



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 PETITION FOR A SECOND)	ORDER
EXTENSION AND RE-ACTIVATION OF THE)	
RECENTLY EXPIRED 15-YEAR SREC PROGRAM)	
(SRP) APPLICATION AS WELL AS A WAIVER OF THE)	
REQUIREMENT TO RE-APPLY TO THE SRP SET)	
FORTH IN N.J.A.C. 14:8-2.4(i))	
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
LEROY COOPER ELEMENTARY SCHOOL)	DOCKET NO. QW20020096
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
OLD BRIDGE HIGH SCHOOL)	DOCKET NO. QW20020097
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
CARL SANDBURG ELEMENTARY SCHOOL)	DOCKET NO. QW20020098
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
GRADE 9 CENTER)	DOCKET NO. QW20020099
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
RAYMOND E VOORHEES ELEMENTARY SCHOOL)	DOCKET NO. QW20020100
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
MEMORIAL ELEMENTARY SCHOOL)	DOCKET NO. QW20020101
)	
OLD BRIDGE TOWNSHIP BOARD of EDUCATION)	
JONAS SALK MIDDLE SCHOOL)	DOCKET NO. QW20020102

Parties of Record:

Cori Kaercher, GeoPeak Energy, LLC
Joshua A. Eckert, Esq., Jersey Central Power and Light Company

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities (“Board”) considers the petition of GeoPeak Energy (“GeoPeak” or “Petitioner”), filed with the Board by letter dated November 25, 2019.

Petitioner seeks an extension of time to complete seven solar energy projects (“Projects”) under the Board’s Solar Renewable Energy Certificate (“SREC”) Registration Program (“SRP”).

BACKGROUND

The Board’s Renewable Portfolio Standard (“RPS”) rules, found at N.J.A.C. 14:8-2, are designed to encourage the development of renewable sources of electricity; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions; 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 to generate energy upon which SRECs can be created. SRECs can be used to satisfy New Jersey’s RPS. N.J.A.C. 14:8-2.3. Upon determining that a project application meets SREC eligibility requirements, the SRP administrator issues a conditional registration to the project. If the solar facility completes construction as described in the initial registration package; obtains permission to operate (“PTO”) from the local Electric Distribution Company; submits a post-construction certification package; and passes inspection, if required, the SRP issues a certification number to the facility. N.J.A.C. 14:8-2.4(i)-(n).

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. The rules do not provide for a second extension, which must therefore be sought by seeking a waiver of the rules from the Board. If the conditional registration or extension expires before completion of construction, and no second extension is granted, the registrant shall begin the entire registration process again.

In addition to implementing this long-established regulatory framework, the Board is also in the process of implementing the provisions of the Clean Energy Act of 2018, N.J.S.A. 48:3-87 (“Clean Energy Act”). Among other mandates, the Clean Energy Act directs the Board to close the SRP upon determining that 5.1% of the retail kilowatt-hours sold in the State have been generated by solar facilities connected to the State’s distribution system (“5.1% Milestone”). N.J.S.A. 48:3-87(d)(3). In compliance with the Clean Energy Act, the Board has adopted rules that direct Board staff (“Staff”) to issue monthly reports providing the most current estimate of the date the 5.1% Milestone will be achieved. N.J.A.C. 14:8-2.4(b)(6); 52 N.J.R. 146(b). On April 6, 2020, the Board issued an Order in which it determined that the 5.1% Milestone would be achieved by May 2020.¹

After the Board closes the SRP to new registrants, projects that have submitted complete registrations to the SRP but have not achieved commercial operations shall be eligible for a transition incentive.

¹ In the Matter of the Closure of the SREC Registration Program Pursuant to P.L. 2018, c.17; In the Matter of a New Jersey Solar Transition Pursuant to P.L. 2018, c.17 – Calculation of 5.1% Milestone for SREC Program Closure, BPU Dkt. Nos. QO18070698 & QO19010068 (April 6, 2020).

PETITION

On or about May 17, 2018, the Board's SRP administrator issued conditional registration acceptances for each Project with a registration length of twelve months and an expiration date of May 17, 2019. The filed Projects were intended to be roof-mounted and net metered. On May 8, 2019, GeoPeak received six-month extensions to November 17, 2019, due to delays in roof replacements as a result of OBTBOE RFP procurement delays. The Projects had already received interconnection, NJ Department of Education, and construction permit approvals.

GeoPeak completed all of the Projects. It submitted the final post-construction certification packages to the SRP administrator by the November 17, 2019 deadline, but without the required PTOs. GeoPeak submits that JCP&L required last minute and unexpected "witness testing" before it would issue the PTOs. Inclement weather necessitated re-scheduling these tests several times. JCP&L finally issued five projects their PTOs in January 2020, one project it's PTO in February 2020, and the remaining project it's PTO in March 2020.

Since the PTOs were not included in the final post-construction certification packages submitted in November, the SRP administrator deemed these projects "Final-As Built Incomplete". GeoPeak, however, states that it was under the impression that once it submitted the PTOs to the SRP administrator, the SRP administrator, "understanding the extenuation circumstances," would be able to review and approve the registrations. Such an approval would have meant that the projects received fifteen-year Qualification Lives ("QL").

The SRP administrator informed GeoPeak that it did not have the authority to approve second extensions. The administrator further explained that GeoPeak would have to petition the Board for waiver of the rule requirement at N.J.A.C. 14:8-2.4(i) to re-apply in the SRP and for approval of the second extensions. GeoPeak asserts that it was unaware that there was a process to petition the Board for second extensions until so informed by the SRP administrator and the SRP extension policy page on the application states only that the SRP does not allow for second extensions. Had it known that it needed to petition the Board, GeoPeak claims that it would have done so prior to the expiration of the first extensions.

On January 31, 2020, GeoPeak filed with the Board a petition to reactivate the seven expired registrations with the associated 15-year SREC QLs. Petitioner also seeks second extensions for the Projects, presumably to be retroactively effective.

DISCUSSION AND FINDINGS

The Board is authorized to relax or 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 looks to the standards provided in this rule. In special cases upon a showing of good cause, the Board may relax or permit deviations from the rule. N.J.A.C. 14:1-1.2(b). Additionally, if strict adherence to a rule would adversely affect ratepayers, hinder safe, adequate and proper service, or adversely impact the interests of the general public, the Board shall waive sections of the rule. N.J.A.C. 14:1-1.2(b)(1).

As noted above, the RPS rules are designed to encourage the development of renewable sources of electricity. N.J.A.C. 14:8-2.1. However, these rules are also intended to provide stability and transparency to the solar market. GeoPeak's petition, by asking that the expired registrations be reactivated, threatens that stability and transparency. Other than its own desire to retain the former fifteen-year Qualifying Lives for the Projects, Petitioner offers no rationale for the Board's intervention in the normal processes of the SRP. The Board **FINDS** that such an intervention is unwarranted and risks creating confusion and uncertainty in the market. The Board **FURTHER FINDS** that the out-of-time receipt of a PTO does not constitute justification for intervention.

Petitioner argues that its failure to timely file for a second extension was the result of ignorance. This argument lacks persuasive power. Ignorance of the regulatory structure of which Petitioner seeks to be a beneficiary cannot excuse Petitioner from complying with the regulatory requirements. See State v. Moran, 202 N.J. 311, 320 (2009); see also Nolasco v. Board of Review, No. A-3261-14T2, 2016 N.J. Super. Unpub. LEXIS 1464, at *7 (App. Div. June 24, 2016) ("The statute and the applicable rule are clear regarding the eligibility requirements and Nolasco's ignorance of the requirements, while unfortunate, does not vitiate those requirements.").

In addition, as noted above, the RPS rules are designed to encourage timely development of renewable sources of electricity. Petitioner already received an extension that increased the initial time to complete the Projects. The EDC's inspection delays, while outside Petitioner's control, do not constitute such an extraordinary and startling development that they justify continuing to waive the procedural safeguards intended to ensure transparency in the amount of new generation coming on line.

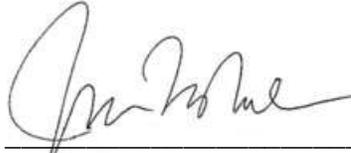
Under these circumstances, the Board **FINDS** that there is no justification for an unprecedented "reactivation" of the registrations. The Board **FURTHER FINDS** that the delay in receipt of the PTOs was not an extraordinary occurrence such as would justify a waiver of the Board's rules. Therefore, the Board **DENIES** the petition.

The Board **FURTHER ORDERS** that the Projects shall not be eligible for the SRP but may be eligible for the transition incentive. The Board **HEREBY WAIVES** the requirement to register within fourteen (14) days of a signed contract and also the associated penalty that bars retirement of SRECs generated for a period of one year from PTO.

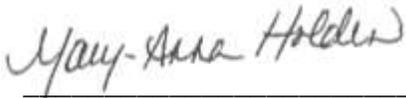
The effective date of this Order is May 5, 2020.

DATED: May 5, 2020

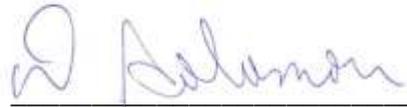
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AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF PETITION FOR A SECOND EXTENSION AND RE-ACTIVATION OF THE
RECENTLY EXPIRED 15-YEAR SREC PROGRAM (SRP) APPLICATION AS WELL AS A
WAIVER OF THE REQUIREMENT TO RE-APPLY TO THE SRP SET FORTH IN N.J.A.C. 14:8-
2.4(i) - OLD BRIDGE TOWNSHIP BOARD OF EDUCATION

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