



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF LUMINOUS)
SOLAR LLC FOR AN EXTENSION OF SOLAR) ORDER
RENEWABLE ENERGY CERTIFICATE ("SREC"))
PURCHASE AND SALE AGREEMENT WITH)
ATLANTIC CITY ELECTRIC COMPANY ("ACE")) DOCKET NO. QO17080892

Parties of Record:

Gregory Weisman, Luminous Solar LLC
Stefanie A. Brand, Esq., Director, Division of Rate Counsel
Philip Passanante, Esq., on behalf of Atlantic City Electric Company

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Luminous Solar LLC ("Luminous Solar" or "Petitioner") for an extension of time to complete a solar energy project ("Project") under a Solar Renewable Energy Certificate ("SREC") purchase and sale agreement ("SREC Agreement") between Luminous Solar and Atlantic City Electric Company ("ACE"). On November 10, 2016, as a winning bidder in ACE's SREC II financing program, Luminous Solar entered into an SREC Agreement with ACE with respect to this project proposed at 44 kilowatts dc ("kW") of solar energy to serve Muzzarelli Farms located in Vineland, New Jersey.

By petition dated August 7, 2017 ("Petition"), Luminous Solar submitted a request for a three-month extension of time to complete construction.¹ (Petition at ¶ 9.)

BACKGROUND AND PROCEDURAL HISTORY

By Order dated December 18, 2013² ("December 2013 Order"), the Board approved the stipulation of settlement, program design, and attached SREC Agreements constituting ACE's

¹ Petitioner has been granted an extension until August 10, 2017 by ACE. Petition at ¶ 4.

² In re Petition of Atlantic City Electric Company Concerning a Proposal for an Extended Solar Renewable Energy Certificate (SREC)-based Financing Program, BPU Docket No. EO12090799 (December 18, 2013).

SREC II Financing program. The Board approved similar programs, settlement stipulations, and SREC Agreements for Jersey Central Power and Light ("JCPL") and Rockland Electric ("RECO").

The programs were developed through a cooperative process involving Board of Public Utilities Staff ("Staff"), the Division of Rate Counsel ("Rate Counsel"), solar stakeholders, and the Electric Distribution Companies ("EDCs"). The program development process was initiated by Order dated May 23, 2012,³ in which the Board authorized the extension of previously approved utility-run SREC financing programs with certain modifications for a total capacity of 180 MW over three years, to be divided among the EDCs based on retail sales.

The December 2013 Order approving ACE's SREC II program addressed in detail the program design elements, including program size, duration, market segments, participant caps, solicitation process, project metering, conditions for SREC use, and the time requirements for project completion. Market Segment 1 includes net metered residential and small commercial solar projects less than or equal to 50 kW. Segment 1 projects are required to be completed within six months of the effective date of the SREC agreement and may receive "one automatic three-month extension, provided the Program Participant has filed necessary permits with the local government and provides the appropriate certification to [ACE]."

The December 2013 Order further addressed extensions in discussion of the time requirements for project completion:

The Board shall have the sole authority to grant any additional extensions in any of the three segments. A request for a second extension shall be made prior to the expiration of the first extension. The Parties recommend that a second extension be for one month for projects of 10 kW or less, and for three months for projects over 10 kW. The Parties recommend that second extension only be granted if all criteria for a first extension have been met and, in addition, all modules and other equipment are on site and completion is imminent.

[December 2013 Order at p. 9.]

The December 2013 Order contained, as a referenced attachment, a copy of the stipulation with standard form Purchase and Sale Agreements ("PSAs") for each of the program's three market segments. The SREC Agreements contain General Terms and Conditions labeled as Appendix A and a Certification labeled as Appendix A-1 intended for use in extension requests.

Each standard form SREC Agreement requires execution by the SREC "seller" and the SREC "purchaser" with the execution date establishing the agreement's "Effective Date." The standard form SREC Agreement, with reference to the General Terms and Conditions, also defines the "Delivery Period" for the purchase and sale obligation. The Delivery Period begins at the Commencement Date, exactly six months from the effective date of the SREC Agreement and shall terminate ten (10) years, i.e., 120 months, thereafter.

Project Description and Status

Luminous Solar has installed three separate solar electric generation systems at Muzzarelli Farms. (Petition at ¶ 2.) Luminous Solar registered each project with the SREC Registration

³ In re Review of Utility Supported Programs, BPU Docket No. EO11050311V (May 23, 2012).

Program, receiving the registration numbers NJSRRE1532346149,⁴ NJSRRE1532346087,⁵ and NJSRRE1532346136.⁶ (*Id.* at ¶ 2.) Luminous Solar submitted bids for each project in the fourth solicitation round of the EDC SREC II program, which was held in July 2016. The Petition addresses NJSRRE1532346149, which is the only bid awarded a PSA in ACE's SREC II program.

By Order dated September 23, 2016, the Board approved Staff's recommendation to award an SREC agreement for the Project.⁷ The SREC Agreement between Luminous Solar and ACE for the project was executed November 10, 2016. (Petition at ¶ 3.) Consistent with the program approved by the Board in the December 2013 Order and the SREC Agreement executed for the project, the construction deadline for the Project was May 10, 2017. ACE has already granted Petitioner a three-month extension until August 10, 2017. (Petition at ¶ 4.)

The Petitioner cites unforeseen structural issues encountered when installing the "aggregate system," which is described as the subject Project and two Associated Projects. To maintain the "aggregate system" size of 92.12 kWdc, the Petitioner increased the system size of the Project beyond the 44 kWdc that was originally registered with the SREC Registration Program and bid into the fourth solicitation round of the EDC SREC II program. (Petition at ¶ 5.) The Petitioner increased the system size from 44 kWdc to 52.36 kWdc, which is greater than the 10 percent variance allowed for in the program as described in the Agreement. (Petition at ¶ 6.)

Petitioner provided a supplemental certification on September 11, 2017 providing further explanations of the unexpected issues that resulted in Petitioner's request for a three-month extension of the August 10, 2017 deadline to complete construction ("Certification"). The initial unforeseen issue was insufficient structural integrity of an area of the roof on which solar panels were being installed. Reconfiguring the aggregate system and relocating a number of panels delayed the Project. (Certification at ¶ 1.) Additionally, the Petitioner cites "lengthy approval delays" from both the municipality and the utility. (Certification at ¶ 2.)

Petitioner states that it submitted an application to ACE for inclusion of the aggregate system in the Redskye Farms pilot program ("Redskye Program"), for which the Board in its February 3, 2009 Order directed ACE to provide aggregated on-site net metering for certain project types until amendments to net metering regulations were adopted.⁸ This application to interconnect

⁴ This system was originally registered in the SREC Registration Program at 43.96 kWdc on June 17, 2016. The final as-built system size was confirmed to be 43.4 kWdc during an inspection on October 19, 2017 and is referred to as the "Project" in the August 17, 2017 petition. *Ibid.*

⁵ This system was registered in the SREC Registration Program at 29.68 kWdc on June 16, 2016. The final as-built system size was confirmed to be 29.68 kWdc during an inspection on October 19, 2017 ("Associated Project 1"). *Ibid.*

⁶ This system was registered in the SREC Registration Program at 18.48 kWdc on June 16, 2016. The final as-built system size was confirmed to be 19.04 kWdc during an inspection on October 19, 2017 ("Associated Project 2"). *Id.* at ¶ 2.

⁷ I/M/O the Verified Petition of Atlantic City Electric Company Concerning a Proposal for an Extended Solar Renewable Energy Certificate (SREC)-Based Financing Program under N.J.S.A. 48:3-98.1 (SREC II), BPU Docket No. EO12090799 (September 23, 2016); I/M/O the Verified Petition of Jersey Central Power & Light Company Concerning a Proposal for a SREC-Based Financing Program under N.J.S.A. 48:3-98.1 (SREC II), BPU Docket No. EO12080750 (September 23, 2016); and I/M/O the Verified Petition of Rockland Electric Company Concerning a Proposal under N.J.S.A. 48:3-98.1 (SREC II), BPU Docket No. EO13020118 (September 23, 2016).

⁸ I/M/O William C. Skye d/b/a/ Redskye Farms Net Metering Determination for Solar System by August 31,

using the rarely implemented meter aggregation process further delayed the Project. (Certification at ¶ 4.)

In addition, the Petitioner cites various unforeseen delays due to the need to upgrade the existing transformer, and to unexpected communications issues in setting up performance data delivery technology given the size and complexity of the Aggregate System. (Certification at ¶ 5, 6.)

The Petitioner claims to be working to reduce the size of the Project such that it is allowed within the 10 percent variance provided in the EDC SREC II program and reflected in the standard form SREC agreement. (Petition at ¶ 6.) The Project and the Associated Projects are all operational, but Petitioner held off registering them with the Generation Attribute Tracking System ("GATS") operated by PJM Environmental Information Services, Inc. (*Id.* at ¶ 7.) The Petitioner is seeking a second three-month extension of the SREC Agreement to provide sufficient time to bring the system size into compliance. (*Id.* at ¶ 8.)

Implications of the Project's Participation in the Redskye Program

The Board approved the Redskye Program in 2009 in response to a petition to allow an alternative to current net metering practices. The petitioner, Redskye Farms, sought to size one customer-generator facility for purposes of allocating renewable energy to financially offset the billable consumption recorded at several electricity meters on the customer's property, a practice referred to as aggregated onsite net metering.

At the time of the Redskye petition, the Board was engaged in a rulemaking process to amend the net metering and interconnection rules. A pilot program was viewed as an opportunity to gather data to inform the rulemaking process. The Board approved the pilot program with specific limitations on the eligibility of pilot participants and the length of time to accept new applicants. The pilot program was to serve customers with mixed-use residential and non-residential projects on a single agricultural property within ACE's service territory that have waited in the Customer On-site Renewable Energy ("CORE") rebate program queue. The pilot program authorization was to exist until new regulations were in place.

On June 23, 2010, the Board approved the requests of three additional farms to participate in the aggregated net metering pilot program.⁹ The Board directed Staff to initiate stakeholder discussions on the development of separate pilot programs in other utility service territories to gather additional information to inform the rulemaking process. Staff engaged net metering and interconnection stakeholders, including the EDCs and Rate Counsel, and invited public comment on the development of additional pilot programs.

Even though no new pilot programs developed from the stakeholder process, the information gathered from the pilot projects and the concepts discussed with stakeholders resulted in amendments to the statute governing net metering. The Solar Act of 2012, P.L. 2012, c. 24, signed by Governor Christie on July 23, 2012, required the Board to adopt net metering aggregation standards within 270 days. Staff worked with stakeholders to develop rules consistent with the law. On March 20, 2013, the Board approved a rule proposal to implement

⁹ 2008, BPU Docket No. EO08060410 (February 3, 2009).

⁹ I/M/O Aggregated On-site Net Metering – Expansion of the Pilot to Other Small Generators in Atlantic City Electric (ACE) Territory, BPU Docket No. EX08060410 (June 23, 2010).

the aggregated net metering standards via special adoption. The specially adopted rules became effective on March 21, 2013 and were proposed for readoption on October 6, 2014.

With the filing of this Petition, Staff became aware that ACE continued to enroll customer-generators in the Redskye Program despite the closure of the CORE rebate program in 2013 and the aggregated net metering rulemaking that had occurred in 2013. The subject Projects would not have been eligible for the Redskye Program at the time they were enrolled by ACE. On October 19, 2017, Staff inspected the systems installed at the Muzzarelli Farms property. All three systems described above were found to be operational consistent with the Permission to Operate letter provided for the "aggregate system" by ACE on March 7, 2017. During the inspection, the subject system was confirmed to be 43.4 kWdc, a change in size of less than 10% from that approved by the Board, consistent with the terms and conditions of the SREC Agreement.

DISCUSSION AND FINDINGS

In addressing Petitioner's request for an extension of time to complete pursuant to its SREC financing contracts with ACE, the Board looks to its previous rulings under the SREC financing programs. The Board has previously ruled upon requests for an extension made by participants in long-term SREC contracts. 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 SREC Agreement.¹⁰

Applying the standard to the matter at hand, the Board looks at the representations made in the Petition and ACE's response providing that:

- The Project has been substantially completed.
- ACE approved a first extension.
- ACE, via correspondence with Staff dated August 28, 2017, does not oppose a second extension.

Based on the representations in the Petition and ACE's response, the Board **FINDS** that Luminous Solar has documented completion of the Project.

In the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time of Petitioner's application to the long-term SREC financing program. In the instant matter, Luminous Solar has certified that unforeseen and unavoidable developments in the project's development including confusion about participation in the Redskye Program and the inconsistencies with the EDC SREC II program terms and conditions caused the delays in completing the subject project consistent with the requirements

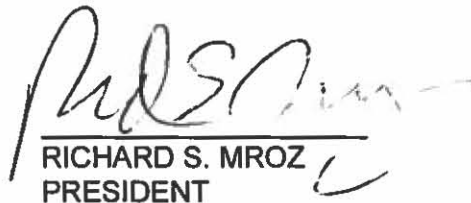
¹⁰ See I/M/O Dobco, Inc. – Request Extension for SREC Purchase Sale Agreement with JCP&L and I/M/O Request for Extensions of Project Completion in the SREC Registration Program, REIPNR-06120, REIPNR-06121 REIPNR-06621 REIPNR-06631 REAPNO-06744 REIPNR-06745, BPU Docket Nos. EO11050269V and EO08090840 (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, BPU Docket No. EO11060350V (July 14, 2011).


in the SREC Agreement. The Board **FINDS** that the delays caused by the Petitioner's participation in the Redskye Program at the encouragement of ACE interconnection staff and the subsequent resizing required to remain compliant with the SREC Agreement were unavoidable and unforeseeable at the time the Petitioner entered into its SREC Agreement with ACE. ACE has advised Staff that ACE will no longer continue to enroll customer-generators in the Redskye Program.¹¹ The Board **ORDERS** ACE to provide Staff with a final report on the Redskye Program, including the status of all participants and applicants.

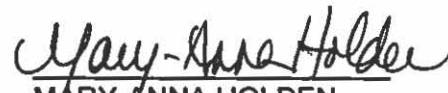
After consideration of the above, the Board **HEREBY GRANTS** the request for a second extension of the deadline for completion of the Project under the SREC Agreement with ACE. The Board **FINDS** that a two-month extension to January 21, 2018 to finalize project paperwork, including registration with GATS, is appropriate given the advanced status of the Project. The Board **FURTHER FINDS** that failure to meet this deadline will result in an "Event of Default" voiding the Agreement.

DATED: 11/21/17

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

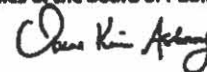

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



¹¹ This is consistent with Staff's view that this pilot program is closed. However, Staff believes that ACE may have enrolled one additional participant.

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SOLAR RENEWABLE ENERGY CERTIFICATE ("SREC") PURCHASE AND SALE
AGREEMENT WITH ATLANTIC CITY ELECTRIC COMPANY ("ACE")
DOCKET NO. QO17050463

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