



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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)
)
)
IN THE MATTER OF REQUEST FOR A WAIVER OF)
SREC REGISTRATION RULES AT N.J.A.C. 14:8-2.4 –)
COLONIAL PIPELINE CO. ALLENTOWN)

ORDER GRANTING
REQUEST FOR WAIVER

DOCKET NO. EO12090832V

DOCKET NO. QW19050602

Party of Record:

Danny Ptak, Director, EnterSolar, LLC
Andrea E. Hayworth, Managing Attorney – Commercial and Governance, Colonial Pipeline Company

BY THE BOARD:

This Order concerns a request by solar project developer EnterSolar, LLC (“EnterSolar” or “Petitioner”), on behalf of its client, Colonial Pipeline Company (“CPC”), for a second extension of time to register its 2.46 MWdc solar project located at 493 Ward Avenue in Chesterfield, New Jersey (SRP Registration Number NJSRRE1535199118) in the Solar Renewable Energy Credit (“SREC”) Registration Program (“SRP”),¹ due to circumstances outside of CPC’s and EnterSolar’s control. 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.

CPC submitted its SRP application on October 10, 2017. The SRP issued the project its initial conditional registration on November 2, 2017 with a commitment length of twelve months. In response to a request for an extension of the initial conditional registration, on October 9, 2018, Staff’s consultant, TRC, granted the project a six-month extension to May 2, 2019. EnterSolar now requests an additional short extension to register the project in the SRP.

¹ EnterSolar and CPC’s submission on April 23, 2019 also included a request for an extension for the solar field at CPC’s Woodbury Junction location in West Deptford, New Jersey (SRP Registration Number NJSRRE1535199005). On May 2, 2019, CPC submitted its post-construction certification package pursuant to N.J.A.C. 14:8-2.4(l), prior to expiration of conditional registration, and thus no longer requires an extension for that project.

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.²

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 new solar electric generation 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). Pursuant to N.J.A.C. 14:8-2.4(i), construction of a solar electric generating facility shall be completed prior to expiration of conditional registration in the SRP; 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 if the conditional registration or extension expires before completion of construction, the registrant shall begin the entire registration process again.

On April 12, 2019, EnterSolar requested a second extension of the project's conditional registration. EnterSolar noted that construction of the Chesterfield solar field was completed in September 2018 and that the project was soon due to receive permission to operate but required a short extension due to extenuating circumstances, including interconnection delays involving Public Service Electric and Gas Company ("PSE&G") and PJM Interconnection, LLC ("PJM"). On April 17, 2019, TRC denied this request based on the SRP requirements at N.J.A.C. 14:8-2.4(i) and referred EnterSolar to the Board's dispute resolution process.

On April 23, 2019, EnterSolar submitted a request for extension to the Board on behalf of CPC. This request included a supporting statement from Andrea E. Hayworth, Managing Attorney at CPC.

² I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(q), (r) and (s) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(t) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(w) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

Ms. Hayworth explained that, in 2017, CPC began development of two solar fields designed to produce renewable energy for two CPC facilities that support the company's transport of refined petroleum products in the northeast United States, including the project in Chesterfield, New Jersey that powers the Allentown Booster Station. Ms. Hayworth stated that development of the Chesterfield project has been continuous since it was initiated in 2017 but that in July 2018 PSE&G notified CPC that it lacked jurisdiction to grant interconnection approval to the project and had done so in error in 2017. Ms. Hayworth stated that, in late 2018, CPC began the interconnection approval process with PJM and has since been attempting to work with both PSE&G and PJM to identify and satisfy the technical requirements for interconnection. Ms. Hayworth noted that the Chesterfield project was only awaiting substation tie-in, which was anticipated to be completed in May or June. Ms. Hayworth concluded by affirming CPC's long-standing commitment to its solar projects and requesting that the Board allow CPC to recognize the benefit of these facilities by granting them an extension and thereby allowing the projects to be completed.

As part of its April 23, 2019 submission, EnterSolar also provided a more detailed timeline of events – including a summary of its efforts to obtain interconnection approval from both PSE&G and PJM, execution of a Design Build Agreement, submission of its SREC registration application, applications for and issuances of permits, and initiation and completion of construction – in support of its argument that work on the project has been continuous since 2017, the project is nearly complete, and delays to date have been out of CPC's and EnterSolar's control.

STAFF RECOMMENDATIONS

CPC's and EnterSolar's submission details a series of regulatory compliance actions that evidence their 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 be completed and will obtain permission to operate by June, Staff recommends that the Board grant Petitioner three (3) months from expiration of its current registration, or by August 2, 2019, to submit a complete post-construction certification package to the Board's SRP team.

DISCUSSION AND FINDINGS

EnterSolar 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). The Board is authorized to waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. 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. There is no dispute that CPC has not met the requirement to obtain an interconnection agreement for its Chesterfield facility prior to expiration of its conditional registration, which included a six-month extension. CPC, however, has identified other efforts in its quest to develop the solar project, including:

- seeking interconnection approval;
- executing a Design Build Agreement for the project on September 21, 2017;
- obtaining permits by March 23, 2018;
- beginning construction in April 2018; and
- completing construction in September 2018.

CPC and EnterSolar have also been in continuous communication with PSE&G and PJM regarding its interconnection applications, particularly since July 2018 when they learned that the original interconnection approval was issued in error by PSE&G. Under these circumstances, 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. CPC affirms its commitment to this project and argues that allowing CPC to complete the project with the benefit of a short three month extension will support the State's supported clean energy goals and allow CPC to recognize the benefit of this renewable energy facility. The Board **FINDS** that CPC and EnterSolar have achieved substantial completion of the project, that delays to date have been unforeseeable, and that granting an additional three months to allow CPC to obtain the new interconnection agreement with PJM, which was necessitated when PSE&G advised CPC that the interconnection agreement that it had granted was issued in error, will further the State's goal of encouraging the development of renewable sources of electricity and new, cleaner generation technology. Given that CPC and EnterSolar have complied with other Board rules, and given that they anticipated obtaining the permission to operate for the Chesterfield project in early June, the Board **FINDS** that strict adherence to registration expiration provision in this case would adversely affect the public interest.

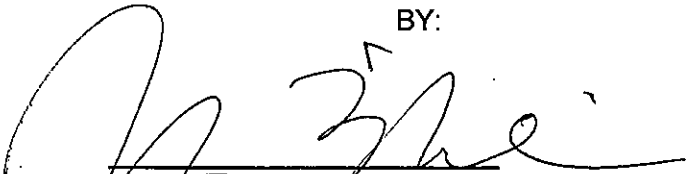
After weighing all of these considerations, the Board **ADOPTS** Staff's recommendation and **GRANTS** Petitioner's request for an additional three-month extension of the registration extension requirement set forth at N.J.A.C. 14:8-2.4(i), with a new expiration date of August 2, 2019. The Board **DIRECTS** 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. After Petitioner has received full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation, with SREC eligibility contingent upon the project commencing commercial operations prior to the attainment of 5.1% of kilowatt hours sold in the state from solar electric power generators connected to the distribution system, pursuant to N.J.S.A. 48:3-87(d). 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 June 22, 2019.

DATED: 6/12/19

BOARD OF PUBLIC UTILITIES
BY:



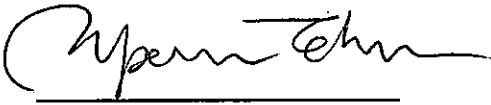
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER




DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

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 – COLONIAL PIPELINE CO. ALLENTOWN**

DOCKET NOS. EO12090832V AND QW19050602

SERVICE LIST

EnterSolar, LLC

Danny Ptak, Director of Business Development
805 3rd Avenue, Floor 20
New York, NY 10022
dptak@entersolar.com

Colonial Pipeline Company

Andrea E. Hayworth, Managing Attorney
Commercial and Governance
ahayworth@colpipe.com

Division of Rate Counsel

Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.state.nj.us

New Jersey Division of Law

Department of Law & Public Safety
Post Office Box 45029
Newark, NJ 07101-45029

Caroline Vachier, DAG
caroline.vachier@law.njoag.gov

Emma Yao Xiao, DAG
emma.xiao@law.njoag.gov

Board of Public Utilities

Post Office Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch
Secretary of the Board
board.secretary@bpu.nj.gov

Paul Flanagan, Esq.
Executive Director
paul.flanagan@bpu.nj.gov

Christine Sadovy
Deputy Chief of Staff
christine.sadovy@bpu.nj.gov

Sara Bluhm, Director
Division of Clean Energy
sara.bluhm@bpu.nj.gov

Sherri Jones, Assistant Director
Division of Clean Energy
sheri.jones@bpu.nj.gov

Benjamin S. Hunter, Manager
Division of Clean Energy
benjamin.hunter@bpu.nj.gov

Jamal Garner, Environmental Engineer
Division of Clean Energy
jamal.garner@bpu.nj.gov

Stacy Ho Richardson, Esq.
Counsel's Office
stacy.richardson@bpu.nj.gov