



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 CARDIFF CENTER)
EXTENSION REQUEST FOR SOLAR RENEWABLE)
ENERGY CERTIFICATE (SREC) PURCHASE SALE)
AGREEMENT (PSA) WITH ATLANTIC CITY ELECTRIC)
COMPANY)
ORDER
DOCKET NO. EO12030208V

Parties of Record:

Justin McCarthy, Esq., Giordano, Halleran & Ciesla, on behalf of The Cardiff Center, LLC
and Solis Partners, Inc.
Robert M. Pagano, Cardiff Center, LLC
Evan Conley, Solis Partners, Inc.
Philip Passanante, Esq., on behalf of Atlantic City Electric Company
Stefanie A. Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities (“Board”) considers the petition of Cardiff Center, LLC (“Cardiff” or “Petitioner”) for a six-month extension of time to complete a solar energy project under Cardiff’s Solar Renewable Energy Certificate (“SREC”) long-term contract for financing with Atlantic City Electric Company (“ACE”).

On or about May 24, 2011, as a winning bidder in ACE’s SREC financing auction, Cardiff entered into a SREC Purchase and Sale Agreement (“PSA”) with ACE for the SRECs from approximately 565 kilowatts (kW) of solar energy to be produced by roof-top solar equipment which will be owned by Petitioner, with contemplated project completion by May 25, 2012. On March 5, 2012, Cardiff filed a formal petition with the Board requesting expedited review of its request for a six-month extension of time for completion of the project, alleging that a number of factors had contributed to unforeseeable and unavoidable delays. At the time that Petitioner filed, a first extension of time to complete was available only by petitioning the Board.

On March 12, 2012, the Board approved a stipulation (“Stipulation”) in which Rockland Electric Company, Jersey Central Power and Light, and ACE (collectively, “EDCs”) agreed to an amendment to the language of the PSA. I/M/O Atlantic City Electric Company Renewable Energy Portfolio Standards – Amendments to the Minimum Filing Requirements for Energy Efficiency, Renewable Energy, and Conservation Programs; and for Electric Distribution

Company Submittals of Filings in Connection with Solar Financing – Changes to the Purchase Sale Agreement Regarding Extension Requirements, Docket Nos. EO08100875, EO08080840, EO09020097 (“March 12 Order”). The amendment provided that the EDCs could grant a first extension of time to complete under a PSA on the condition that the entity requesting the extension provided to the EDC a certification substantially in conformance with specific requirements set out in a new Appendix A-1.

On March 23, 2012, Board staff (“Staff”) advised Petitioner by electronic mail that its request for a first extension should, under the March 12 Order, be submitted in the first instance to ACE. Petitioner has advised that it submitted its request to ACE and that on April 3, 2012, general counsel for ACE declined to grant the extension. On April 10, 2012, ACE informed Staff by electronic mail that ACE would not grant the extension because it did not believe that the certifications provided by Petitioner were substantially in conformance with the criteria for a first extension approved in the March 12 Order. ACE also stated that it did not oppose or object to the petition filed on March 5, 2012.

According to the petition, Petitioner is the owner of the proposed solar facility, and Solis Partners, Inc. (“Solis”) is the developer and installer. Cardiff’s original photovoltaic technology supplier declared bankruptcy in August 2011, necessitating re-sourcing of the supplier as well as a reevaluation of the design specifications, financing and construction plans at the site. Cardiff represents that it filed an application for preliminary interconnection with ACE on September 23, 2011. On October 19, 2011, Solis received notification from ACE that the preliminary interconnection application had been submitted on an outdated form; on October 27, 2011, Solis resubmitted the application. On December 2, 2011, representatives of Solis and ACE conducted a site inspection of the subject property. On January 12, 2012, representatives of ACE determined that interconnection and installation approval was contingent upon the replacement of a transformer at the site. The cost of the transformer upgrade was supplied on February 7, 2012. Petitioner alleges that the delays caused by the bankruptcy of its first supplier, the delays entailed in the submission of its application for preliminary interconnection, and the need to replace a transformer at the property were unforeseen and have resulted in delays that necessitate the filing of this petition for an extension.

Cardiff represents that notwithstanding the above-detailed delays, substantial progress has been made on its project. Cardiff’s Operating Manager and the landlord of the host site, Robert Pagano, has certified to the purchase of over 500 solar panels, whose purchase price represented approximately 7.5% of total project cost and thus meets the “Safe Harbor” requirements for a cash grant as provided in section 1603 of the American Recovery and Reinvestment Act. Evan Conley, Production Manager of Solis., stated in an electronic mail dated April 17, 2012, that “to the extent possible” Solis has completed the initial project design. He further stated that both the Petitioner and his own firm are ready and willing to continue with completion of the project but that as the availability of SRECs is “fundamental” to the financial viability of the project, approval of the six-month extension is a necessity prior to any further financial commitment by Petitioner and its developer.

DISCUSSION AND FINDINGS

As a threshold matter, the Board must determine whether the instant petition is more appropriately reviewed under the standard for first extensions under a PSA which was in effect as of the date the petition was filed or under the more rigorous standard approved by the Board

one week later. To make this determination the Board applies the “Time of Decision” rule as set out in Governor Christie’s Executive Order Two, which provides that “any permit or approval shall be governed by the administrative rules, regulations and standards in effect at the time an application is filed.” The Board will thus apply the standard for first extensions in effect on March 5, 2012, when Petitioner filed its request with the Board.

In addressing Petitioner’s request, the Board looks to the language of the General Terms and Conditions of the PSAs with ACE (“General Terms”) as that language existed prior to the March 12 Order. The General Terms provided that:

...in the event the Commencement Date has not occurred within one year of the Effective Date, Purchaser shall have the right, exercisable upon written notice to Seller, to terminate this Agreement without further obligation or liability to Seller and shall be under no further obligation to advance this Agreement. Such one-year period may be extended only by Order of the Board following formal petition to the Board for such an extension.

Exhibit A to PSA, General Terms at Par. 3

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 PSA. 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, 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, Docket No. EO11060350V (July 14, 2011).

In applying this standard to the matter at hand, the Board looks at the representations made in the petition as well as in the certifications and supplemental communications that:

- Design work for the project has been completed as well as preliminary engineering work.
- Petitioner has expended over seven percent of project costs in irrevocable orders for solar components.
- Solis has completed the initial project design to the extent possible, selected and made commitments for 25% of the panels, and is prepared to finalize engineering.

The Board **FINDS** that Petitioner has documented significant progress toward completion of the project.

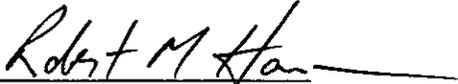
In the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner applied for the relevant incentive, in this case, application to the long-term SREC financing program. In the instant matter, Petitioner avers that the bankruptcy of its first photovoltaic technology supplier, the delays involved in the submittal of its preliminary interconnection form, and the need to replace a transformer caused

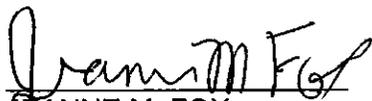
the delay. The Board **FINDS** that the delay caused by this series of events was unavoidable and unforeseeable at the time Petitioner entered into its PSA with ACE as part of the SREC long-term financing program.

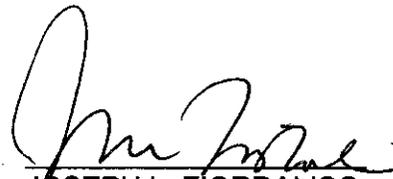
After consideration of the above, the Board **HEREBY GRANTS** the request for an extension of the deadline for completion of the project under the PSA with ACE to November 25, 2012.¹

DATED: 5/11/12

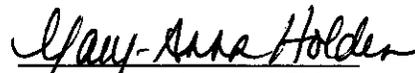
BOARD OF PUBLIC UTILITIES
BY:

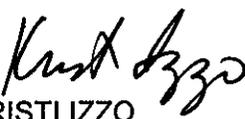

ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

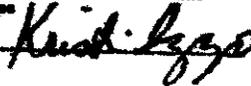

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

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



¹ Petitioner states that it filed a preliminary SREC Registration form with NJCEP on February 2, 2011. Petitioner will need to re-register the referenced project in the SREC Registration Program in order to maintain its eligibility to generate SRECs. 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, Docket Nos. EO11050269V and EO08090840 (July 1, 2011) at 3.

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FOR SOLAR RENEWABLE ENERGY CERTIFICATE (SREC) PURCHASE SALE
AGREEMENT (PSA) WITH ATLANTIC CITY ELECTRIC COMPANY

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