



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	ORDER GRANTING IN
<u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u>)	PART AND DENYING IN
)	PART REQUESTS FOR
IN THE MATTER OF THE IMPLEMENTATION OF)	WAIVERS
<u>L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A PROCEEDING</u>)	
TO ESTABLISH A PROGRAM TO PROVIDE SRECS)	DOCKET NO. EO12090832V
TO CERTIFIED BROWNFIELD, HISTORIC FILL AND)	
LANDFILL FACILITIES)	
)	
RADIANT ENERGY, LLC)	DOCKET NO. EO12090862V
PRICE'S LANDFILL)	
)	DOCKET NO. QO15111299

Party of Record:

Lloyd D. Levenson, Esq., Cooper Levenson, P.A. on behalf of Radiant Energy, LLC

BY THE BOARD:

This Order concerns the petition of Radiant Energy, LLC (“Radiant” or “Petitioner”) for a waiver of N.J.A.C. 14:8-2.4(c)(1), N.J.A.C. 14:8-2.4(e), and N.J.A.C. 14:8-5. The Order also concerns Radiant’s request, for, among other things, an extension of time to register its proposed grid-supply 4.2 MW dc solar project¹ in the Solar Renewable Energy Credit (“SREC”) Registration Program (“SRP”) and to complete construction of its proposed grid-supply solar facility.

BACKGROUND

On July 23, 2012, L. 2012, c. 24 (“Solar Act”) was signed into law by Governor Chris Christie.

The Solar Act, specifically N.J.S.A. 48:3-87(t) (“Subsection (t)”), provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing,

¹ Radiant is also developing a separate 1MW solar array. The net metering project is not the subject of this order.

complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered "connected to the distribution system" [and] shall not require such designation by the board[.]

[N.J.S.A. 48:3-87(t).]

In an Order dated January 24, 2013,² the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities. The certification process for projects seeking approval pursuant to Subsection (t) provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which the New Jersey Department of Environmental Protection ("NJDEP") has determined require further remedial action or, in the case of properly sanitary closed landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which the NJDEP has determined no further remedial or protective action is necessary. 2013 N.J. PUC LEXIS 27 at 32-33.

Projects certified under Subsection (t) of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, a project conditionally approved today would, following receipt of conditional certification, need to be registered in the Board's SRP. N.J.A.C. 14:8-2.4. The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On November 12, 2015, Radiant submitted an application to the Board to have its 4.2 MW dc project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection (t) of the Solar Act. After consultation with the NJDEP, Staff recommended and the Board granted conditional certification in the February 2016 Order.

At the time of the February 2016 Order, the Board's SRP rules required a solar electric generation project to submit a registration package within ten (10) days of executing a contract to install a solar system or to purchase panels for solar system. The SRP rules also then required the project to construct within one (1) year, with only one six (6) month extension permitted.³ Staff recommended that the Board waive the then-existing rule's requirements and permit Radiant fourteen (14) days to file its registration package with the Board and two (2)

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(t) – a Proceeding to Establish a Program to Provide SRECs to Certified Brownfield, Historic Fill and Landfill Facilities; I/M/O the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(u) – a Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27 (Jan. 24, 2013).

³ The then-existing rules had been codified at N.J.A.C. 14:8-2.4(c), (f). During the intervening time, the Board has adopted rule amendments which provide that a solar facility certified or conditionally certified pursuant to Subsection (t) has fourteen (14) days from the effective date of the Order certifying or conditionally certifying the solar facility to register with the SRP and twenty-four (24) months until the registration expires. 48 N.J.R. 383(a) (Mar. 7, 2016); 49 N.J.R. 849(a) (Apr. 17, 2017); N.J.A.C. 14:8-2.4(c), (i).

years to complete construction, which recommendations were imposed as conditions. February 2016 Order at 6. Radiant, however, did not file a registration package with the SRP at any time and, thus, did not comply with the Board's Order.

On November 21, 2017, the Board granted Radiant's petition for a waiver of the Board's interconnection rules with respect to its separate net metering array, specifically the requirement that all such agreements utilize a standard bipartite agreement approved by the Board. See N.J.A.C. 14:8-5.1; I/M/O Radiant Energy, LLC – Approval of a Tripartite Agreement between Atlantic City Electric, the Environmental Protection Agency, and Radiant Energy, LLC, 2017 N.J. PUC LEXIS 240 (Nov. 21, 2017) ("Radiant Order").

On February 14, 2018, Radiant filed a petition ("Petition") seeking an extension of the two (2) year construction period approved by the Board. On February 21, 2018, Radiant amended its petition ("Amended Petition") to also request a waiver of the 14-day requirement to submit the SRP registration package. The Amended Petition included a certification of Ian Jerome.

On April 2, 2018, Radiant filed a second amended petition ("Second Amended Petition") and another certification made by Ian Jerome ("Jerome Certification"), in which it repeated its request for a waiver of N.J.A.C. 14:8-2.4. Petitioner also asked that the Board waive N.J.A.C. 14:8-2.4(e), which provides that if the SRP registration is not timely filed, any SRECs created shall not be usable for compliance with New Jersey's Renewal Portfolio Standards ("RPS") until one (1) year after the solar facility has received authorization to energize, and that the Board waive N.J.A.C. 14:8-5. On April 4, 2018, Radiant filed a letter ("Supplemental Letter") requesting that the Board authorize a fifteen (15) year qualification life for the solar facility as that was the regulatory qualification life at the time the Board conditionally certified its proposed facility.

STAFF RECOMMENDATIONS

Staff advises that the Board grant Petitioner five (5) days from the effective date of this Order, or by May 10, 2018, to submit a complete registration package to the Board's SRP team. Radiant's submissions detail a series of regulatory compliance actions, negotiations with the utility, and the pursuit of financing options which evidence its pursuit of its solar generation Subsection (t) project.⁴ Successful filing would be considered compliance with the obligation set forth in the Board Order.

Staff also recommends that the Board decline to rule upon Petitioner's request for an extension of time to complete construction of its proposed solar generation facility as this request is inapplicable at this time. When the Board modified the one (1) year SRP registration period and extended the SRP registration period to two (2) years for Radiant, the Board accommodated the longer construction times associated with Subsection (t) projects. 2016 N.J. PUC LEXIS 59 at 15. Had Radiant registered by March 19, 2016 and subsequently received an SRP acceptance letter, its SRP registration period would have expired two (2) years from the acceptance letter, or shortly after March 19, 2018. Radiant, however, did not register; therefore, the registration period has not yet begun to run. If the Board adopts Staff's recommendations, the two (2) years will commence once Petitioner receives from the SRP a letter of acceptance of a timely filed registration package.

⁴ To support its claims of diligence and the complexity of the project, Radiant also discusses activities related to its 1 MW net metering project. As noted earlier, the net metering project is not the subject of this Order.

Staff recommends that any extension for the registration deadline recognize that the Petitioner failed to fulfill an obligation set forth in a Board order. Pursuant to N.J.S.A. 48:2-42, the Board can impose a penalty of up to \$100 per day for the violation of a Board Order. In this case, a lesser amount would be appropriate, and Staff recommends that the penalty be set at \$10 per day, for the 753 days between when the SRP should have occurred and the date of the petition and certification were filed with the Board laying out in some detail the request for relief. This totals 753 days, and results in a proposed penalty of \$7,530, payable to the Treasurer, State of New Jersey, in care of the Board. This penalty represents a balance between the societal benefits inherent in the proposed project and the need for parties to respect and abide by Board Orders, and the need for transparency in the solar market. With these considerations, the reduction from \$100 per day to \$10 per day is a fair approach. If the Board adopts Staff's recommendation to impose the penalty, there is no need to address the request for a waiver from N.J.A.C. 14:8-2.4(e).

Staff further recommends that the Board deny Radiant's request for a waiver of N.J.A.C. 14:8-5. This request is misplaced, since the solar installation at issue in this proceeding is designed for grid supply and is thus not subject to the interconnection rules found at N.J.A.C. 14:8-5.

Staff further recommends denial of Petitioner's request for a fifteen (15) year qualification life. Under the SRP rules, the qualification life runs from the date on which the facility is authorized to energize, and Radiant's Subsection (t) project is not now authorized to energize as neither construction or final inspection of the solar facility has occurred.

DISCUSSION AND FINDINGS

Radiant has made several requests of the Board in the Second Amended Petition, but the most significant is its request for a waiver of its requirement that the Petitioner file a registration package with the SRP within a set time period, as contained in the February 2016 Order. Petitioner asserts that its waiver requests should be granted because waiving these requirements would be in accord with the general purpose underlying the rules and because enforcing strict compliance with these rules would adversely affect the interest of the general public. Second Amended Petition at Legal Argument Section B.

As an initial matter, Petitioner is imprecise in this request. Petitioner does not seek a waiver of the SRP Rules; Petitioner seeks a waiver of the obligations imposed in the February 2016 Order. The analysis, however, is similar. In considering whether to grant a request for a waiver, the Board applies the two (2) pronged test set forth at N.J.A.C. 14:1-1.2(b)(1): (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, the utility, 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.

In support of its waiver requests, Radiant relies upon a Board order which had granted a waiver of the Board's interconnection rules regarding Radiant's net-metering project. In that order, the Board stated that while the interconnection rules were designed to make renewable energy development more efficient, the Board identified the underlying goal of these rules as "to increase the use and generation of renewable energy in New Jersey." 2017 N.J. PUC LEXIS 240 at 7.

Like the interconnection rules, 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 pre-requisites that must be met before the solar generation is eligible to earn SRECs. One requirement is that the facility register within fourteen (14) days of obtaining conditional certification. 2016 N.J. PUC LEXIS 59 at 6-8, 14-15.⁵ There is no dispute that Radiant has not met this important requirement, but Radiant has identified other efforts in its quest to develop the Subsection (t) project. For example, in April 2017, Radiant obtained conditional approval from Atlantic City Electric Company to interconnect the Subsection (t) project, and Radiant has filed a landfill disruption permit application which is under review by the NJDEP. Under these circumstances, and when the goal of providing advance notice can still be met as the facility has not been constructed, the Board **FINDS** that extending the SREC registration period contained within the February 2016 Order comports with the general intent and purpose of its rules.

The Board also considers whether full compliance with the fourteen (14) day registration requirement would adversely affect the ratepayers' interest or public interest. See N.J.A.C. 14:1-1.2(b)(1). Petitioner again relies on the Radiant Order where, in considering whether to waive the requirement of the standard interconnection agreement regarding Radiant's net-metering project, the Board said that "implementation of this project would further the State's goal of siting solar facilities on properly closed sanitary landfills." 2017 N.J. PUC LEXIS 240 at 8-9. Allowing the late registration of the Subsection (t) project would also further the State's goal of siting solar facilities on properly closed sanitary landfill facilities. Given that Radiant has complied with other Board rules, and given the uniquely beneficial purpose of the solar installation for which a waiver is sought, the Board **FINDS** that strict adherence to the fourteen (14) day registration requirement in this case would adversely affect the public interest.

Although the Board is authorizing Petitioner to register its project by May 10, 2018, the Board agrees with Staff that a penalty is justified. Pursuant to N.J.S.A. 48:2-42, the Board **IMPOSES** a penalty of \$7,530.00, based upon a \$10 per day penalty for the 753 days between the Order and the petition seeking relief from the obligation. Because an extension of the Board Order requirement to file within fourteen (14) days is granted, the Board **FINDS** that the request for a waiver from N.J.A.C. 14:8-2.4(e) is unnecessary. Accordingly, the Board **ADOPTS** Staff's recommendation. The Board also **ADOPTS** Staff's recommendation regarding Radiant's request for a waiver of N.J.A.C. 14:8-5. As noted by Staff, this rule does not apply to the Subsection (t) project.

Relative to Petitioner's request for an extension of time to complete construction of its proposed solar generation facility, the Board's **ADOPTS** Staff's recommendation. By extending the 14-day registration requirement and allowing Radiant to register now, the two (2) year registration period during which Radiant has to complete construction will commence after Radiant files a complete registration package and it receives an SRP acceptance letter.

With respect to Petitioner's request for Board approval of the fifteen (15) year qualification life that was provided by the Board's rules at the time of the conditional certification, the Board sees no basis for granting this relief. Under the SRP rules, the qualification life runs from the date on which the facility is authorized to energize, and Radiant's Subsection (t) project has not been authorized to energize as construction has not commenced.

Accordingly, the Board **GRANTS** Petitioner's request for an extension of the fourteen (14) day registration requirement set forth in the Board Order. The Board **FINDS** that the applicant must register in the SRP as required of all solar electric generation facilities seeking SREC eligibility pursuant to N.J.A.C. 14:8-2.4. Therefore, the Board **DIRECTS** Petitioner to submit an initial

⁵ The requirement is now codified at N.J.A.C. 14:8-2.4(c)(1)(i).

registration package on or before May 10, 2018 and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-2.4(c), (h). However, the Board **DENIES** Petitioner's request for a waiver of N.J.A.C. 14:8-5 and **DENIES** Petitioner's request for a fifteen (15) year qualification life.

The Board further **ORDERS** Petitioner to submit a check in the amount of \$7,530, payable to the Treasurer, State of New Jersey, in care of the Board, by no later than May 10, 2018.

This Order is issued in reliance on the information presented in the petitions and verified in the Jerome Certification and does not grant any rights in connection with construction of the proposed project beyond an extension of time to file an SRP registration.

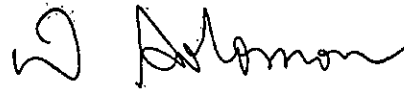
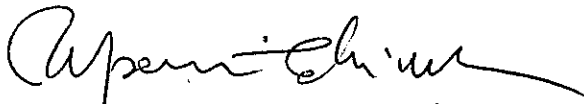
This Order shall be effective on May 5, 2018.

DATED:

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 THE IMPLEMENTATION OF L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A
PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED
BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES

RADIANT ENERGY, LLC
PRICE'S LANDFILL

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