



Agenda Date: 2/10/12
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF GLC (NJ) NACR 2, LLC)
EXTENSION REQUEST FOR SOLAR RENEWABLE)
ENERGY CERTIFICATE (SREC) PURCHASE SALE)
AGREEMENT (PSA) WITH JERSEY CENTRAL)
POWER AND LIGHT COMPANY)
ORDER
DOCKET NO. EO12010066V

Parties of Record:

James C. Meyer, Esq., Ryker Danzig, Scherer, Highland & Perretti, on behalf of GLC (NJ) NACR 2, LLC
Anthony Lebe, Esq., General Counsel, Green Lake Capital, LLC
Zac Christie, Borrego Solar Systems, Inc.
Michael Connolly, Esq. Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power and Light Company

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities ("Board") considers the petition of GLC (NJ) NACR 2, LLC ("GLC" or "Petitioner") for an extension of time to complete its solar energy projects under its Solar Renewable Energy Certificate ("SREC") long-term contracts for financing with Jersey Central Power & Light Company ("JCP&L").

On or about February 25, 2011, as a winning bidder in JCP&L's SREC financing auction, GLC entered into a SREC Purchase and Sale Agreement ("PSA") with JCP&L for the SRECs from approximately 230 kilowatts ("kW") of solar energy to be produced by the solar electric facility. GLC would build at a cemetery owned by the Archdiocese of Newark, with contemplated project completion by February 25, 2012. On January 18, 2012, GLC filed a formal petition with the Board requesting expedited review of its request for a one hundred and eighty-day extension for completion of the project, alleging that the review process required by the local permitting authorities had resulted in a delay of over one hundred days. According to the petition, GLC was not yet in possession of its building permit and would not be able to complete construction prior to February 25, 2012 as required under the PSA. GLC alleges the delay it has encountered in the permitting process have been longer than those it has previously experienced.

GLC requested the one hundred and eighty-day extension so it can complete the project as prescribed in the PSA, if the extension is granted. GLC maintained that its contractor, Borrego Solar Systems, Inc. ("Borrego") has made significant progress toward installing the solar electric facility including the purchase of such major components as the solar modules and the inverter. GLC also maintained that Borrego has diligently sought the necessary permits, and has addressed all of the concerns of the East Hanover zoning board and building department, finally receiving approval of the project on December 13, 2011. Petitioner provided a supplemental certification signed January 17, 2012 by its Site Superintendent, Chris Sabin, attesting to the specific progress made on the project and providing further explanations of the reasons for the delays ("Certification"). By letter dated January 26, 2012, JCP&L has confirmed that it has no objection to the requested extension.

DISCUSSION AND FINDINGS

In addressing Petitioner's request for an extension of time to complete pursuant to its SREC financing contracts 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 Dobco, Inc. – Request Extension for SREC Purchase Sale Agreement with JCP&L and I/M/O Request for Extensions of Project Completion in the SREC Registration Program REIPNR-06120, REIPNR-06121 REIPNR-06621 REIPNR-06631 REAPNO-06744 REIPNR-06745, Docket Nos. EO11050269V and EO08090840 (July 1, 2011); I/M/O Dykes Lumber Company – Request Extension for SREC Purchase Sale Agreement with JCP&L and I/M/O Request for Extensions of Project Completion in the SREC Registration Program, Docket No. EO11060350V (July 14, 2011).

In applying this standard to the matter at hand, the Board looks at the representations made in the petition as well as in the Certification that:

- Petitioner's contractor has prepared detailed plans and schedules for completing the project; and
- Petitioner's contractor has the major components of the facility and has stored them near the site where the installation is to be located.

The Board **FINDS** that Petitioner has documented significant progress toward completion of the project.

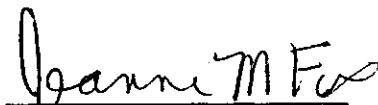
In the second prong of the analysis, the Board looks at whether the cause of the delay was unavoidable and unforeseeable at the time Petitioner applied for the relevant incentive, in this case, application to the long-term SREC financing program. In the instant matter, Petitioner avers the primary reason for the construction delay was an extremely time-consuming review process by the local permitting authorities. The Board **FINDS** that the delay caused by the permitting process was 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** the request for an extension of the deadline for completion of the projects under the PSAs with JCP&L to July 23, 2012.¹


DATED: 2/10/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

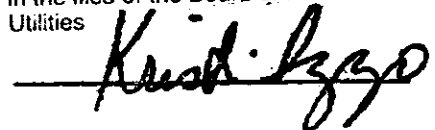

NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
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



¹ Petitioner will need to re-register the referenced project in the SREC Registration Program in order to maintain its eligibility to generate SRECs. See Dobco Order, supra, at 3.

IN THE MATTER OF GLC (NJ) NACR 2, LLC EXTENSION REQUEST
FOR SOLAR RENEWABLE ENERGY CERTIFICATE (SREC) PURCHASE SALE
AGREEMENT (PSA) WITH JERSEY CENTRAL POWER AND LIGHT COMPANY (JCP&L)

DOCKET NO. EO12010066V

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C O U N S E L O R S A T L A W
A Pennsylvania Limited Liability Partnership

RANDALL B. SUNBERG
Partner-in-Charge

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January 26, 2012

VIA FEDERAL EXPRESS

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Fl
Trenton, NJ 08625-0350

Re: In the Matter of the Verified Petition of GLC (NJ) NACR2, LLC for an extension of a
SREC Purchase and Sale Agreement with JCP&L
BPU Docket No. EO12010066V

Dear Secretary Izzo:

This office represents Jersey Central Power & Light Company ("JCP&L" or "Company"). In connection with the above-referenced matter, JCP&L has been made aware of the January 18, 2012 petition ("Petition") by GLC (NJ) NACR2, LLC ("GLC") to the New Jersey Board of Public Utilities ("Board") to extend a certain Solar Renewable Energy Certificates Purchase and Sale Agreements ("SREC-PSA"). Insofar as the Petition pertains to the extension of the latest Commencement Date under the following SREC-PSA between GLC and JCP&L, for GLC's Archdiocese of Newark – Gate of Heaven Cemetery solar project, the Company does not object to GLC's request for an extension, but takes no position with respect to the merits of the request for a one hundred eighty (180) day extension of the Commencement Date of the SREC-PSA to July 23, 2012 as set forth in the Petition:

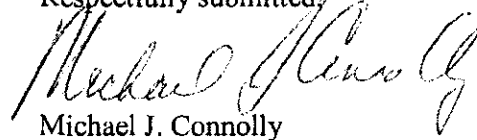
**Solar Renewable Energy Certificate Purchase and Sale Agreement, Dated
(Effective Date) February 25, 2011. Commencement Date before February 25,
2012 (REIPNR-09199)**

Kristi Izzo, Secretary
January 26, 2012
Page 2

Morgan Lewis
COUNSELORS AT LAW
A Pennsylvania Limited Liability Partnership

Please return a time-stamped copy of this letter to me for our records using the enclosed, stamped and self-addressed envelope. If you have any questions, please feel free to contact me.

Respectfully submitted,



Michael J. Connolly

c: via Electronic Mail & Regular U.S. Mail:
James C. Meyer, Esq.
Rachel Boylan – Board Staff
Allison Mitchell – Board Staff
Benjamin Scott Hunter, Office of Clean Energy
Michael Winka, Director, Office of Clean Energy
Stephanie Brand, Esq. – Division of Rate Counsel
Babette Tenzer, DAG
Tony Lebe, Esq. Green Lake Capital, LLC
Mr. Thomas Donadio – JCP&L (Rates Department)
Mr. Richard Schreader – JCP&L – Regulated Commodity Sourcing

Kristi Izzo, Secretary
January 26, 2012
Page 3

Morgan Lewis
COUNSELORS AT LAW
A Pennsylvania Limited Liability Partnership

bc: A. Korkosz, Esq. – FirstEnergy
A. Juterbock, Esq. - FirstEnergy
M. Mader – JCP&L Rates



**RIKER
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ATTORNEYS AT LAW

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Reply to: Morristown

January 27, 2012

Via Hand Delivery

Honorable Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
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CLEAN ENERGY PROGRAM

Re: In the Matter of the Verified Petition of GLC (NJ) NACR 2, LLC For An Extension of A Solar Renewable Energy Certificate (SREC) Purchase and Sale Agreement With Jersey Central Power & Light Company, BPU Docket No. EO12010066V

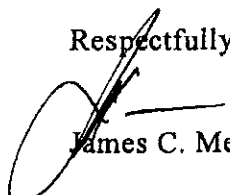
Dear Secretary Izzo:

On behalf of Petitioner GLC (NJ) NACR 2, LLC, enclosed for filing please find an original and seven copies of:

1. the Certification of Chris Sabin, Site Superintendent, Borrego Solar Systems, Inc., in support of the Verified Petition
[note that the undersigned added the Docket Number to the first page of the Certification]; and
- (2) the original executed Verification page for the January 18, 2012 Verified Petition.

Please contact me if you have any questions regarding this matter. Kindly stamp the enclosed extra copy "filed" and return it to me in the enclosed self-addressed, postage paid envelope.

Respectfully submitted,


James C. Meyer

JM/mf
Enclosures
c: Service List (via e-mail and first class mail)

1/9/12

SERVICE LIST

Verified Petition of GLC (NJ) NACR 2, LLC For An Extension of A Solar Renewable Energy Certificate (SREC) Purchase and Sale Agreement With Jersey Central Power & Light Company

BPU/STAFF

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ICP&L

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Attorneys for
GLC (NJ) NACR 2, LLC

IN THE MATTER OF THE VERIFIED)
PETITION OF GLC (NJ) NACR 2, LLC)
FOR AN EXTENSION OF A SOLAR)
RENEWABLE ENERGY CERTIFICATE)
(SREC) PURCHASE AND SALE AGREEMENT)
WITH JERSEY CENTRAL POWER & LIGHT)
COMPANY)

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

Docket No. EO12010066V
Clean Energy

CERTIFICATION OF
CHRIS SABIN

I, Chris Sabin, of full age, certify as follows:

1. I am the Site Superintendent of Borrego Solar Systems, Inc. ("Borrego" or "we") and my office address is Borrego Solar Systems, Inc., 205 Industrial Avenue E, Lowell, MA 01852. I make this Certification in support of the Verified Petition ("Petition") of GLC (NJ) NACR 2, LLC ("GLC" or "Petitioner") for the expedited issuance of a Board of Public Utilities ("Board") Order extending the time in which to complete an operational photovoltaic project pursuant to a Solar Renewable Energy Certificate Purchase and Sale Agreement ("PSA") by and between Jersey Central Power & Light Company ("JCP&L") and GLC. I have personal knowledge of the facts set forth herein.

2. Borrego is the engineering, procurement, and construction contractor to GLC for the Project that is the subject of the Petition, namely the installation of a 230 kw photovoltaic system located at the Gate of Heaven Cemetery, 225 Ridgedale Avenue, East Hanover, New

Jersey 07936, with the Host being the Archdiocese of Newark (the "Project"). In my role as the Site Superintendent for Borrego, I am fully familiar with the efforts to design, procure, permit and construct the Project.

3. This Certification will address (1) the significant efforts of GLC and Borrego to complete the Project within one year of the effective date of the PSA, (i.e. before February 25, 2012) and (2) the unavoidable and unforeseen delays that will prevent completion by that date and necessitate an extension.

4. Borrego spent dozens of man hours designing and engineering the Project and preparing detailed plans and schedules for constructing the Project, all of which have been long since completed.

5. Borrego has purchased all of the of the major Project components, and had them delivered to New Jersey where they have been stored for many months and are awaiting installation. Specifically, Borrego ordered the solar modules, the most expensive component of the Project and the component generally requiring the longest lead time from manufacturers on or about April 19, 2011, accepted delivery of the solar modules on or about June 30, 2011 and immediately commenced paying to store them at a leased warehouse located at 180 Mill Road, Edison, New Jersey 08817 (the "New Jersey Warehouse") so that they would be readily available once the Township of East Hanover ("Township") issued the required building and electrical permits for Borrego to commence construction on the site. The inverter was ordered on or about August 18, 2011 and Borrego accepted delivery at the New Jersey Warehouse on or about September 16, 2011. Solar modules and inverters are the most expensive components of a photovoltaic system and are the components requiring the most lead time to source and have delivered to a solar developer. Together, the solar modules and inverter constitute approximately

sixty-five (65%) percent of the cost of typical photovoltaic system. The racking and other balance of systems componentry was ordered subsequently and is also being stored at Borrego's expense in the New Jersey Warehouse. I have personally inspected the equipment being stored at the New Jersey Warehouse.

6. We also submitted complete applications to the Township for the issuance of building and electrical permits on or about September 26, 2011. This submission was in accordance with industry standards and should have afforded ample time to complete the Project by February 25, 2012.

7. Unfortunately, we encountered unusual delays in receiving the building and electrical permits which could not have been foreseen at the time of execution of the PSA or avoided by either Borrego or GLC, and which will prevent completion of the Project before February 25, 2012. On or about September 28, 2011, the Township building department ("Building Department") informed Borrego that the Township Zoning Board ("East Hanover Board") had aesthetic concerns with the Project and would need to first approve the project before the Building Department could even accept Borrego's permit application for review and approval.

8. We immediately sought a meeting with the East Hanover Board to understand the East Hanover Board's concerns and address them expeditiously. On October 7, 2011, Borrego's project manager met with East Hanover Board officials to understand and address the East Hanover Board's questions and concerns with the Project. On October 11, 2011, Borrego's project manager sent the East Hanover Board a letter addressing all of the East Hanover Board's concerns.

9. After the East Hanover Board requested and received a letter from GLC's customer, the Archdiocese, in support of the Project, the East Hanover Board informed Borrego that Borrego would need to attend a "review meeting" on November 29, 2011 to verify that all of Borrego's permit application materials were properly completed in preparation for the next formal East Hanover Board meeting to vote on the Project. Borrego attended the November 29, 2011 review meeting and was approved to appear at the East Hanover Board's next scheduled meeting.

10. On December 13, 2011, Borrego appeared before the East Hanover Board and the Project was approved. The East Hanover Board stated that its decisions would be published in thirty (30) days on January 13, 2011, and on that date Borrego could re-submit its permit application to the Building Department. Borrego attempted to re-submit the permit application after thirty (30) days but was informed by the Building Department that it could not re-submit its permit application until January 18, 2012, which is being done contemporaneously with filing this Petition. In sum, Borrego had to wait 114 days to re-submit its permit application from the its initial complete September 26, 2011 permit application, for the additional Township review described above. Borrego has not encountered a similar review in any of its other New Jersey or other projects.

11. The Building Department has stated that Borrego should receive the permits allowing it to begin construction within thirty (30) days of the re-submission (which would be February 17, 2012), but cannot guarantee precisely how many days it will take to issue the permits to Borrego.

12. An extension of one hundred and eighty (180) days until July 23, 2012 will provide sufficient time to obtain the permits and complete the Project.

I hereby certify that the foregoing statements made by me are true and correct. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Chris Sabin
Site Superintendent
Borrego Solar Systems, Inc.

STATE OF CALIFORNIA)

: ss

COUNTY OF ALAMEDA)

I, Anthony J. Lebe, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the General Counsel of Green Lake Capital, LLC, sole member of the Company, the petitioner in the foregoing Petition.

2. I have read the annexed petition, and the matters and things contained therein are true to the best of my knowledge and belief.

[Handwritten Signature]

Anthony J. Lebe
General Counsel
Green Lake Capital, LLC

Sworn to and subscribed to
Before me this 17th day
of January, 2012

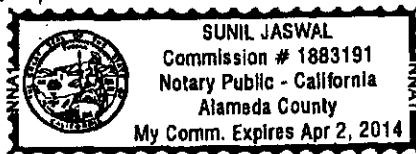
[Handwritten Signature]

Notary Public

[Handwritten Signature]
Notary Public

State of California, County of ALAMEDA
Subscribed and sworn to (or affirmed) before me on this
17 day of January 2012, by ANTHONY J. LEBE
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

[Handwritten Signature]
(Signature of Notary)



[Handwritten Signature]

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE VERIFIED)
PETITION OF GLC (NJ) NACR 2, LLC)
FOR AN EXTENSION OF A SOLAR)
RENEWABLE ENERGY CERTIFICATE)
(SREC) PURCHASE AND SALE AGREEMENT)
WITH JERSEY CENTRAL POWER & LIGHT)
COMPANY)**

**BPU Docket No. E012010066V
Clean Energy**

VERIFIED PETITION

GLC (NJ) NACR 2, LLC (“GLC”, the “Company”, or “Petitioner”), a limited liability company of the State of Delaware, which has its principal offices at 2500 Venture Oaks Way, Suite 390, Sacramento, California 95833, hereby respectfully petitions the New Jersey Board of Public Utilities (the “Board”) pursuant to N.J.A.C 14:1-1 *et seq.*, for the expedited issuance of an Order extending the time in which to complete an operational photovoltaic project pursuant to a Solar Renewable Energy Certificate Purchase and Sale Agreement (“PSA”) by and between Jersey Central Power & Light Company (“JCP&L”) and GLC with an effective date of February 25, 2011, as follows:

Introduction

1. GLC is a wholly-owned subsidiary of Green Lake Capital, LLC, a leading solar energy service provider which operates throughout North America (“Green Lake”). In the State of New Jersey, GLC and another wholly-owned subsidiary of Green Lake have entered into ten separate agreements with facilities operated by the Roman Catholic Archdiocese of Newark (“Archdiocese”) to construct smaller net metered photovoltaic systems between 51 kw and 260 kw in size in a commitment to help the Archdiocese achieve significant energy savings.