



Agenda Date: 7/19/13
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

)	ORDER
)	
IN THE MATTER OF THE IMPLEMENTATION OF L.)	
2012, C. 24, THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF L.)	
2012, C. 24 (Q)(R)(S) PROCEEDINGS TO ESTABLISH)	
THE PROCESSES FOR DESIGNATING CERTAIN GRID)	
SUPPLY PROJECTS AS CONNECTED TO THE)	
DISTRIBUTION SYSTEM – REQUEST FOR APPROVAL)	
OF GRID SUPPLY SOLAR ELECTRIC POWER)	
GENERATION PURSUANT TO SUBSECTION (S))	DOCKET NO. EO12090880V
)	
COMMUNITY ENERGY RENEWABLES, LLC – PJM W1-)	
127 – MOTION FOR RECONSIDERATION)	DOCKET NO. EO12121134V

Party of Record:

Walter N. Wilson, Esq., on behalf of Community Energy Renewables, LLC

BY THE BOARD:

Community Energy Renewables, LLC. ("Community Energy" or "Petitioner"), on behalf of its wholly owned subsidiary Harmony Solar LLC ("Harmony") has moved for reconsideration of the Board's Order dated May 10, 2013, in the above-captioned matter ("May 10 Order") denying its application to be designated as "connected to the distribution system" pursuant to L. 2012, c. 24, sec. 3 ("Solar Act"), codified as N.J.S.A. 48:3-87 (s) ("Subsection s").

BACKGROUND

As described in more detail in the May 10 Order, the Solar Act, a bi-partisan effort to stabilize the solar market, was signed into law by Governor Chris Christie on July 23, 2012, and took effect immediately. The law amends N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87, provisions of the Electric Discount and Energy Competition Act which requires, among other things, that retail sellers of electricity comply with the State's renewable portfolio standards ("RPS"). The RPS encourages the production of renewable energy.

Prior to the Solar Act, whether solar generated electricity could be the basis for an Solar Renewable Energy Certificates (SREC) usable for RPS compliance depended on meeting the

requirements of N.J.A.C. 14:8-2, including but not limited to pre-registration through N.J.A.C. 14:8-2.4, which is commonly referred to as the SREC Registration Program ("SRP"). One of the RPS requirements is that the energy be generated at a facility issued a Certification Number through the Board's registration process. See N.J.A.C. 14:8-2.4(a). The registration process includes an application and review process to determine whether a solar facility meets SREC eligibility requirements. N.J.A.C. 14:8-2.4(f). After review is completed, and provided that SREC eligibility requirements are satisfied, the facility is issued a conditional registration. The notice of conditional registration, also known as the SRP acceptance letter, which includes an expiration date twelve months from its issuance, states that if the solar facility is constructed which meets all program eligibility requirements including compliance with all federal, state, and local laws, a Certification Number will be issued for the solar facility upon completion of construction, submission of a final as-built package, and inspection. N.J.A.C. 14:8-2.4(f)(4)(i) and (ii).

Following conditional registration, construction of the solar facility could begin, and the facility must be completed prior to the registration expiration date, although one extension is allowed. See N.J.A.C. 14:8-2.4(f)(5) and (g). It is not until after the facility owner submits a post-construction certification package that includes a copy of the approval from either the relevant electric distribution company or PJM Interconnection, L.L.C. ("PJM") to interconnect and energize the facility, and after inspection of the facility or waiver of inspection per N.J.A.C. 14:8-2.4(i) and (k), that a Certification Number is assigned to the facility for use in obtaining SRECs from PJM-Environmental Information Services Generation Attribute Tracking System ("PJM-EIS GATS"). N.J.A.C. 14:8-2.4(l). See N.J.A.C. 14:8-2.2 (definition of "Generation Attribute Tracking System").

The Solar Act adds requirements that are not in the SRP for Board approval or designation of certain projects as being "connected to the distribution system" in order to earn SRECs. Subsection s applies to land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to -23.24, at any time within the 10 year period prior to the effective date of the Solar Act ("farmland"). Under Subsection s, a solar electric power generation facility on qualifying farmland that is not net-metered or an onsite generation facility (that is, the electricity is not being used to satisfy the electrical needs of structures on or adjacent to the land where the solar facility is located) is subject to a review process by the Board to determine whether the proposed project should be approved as connected to the distribution system and therefore eligible to earn SRECs. N.J.S.A. 48:3-87(s)(2). This is incremental to satisfaction of the Board's SREC Registration Program ("SRP") process.

After notice, a public hearing, and opportunity for oral and written comments, on November 30, 2012, Board Staff distributed the Subsection s(2) application via mass email distribution to renewable energy stakeholders, and posted the application form on its webpage and on the webpage of the New Jersey Clean Energy Program. Any company applying for eligibility for SRECs under N.J.S.A. 48:3-87(s)(2) was required to submit a completed application package by December 17, 2012. The application required responding to twenty seven questions, all, as noted in the May 10 Order "designed specifically to aid Staff in making a recommendation to the Board as to which proposed projects should be approved[.]" May 10 Order at 12-14.

As noted in the May 10 Order, Staff reviewed a total of fifty seven applications and ranked them according to the extent of each application's progress toward completion.¹ The key criteria

¹"Completion" includes all the activities required in developing a project, including but not limited to construction.

utilized by Staff to judge project progress included the application submissions regarding project completion status, anticipated completion date, pictures of any completed construction, and percentage of funding expended. Based on these criteria and on its field inspections of the twelve projects which Staff determined were most advanced on the basis of the criteria, Staff recommended for approval and the Board approved three applications. In re the Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(q)(r)(s), Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System, Approval of Application for SunPerfect, Inc., W1-132, Approval of Application for OCI Solar Power, LLC, W1-112, Approval of Application for NJ Clean Energy Ventures, W2-056, Dkt Nos. EO12090880V, EO12121101V, EO12121106V, EO12121142V (May 8, 2013).

Staff also considered whether a project had obtained all final, non-appealable local, state, and federal approvals and permits. Question number two on the application asked explicitly whether approvals had been obtained and read as follows:

Have all final unappealable federal, state, regional and local approvals been secured? Yes or No: _____

Staff considered the possession of these approvals as a strong indicator that completion was likely as a solar project cannot lawfully be constructed without all of these approvals. When the applications which Staff was not recommending for immediate approval were reviewed using this criterion as a bright line, Staff recommended, and the Board approved, deferral of final decision for twenty of the fifty seven projects, final determinations to be made following development of additional evaluation criteria. May 10 Order at 50, 57.

Thirty four projects remained. Seven projects failed to meet the minimum statutory criteria and were denied on that basis. Finally, Staff determined that the remaining twenty seven applications were neither substantially completed nor had received all final, non-appealable approvals and permits. Staff recommended that these applications be denied and the Board did so.

Among the projects denied was Harmony's. According to Staff's review, the application indicated that project construction financing had not been secured, that the project had been not been installed, that equipment was not purchased; that construction had not commenced, and that there were currently no materials on site. In addition, the system had not been authorized to energize and was not interconnected, although an SREC off take contract had been secured. Lastly, the application indicated that all the requisite federal, state, regional and local approvals had not been secured. Staff therefore recommended denial based on its review of all of the above factors concluding that "this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative..." May 10 Order at 31.

MOTION FOR RECONSIDERATION

On June 3, 2013, Community Energy on behalf of Harmony filed a motion for reconsideration by the Board. Petitioner seeks to have its application "deferred" rather than "denied." According to the motion, Harmony submitted a completed application by the December 17, 2012 due date with copies of various state approvals which had been secured. Harmony admitted that it had not received building permits and marked item 2 on the application accordingly. Community Energy maintains that it had all the required final unappealable approvals, and its application should have been deferred because it had unappealable land use approvals and it was only the construction permits that had not been secured.

In support of its request, Petitioner has submitted certifications from Walter N. Wilson, Esq. ("Wilson Certification") and David Krupp, the project developer ("Krupp Certification"). Mr. Wilson stated that he was the attorney for Harmony with regard to obtaining approvals for its project, and that "all requisite approvals" had been obtained months prior to the Subsection s application deadline of December 17, 2012. Wilson Certification at para. 3, 4. Mr. Krupp stated that he had prepared the Subsection s applications for Harmony. He stated that he had answered question number two, relating to final, unappealable approvals, with a "no" followed by an asterisk, and that following the asterisk he had explained his response by stating that all land use approvals had been obtained but that "[b]uilding permits approvals "Twp and NJ DECP (sic) have not been secured." Mr. Krupp goes on to itemize the land use approvals obtained from Harmony Township, the relevant Warren County agencies, and the New Jersey Department of Environmental Protection. Krupp Certification at para. 8.

Mr. Krupp also avers that he personally investigated the status of building permits for four other applications reviewed under Subsection s which were deferred rather than denied. As a result of this investigation, he states that he confirmed that building permits had not issued for these four projects. Krupp Certification at para. 6. Mr. Krupp concludes that the Board has not interpreted question number two on the Application to refer to building permits and that his response, which began with the word "No" but went on to clarify that the only permits not yet received were building permits, should be deemed a "Yes" and that, in consequence, the Harmony project should be included among the deferred projects for further consideration. Krupp Certification at para. 9.

DISCUSSION AND FINDING

Following review, the Board **FINDS** that nothing in Community Energy's request requires the Board to modify or otherwise reconsider its decision. Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. E.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious or unreasonable. D'Atria, supra, 242 N.J. Super. at 401

N.J.A.C. 14:1-8.6 requires that a request for rehearing or reconsideration be done by a motion that enumerates the alleged errors of law or fact, and where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. Community Energy conformed to the requirements of the regulation. But this Board will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not find that the issues raised by Petitioner are sufficient to warrant reconsideration or modification.

Community Energy claims that its project satisfies the Board's requirements for deferral rather than denial based on its understanding that building and construction permits are not the approvals that Staff determined were essential for deferral. According to Community Energy, it misinterpreted question 2 on the Application which should have been answered, "yes." Additionally, other applicants lacking building permits were deferred, and to be consistent, the Board should reconsider its denial of the Harmony project.

The Board has carefully reviewed the motion and the allegations made in the motion. Board Staff is conducting an independent investigation of the four applications which Petitioner claimed were in fact similarly situated in that they had not yet received building permits although they had all other approvals but were deferred rather than denied.

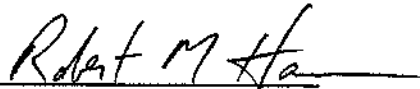
The Board does not regard this apparent discrepancy as a basis for modifying its decision in the instant matter. Rather, it appears that the applicants in question misapprehended the intent of the question regarding receipt of all final, non-appealable approvals. The Board will not address those other applications in this docket. The Board **HEREBY CLARIFIES** that "all . . . local approvals" includes building and construction permits as those are prerequisites for actual construction of the proposed facility.

The Board has reviewed the motion for reconsideration, the supporting documentation, and Staff's recommendation. The Board **FINDS** that Petitioner has not received its building permits and therefore, Petitioner has not received all final non-appealable federal, state, and local use approvals. In addition, although only the issue of the finality of the approval was raised by the motion, the Board notes that Staff evaluated the proposed project using all of the criteria described above and found it wanting in various other respects.

Accordingly, the Board **HEREBY DENIES** the Petitioner's request that the Board modify the May 10 Order and reclassify the Harmony project as deferred rather than denied.

DATED: 7/19/13

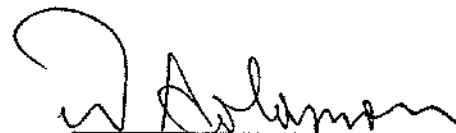
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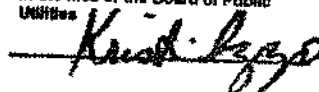
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ATTEST:


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



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 (Q)(R)(S) PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM – REQUEST FOR APPROVAL OF GRID SUPPLY SOLAR ELECTRIC POWER GENERATION PURSUANT TO SUBSECTION (S)

COMMUNITY ENERGY RENEWABLES, LLC – PJM W1-127

DOCKET NOS. EO12090832V, EO12090880V & EO12121134V

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