant energy savings to the Host. For these reasons, Summit is requesting a 180-day extension of the PSA, with such extension effective as of the date of the Board's Order. Petition at 3.

On January 7, 2013, JCP&L submitted a letter stating that it does not object to Summit's request for a 180-day extension with respect to the Project and the applicable Commencement Date of the PSA, but takes no position, procedurally or substantively, with respect to the Petition.

On February 21, 2014, Petitioner submitted a letter to the Board stating that Summit has spent \$113,434.39 to date on the project. However, Petitioner explained that this amount consisted primarily of legal and engineering fees in order to get Township approvals. Petitioner explained that it "has not contracted for any materials for this project as it was too risky to do so without the extensions we are seeking." Petitioner further stated that "the finance partner for this project, True Green Capital, does hold panel inventory that is eligible for the US Treasury 1603 Grant and it is their intention to use these panels on the United Jewish Communities project." Petitioner stated that "[c]urrently the panels sit in a warehouse and are not specifically pledged to this project but it is their intention to do so once our extension is received." See Letter of February 21, 2014 from Craig Engler, Director, Summit Energy Development Group, LLC, to William P. Agee, Office of the Chief Counsel, State of New Jersey, Board of Public Utilities.

## **DISCUSSION AND FINDINGS**

In addressing Petitioner's request for an extension of time to complete the project pursuant to its SREC financing contract with JCP&L, the Board looks to its previous rulings under the SREC financing programs. 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. In the Matter of 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 this standard to the matters at hand, the Board looks at the representation made in the petition. Cf. Smart Energy (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). In the petition filed on behalf of Summit, Summit Director Craig Engler stated that to date Summit has spent \$113,434.39 on the development of this project in connection with design and engineering and in its application to Hanover for zoning approval.


In addition, Mr. Engler attached to the petition the Resolution of the Hanover Planning Board approving Summit's application for preliminary and final site plan approval subject to conditions which shows that Summit has obtained waivers needed to proceed with construction of the

Project. However, Petitioner has not purchased, or contracted, for any materials, including solar panels, dedicated to this project, and the majority of the expenditures were made prior to the execution of the PSA. Petitioner has not documented significant progress toward completion of the project since the signing of the PSA. Accordingly, the Board **FINDS** that Petitioner has not satisfied this part of the test.

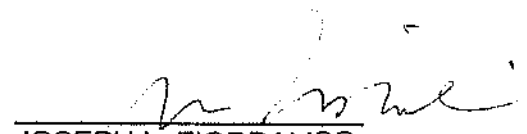
Turning to the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time Summit entered into the PSA with JCP&L. In his petition on behalf of Summit, Mr. Engler represented that: 1) Summit ran into several weeks of delay with final design due to the impact of Hurricane Sandy, and 2) that Summit and its finance partner for this Project, True Green Capital Management, LLC, continue to work with the Host and Hanover to ensure project completion. After consideration of these representations, the Board **FINDS** that while the delay encountered by Petitioner was unavoidable and unforeseeable at the time it entered into the PSA, it was not of significant length. Because Petitioner has not demonstrated significant progress toward completion of the project since the signing of the PSA in December 2011, the Board therefore **CONCLUDES** that Petitioner has not met the Board's criteria for granting an extension, and **DENIES** Petitioner's request for a six-month extension of time to complete the project.

DATED: 3/19/2014

BOARD OF PUBLIC UTILITIES  
BY:

  
DIANNE SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

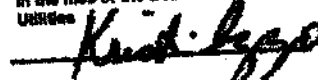
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARYANNA HOLDEN  
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 Summit Energy Development Group, LLC Extension Request for Solar  
Renewable Energy Certificate Purchase Sale Agreements  
with Jersey Central Power & Light Company  
Docket No. EO12121067V

SERVICE LIST

Stefanie A. Brand, Esq., Director  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Babette Tenzer, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029

Michael J. Connolly, Esq.  
Morgan, Lewis & Bockius, LLP  
89 Headquarters Plaza North  
Suite 1435  
Morristown, NJ 07960

Elizabeth Ackerman, Director  
Division of Economic Development  
and Energy Policy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Craig Engler, Director  
Summit Energy Development Group, LLC  
9191 Towne Centre Drive, Suite 210  
San Diego, CA 92122

William P. Agee, Esq.  
Office of the Chief Counsel  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Benjamin Hunter  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Alice Bator, Chief  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Rachel Boylan, Esq.  
Office of the Chief Counsel  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Allison E. Mitchell, AAI  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350