



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
Two Gateway Center, Suite 801  
Newark, NJ 07102  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CLEAN ENERGY

IN THE MATTER OF THE PETITION OF SUNOLAR )  
POWER CO, LLC FOR AN ORDER WAIVING THE )  
REQUIREMENTS OF N.J.A.C. 14:8-2.9(d) AND )  
AUTOHORIZING THE ISSUANCE OF SOLAR )  
RENEWABLE ENERGY CREDITS WITH RESPECT TO )  
INTERCONNECTION TO ATLANTIC CITY ELECTRIC )  
COMPANY'S ORCHARD SUBSTATION )  
DOCKET NO. EO10100774V

Mitchell R. Cohen, Esq. Flaster/Greenberg, PC, Cherry Hill, N.J. on behalf of Sunolar Power Co, LLC,

BY THE BOARD<sup>1</sup>

This Order memorializes action taken by the New Jersey Board of Public Utilities ("Board") at a public agenda meeting held on March 30, 2011 regarding a request by Sunolar Power Co, LLC ("Sunolar") for a waiver of N.J.A.C. 14:8-2.9(d), and a declaration of eligibility for Solar Renewable Energy Credits ("SRECs"). As will be discussed below, the waiver request is **DENIED**.

On October 28, 2010, Sunolar filed a petition with the Board seeking the waiver of N.J.A.C. 14:8-2.9(d)(1), which requires that solar electrical generation facilities must interconnect with the distribution system in order to be eligible for SRECs. According to the petition, Sunolar wishes to connect a 20MW grid-supply generation facility, to be located adjacent to the Atlantic City Electric Company's Orchard Substation in Upper Pittsgrove Township, directly to a 230kV transmission line while retaining the ability to generate SRECs. The waiver request is predicated upon N.J.A.C. 14:8-2.9(e), which states that "the Board may waive the requirements at (d) above by Board order if the Board determines that such waiver would facilitate participation in the system and determines that such a waiver would significantly advance the purposes expressed in N.J.A.C. 14:8-2.1(a)."

Sunolar claims that the waiver is appropriate as the development of this generation facility is in keeping with the Board's solar ideals and satisfies the elements set forth at N.J.A.C. 14:8-

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<sup>1</sup> President Solomon has recused himself from this matter based upon ex parte communications from a representative from Sunolar, and as such has taken no part in the discussion or deliberations.

2.1(a). Without the waiver, Sunolar claims, the project is not financially viable and very likely physically infeasible. Petition at & 10.

Sunolar asserts that, despite connecting at 230kV, the system should not be considered as connected to transmission, as the power “will almost certainly be consumed” in New Jersey. Petition at & 35 According to Sunolar, this would ensure that New Jersey receives the appropriate benefits in conjunction with the Board’s issuance of SRECs. Sunolar is aware of Atlantic City Electric Company’s recent request for a declaratory ruling, finding that 69kV facilities can and should be considered as “distribution” in its territory for purposes of SREC eligibility. Sunolar believes that in the same way Atlantic City Electric Company is seeking this determination, it is appropriate for the Board to grant this waiver for a project that would be served by Orchard’s 230 kv lines. Petition at & 63.

Sunolar maintains that the definitions in N.J.S.A. 48-3-51 are ambiguous, and allow the Board to determine how best to apply the elements. Specifically, N.J.S.A. 48:3-51 defines “transmission and distribution system” as

with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned, or controlled by the electric public utility within this State

while the definition of “SREC” in that same section is a

certificate issued by the board or its designee representing one megawatt hour (MWh) of solar energy that is generated by a facility connected to the distribution system in this State and has value based upon, and driven by, the energy market.

Sunolar claims that as distribution system is not defined in the statute, and as the definition of “electric distribution system” at N.J.A.C. 14:8-2.9(d) is ambiguous, the Board has the ability to refine the conditions to allow a project that otherwise provides the types of benefits envisioned by the statute and the regulations to qualify for SRECs. Petition at & 70.

Board Staff has recommended that the Board deny the waiver request. Staff believes that while “distribution system” is not defined in the statute, it is defined in the Board’s rules at N.J.A.C. 14:4-1.2 as “that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer’s premises.” Board Staff further believes that the 230kV system can not, in any reasonable manner, be considered as “distribution.” According to Staff, a 230kV line is a transmission line in every sense of the word, and is designed and designated as such by nearly every electric distribution company in the State. Additionally, the Federal Energy Regulatory Commission has jurisdiction over these lines and the designation of these lines as “distribution” does not fit the technical nature of the lines,

Additionally, Staff noted that a waiver may be granted pursuant to N.J.A.C. 14:8-2.9(e) only if the Board determines that providing SRECs to a project would significantly advance “the

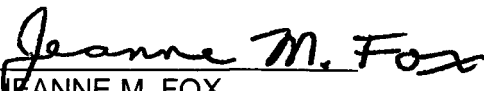
development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation; and support the reliability of the supply of electricity in New Jersey.” The arguments set forth by Sunolar have not persuaded Staff that that this 20 MW grid connected project will significantly advance these goals, especially as, according to recent reports available on the Board’s Office of Clean Energy website, sufficient conforming solar development exists in the pipeline to meet the State’s solar mandates at this time.

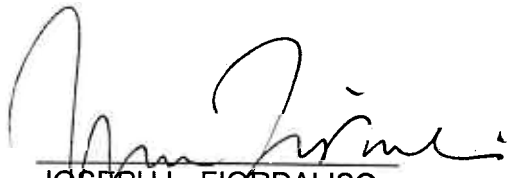
Based on facts and circumstances specific to this matter as set forth above, the Board accepts Board Staff’s recommendations. The Board **HEREBY FINDS** that the rules at N.J.A.C. 14:4-1.2 define “distribution system” and that a 230kV line cannot be considered as “distribution” for the purpose of determining whether a solar project qualifies for SRECs. The Board **FURTHER FINDS** that this 20 MW grid connected project will not significantly advance the goals set forth in N.J.A.C. 14:8-2.9(e) so as to warrant a waiver since sufficient qualifying projects are already in the pipeline.


Accordingly, the Board **HEREBY DENIES** the petition of Sunolar to waive the provisions of N.J.A.C. 14:8-2.9(d)(1) requiring that a generating facility be interconnected with an electric distribution system that supplies New Jersey so as to allow the proposed 20MW generation facility adjacent to the Atlantic City Electric Company’s Orchard Substation in Upper Pittsgrove Township to be connected to a 230kV transmission line and be qualified for the issuance of SRECs.


DATED: 8/4/11

BOARD OF PUBLIC UTILITIES  
BY:

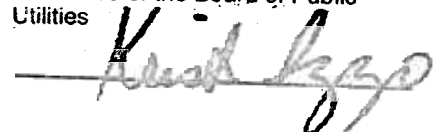
  
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COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

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



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