



STATE OF NEW JERSEY
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)
L. 2012, C. 24, THE SOLAR ACT OF 2012)

ORDER GRANTING)
REQUEST FOR WAIVER)

IN THE MATTER OF REQUEST FOR A WAIVER OF)
SREC REGISTRATION RULES AT N.J.A.C. 14:8-2.4 –)
HESP SOLAR, LLC)

DOCKET NO. EO12090832V

DOCKET NO. QO19050651

Parties of Record:

Stephen B. Pearlman, Esq., Pearlman & Miranda, LLC
Susan Brodie, Executive Vice President, HESP Solar, LLC

BY THE BOARD:

This Order concerns a request by HESP Solar, LLC ("HESP Solar" or "Petitioner") for a second extension of time to register its 668.66 kWdc net-metered solar project to be located at the Pine Brook Rehabilitation & Care Center, 104 Pension Road, Englishtown, New Jersey (SRP Registration Number NJSRRE1536193251) in the Solar Renewable Energy Credit ("SREC") Registration Program ("SRP"), due to circumstances outside of Petitioner's control and so as to avoid substantial hardship to Petitioner. This extension would require a waiver of the Board's rules at N.J.A.C. 14:8-2.4(i), which limit applicants to a single six-month extension of their initial conditional registration.

The SRP issued the project its original SRP registration on January 23, 2018 with a commitment length of twelve months. In response to a request for an extension of the initial conditional registration dated December 20, 2018, on December 27, 2018, the SRP granted the project a six-month extension to July 23, 2019. HESP Solar now requests an additional three-month extension to October 23, 2019 to register the project in the SRP.

BACKGROUND

On July 23, 2012, the Solar Act was signed into law. The Solar Act amended certain provisions regarding the generation, interconnection, and financing of renewable energy in the Electric

Discount and Energy Competition Act, which requires retail sellers of electricity to comply with New Jersey's Renewable Portfolio Standards ("RPS"). Among other actions, the Solar Act required the New Jersey Board of Public Utilities ("Board") to conduct proceedings to establish new standards and develop new programs to implement the statute's directives. By Order dated October 10, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.

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.

N.J.A.C. 14:8-2.4 establishes the process and eligibility criteria for certain grid supply 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 the project conditional registration. 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(i) requires that construction of a solar electric generating facility shall be completed prior to expiration of conditional registration in the SRP; that 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 an extension of six months prior to expiration of the conditional registration; and that, if the conditional registration or extension expires before completion of construction, the registrant shall begin the entire registration process again.

On May 23, 2019, HESP Solar submitted a petition to the Board in which it requested a second extension of the project's conditional registration. Petitioner stated that it has completed the following in connection with construction of the project: (1) replacement of the roof at the Pine Brook Nursing Home in order to accommodate installation of the panels; (2) pursuit and award of a use variance and Preliminary and Final Major Site Plan approval by the Township of Manalapan's Zoning Board of Adjustment to allow for the installation of the solar project; and (3) purchase of more than 2,000 solar panels for the installation of the project, all of which have been located on site for several months. Petitioner has also obtained outside governmental approvals, including from the Monmouth County Planning Board, Freehold Soil Conservation District, and New Jersey Department of Environmental Protection. Petitioner stated that it has expended approximately 52% of the anticipated total project cost. Petitioner asserts that it has proceeded diligently and continuously to advance the project and that, but for unavoidable and unforeseeable delays in obtaining local building permits, Petitioner would have completed construction long ago.

As part of its submission, HESP Solar provided a detailed timeline of events in support of its argument that its efforts on the project have been continuous since December 2016 and that Petitioner has been diligently working with the Township's staff to satisfy all conditions of the approvals required. Petitioner specifically describes how, after working with the Board Engineer on multiple plans – including the site plan; grading, drainage, and utility plan; landscape and lighting plan; and soil erosion and sediment control plan – relating to the project, Petitioner received a Resolution Compliance letter from the Township of Manalapan's Board Engineer on August 8, 2018. On January 31, 2019, Petitioner received a second Resolution Compliance

review letter that informed Petitioner of two outstanding conditions that Petitioner needed to address. On March 20, 2019, the Board Engineer sent HESP Solar a follow-up communication regarding one of these conditions: the Performance Guarantee & Engineering Inspection Escrow Estimate, which Petitioner used as a basis to work with the Township Attorney on a Performance Bond, which was approved on April 4, 2019. On April 4, 2019, Petitioner also received Township approval for a Tree Preservation Easement with the Township and property owner. On April 23, 2019, the Board Engineer informed Petitioner that Petitioner had completed the Resolution Compliance process. On May 9, 2019, the Township informed Petitioner that the project would need to undergo plan review with the New Jersey Department of Community Affairs ("DCA") due to the location of the project on the roof of a health care facility. Petitioner submitted an application and project documents to the DCA on May 14, 2019. The DCA requested additional information on May 16, 2019, which Petitioner provided on May 20, 2019. Petitioner is currently awaiting a decision from the DCA that will enable Petitioner to obtain permits to begin construction on the project. In summary, Petitioner argues that the multiple delays encountered in obtaining the Township's sign off on site plan approval have been unavoidable and unforeseeable. Petitioner also asserts that, if the Board requires Petitioner to file a new registration, the project would be issued a new SRP Registration number and would only be eligible to generate SRECs for a term of ten years, which would render the project financially unviable and cause financial harm to the Petitioner due to its abandonment of the project.

STAFF RECOMMENDATIONS

HESP Solar's submission details a series of regulatory compliance actions that evidence its pursuit of full certification of the solar generation project. Staff recommends that, in this case, the Board waive the conditional registration extension provision set forth at N.J.A.C. 14:8-2.4(i). Based on the Petitioner's expectation that the project will soon obtain the final remaining local approvals from Manalapan Township and be able to begin construction, Staff recommends that the Board grant Petitioner three (3) months from expiration of its current registration, or by October 23, 2019, to submit a complete post-construction certification package to the Board's SRP team.

DISCUSSION AND FINDINGS

HESP Solar requests a waiver of the Board's requirement that solar electric generating facilities receive at most a six-month extension of conditional registration in the SRP and that construction be completed prior to expiration of the registration, as set forth at N.J.A.C. 14:8-2.4(c)(1). In considering whether to grant a request for a waiver, the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1) and determines (1) whether the request is in accord with the general purposes and intent of the rules; and (2) whether full compliance with the rules would adversely affect ratepayers, a utility or other regulated entity, or the public interest. To determine the general purpose and intent of its rules, the Board looks to the policy underlying the rule(s) in question, as well as the rule's history.

The SRP registration rules promote the development of renewable sources of electricity. To ensure transparency, provide advance notice to solar market participants of new renewable energy generation entering the market, and protect ratepayers who bear the SREC costs, N.J.A.C. 14:8-2.4 identifies the prerequisites that must be met before solar generation is eligible to earn SRECs. One requirement, codified at N.J.A.C. 14:8-2.4(i), is that the construction of the facility shall be completed prior to expiration of conditional registration in the SRP and that Staff

may authorize one six-month extension of the project's registration on a case-by-case basis, based on the likelihood of timely and successful completion of the solar facility. If the conditional registration or extension expires before construction is complete, the registrant shall begin the entire registration process again by submitting an initial registration package.

HESP Solar states that it is unlikely to complete construction of the project prior to expiration of its conditional registration, which included a six-month extension. HESP Solar, however, has identified other efforts in its quest to develop the solar project, including:

- replacing the roof at the facility in order to accommodate installation of the panels;
- purchasing more than 2,000 solar panels for the installation of the project;
- obtaining a use variance and Preliminary and Final Major Site Plan approval by the Township of Manalapan's Zoning Board of Adjustment to allow for the project's installation;
- obtaining outside governmental approvals, including from the Monmouth County Planning Board, Freehold Soil Conservation District, and New Jersey Department of Environmental Protection;
- receiving Township approval of a Performance Bond;
- completing the Resolution Compliance process with the Township;
- receiving Township approval for a Tree Preservation Easement with the Township and property owner;
- applying for a tree removal permit and zoning permit from the Township; and
- submitting an application and project documents to the DCA for sign off prior to the Township's issuance of a commercial building permit.

Given the fact that Petitioner and the Township of Manalapan have been in continuous communication about the required approvals and that Petitioner soon expects to receive a commercial building permit, which is the final requirement to begin construction of the project, the Board **FINDS** that extending the SREC registration period by an additional three months comports with the general intent and purpose of its rules.

The Board also considers whether full compliance with the registration expiration provision would adversely affect the ratepayers' interest or public interest. The Board **FINDS** that Petitioner has been proceeding diligently and achieving continuous progress toward obtaining the governmental approvals needed to beginning construction of the project and that granting an additional three months to allow Petitioner to complete construction of the project prior to expiration of its conditional registration will further the State's goal of encouraging the development of renewable sources of electricity and new, cleaner generation technology. Given that Petitioner has complied with other Board rules, and given that they soon anticipate obtaining approvals to proceed with construction, the Board **FINDS** that strict adherence to registration expiration provision in this case would adversely affect the public interest.

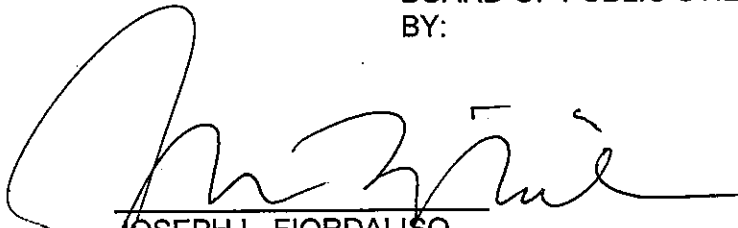
After weighing all of these considerations, the Board **ADOPTS** Staff's recommendation and **GRANTS** Petitioner's request for an additional three-month extension of the registration extension requirement set forth at N.J.A.C. 14:8-2.4(i), with a new expiration date of October 23, 2019. The Board **DIRECTS** Staff to issue full certification to the project upon Petitioner's demonstration that all requirements for full certification – including all SRP requirements at N.J.A.C. 14:8-2.4 – have been satisfied. The Board **AUTHORIZES** Staff's use of the date on the Permission to Operate as a proxy for the commencement of commercial operations.

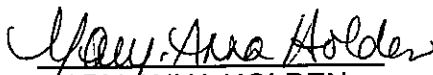
This Order is issued in reliance on the information presented in the petition and does not grant any rights beyond an extension of time to file an SRP registration.

This Order shall be effective on July 20, 2019.

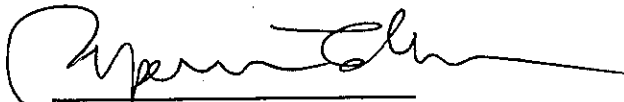
DATED: 7/10/19

BOARD OF PUBLIC UTILITIES
BY:

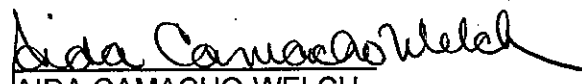

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AIDA CAMACHO-WELCH
SECRETARY

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

In the Matter of the Implementation of L. 2012, c. 24, the Solar Act of 2012;
In the Matter of Request for a Waiver of SREC Registration Rules at N.J.A.C. 14:8-2.4 –
HESP Solar, LLC

Docket Nos. EO12090832V and QO19050651

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