

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP

61 South Paramus Road

Paramus, New Jersey 07652

(201) 928-1100

Attorneys for DG MAC 2, LLC

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

**I/M/O/ REQUEST FOR EXTENSION OF TREC
ELIGIBILITY FOR TI APPLICATION NOS.
NJSTRE1547351962 AND NJSTRE1547352275**

BPU DOCKET NO.:

REDACTED VERSION

By way of this Verified Petition, Petitioner, DG MAC 2, LLC (“DG MAC 2”), an indirect subsidiary of NextEra Energy Resources, LLC, respectfully petitions and invokes the jurisdiction of the New Jersey Board of Public Utilities (the “Board” or “BPU”), pursuant to N.J.A.C. 14:1-1.2, to grant this Request for: (1) a one-month extension of time until September 16, 2022 to complete construction and commence operation of a 233.28 kW DC solar project under Transition Incentive (“TI”) Application No. NJSTRE1547351962 (“Rooftop Project”); and, (2) a one-year extension of time until August 16, 2023 to complete construction and commence operation of a 1494.15 kW DC solar project under TI Application No. NJSTRE1547352275 (“Carport Project”) (collectively, the “Projects”).

As set forth herein as well as in the accompanying certification of Matthew G. Ulman, the delay in achieving completion of construction and commencing commercial operation of the Projects by August 16, 2022 is due to a substantial delay in the interconnection review process

conducted by Orange and Rockland Utilities, Inc. (“ORU”). Moreover, the relief requested herein also includes a waiver of the transition renewable energy certificates (“TRECs”) Program Rules set forth at N.J.A.C. 14:8-10.4(f)(4)(ii)(2) establishing a TREC Expiration Date for the Solar Projects of one (1) year from the date of the applicable TREC Conditional Acceptance.

BACKGROUND FACTS AND PROCEDURAL HISTORY

1. On December 6, 2019, the Board issued an Order creating the Transition Incentive program, designed to bridge the gap between the Legacy SREC Program and a still to-be-determined Successor Program. See Board Order, dated March 9, 2020, In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, pg. 3, Agenda Item 8H.

2. On July 29, 2020, the Board granted a blanket extension to all projects that registered in the TI Program on or before October 30, 2020, setting the new expiration date for all impacted registrations to October 30, 2021.

3. On June 24, 2021, the Board granted projects registered in the TI Program on or before the effective date of the order an automatic six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4(e) or (f). See In re a New Jersey Solar Transition Pursuant to P.L. 2018, c.17 – Order Addressing Requests for Extension for Projects in the Solar Transition Incentive Program, BPU Docket Nos. QO19010068 & QO21060883, Order dated June 24, 2021 (“June 2021 Order”).

4. On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (L. 2021, c.169) into law. Among other requirements, this law directed the Board to develop and launch the Successor Program. On July 28, 2021, the Board announced the closure of the TI Program, effective 30 days later, and the opening of the Successor Solar Incentive (“SuSI”) Program. See

In re a New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, BPU Docket No. QO19010068,
Order dated July 28, 2021.

A. Becton Dickinson Carport and Rooftop Solar Projects

5. On April 21, 2021, Petitioner’s affiliate, DG MAC 1, LLC, and Becton Dickinson and Company executed a Power Purchase Agreement (“PPA”) for the development, construction and operation of Rooftop and Carport Projects at the corporate headquarters of Becton Dickinson in Franklin Lakes, New Jersey.¹ On July 27, 2021, the Petitioner applied for incentives pursuant to the New Jersey Clean Energy Program TI Program. The Projects received acceptance under the TI program on August 16, 2021 conditioned upon “completing the solar installation and commencing commercial operation by August 16, 2022.” (See TI Application Number NJSTRE1547351962 - Conditional Acceptance (August 16, 2021); TI Application Number NJSTRE1547352275 - Conditional Acceptance (August 16, 2021)). True and accurate copies of the TREC Conditional Acceptances for the Solar Projects are attached hereto as Exhibit A.

6. The Rooftop Project and Carport Project were assigned TI Application Nos. NJSTRE1547351962 and NJSTRE1547352275, respectively. (Id.; see also Certification of Matthew G. Ulman (“Ulman Cert.”), ¶ 5, attached hereto as Exhibit B).

B. Petitioner Has Made Substantial Efforts to Meet the Commercial Operation Date for the Projects.

Interconnection

7. Petitioner has diligently pursued development of both Solar Projects and has made substantial efforts to seek interconnection of the Projects. Specifically, on October 14, 2021, Petitioner submitted interconnection applications to ORU for both the Rooftop and Carport

¹ The PPA was later assigned to DG Fairleigh, LLC – an affiliate of the Petitioner. Petitioner remains the owner of both Projects.

Projects. In February 2022, ORU provided preliminary interconnection results for both Projects.

8. With respect to the Rooftop Project, based upon the preliminary interconnection results, a supplemental interconnection study was commenced on March 13, 2022. Supplemental results were provided by ORU for the Rooftop Project on April 20, 2022. Thereafter, on April 27, 2022, ORU provided Conditional Approval for Interconnection to the Rooftop Project. (See Conditional Approval to Interconnect attached hereto as Exhibit C). Final interconnection approval is anticipated after completion of construction of the Rooftop Project in mid-August 2022.

9. Petitioner conducted correspondence on-going with ORU seeking an update on the status of the Carport Interconnection Application throughout late 2021 and into 2022. (See Email Correspondence between Petitioner and ORU attached hereto as Exhibit D). Due to the larger size of the Carport Project, ORU determined that a Coordinated Electric System Interconnection Review (“CESIR”) Study was required to analyze the Carport Project’s potential impact to the utility system and determine what system upgrades, if any, will be required. Petitioner elected to proceed with the CESIR Study on March 11, 2022. ORU invoiced Petitioner for the cost of the CESIR study for the Carport Project on March 27, 2022. Petitioner paid the \$10,000 CESIR Study fee on April 1, 2022.² Per ORU, the CESIR Study was anticipated to be completed within approximately 60 business days. Based on that timeframe, DG MAC 2, LLC expected the CESIR Study results in June 2022. However, to date, the CESIR Study for the Carport Project is not complete. During weekly status meetings, ORU has advised the Applicant that it is awaiting study results from its consultant and that analysis of the results will be required prior to finalizing the

² Petitioner has paid ORU over \$11,000 to date to support the CESIR Study (\$1,226.18 Application Fee and \$10,000 to fund CESIR Study).

Study and identifying necessary system upgrades, if any. ORU currently estimates completion date for the CESIR Study by the end of August 2022.

Local Permits

10. In addition, on October 25, 2021, Petitioner submitted an Application for Final Site Plan to the Borough of Franklin Lakes. The Application for Final Site Plan was deemed complete on February 16, 2022. On April 20, 2022, the Borough of Franklin Lakes granted Final Site Plan approval for both Projects. (See Resolution for Approval for Amended Site Plan Approval and Soil Movement Permit attached hereto as Exhibit E.)

11. In May 2022, the Petitioner retained Advanced Solar Projects, Inc. as the contractor to construct the Rooftop Project. On June 6, 2022, Petitioner submitted a building permit for Rooftop Project to the Borough of Franklin Lakes, which was granted on June 29, 2022. A copy of the building permit is attached hereto as Exhibit F.

Construction

12. Construction commenced on the Rooftop Project on July 11, 2022. Construction of the Rooftop Project is expected to be completed on or about August 10, 2022. Petitioner has expended or issued purchase orders for approximately \$ [REDACTED] on materials and construction of the Rooftop Project to date (100% of the project costs). As stated above, final interconnection approval for the Rooftop Project from ORU is anticipated shortly after the completion of construction in mid-August 2022. (See Email dated August 10, 2022 from ORU attached hereto as Exhibit G).

13. Petitioner is unable to begin construction of the Carport Project until the CESIR Study process is complete. Petitioner has designed the Carport Project to 60% level engineering and solar modules and inverters were procured at aggregate costs in excess of \$ [REDACTED].

However, in the absence of the CESIR Study, Petitioner is unable to engage in final engineering for the Carport Project as the final upgrades and associated cost of interconnection is not yet known.

LEGAL ANALYSIS

14. The Board’s rules provide that “[i]n special cases, upon a showing of good cause the Board may, unless otherwise specifically stated, relax or permit deviations from these rules.” N.J.A.C. 14:1-1.2(b). The Board’s rules go on to explain that “[t]he Board shall, in accordance with the general purpose and intent of the rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public.” N.J.A.C. 14:1-1.2(b)(1).

15. Furthermore, the Board may “at any time may order a rehearing and extend, revoke, or modify any order made by it.” See N.J.S.A. 48:2–40. See, e.g., Deptford v. Woodbury Terrace, 54 N.J. 418 (1969) A petition filed pursuant to subchapter 5 of the Board’s “Rules of Practice,” N.J.A.C. 14:1–5.1 is an appropriate method for seeking an extension of time to modify the deadlines set forth in the respective TI Applications.

16. On June 8, 2022, the Board granted a waiver for a Petition for a TREC Extension to a developer that did not meet the TI Conditional Approval Deadline. See Board Order, dated June 8, 2022, I/M/O a New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, BPU Docket No. QO19010068, I/M/O Request for an Extension of Time to Complete NJSTRE1545046932 in Transition Incentive Program – 480 South Democrat Road, Gibbstown NJ ESNJ-KEY-GIBBSTOWN, LLC, BPU Docket No. QO22030156, Order dated June 8, 2022 (the “Gibbstown Order”).

17. In that matter, the waiver was granted due to a delay in required interconnection upgrades that the Electric Distribution Company (“EDC”) promised to complete on a date certain which would allow enough time for the petitioner to complete construction and obtain Permission To Operate (“PTO”) prior to the TREC deadline. The EDC did not complete the required upgrades and, as a result, this delay which was outside of the petitioner’s control was the primary cause for that petitioner’s failure to obtain PTO prior to the TREC deadline.

18. In the Gibbstown Order, the Board also allowed other similarly situated projects to apply for a waiver for extension if they met the same requirements as that petitioner.

19. In the Gibbstown Order, the Board recognized the inherent unfairness in penalizing solar developers and customers for missing a deadline that was out of the control of the developer.

20. Here, the delay in the construction of both Projects is the result of actions wholly outside the control of Petitioner. In particular, as set forth above, delays in the interconnection study process, have resulted in delays to both the final engineering of the Projects and, with respect to the Carport Project, the ability to commence construction.

21. As set forth above, Petitioner has taken all reasonable steps to meet the August 16, 2022 deadline set forth in the TI Applications. Construction of the Rooftop Project is anticipated to be complete on or about August 10, 2022. However, upon completion of construction, final electrical and fire inspections are required by the Borough of Franklin Lakes. In addition, ORU must provide final approval to interconnect. As such, a one-month extension until September 16, 2022 to commence operation of the Rooftop Project is justified.

22. With respect to the Carport Project, due to the extended delay in the completion of the CESIR Study, final engineering and procurement for the Project cannot proceed using prudent and commercially reasonable standards. Accordingly, the Petitioner requests that the BPU grant

a one-year extension of the construction completion and commercial operation deadline for the Carport Project from August 16, 2022 to August 16, 2023.

23. Failure to approve the requested deadlines would unreasonably penalize Petitioner for events outside its control and resulting in a significant loss in value to the Petitioner.

24. Petitioner respectfully submits that it satisfies the requirements for a waiver pursuant to N.J.A.C. 14:1-1.2.

25. All correspondence, filings, discovery, reports, and documentation generally regarding this matter should be sent to the following:

James S. King
Senior Attorney
NextEra Energy Resources, LLC
700 Universe Boulevard, LAW/JB
Office JB-E2330, Ext. 3330
Juno Beach, Florida 33408
Email: James.King@nee.com

With a copy to:

William Harla, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
61 South Paramus Road
Paramus, New Jersey 07652
Email: wharla@decotiislaw.com

Ryan J. Scerbo, Esq.
61 South Paramus Road
Suite 250
Paramus, NJ 07652
Email: RScerbo@decotiislaw.com

Alice M. Bergen, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
61 South Paramus Road
Paramus, New Jersey 07652
Email: abergen@decotiislaw.com

CONCLUSION

For all the foregoing reasons, as a result of events outside Petitioner’s control, together with Petitioner’s good faith and commercially reasonable efforts to meet the deadlines set forth in the TI Applications, Petitioner has demonstrated that good cause exists to extend the deadline to complete construction and commence commercial operation for the Rooftop Project until September 16, 2022 and for the Carport Project until August 16, 2023.

Petitioner thanks the Board for its consideration of its request for this extension and is available to address questions or clarify any aspects of this request.

**DECOTHS, FITZPATRICK, COLE
& GIBLIN LLP**
61 South Paramus Road
Paramus, New Jersey 07652
(201) 928-1100
Attorneys for DG MAC 2, LLC

By: /s William Harla
William Harla

Dated: August 15, 2022

VERIFICATION

STATE OF FLORIDA

SS:

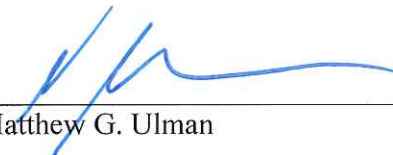
COUNTY OF PALM BEACH

I, Matthew G. Ulman, of full age, being duly sworn according to law, upon my oath, depose and say:

1. I am the Vice President, Distributed Generation, NextEra Energy Resources, LLC (“NEER”). NEER is the indirect parent of Petitioner, DG MAC 2, LLC.

2. I reviewed the attached Petition and affirm that that information contained therein is true and accurate to the best of my knowledge and belief.

3. I hereby appoint and authorize William Harla, Esq., Ryan Scerbo, Esq. and Alice M. Bergen, Esq. of the law firm DeCotiis, Fitzpatrick, Cole & Giblin LLLP, to prosecute the within Petition and to appear on DG MAC 2, LLC’s behalf before the Board of Public Utilities in this matter.



Matthew G. Ulman

Sworn and subscribed to before me
On this 15th day of August, 2022



Notary Public

