



Agenda Date: 03/24/2021
Agenda Item: 8M

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 THE PETITION OF VIRGINIA M.)
BROWN TO REVIEW THE TRANSFER OF THE SREC)
REGISTRATION TO THE TRANSITION INCENTIVE)
PROGRAM) DOCKET NO. QO20120739

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Virginia Brown, Petitioner

BY THE BOARD:

In this Order the Board considers the request of Virginia M. Brown ("Petitioner") to deem her solar facility eligible for the legacy Solar Renewable Energy Certificate ("SREC") Registration Program ("SRP").

BACKGROUND AND PROCEDURAL HISTORY

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the SREC program upon the attainment of the 5.1% Milestone, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandates, in relevant part, that the Board close the SREC market to new entrants once it determines that the 5.1% Milestone has been met. The Board implemented this directive through a series of interconnected Orders and rulemaking proceedings, as detailed in previous Orders.¹

¹ In re Closure of The SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated March 27, 2020; In re Closure of The SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated April 6, 2020 ("April 6, 2020 Order").

After determining that the State would generate 5.1% of its retail electricity sales from solar before May 1, 2020, the Board ordered that this determination and the closure of the SRP would be effective on April 30, 2020. April 6, 2020 Order at 5. Projects in the SRP pipeline that had not received a Permission to Operate authorization letter (“PTO”) dated prior to April 30, 2020, or failed to submit their post-construction certification package in a timely manner, would not be eligible for the SRP and would instead become eligible for the Transition Incentive Program. Id.

Contemporaneously with the closure of the SRP and the Board’s actions in that regard, the COVID-19 outbreak produced a national state of emergency.² Travel both within and beyond the State was severely restricted as a result. On March 16, 2020, Governor Murphy signed Executive Order No. 104 (“EO 104”),³ implementing aggressive social distancing measures to mitigate further spread of COVID-19 in New Jersey. On March 21, 2020, he issued Executive Order 107 (“EO 107”),⁴ expressly superseding the operative paragraphs of EO 104 with yet more stringent measures. In addition, on April 8, 2020, the Governor ordered all “non-essential” construction to halt as of April 10, 2020.⁵

In recognition of the extraordinary circumstances, the Board waived certain of its rules to allow Board Staff and the SREC Registration Program administrator (“SRP Administrator”) flexibility in determining when projects commence commercial operations. Specifically, in order to accommodate projects that would have achieved commercial operations by the April 30, 2020 deadline but for delay in obtaining a local code inspection and authorization to energize the project by the local Electric Distribution Company, the Board approved a narrow and time-limited waiver of the need to have the PTO for purposes of determining SREC eligibility for those projects that awaited only final inspections and final permission to operate the interconnected solar project prior to the April 30, 2020 closure of the SRP program.⁶

To obtain this relief (“PTO Waiver”), the April 27, 2020 Order required registrants to submit the following to TRC, the Board’s SRP Administrator:

1. An affidavit⁷ from the project owner that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO;
2. An affidavit signed by a person with direct personal knowledge stating that the project was complete but for final inspections or final permission to interconnect to the grid prior to April 30, 2020;

² Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (March 13, 2020).

³ Exec. Order No. 104 (March 16, 2020), 52 N.J.R. 550(a) (April 6, 2020).

⁴ Exec. Order No. 107 (March 21, 2020), 52 N.J.R. 554(a) (April 6, 2020).

⁵ Exec. Order No. 122 (April 8, 2020), 52 N.J.R. 959(a) (May 4, 2020).

⁶ In re Closure Of The SREC Registration Program Pursuant To P.L. 2018, C. 17 – Procedure for Requesting Extended Time to Obtain Final Inspections and Permission to Operate, BPU Docket. No. QO18070698, Order dated April 27, 2020 (“April 27, 2020 Order”).

⁷ The Board noted that on April 14, 2020, Governor Murphy signed into law bill A-3903/S-2336 (2020), effective immediately, allowing remote notarial acts during the Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020. L. 2020, c. 26; https://www.njleg.state.nj.us/2020/Bills/AL20/26_.PDF

3. Date-stamped pictures of the array, inverter and balance of system;
4. Date-stamped evidence that project representatives attempted to communicate with local code officials (e.g. emails with the local code officials requesting an inspection); or, if the project has already passed local code inspections, evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC;
5. An executed milestone report form that reflects the status of the project, including the date the request for inspection was filed with the municipal officials, date of receipt of inspection approval, and date of submission of application to energize (Part II of the interconnection application) with the EDC⁸; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

PETITION

By petition dated November 21, 2020, Ms. Brown advises that she contracted with a solar photovoltaic installation contractor ("Castle Energy" or the "Contractor") to install a solar photovoltaic system at her residence ("the System") on March 6, 2020.

The Petitioner states that she was "anxious for the SRECs" that the System's electric generation would allow her to earn. Petitioner further states that upon the declaration of a public health emergency and only because of that, there were delays in connection with: (1) the delivery and installation of the System by the Contractor; (2) her ability to secure credit from a lender to finance System acquisition; (3) permit requests submitted to the municipality in which she resides; and (4) home site inspection requests sent to her electric distribution company.

Petitioner believes that, but for the public health emergency, the Contractor "would have completed the project . . . by April 30, 2020 or at the very least [reached] the mechanically complete stage by that date." Petition at Par. 5. In support of this contention, Petitioner provides a form notice from Castle Energy in which a timeline of approximately seven weeks plus twenty business days is identified as the norm. Petitioner asks that the Board take into consideration the impact of the COVID-19 crisis upon her project and allow it into the SRP.

STAFF RECOMMENDATION

Petitioner presents an explanation as to why she believes that the public health emergency prevented the receipt of a PTO for the System prior to the cutoff date of April 30, 2020, but she does not explain her failure to use the PTO Waiver process established by the Board. TRC's records indicate that Petitioner first attempted to seek a waiver by contacting TRC directly on August 2, 2020, and that she continued to advocate for this relief via emails to TRC dated August 6, August 12, and August 28, 2020.

⁸ The "Milestone Report Form" is a specific form used by TRC to track the progress of projects accepted into the SRP.

Although Petitioner believes that she was unable to meet the April 30, 2020 deadline because of the health emergency, she did not follow the process established by the Board and timely submit a PTO Waiver request or any of the required documentation meant to accompany such a request.⁹ With the petition, Ms. Brown has provided a document that she asserts she received from the Contractor indicating that “it takes approximately 8-10 weeks” from the date of a property owner’s execution of an agreement with Contractor to PTO. Petition at Par. 8. Apart from this form document from the Contractor, however, Ms. Brown did not submit any documentation. She did not provide: date-stamped pictures of the installed array, inverter and balance of system; the required affidavit affirming that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO; an executed milestone report; an affidavit signed by a person with direct personal knowledge stating that the project was complete but for final inspections or final permission to interconnect to the grid prior to April 30, 2020; or date-stamped evidence of attempts to communicate with local code officials and/or evidence that the application to energize was submitted to the EDC. These items had to be submitted by August 1, 2020, if a project was to remain in the SRP.

Notwithstanding Ms. Brown’s affirmative steps to seek relief as a project owner whose project awaited only final inspections and final permission to operate the interconnected solar project, neither she nor the Contractor provided the documentation specified by the Board to obtain a PTO Waiver. Staff believes that Ms. Brown may have been poorly served by the Contractor, which was in a better position to be familiar with the Board’s Orders and timelines. Nonetheless, given the failure to follow the direction and timelines provided by the Board for projects whose final inspections and PTO were delayed by COVID-19 and the State of Emergency, Staff recommends that the Board deny this petition.

Staff notes that Ms. Brown is eligible for the TI incentive. Provided that she completes the TI paperwork requirements timely, she should qualify for the incentives available under this program.

DISCUSSION AND FINDINGS

The Board has reviewed the record and Staff’s recommendation. The Board does not find that the explanations Petitioner provided serve as a basis to waive the requirements of the April 27, 2020 Order. Based on the clear requirements established for the PTO Waiver and the failure to provide any of the necessary documentation by the stated deadline, the Board **DENIES** the petition.

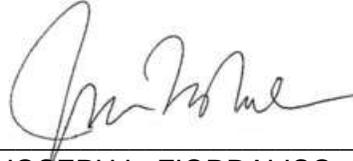
In the April 27, 2020 Order, the Board noted that the COVID-19 crisis has affected solar installations in various stages of development. While noting its sympathy for the plight of such projects, the Board stressed the need to balance prompt closure of the SREC program with the desire to prevent manifest unfairness to projects that are otherwise complete. Then, as now, the Transition Incentive program ensures that significant financial incentives remain available for projects, such as Petitioner’s, that did not attain completion in time to be eligible for SRECs. The Board encourages Petitioner, and all others similarly situated, to complete the requirements for the TI program to begin receiving those incentives.

⁹ The System was ultimately issued a PTO on August 20, 2020. Petitioner submitted photographs of the array and a copy of her PTO on September 18, 2020, but TRC’s records indicate that she has not yet submitted the remaining final documents or altered the status of her project in the TI program.

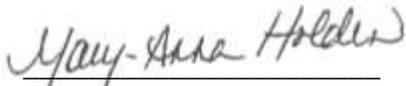
This Order will take effect on April 3, 2021.

DATED: March 24, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

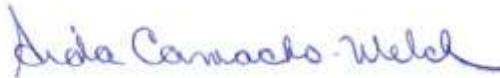


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE PETITION OF VIRGINIA M. BROWN TO REVIEW THE TRANSFER
OF THE SREC REGISTRATION TO THE TRANSITION INCENTIVE PROGRAM**

BPU DOCKET NO. QO20120739

SERVICE LIST

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