



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE TIOGA SOLAR HOLMDEL, )  
LLC PETITION TO EXTEND SOLAR RENEWABLE ) ORDER  
ENERGY CERTIFICATE PURCHASE AND SALE )  
AGREEMENT WITH JERSEY CENTRAL POWER & )  
LIGHT COMPANY )  
DOCKET NO. EO12020132V

Parties of Record:

**Michael J. Connelly, Esq. Morgan, Lewis & Bockius, LLP**, on behalf of Jersey Central Power and Light Company  
**Justin K. Krum, President**, Tioga Solar Holmdel, LLC

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of Tioga Solar Holmdel, LLC ("Tioga Solar" or "Petitioner") for an extension of time, nunc pro tunc, to complete a solar energy project under its Solar Renewable Energy Certificate ("SREC") long-term contract with Jersey Central Power & Light ("JCP&L" or "the Company").

On or about February 25, 2011, as a winning bidder in JCP&L's SREC financing solicitation, Tioga Solar entered into an SREC Purchase and Sale Agreement ("PSA") with JCP&L for the SRECs from the solar energy to be generated from a system of approximately 255 kilowatts (kW) to be located at a site owned by St. Benedict's Catholic Church ("St. Benedict's" or "Host"). Contemplated project completion for the project was on or prior to February 25, 2012 ("Expiration Date"). On February 9, 2012, Petitioner filed this petition seeking a 180-day extension of the PSA with JCP&L.

Petitioner stated that project completion had been delayed by unforeseen and unavoidable events beyond its control. In particular, the petition cited delays due to a prolonged period securing a municipal variance that was found to be necessary, two different solar financing companies withdrew from the project, and the roof where the project was to be located needed restructuring. According to the petition, resolving these issues delayed the construction schedule.

By letter dated November 15, 2012, signed by Petitioner's principal, Mr. Justin Krum, Petitioner certified that its project had been substantially completed by February 24, 2012, with ground mount installation fully complete by February 19, 2012 and rooftop photovoltaic installation complete by February 15, 2012. ("Krum Certification"). Mr. Krum also stated that authorization

to energize was received from JCP&L on May 16, 2012, and that Petitioner received written notice from JCP&L that its system had passed all inspections on June 11, 2012. The SREC meter was installed on or about September 25, 2012.

By letter dated November 16, 2012, JCP&L confirmed that it authorized Petitioner to operate on May 16, 2012. JCP&L did not take a position on the requested extension but requested that certain conditions be included in any approval. Specifically, the Company asked that the Board clarify that JCP&L is not obligated to purchase any SREC that is claimed to have been created prior to September 25, 2012, when the SREC meter was installed; and that the term of the SREC PSA shall not extend beyond ten years from May 16, 2012, when Petitioner obtained authorization to operate from JCP&L.

## **DISCUSSION AND FINDINGS**

As a threshold matter, the Board notes that as the Expiration Date for the PSA at issue occurred prior to the Board's March 2012 Order authorizing the EDCs to grant first extensions of the completion dates under the PSAs. Therefore, the extensions of the contracts at issue are properly before the Board.

In addressing Petitioner's request for an extension of time to complete under its SREC financing contract with JCP&L, the Board looks to the language of the General Terms and Conditions of the PSAs with JCP&L ("General Terms"). The General Terms provide that:

...in the event the Commencement Date has not occurred within one year of the Effective Date, Purchaser shall have the right, exercisable upon written notice to Seller, to terminate this Agreement without further obligation or liability to Seller and shall be under no further obligation to advance this Agreement. Such one-year period may be extended only by Order of the Board following formal petition to the Board for such an extension.

Exhibit A to PSA, General Terms at Par. 3

The Board has previously ruled upon requests for an extension made by participants in long-term SREC contracts. In reviewing such requests, the Board has looked first at whether the applicant could document significant progress toward completion of the project and, second, whether the delay was unavoidable and unforeseeable at the time of the execution of the PSA. I/M/O Smart Energy Capital, LLC. – Extension Request for SREC Purchase Sale Agreement with JCP&L, Dkt. No. EO12010081V (2/10/12); I/M/O GLC(NJ) NACR2.LLC - Extension Request for SREC PSA with Rockland Electric Company, Docket No. EO12060555V (August 15, 2012).

Applying the standard to the matter at hand, the Board looks at the representations made in the petition as well as in the Krum Certification that: 1) Petitioner had made substantial progress on the project prior to the Expiration Date; and 2) the project has now been finished. The facts underlying the certification include, but are not limited to the following: 1) the roof mount was complete by February 15, 2012; 2) the ground mount installation was complete by February 19, 2012; 3) the Petitioner obtained a work order from JCP&L to relocate their transformers and interconnect the project on February 23, 2012; and 4) the Petitioner informed JCP&L on or about February 24, 2012, that the project was substantially complete. Therefore, the Board **FINDS** that Petitioner has documented significant progress toward completion of the projects prior to the Expiration Date. In addition, the Board **FINDS** that Petitioner received permission to

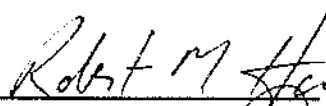
energize the Project on May 16, 2012 and that JCP&L installed a meter to record SREC generation on September 25, 2012.

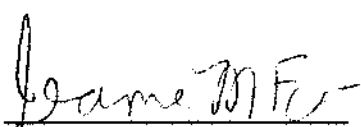
In the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner applied for the relevant incentive. In the instant matter, Petitioner indicates that unexpected financing issues, zoning variance requirements imposed by local permitting authorities, and structural changes to the rooftop on which the solar installations were to be installed resulted in unforeseen delay. The Board **FINDS** that the delays caused by the permitting process and structural issues were unavoidable and unforeseeable at the time Petitioner entered into its PSA with JCP&L as part of the SREC long-term financing program. After consideration of the above, the Board **HEREBY GRANTS**, as within time, an extension of the deadline for completion of the project under the PSA with JCP&L to June 20, 2012.

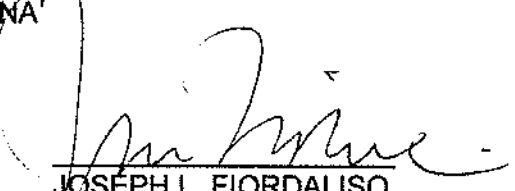
Regarding JCP&L's request for clarification of its obligation to purchase SRECS from Petitioner, N.J.A.C. 14:8-2.9(c) is applicable. Pursuant to the regulation, as of "December 4, 2012, in measuring generation to determine the number of RECs or SRECs to issue, the Board or its designee shall accept only readings of a meter that records kilowatt-hour production of electrical energy . . ." Ibid.; see In the matter of Atlantic City Electric Co. Renewable Energy Portfolio Standard – Amendments To The Minimum Filing Requirements For Energy Efficiency, Renewable Energy, And Conservation Programs; And For Electric Distribution Company Submittals of Filings In Connection with Solar Financing, Docket No., EO08100875 (March 27, 2009) (requiring installation of meters to record SREC generation). Therefore, the Board **CONCLUDES** that it is reasonable and in accord with the cited authority, to require purchase of SRECs by the electric distribution company only after a meter has been installed. The other issues raised in JCP&L's November 16, 2012, correspondence are beyond the scope of this Order.

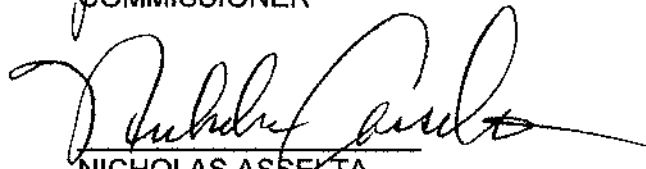
DATED: 12/19/12


BOARD OF PUBLIC UTILITIES  
BY:

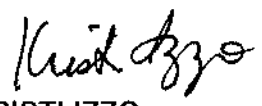
  
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COMMISSIONER

  
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COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

! 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 TIAGA SOLAR HOLMDEL, LLC PETITION TO EXTEND SOLAR  
RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT WITH JERSEY  
CENTRAL POWER & LIGHT COMPANY  
DOCKET NO. EO12020132V

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IN THE MATTER OF THE PETITION OF  
TIOGA SOLAR HOLMDEL, LLC FOR AN  
EXTENTION OF SOLAR RENEWABLE  
ENERGY CERTIFICATE (SREC)  
PURCHASE AND SALE AGREEMENT  
WITH JCP&L

BPU MAILROOM  
STATE OF NEW JERSEY BOARD OF  
PUBLIC UTILITIES BPU  
Docket Nos. EO08108875, EO08090840, and  
EO09020097  
VERIFIED PETITION

Tioga Solar Holmdel, LLC (the "Company") respectfully submits this petition to the New Jersey Board of Public Utilities (the "Board"), pursuant to N.J.A.C. 14:1-1 *et seq.* Tioga Solar Holmdel, LLC is solar energy service provider, and its parent company, 1<sup>st</sup> Light Energy, Inc., operates across a national marketplace. Headquartered in New Jersey, Tioga Solar Holmdel, LLC, along with its parent company, maintains a west coast office in Modesto, California. Tioga Solar Holmdel, LLC and its parent company provides a fully managed service: the Company finances, installs, operates, monitors, and maintains photovoltaic systems for commercial, government and utility customers without the high capital outlays traditionally associated with solar energy. To date, Tioga Solar Holmdel, LLC and its parent company has more than fifteen (15) MW of solar energy capacity national wide, across more than one thousand two hundred (1,200) operational sites.

In this petition, Tioga Solar Holmdel, LLC seeks an Order of the Board to extend the SREC Purchase and Sale Agreement, with an effective date of February 25, 2011, REIPNR #09078, to which the Company is party with JCP&L (the "Agreement"). The Agreement is in respect of the following project ("Project") at a site owned by St. Benedicts Catholic Church (the "Host"):

- 255.15 kW DC systems at 155 Bethany Road, Holmdel, New Jersey 07733

Tioga Solar Holmdel, LLC and JCP&L entered the Agreement pursuant to the Board's Order dated February 25, 2011 in Docket Nos. EO08108875, EO08090840, and EO09020097 (the "SREC Contracting Order"). Section A.3. of Appendix A (General Terms) of the Agreement requires that the Project be completed within twelve (12) months of the effective date. This section states that "[s]uch one-

year period may be extended only by Order of the Board following formal petition to the Board for such an extension.”

The Host, St. Benedicts Catholic Church, originally began this Project in 2007. During that time, the Host enrolled into the New Jersey Solar Program, a program that would not be available the following year. The Host waited patiently in the queue for this solar program for over one and a half (1.50) years, and in that time the Project was unsuccessful due to a number of unforeseen circumstances. These circumstances include two (2) separate solar financing companies that initially obtained the funding necessary to complete the project, only to have the funding sources withdraw from the companies. Tioga Solar Holmdel, LLC , who has the financing in place to see the Project complete, is now the owner of the contract for the Project, is the developer of the Project, and is the EPC of the Project.

Although Tioga Solar Holmdel, LLC has made diligent efforts to complete the Project by the commencement date required by the Agreement, the Company has encountered unavoidable delays. These delays were beyond Tioga Solar Holmdel, LLC’s reasonable control and not due to any party’s negligence or misconduct.

The Project will be the first system that Tioga Solar Holmdel, LLC has constructed on the site owned or controlled by the Host. In addition to the issues with financing, when the Project was presented before the Township of Holmdel it was discovered that the Project would need to obtain a variance. After one and a half (1.50) years, and many legal fees, the Host was able to secure the variance necessary to proceed with the Project. Furthermore, Tioga Solar Holmdel, LLC encountered site conditions not reasonably discoverable prior to the commencement of construction. The roof of the Project site needed restructuring where the solar mounting was to be placed. Addressing these issues added many weeks to the planning and construction schedule.

Now, the Host has their processes in place and the site conditions have been addressed. As such, Tioga Solar Holmdel, LLC could complete construction and have the Project ready to be placed into operation within 120 days. Unfortunately, Tioga Solar Holmdel, LLC may be forced to halt work until it has certainty as to whether the Agreements will be extended or whether it will be terminated.

Currently, the status of the Project is as follow:

- Racking:
  - 100% of the roof racking has been installed.
  - The estimated date of completed installation for the ground racking is February 29, 2012, given that there are no unusual weather factors.
- Modules:
  - 100% of the modules are in the possession of Tioga Solar Holmdel, LLC .
  - The estimated date of completed installation for the modules is March 15, 2012, given that there are no unusual weather factors.
- Electrical Wiring:
  - 100% of the wire is in the possession of Tioga Solar Holmdel, LLC .
  - The estimated date of completed installation for the electrical wiring is March 30, 2012, given that there are no unusual weather factors.
- Interim Completion:
  - Scheduled to occur between April 01, 2012 and April 07, 2012.

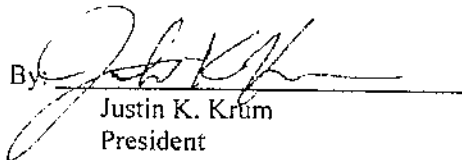
In the absence of an extension, Tioga Solar Holmdel, LLC must cancel the Project. This would represent the loss of 255 kW of solar capacity that would otherwise have been installed in New Jersey. This will also result in the loss of a solar project for St. Benedicts Catholic Church, a non-profit organization. Non-profit organizations are the most underserved sectors of the solar industry due to the lack of solar financing that is available to these types of organizations.

For these reasons, Tioga Solar Holmdel, LLC respectfully requests that the Board extend the Agreement by 120 days, with such extension effective as of the date the Board's Order. The requested 120-day

extension takes into account the possibility that the Company may have to halt work until an Order is issued. In light of the imminent termination date of the Agreement, Tioga Solar Holmdel, LLC requests that the Board act on this petition before February 25, 2012.

Respectfully submitted,

Tioga Solar Holmdel, LLC

By: 

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