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State of New Jersey

BOARD OF PUBLIC UTILITIES
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Commissioner

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April 8, 2021

To the Service List:

Re: Docket No. QO20120737 – In the Matter of Dr. Vijay Kamath – Request for Inclusion into the Solar Renewable Energy Certificate (SREC) Program.

Agenda Date: April 7, 2021 – Agenda Item: 8E

Please be advised that the Board of Public Utilities (“Board”) is re-issuing the Order for the above-referenced agenda item that was approved by the Board at the April 7, 2021 Board agenda meeting to correct an error in the listing of Parties of Record. Stefanie Brand, Director of the Division of Rate Counsel was incorrectly listed as a Party to this proceeding, when in fact the Division of Rate Counsel has had no involvement.

This is the only change to the Order, which will be re-distributed to the parties of record and the attached Service List.

Sincerely,

A handwritten signature in blue ink that reads "Aida Camacho-Welch".

Aida Camacho-Welch
Secretary to the Board

/dg



Agenda Date: 4/7/21
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9TH Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
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CLEAN ENERGY

IN THE MATTER OF DR. VIJAY KAMATH – REQUEST) ORDER
FOR INCLUSION INTO THE SOLAR RENEWABLE)
ENERGY CERTIFICATE (SREC) PROGRAM)
) DOCKET NO. QO20120737

Party of Record:¹

Vijay Kamath, Petitioner

BY THE BOARD:

In this Order, the Board considers the request of Dr. Vijay Kamath (“Dr. Kamath” or “Petitioner”) to deem his 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 (“Clean Energy Act” or “CEA” or “Act”), into law, 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.²

¹ The Director of the Division of Rate Counsel was previously shown as a Party of Record to this matter. Rate Counsel had no involvement in this matter, so the Director’s name has been removed.

² 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 be 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.³ 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”),⁴ 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”),⁵ expressly superseding the operative paragraphs of EO 104 with yet more stringent measures. And on April 8, 2020, the Governor ordered all “non-essential” construction to halt as of April 10, 2020.⁶

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.⁷

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 affidavit⁸ 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;
3. Date-stamped pictures of the array, inverter and balance of system;

³ Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (March 13, 2020).

⁴ Exec. Order No. 104 (March 16, 2020), 52 N.J.R. 550(a) (April 6, 2020).

⁵ Exec. Order No. 107 (March 21, 2020), 52 N.J.R. 554(a) (April 6, 2020).

⁶ Exec. Order No. 122 (April 8, 2020), 52 N.J.R. 959(a) (May 4, 2020).

⁷ 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”).

⁸ 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

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 EDC⁹; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

PETITION

By petition dated November 22, 2020, Dr. Kamath advises that he contracted with Sunrun Installation Services ("Sunrun") for a 12.42 kilowatt system ("the System") in February 2020. The Petitioner states that there were some delays in installation "due to Covid" but that his panels were installed on April 15, 2020. He represents that municipal inspections in Howell were also delayed by the pandemic and State of Emergency and says that he experienced delay in getting his PTO, which he has no doubt was due to the same cause. Petitioner provided copy of a Certificate of Approval from Howell Township Construction Code Division dated April 29, 2020. Petitioner asserts that "the project [was] mechanically complete and would have received the final inspections necessary to reach PTO prior to April 30, 2020 but for the COVID-19 state of emergency." Petitioner asks that the Board take into consideration the impact of the COVID-19 crisis upon his project and allow it into the SRP.

STAFF RECOMMENDATION

Petitioner presents an explanation as to why he was unable to obtain a PTO for the System prior to the cutoff date of April 30, 2020.

By correspondence dated May 22, 2020, denying the Petitioner's request for waiver of the PTO requirement to remain eligible for the SREC program, the SRP Administrator indicated that "[a]fter reviewing the materials supplied to the SRP Processing Team for this [waiver] request, additional documentation is required." Petitioner was then instructed to provide the following information:

1. An affidavit from the project owner that the failure to obtain PTO was attributable to COVID-19 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 and final permission to interconnect to the grid prior to April 30, 2020;
3. Date-stamped photographs of the array inverter and balance of system equipment;
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;

⁹ The "Milestone Report Form" is a specific form used by TRC to track the progress of projects accepted into the SRP.

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 official's date of receipt of inspection approval and date of submission of application to energize (Part II of the interconnection application) with the EDC; and
6. Ensure that both affidavits are notarized, and that photographs are date-stamped.

In subsequent correspondence dated July 8, 2020, the SRP Administrator advised Petitioner of the same deficiencies. The SRP Administrator identified July 30, 2020 as the deadline for submitting these items if a project was to remain in the SRP Portal.

Subsequently, Petitioner submitted all but one of the required documents including, on July 28, 2020, an affidavit from a Sunrun official that testified to the affiant's direct personal knowledge that the project was complete but for final inspections and final permission to interconnect to the grid prior to April 30, 2020. The Sunrun affidavit, which identified Sunrun as "the owner and/or installer" of the project, did not identify the project to which it was referring.

On August 6, 2020, the SRP Administrator advised Petitioner that the PTO waiver package was deemed incomplete because it lacked an affidavit from the project owner that the failure to obtain PTO was attributable to COVID-19 related closures of critical local government offices or delays in the EDC issuance of PTO. The SRP Administrator provided a deadline of August 30 to submit the missing affidavit. The notice did not indicate any other deficiencies in the waiver request.

On August 13, 2020, Petitioner was again advised that he still needed to submit an affidavit from the project owner that the failure to obtain PTO was attributable to COVID-19 related closures of critical local government offices or delays in the EDC issuance of PTO. Once again, no additional deficiencies were noted.

On August 26, 2020, Petitioner was advised in a final notice ("FINAL REMINDER") that an affidavit from the project owner asserting that failure to obtain PTO was attributable to COVID-19 related closures of critical local government offices or delays in the EDC issuance of PTO. As with the previous two letters, no additional deficiencies were identified. The following day, on August 27, 2020, the petitioner submitted an affidavit from himself - the project owner - stating that the failure to obtain PTO was attributable to local government office closures caused by COVID-19. The affidavit references the attached SRP application.

On October 2, 2020, the SRP Administrator denied the PTO Wavier stating: "Affidavit submitted by Sunrun does not reference the associated project. There was no project listed on the Affidavit or a project list attached with Affidavit." Staff believes that the SRP Administrator denied the waiver request for lack of information on the affidavit from someone "with direct personal knowledge." However, prior to the denial, the Petitioner and its developer were advised that the final deficiency requiring correction was an affidavit from the project owner. In its last three deficiency notices, the SRP Administrator had not advised the Petitioner or their installer that they needed to supplement the previously supplied affidavit from a person with direct personal knowledge to include a specific identification of the relevant project.

Given the Petitioner's good faith attempts 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, as well as the direction provided by the SRP Administrator in its previous letters, Staff recommends that the Board grant this petition.

DISCUSSION AND FINDINGS

The Board has reviewed the record and Staff's recommendation. The Board **HEREBY FINDS** that Petitioner provided the documentation that it was directed to provide. The Board **FURTHER FINDS** that Petitioner's reasonable reliance upon the correspondence received from the SRP Administrator serves as good cause to waive full compliance with the requirements of the April 27, 2020 Order. Specifically, the Petitioner was not informed prior to the denial that the affidavit submitted to fulfill the requirement of an affidavit from someone with direct knowledge of the project lacked information that identified this project. Based on the clear requirements established for the PTO Waiver and the Petitioner's substantial compliance with the program's terms as communicated to him by the Program Administrator by the stated deadline, the Board **GRANTS** 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. The unique circumstances of the petition under review merit the action taken by the Board in this Order. This relief is based upon these unique circumstances and is limited to them.

This Order will take effect on April 17, 2021.

DATED: April 7, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

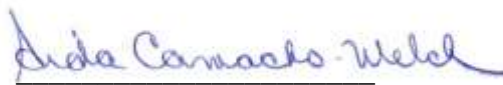


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF DR. VIJAY KAMATH – REQUEST FOR INCLUSION INTO THE SOLAR
RENEWABLE ENERGY CERTIFICATE (SREC) PROGRAM**

BPU DOCKET NO. QO20120737

SERVICE LIST

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