



Agenda Date: 5/20/20
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF A REQUEST FOR A WAIVER OF)
SREC REGISTRATION RULES AT N.J.A.C. 14:8-)
2.4(h)5, (i), and (k) - JOHN C. SHEPHERD, JR.) DOCKET NO. QW20030236

Parties of Record:

John C. Shepherd, Jr.

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Mr. John C. Shepherd ("Mr. Shepherd" or "Petitioner"), filed with the Board by letter dated March 11, 2020. Petitioner asks the Board to reactivate his expired 2013 registration in the Board's Solar Renewable Energy Certificate ("SREC") Registration Program ("SRP").

BACKGROUND

The Board's rules at N.J.A.C. 14:8-2 are designed to encourage the development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation; and support the reliability of the supply of electricity in New Jersey. N.J.A.C. 14:8-2.1(a). The rules establishing an SREC registration process at N.J.A.C. 14:8-2.4 are "intended to provide advance notice to the public and the renewable energy markets when increases in solar electric generation capacity in New Jersey are planned."

N.J.A.C. 14:8-2.4 establishes the process and eligibility criteria for new solar electric generation projects to register in the SRP and become eligible for SRECs, which can be used to satisfy New Jersey's RPS. If a project meets SREC eligibility requirements, the SRP issues a notice of conditional registration to the project. N.J.A.C. 14:8-2.4(h)4. After issuance of the notice of conditional certification, construction of the solar facility may begin. N.J.A.C. 14:8-2.4(h)5. If the solar facility is constructed as described in the initial registration package, the SRP issues a certification number to the facility upon completion of construction, submission of a post-construction certification package, and inspection. N.J.A.C. 14:8-2.4(h)4(i); N.J.A.C. 14:8-2.4(k).

Pursuant to N.J.A.C. 14:8-2.4(i), construction of a solar electric generating facility shall be completed prior to the expiration of conditional registration in the SRP. Additionally, “[a] registrant for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering” may request a six-month extension prior to the expiration of the conditional registration. N.J.A.C. 14:8-2.4(i). If the conditional registration or extension expires before completion of construction, the registrant shall begin the entire registration process again. N.J.A.C. 14:8-2.4(i).

In addition to this long-established regulatory framework, the Board is also in the process of implementing the provisions of the Clean Energy Act of 2018, N.J.S.A. 48:3-87 (“Clean Energy Act”). Among other mandates, the Clean Energy Act directs the Board to close the SRP upon determining that 5.1% of the retail kilowatt-hours sold in the State have been generated by solar facilities connected to the State’s electric distribution system (“5.1% Milestone”). N.J.S.A. 48:3-87(d)(3). On April 6, 2020, the Board determined that the 5.1% Milestone would be achieved and the SRP closed on April 30, 2020.

Since the Board has closed the SRP to new registrants, projects that have submitted complete registrations to the SRP but have not achieved commercial operations shall be eligible for a transition incentive. Projects with incomplete or expired registrations may now apply to the transition program.

PETITION

In December 2012, Mr. Shepherd installed a 3.57 kW dc system. He submitted an initial registration packet after completing construction and received his SRP conditional acceptance letter from the SRP Administrators on July 8, 2013, with a registration length of twelve months and an expiration date of July 8, 2014. On August 25, 2014, Mr. Shepherd received notification from the SRP Administrator informing him that his original registration had expired and that he needed to submit a new registration packet. When he contacted his contractor Total Exteriors, he discovered that the company went out of business and never completed the Post-Construction Certification paperwork.

On October 9, 2014, Mr. Shepherd signed with a new contractor, Energy Solutions, and thought that Energy Solutions would handle the submission of the final paperwork. After some time, when he did not hear from Energy Solutions, he found out that they also went out of business.

Almost a year later, Mr. Shepherd contacted the Vineland Municipal Electric Utility (“VMEU”), and the net meter was installed on August 9, 2015. On September 28, 2015, the VMEU approved the system and issued the system Permission to Operate (“PTO”). Although he was in the possession of a PTO for his system, Mr. Shepherd had yet to re-submit the SRP registration paperwork.

He next attempted to register his system in the Generation Attribute Tracking System (“GATS”) but its operator, PJM-EIS LLC, did not approve the request since he did not have a New Jersey Certification number granted to projects that satisfied the SRP process.

In 2018, Mr. Shepherd used Code Green Solar to install a second 3.54 kW dc system. He properly submitted SRP registration paperwork and was given a conditional acceptance (NJSRRE1538244417). The system passed inspection and was given a PTO by VMEU.

Petitioner was issued NJ Certification number NJ-812076-SUN-I on October 9, 2018. Petitioner states that he asked Code Green Solar LLC to connect the two systems but was told that they could not.

In August 2019, Petitioner hired Solar Works NJ LLC (“Solar Works”) to see whether they could get the original 2013 solar system registered in the SRP and receive a new NJ Certification number. Solar Works contacted the SRP Administrator on December 20, 2019, and explained the factual circumstances in the present matter. On December 30, 2019, the SRP Administrator sent an email stating that the 2013 registration was deactivated because no Post-Construction Certification package had been submitted. Therefore, no NJ Certification number had been issued, and one would not be issued for a deactivated project.

Solar Works appealed this decision to the SRP Administrator and asked that the 2013 SRP registration be re-activated. On February 19, 2020, the SRP Administrator denied the appeal and advised Solar Works that it did not have the authority to reactivate a project that had not satisfied the Board’s rules for the SRP. The SRP Administrator advised Solar Works that the Petitioner could petition the Board to request a waiver of the Board’s rules regarding the SRP, namely N.J.A.C. 14:8-2.4(i), and request reactivation of the 2013 SRP registration. Mr. Shepherd filed the petition on March 11, 2020.

STAFF RECOMMENDATIONS

Staff recommends that the Board deny Petitioner’s request to waive the SRP rules to reactivate the expired registration. Staff recommends that the Board advise Petitioner of the opportunity to participate in the Transition Incentive Program. Staff further recommends that should Petitioner apply to the Transition Incentive Program, the PTO date of September 28, 2015 be used to start the solar electric generation facility’s qualification life and that Petitioner be required to conduct a meter reading after the effective date of this Order to mark the commencement of electricity generation eligible for TREC creation.

DISCUSSION AND FINDINGS

The Board is authorized to waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. Since Petitioner’s request could be viewed as a reactivation of an expired registration, granting the request would require a waiver of the Board’s rules requiring timely registration, N.J.A.C. 14:8-2.4(h), or the rules limiting applicants to a single six-month extension of their initial conditional registration. N.J.A.C. 14:8-2.4(i). The Board has the authority to waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that in special cases and for good cause shown, the Board may relax or permit deviations from these rules. Further, in accordance with the general purposes and intent of its rules, the Board shall “waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public.” N.J.A.C. 14:1-1.2.

As noted above, the RPS rules are designed to encourage timely development of renewable sources of electricity and to provide advance notice to the public of the intention to construct a solar electric generation facility seeking SREC eligibility. These rules are designed to provide predictability for the market. Mr. Shepherd relies on his claim of ignorance – he states that he did

not understand the SRP process and was not aware until he attempted to follow up with Total Exteriors and Energy Solutions, which had subsequently gone out of business. Solar Works also states that they believed that once they explained the series of events connected with the two previous contractors going out of business and failure to submit the final documentation to the SRP Administrator, the SRP Administrator would have the authority to review and reactivate the registration under the terms of the initial program application and issue an "SREC Registration number," which is the NJ State Certification Number needed to register the Project in GATS. However, Mr. Shepherd should have been aware of his SRP-related obligations as described in the July 8, 2013 letter. The SRP deactivation letter he received on July 25, 2014 clearly informed him that since SRP did not receive "the completed Final As-Built paperwork within the required commitment timeframe," his original registration expired, and Petitioner needed to submit a new initial registration packet. Mr. Shepherd still has not submitted a new registration package. The Board thus **FINDS** that such an intervention is unwarranted and risks creating confusion and uncertainty in the market.

Petitioner references the business failure of his developer(s) as the cause of his failure to timely obtain the PTO and file his post-construction paperwork. He offers no reason at all for his failure to timely pursue his GATS certification. Additionally, as one seeking the benefit of a ratepayer-funded incentive, Petitioner is responsible for complying with the regulatory requirements. Ignorance of the regulatory structure of which Petitioner seeks to be a beneficiary cannot excuse Petitioner from complying with the regulatory requirements. See *State v. Moran*, 202 N.J. 311, 320 (2009); see also *Nolasco v. Board of Review*, No. A-3261-14T2, 2016 N.J. Super. Unpub. LEXIS 1464, at *7 (App. Div. June 24, 2016) ("The statute and the applicable rule are clear regarding the eligibility requirements and Nolasco's ignorance of the requirements, while unfortunate, does not vitiate those requirements.").

In addition, as noted above, the RPS rules are designed to encourage timely development of renewable sources of electricity. Petitioner has repeatedly allowed months and years to pass without pursuing a remedy. Under these circumstances, the Board **FINDS** that there is no justification for an unprecedented "reactivation" of the registrations. Therefore, the Board **DENIES** the petition.

The Board **FURTHER ORDERS** that the Project shall not be eligible for the SRP but **AFFIRMS** that Mr. Shepherd may submit a new registration and may be eligible for the Transition Incentive Program. The Board **DIRECTS** Staff to take note of the date of PTO when establishing the TREC qualification life should Petitioner apply to the Transition Incentive Program. The Board **FURTHER ORDERS** that Mr. Shepherd take a solar production meter reading on June 1, 2020, to begin recording the generation towards the creation of TRECs.

The Board **HEREBY WAIVES** the requirement to register within fourteen (14) days of a signed contract and also the associated penalty that bars retirement of SRECs generated for a period of one year from PTO.

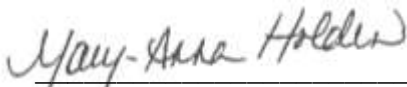
The effective date of this Order is May 30, 2020.

DATED: May 20, 2020

BOARD OF PUBLIC UTILITIES
BY:



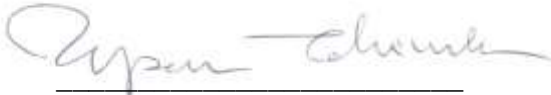
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COMMISSIONER



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COMMISSIONER

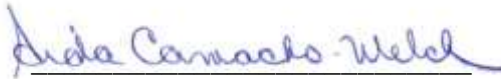


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF REQUEST FOR A WAIVER OF SREC REGISTRATION RULES AT
N.J.A.C. 14:8-2.4(i) - JOHN C. SHEPHERD, JR. – Docket No. QW20030236**

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