



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

CLEAN ENERGY

IN THE MATTER OF THE PETITION TO REVIEW THE) ORDER
TRANSFER OF THE SREC REGISTRATION)
(NJSRRE1544354872) TO THE TREC PROGRAM)
(MAKSYMILAN KAWALEC).) DOCKET NO. QO20110695

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Maksymilian Kawalec, Petitioner

BY THE BOARD:

In this Order the Board considers the request of Dr. Maksymilian Kawalec (“Dr. Kawalec” or “Petitioner”) to override the transfer of his solar project into the Transition Incentive program and return it to the legacy Solar Renewable Energy Certification (“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 SRP once the Board has determined that 5.1% of the retail kilowatt-hours sold in the State were generated from solar facilities connected to New Jersey’s distribution system (“5.1% Milestone”). The Act also reduced the SREC term or “qualification life” to 10 years and imposed 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 SRP to new applications 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, on which date the SRP would be closed to new registrations. April 6, 2020 Order at 5. Projects in the SRP pipeline that had not received a PTO by April 30, 2020, or failed to submit their post-construction certification package in a timely manner, would not be so eligible 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, 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 interconnect to the grid 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 Dkt. No. QO18070698, Order dated April 27, 2020 ("April 27, 2020 Order").

⁷ The Board notes 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.

The history of Petitioner's own attempts to obtain a PTO waiver and keep his project in the SRP is documented in multiple email trails attached to his petition – some initiated by Petitioner, some by TRC and a few sent by Petitioner's installer, SunnyCorp, in response to his inquiries. As documented in these emails, Dr. Kawalec first contacted TRC to countermand SunnyCorp's request that his project, which received its PTO after April 30, 2020, be transferred into the Transition Incentive program. On June 29, 2020, TRC sent him instructions on the requirements for a PTO waiver. On June 30, 2020, a SunnyCorp representative sent an email to the Program Administrator, attaching Petitioner's affidavit in support of his PTO Waiver request and several attachments. In response, TRC informed the SunnyCorp representative that he would need to upload the documents attached to his email to the program's web portal once TRC had reactivated the SRP registration; TRC also advised that the two documents would need to be combined into a single file.

Following these initial contacts, there were multiple exchanges between Petitioner and TRC. Petitioner repeatedly asked if his PTO Waiver has been processed yet and what requirements remained outstanding, and TRC repeatedly informed Petitioner that a complete PTO Waiver package has not yet been received. As such, TRC referred him to the instructions sent on June 29, 2020. In several emails to Petitioner and his installer, TRC specified the deficiencies in the documentation provided and noted that the following items were missing:

- 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;
- 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; and
- 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 EDC.

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

TRC stated that it sent these emails to both Petitioner and the installer on July 20, August 10, and August 26, 2020; copies of the July 20, 2020 and August 26, 2020 emails appear in the attachments to the petition.

On July 16, 2020 and again on July 21, 2020, after being told by TRC that it had not yet received the documentation that it had identified as missing, Petitioner replied that he had contacted SunnyCorp and been told that all necessary documentation had been submitted. TRC confirmed that a SunnyCorp employee submitted the notarized Affidavit signed by Dr. Kawalec on July 17, 2020 and the dated photos on July 29, 2020.

On August 24, 2020, in response to an inquiry from Petitioner, TRC informed him that as of August 10, 2020, his application was still in status "PTO Waiver Request Incomplete" and that if the necessary documentation was not received by August 30, 2020, the application would be transferred to the Transition Incentive program.

On September 8, 2020, Petitioner again inquired about the status of his project and was told that it would be transferred to the Transition Incentive since the installer had not timely completed the PTO Waiver request. In response, Petitioner stated that this had been done and forwarded a copy of the installer's June 29, 2020 email and attachments to TRC.

On September 23, 2020, Dr. Kawalec filed this petition with the Board.

PETITION

Petitioner, who appears to believe that he was asked to submit his PTO Waiver by April 30, 2020, references his occupation as a physician and essential worker as the reason for not submitting his PTO Waiver until June 29, 2020. Petitioner states that his project was completed on April 23, 2020, and maintains that his PTO Waiver request was uploaded on June 30, 2020 "and uploaded a few more times" on July 17 and July 29, 2020.⁹ Petitioner asserts that he strongly believes that he and his developer, SunnyCorp, submitted all the required documentation and adds that TRC has confirmed "that PTO waiver was uploaded on 7/17 and 7/29/20."

Dr. Kawalec has included substantial documentation with the petition, beginning with a copy of his notarized affidavit, dated June 29, 2020 by the notary public. In his affidavit, Petitioner certifies that he has attached date stamped photos of the array, inverter, and balance of system and that the pictures accurately reflect the status of the system on the date indicated, April 23, 2020. He states that he has included an executed milestone report form that reflects the date the request for inspection was filed with municipal officials, the date inspection approval was received, and the date the application for authorization to energize was submitted. Finally, he certifies that "to [his] own direct personal knowledge," his solar project NJSRRE1544354872 was complete but for final inspections and authorization to energize on April 23, 2020.

⁹ Petitioner appears to be referring to the email sent by SunnyCorp to TRC on that date. Included in Petitioner's documentation is a July 17, 2020 email from TRC informing him that what was uploaded in June was not the PTO Waiver request and referring him to TRC's June 29, 2020 email for the PTO Waiver requirements.

Several documents are attached in support of these statements, including photos of his solar system, dated “April 23, 2020”; a letter dated May 19, 2020 from the GPC Team¹⁰ stating that the system of Maksymilian Kawalec at 115 White Owl Trail in Mullica Hill, New Jersey is authorized for operation; a UCC certificate of approval dated April 30, 2020, apparently issued on behalf of the municipality; a Final As-Built Technical Worksheet with photos of a solar array; and a list headed “Operations Milestones – 13 properties.” This list, which consists of a series of items with dates below them and a “Project Permit Number,” appears to be the “executed milestone report form” to which Petitioner refers in his affidavit.

Since the deficiencies identified by TRC form the basis of this dispute, they will be identified here. The second PTO Waiver requirement listed in the April 27, 2020 Order is “an affidavit signed by a person with direct personal knowledge” that the project needed only final inspections and its PTO. Dr. Kawalec attempted to satisfy this requirement with a statement in his own affidavit that he has “direct personal knowledge” that the project was complete but for final inspections and PTO. However, the affidavit contains no information to support this claim or even a statement that he is the host customer. The fourth requirement is for date-stamped evidence that the application to energize, Part II of the interconnection application, has been submitted to the EDC. Petitioner has not documented that Part II of the interconnection application was submitted to the EDC, let alone that this was done prior to April 30, 2020. Petitioner apparently relies upon the very terse information provided in what he styles as his “executed milestone report form,” which is clearly not the standard Milestone Report Form used by TRC in administering the program and intended to be referred to in the April 27, 2020 Order. In any case, Petitioner’s milestone form does not contain or constitute “evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC.” It does not even reference anything recognizable as Part II of the interconnection application, although the notation “IC Part I Approved 02/18/20” could be interpreted as referring to Part I of that application. Apart from not being the Milestone Report Form referenced in requirement five for the PTO Waiver request, the “milestone report form” attached to the Affidavit provides very little in the way of information. Petitioner’s report consists of a list of abbreviated actions with dates shown below, such as that quoted above; however, nothing listed corresponds exactly to the “date the request for inspection was filed with the municipal officials,” “the date of receipt of inspection approval,” and “date of submission of application to energize . . . with the EDC,” as Petitioner claims, nor is the “milestone report form” “executed” or associated with any individual or entity.

RECOMMENDATIONS

The email correspondence provided by Petitioner evidences his determined and good faith efforts to provide the information necessary to satisfy the requirements of the PTO Waiver. The same email trails also demonstrate many efforts by TRC to assist him in doing so. In addition to the more formal emails that identify the deficiencies in his PTO Waiver documentation with language copied from the Board’s Order, there are a number of emails addressed to him personally to let him know, for example, that the status of his PTO Waiver request has been changed to allow his installer to upload the additional documentation needed.¹¹

¹⁰ Green Power Connect is the renewable energy division of Atlantic City Electric Company, the EDC serving Dr. Kawalec’s electricity account.

¹¹ “We have moved this [PTO Waiver] back to “ACCEPTED.” You need to upload the PTO Waiver documents in 1 file.” TRC email dated July 17, 2020, at 3:19 p.m.

However, as noted by Petitioner in one email, "I don't have necessary documentation to submit."¹² Petitioner was forced to rely upon his installer, and the installer, whether through negligence or ignorance, persisted in failing to supplement or correct the documentation that it was repeatedly informed was insufficient. In addition to Petitioner's statements that he has spoken with a SunnyCorp representative, the more formal emails sent on July 20, August 10, and August 26, 2020 are directed to SunnyCorp as well as to Petitioner.

Staff does not disagree with TRC's assessment of the deficiencies in the documentation uploaded in support of the PTO Waiver request. TRC pointed to Petitioner's failure to satisfy requirement number two (an affidavit from a person with direct personal knowledge that the project was complete but for final inspections or final permission to interconnect to the grid prior to April 30, 2020), requirement number four (evidence that the application to energize, Part II of the interconnection application, was submitted to the EDC), and requirement number five (an executed milestone report form reflecting the date the request for inspection was filed, the date inspection approval was received, and the date that Part II of the interconnection application was submitted to the EDC).

Staff believes that these deficiencies are the responsibility of the installer rather than of Petitioner. However, regardless of who is at fault, the requirements for a PTO Waiver were not satisfied. Staff recommends denial.

DISCUSSION AND FINDINGS

The Board has reviewed the record and Staff's recommendation. While the Board does not believe that Petitioner was well served by his installer in this matter, the Board does not find that the inadequacies of SunnyCorp serve as a basis to waive the requirements of the April 27 Order. Based on the clear requirements established for the PTO Waiver and the apparent deficiencies in what was submitted for Petitioner's project, the Board **DENIES** the petition.

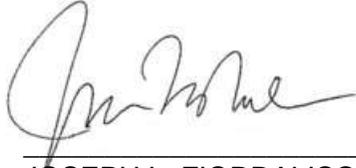
In the April 27, 2020 Order, the Board noted that the COVID-19 crisis has affected solar installations in various stages of development. While noting its sympathy for the plight of such projects, the Board stressed the need to balance prompt closure of the SREC program with the desire to prevent manifest unfairness to projects that are otherwise complete. Then as now, the Transition Incentive program ensures that significant financial incentives remain available for projects that did not attain completion in time to remain in the SRP and such projects will continue to be automatically transitioned into this new program.

¹² Kawalec email on 7/27/20 at 11:30 a.m.

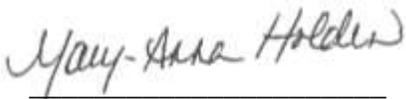
This Order will take effect on March 24, 2021.

DATED: March 24, 2021

BOARD OF PUBLIC UTILITIES
BY:



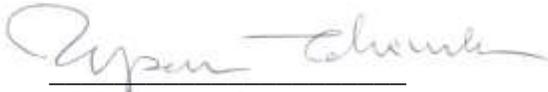
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

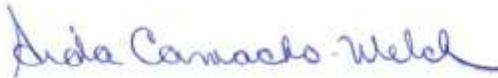


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE PETITION TO REVIEW THE TRANSFER OF THE SREC
REGISTRATION (NJSRRE1544354872) TO THE TREC PROGRAM (MAKSYMILAN
KAWALEC) - BPU DOCKET NO. QO20110695**

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