



Agenda Date: 2/24/16
Agenda Item: 8D

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)	ORDER
L. 2012, C.24, THE SOLAR ACT OF 2012; AND)	
)	DOCKET NO. EO12090832V
IN THE MATTER OF THE PETITION OF TRUE)	
GREEN CAPITAL MANAGEMENT LLC FOR AN)	
EXTENSION OF THE DESIGNATION DATE SET)	
FORTH IN THE MATTER OF AUGUSTA SOLAR)	
FARMS (DOCKET NO. QO13101014) PURSUANT)	
TO <u>N.J.S.A.</u> 48:3-87(Q))	DOCKET NO. QO16020108

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
John G. Valeri, Esq., Chiesa Shahinian & Giatomasi, True Green Capital Management, LLC

BY THE BOARD:

On February 10, 2016, True Green Capital, LLC ("True Green" or "Petitioner"), owner and operator of the a grid supply solar generation facility which the Board of Public Utilities ("Board" or "BPU") approved for designation as connected to the distribution system by Order dated February 4, 2014, filed a verified petition seeking an extension of time to complete construction.

BACKGROUND

On July 23, 2012, L. 2012, c. 24 ("Solar Act") was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the Board to conduct proceedings to establish new standards and to develop new programs to implement its directives. On October 4, 2012, under Docket No. EO12090832V, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act including those under N.J.S.A. 48:3-87(q) ("Subsection q").

Subsection q of the Solar Act provides that:

(1) During the energy years of 2014, 2015, and 2016, a solar electric power generation facility project that is not: (a) net metered; (b) an on-site generation facility; (c) qualified for net metering aggregation; or (d) certified as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility, as provided pursuant to subsection t of this section may file an application with the board for approval of a designation pursuant to this subsection that the facility is connected to the distribution system. An application filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility. The board shall approve the designation if: the facility has filed a notice in writing with the board applying for designation pursuant to this subsection, together with the notice escrow; and the capacity of the facility, when added to the capacity of other facilities that have been previously approved for designation prior to the facility's filing under this subsection, does not exceed 80 megawatts in the aggregate for each year. The capacity of any one solar electric power supply project approved pursuant to this subsection shall not exceed 10 megawatts. No more than 90 days after its receipt of a completed application for designation pursuant to this subsection, the board shall approve, conditionally approve, or disapprove the application. The notice escrow shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection.

(2) If the proposed solar electric power generation facility does not commence commercial operations within two years following the date of the designation by the board pursuant to this subsection, the designation of the facility shall be deemed to be null and void, and the facility shall not be considered connected to the distribution system thereafter.

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

By Order dated May 9, 2013, the Board approved an application process, form of application and form of escrow agreement to be used in connection with the Board's review of projects seeking designation as "connected to the distribution system" under Subsection q ("May 9, 2013 Order").¹ As stated above, Subsection q charges the Board with denying, approving or conditionally approving qualifying applications from certain proposed grid supply solar facilities for designation as "connected to the distribution system" during energy years 2014, 2015 and 2016² within 90 days of receipt of a completed application.

¹ In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V and In the Matter of the Implementation of L.2012, C.24, N.J.S.A 48:87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System - Subsection (q) Application and Escrow Agreement, Docket No. EO12090880V (May 9, 2013).

² As defined in N.J.S.A. 48:3-51, an energy year ("EY") is the 12-month period from June 1 through May 31, numbered according to the calendar year in which it ends.

As approved by the Board in the May 9, 2013 Order, to obtain final approval of a Subsection q application for Energy Year 2014 (“EY 2014”) or conditional approval of a Subsection q application for Energy Year 2015 (“EY 2015”) or Energy Year 2016 (“EY 2016”), the developer of a proposed facility had to file a Subsection q application with the Board, with a copy provided to Rate Counsel; the proposed system must be 10 megawatts (“MW”) or less and be the only facility proposed for interconnection at a distinct interconnection point; the appropriate escrow amount must be noticed as properly deposited; and all appropriate Solar Renewable Energy Certificate (“SREC”) registration requirements must be fulfilled. To obtain final approval of a Subsection q application for EY 2015 or EY 2016, the developer of a proposed facility must have submitted a Subsection q application and received conditional approval from the Board; the facility must be the only facility interconnected at a distinct interconnection point; the facility must have completed construction and received authorization to energize; the completed system must be 10 MW or less; and all applicable SREC registration and escrow requirements must have been maintained throughout the conditional approval period. May 9, 2013 Order at 9.

Following a stakeholder process that included instructions for submitting applications under Subsection q, on August 21, 2013, the Board approved twenty-one (21) applications for designation as “connected to the distribution system” pursuant to Subsection q either on a final or conditional basis from the first application round held from May 15 to 31, 2013 (“Round One”).³ The Board approved eleven (11) projects seeking designation in EY 2014 for 68.1 MWdc of capacity, conditionally approved seven (7) projects seeking designation in EY 2015 for 31.2 MWdc of capacity, and conditionally approved three (3) projects seeking designation in EY 2016 for 20.6 MWdc of capacity. August 21, 2013 Order at 9-10. The Board also announced that an additional window would be opened for the remaining capacity for each of the energy years. Id. at 10.

Following a process similar to that used in connection with Round One, on October 1, 2013, Staff distributed, via the renewable energy stakeholder email distribution list and posted to the New Jersey Clean Energy Program and BPU websites, the instructions for participating in Round Two, which application window was October 15 to 31, 2013.

By order dated February 4, 2014, the Board approved two (2) applications for projects under EY 2014; conditionally approved six (6) applications for projects under EY2015; and conditionally approved nine (9) applications under EY 2016 (“February 4, 2014 Order”).⁴

³ In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V and In the Matter of the Implementation of L.2012, C.24, N.J.S.A 48:87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System - Subsection (q) Round Two Application Approvals, Docket No. EO12090880V (August 21, 2013).

⁴ In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V and In the Matter of the Implementation of L.2012, C.24, N.J.S.A 48:87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System - Subsection (q) Round Two Application Approvals, Docket No. EO12090880V (February 4, 2014).

The Board required the two projects approved for EY 2014 to complete construction within two (2) years of the designation date for the projects, which was set as two (2) years from the effective date of the Board's February 4, 2014 Order, that is, February 14, 2014. Augusta Solar Farms, LLC, ("Augusta") had submitted one of these two applications ("Augusta Project"). Under the terms of the February 4, 2014 Order, if the projects approved for designation for EY 2014 were completed within two years of the designation date, or February 14, 2016, the projects would be eligible to create SRECs after they were authorized to energize by the EDC. February 4, 2014 Order at 11.

Augusta's Petition for Extension

The Petitioner is the owner and operator of the Augusta Project. Petitioner requests that the Board extend the date of designation which was set in the February 4, 2014 Order. Petitioner requests that the designation date for the Augusta project which was approved for EY 2014 be the final day of Energy Year 2014 (May 31, 2014) rather than the effective date of the Board Order, February 14, 2014. This extension of the designation date will allow Augusta until May 31, 2016 to commence commercial operations and be eligible to generate energy on which SRECs may be based. N.J.S.A. 48:3-87(q).

In support of this request, Petitioner puts forward two claims regarding the status of its project. First, it asserts that the delays which have caused it to miss the date for commercial operation were beyond its control. Specifically, True Green points to prolonged and unanticipated delays: non-delivery of racking from its first manufacturer and a severe winter storm.

According to the verified petition, True Green's original contract for racking had a delivery date of October 15, 2015; on November 22, 2015, the manufacturer requested an extension for an indefinite period of time, citing events, including a toxic spill and hurricane effects, it believed fell under the "Force Majeure" clause in its contract. See Exhibit B to the Petition. Petitioner states that it engaged in a swift search for an alternate manufacturer and has since purchased a second racking system, see Exhibit C to the Petition, but avers that the need to do so caused significant delay. Petition at 5.

In addition, Petitioner points to a winter storm which resulted in a state of emergency and the loss of several work days as its contractor prepared the site for a heavy snow and which Petitioner states left three feet of snow which it anticipates will keep construction at a standstill until the end of February. Petitioner also states that it has reason to be concerned about the speed with which it will receive its interconnection. According to Petitioner, Jersey Central Power & Light ("JCP&L"), in whose service territory the Augusta Project is located, has not been responsive and has been prioritizing other work for its high voltage line crews, as well as slowing down completion of routine work during preparation and response to the same winter storm which shut down Petitioner's construction.

Second, Petitioner points to the extensive preparations it has made to complete construction expeditiously. In support of this claim, True Green represents that it has expended over 7 million dollars toward construction, which it characterizes as the majority of the project costs. Specifically, True Green states that panels, inverters, racking, "and all major equipment" have been ordered and paid for and that the panels and inverters are being stored near the site. Petition at 3.

Petitioner argues that an extension of its designation date is appropriate because Subsection q establishes the two (2) year deadline based on the designation date set by the Board. True Green submits that neither Subsection q specifically nor the Solar Act generally define the date from which the solar project is designated by the Board. However, the term “energy year” is a defined term, which 12-month period runs from June 1 to May 31, numbered according to the calendar year in which it ends. Therefore, True Green argues that the Board may designate any date within the energy year, including the last date of the energy year. True Green further argues that because the designation date for projects approved for EY 2015 and EY 2016 ran from the start of the energy year, those projects had 28 and 40 months, respectively, to complete construction.

STAFF’S RECOMMENDATION

Staff has reviewed Petitioner’s documentation and states that Petitioner’s request to modify the designation date approved in the February 4, 2014 Order is not unreasonable. Such a modification will provide three and one-half additional months for the Augusta Project to enter commercial operations and will accommodate for the unique circumstances as described in its petition. Staff recommends that the Board modify the “date of designation” in the February 4, 2014 Order from February 14, 2014 to the end of EY 2014, or May 31, 2014, for the Augusta Project. The deadline for True Green to commence commercial operations will then become the end of EY 2016 or May 31, 2016. This change in the date of designation would allow True Green time to achieve commercial operations and earn the SRECs.

Staff also notes that no other project approved under Round One or Round Two for EY 2014 petitioned the Board for an extension of its designation date. Moreover, all projects under Round One for EY 2014 have concluded in accordance with the August 21, 2013 Order. Therefore, changing the designation date for Augusta would have no effect on these EY 2014 projects.

DISCUSSION AND FINDINGS

The Board must determine whether under the circumstances of this case, it is appropriate for the Board to amend the designation date applicable to Augusta as set forth in the February 4, 2014 Order. Pursuant to N.J.S.A. 48:2-40(e), the Board may modify a prior decision. In exercising our discretionary authority under N.J.S.A. 48:2-40(e) to determine whether a modification is appropriate in this case, the Board considers the Solar Act’s overarching goal of stabilizing the SREC market.

Subsection q requires a proposed solar facility to achieve commercial operations within (2) two years of the date the Board has designated it as “connected to the distribution system” or forfeit its designation. However, the Legislature did not prescribe the date of designation by the board or indicate any limitations on the Board’s discretion to set that date. Thus, the Board has exercised its discretion in designating these dates. Cf. Gloucester Cty. Welfare Bd. v. State Civil Serv. Comm’n, 93 N.J. 384, 390 (1983) (A strong presumption of reasonableness accompanies an administrative agency’s exercise of statutorily-delegated responsibility); In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 452-454 (1992) (The ultimate question is whether the agency’s action is permissible under the broad language of the statute).

The Board exercised that discretion in setting the designation dates in the February 4, 2014 Order.⁵ In that order, the Board determined designation dates for all three energy years covered by the statute. For projects which received conditional approval for EY 2015 and EY 2016, the Board selected the first day of the respective energy year as the designation date, that is, June 1, 2014 for EY 2015 facilities and June 1, 2015 for EY 2016 projects. The Board appropriately exercised its discretion in setting these "date[s] of designation" for EY 2015 and EY 2016.

However, had the Board applied the same framework to the two projects designated for EY 2014,⁶ and selected the first day of EY 2014 as their designation date, more than eight (8) months of the statutory two years would have run prior to the date the applicants were designated. These projects would have had only slightly more than 15 months to commence commercial operations. The Board exercised its discretion and chose instead the effective date of its order, February 14, 2014 as the "date of designation." As a result of the differing designation dates, EY 2015 projects had 28 months to commence commercial operations, from February 14, 2014 to June 1, 2016. Projects conditionally designated for EY 2016 had 40 months to commence commercial operations, from February 14, 2014 to June 1, 2017.

The situation presented by this Petition is unique in many respects. This project is one of only two projects approved in Round Two for EY 2014, and the only project that seeks a brief extension. As Staff notes, all other EY 2014 projects approved under Round One have concluded. As stated above, no other project approved under Round One or Round Two for EY 2014 petitioned the Board for an extension of its designation date. Therefore, there is no impact to other EY 2014 projects approved in Round One or Round Two. No other project is similarly situated and no other project will be affected by this modification. EY 2014 is closed. Furthermore, the prolonged, unforeseen and particular delays, and efforts of the Petitioner in response, are unique to these circumstances.

The Board **CONCLUDES** that considerations of equity support a modification of the date of designation for the Augusta Project, from February 14, 2014 to the final day of that energy year, May 31, 2014. Therefore, the Board **GRANTS** the Petition and **MODIFIES** the date of designation as May 31, 2014. Pursuant to Subsection q, the Augusta Project is required to commence commercial operations within two (2) years of the date of designation, by May 31, 2016. All other terms and conditions of the February 4, 2014 Order remain in effect.

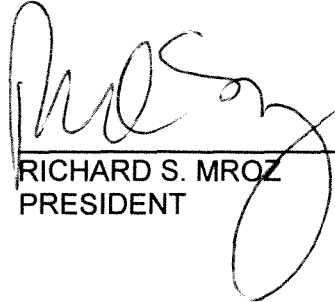
⁵ The Board similarly used its discretion in establishing the designation dates for projects approved in Round One. August 21, 2013 Order at 9-10.

⁶ See North Park Solar, LLC, Docket No. QO13101015 and Augusta Solar Farms, LLC, Docket No. QO13101014.

The effective date of this Order is March 5, 2016.

DATED: 2-24-16

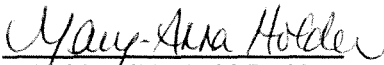
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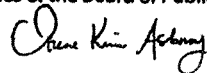
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ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



I/M/O the Petition of True Green Capital Management, LLC for an Extension of the Designation Date Set forth in the Matter of Augusta Solar Farms Pursuant to N.J.S.A. 8:3-87(q)

DOCKET NO. QO16020108

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