



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 THE CLOSURE OF THE SREC)
REGISTRATION PROGRAM PURSUANT TO P.L. 2018,)
C. 17 – PROCEDURE FOR REQUESTING EXTENDED)
TIME TO OBTAIN FINAL INSPECTIONS AND)
PERMISSION TO OPERATE) DOCKET NO. QO18070698

Party of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this Order the Board sets forth the procedure for registrants in the SREC Registration Program (“SRP”) pipeline that would have completed all necessary steps for SRP eligibility but were prevented by the COVID-19 emergency from obtaining the final inspections needed and/or their Permission to Operate (“PTO”) from their Electric Distribution Company (“EDC”) prior to April 30, 2020. That is the date on which the Board determined that 5.1% of the retail electricity kilowatt-hours sold in the State was generated by solar generation connected to the distribution system in the State (“5.1% Milestone”). To accomplish this, the Board waives certain of its rules to allow Board Staff and the SREC Registration Program administrator (“SRP Administrator”) flexibility in determining when projects commence commercial operations.

BACKGROUND AND PROCEDURAL HISTORY

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law (“Clean Energy Act” or “CEA” or “Act”), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the SREC program upon the attainment of the 5.1% Milestone, reducing the SREC term or “qualification life” to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandates, in relevant part, that the Board close the SRP to new applications once it determines that the 5.1% Milestone has been met. The Board implemented this directive through

a series of interconnected Orders and rulemaking proceedings, as detailed in two previous Orders.¹

Following the publication of the monthly 5.1% Milestone attainment report by Staff on March 31, 2020,² the Board determined that the State would generate 5.1% of its retail electricity sales from solar before May 1, 2020. Consequently, the Board ordered that this determination and the closure of the SRP would be effective on April 30, 2020. The Board ordered Staff to close the SRP to new registrations on that date. April 2020 Order at 5. Therefore, only projects in the SRP pipeline that had received a Permission to Operate (“PTO”) from their Electric Distribution Company (“EDC”) by April 30, 2020, and submitted the post-construction certification package no later than 90 days from the date of PTO, would be eligible to receive SRECs. Projects in the SRP pipeline that had not received a PTO by April 30, 2020, or failed to submit their post-construction certification package in a timely manner, would be not be so eligible and would instead become eligible for the Transition Incentive Program. Id.

Contemporaneously with the closure of the SRP and the Board’s actions in that regard, the COVID-19 outbreak has produced a national state of emergency.³ Travel both within and beyond the State has been severely restricted as both government and commercial carriers respond to the health threat. On March 16, 2020, Governor Murphy signed Executive Order No. 104 (“EO 104”),⁴ implementing aggressive social distancing measures to mitigate further spread of COVID-19 in New Jersey; on March 21, 2020, he issued Executive Order 107 (“EO 107”),⁵ expressly superseding the operative paragraphs of EO 104 with yet more stringent measures. And on April 8, 2020, the Governor ordered all “non-essential” construction to halt as of April 10, 2020.⁶

STAFF RECOMMENDATIONS

Staff understands that there are a number of solar projects that are fully constructed and would have achieved commercial operations but are prevented from reaching PTO because they cannot access municipal or EDC personnel to complete the required final inspection. In Staff’s view, projects that meet the requirements laid out below would have been extremely likely to have reached PTO prior to April 30, 2020, but for the pandemic and the extraordinary measures taken to combat it.

Specifically, Staff recommends that the Board waive, in certain cases, the portion of its rules that require projects with active registrations in the SRP pipeline to have a PTO letter issued by their EDC in order to formally commence commercial operations, subject to specific criteria as

¹ In re Closure of the SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated March 27, 2020; In re Closure of The SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated April 6, 2020 (“April 2020 Order”).

² BPU Monthly Report on Status toward Attainment of the 5.1% Milestone for Closure of the SREC Program, dated March 31, 2020, <https://www.nj.gov/bpu/pdf/publicnotice/Notice%20on%205-1%20Percent%20Milestone%203-31-20.pdf>

³ Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. Available at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (March 13, 2020; accessed April 17, 2020).

⁴ Exec. Order No. 104 (March 16, 2020, Murphy). <https://nj.gov/infobank/eo/056murphy/pdf/EO-104.pdf>

⁵ Exec. Order No. 107 (March 21, 2020, Murphy). <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

⁶ Exec. Order No. 122 (April 10, 2020, Murphy). <https://www.nj.gov/infobank/eo/056murphy/pdf/EO-122.pdf>

described further below.⁷ The inability to reach PTO directly affects these projects' right to be eligible for SRECs. April 2020 Order at 5; N.J.A.C. 14:8-2.4(b)(7)(iii). In light of the state of emergency, Staff urges the Board to waive its rules to the extent necessary to allow additional time to obtain the PTO to those projects that are only awaiting final inspections and final permission to interconnect to the grid prior to the April 30, 2020 closure of the SRP program. Staff notes that it proposes only a narrow and time-limited waiver of the need to have the PTO for purposes of determining SREC eligibility. State law continues to require that all electric generation facilities pass final inspections and receive a PTO prior to energizing.

Staff recommends that the Board require registrants seeking such relief to submit the following to TRC, the Board's SRP Administrator:

1. An affidavit⁸ from the project owner that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO;
2. An affidavit signed by a person with direct personal knowledge stating that the project was complete but for final inspections or final permission to interconnect to the grid prior to April 30, 2020;
3. Date-stamped pictures of the array, inverter and balance of system;
4. Date-stamped evidence that project representatives attempted to communicate with local code officials (e.g. emails with the local code officials requesting an inspection); or, if the project has already passed local code inspections, evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC;
5. An executed milestone report form that reflects the status of the project, including the date the request for inspection was filed with the municipal officials, date of receipt of inspection approval, and date of submission of application to energize (Part II of the interconnection application) with the EDC; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

DISCUSSION AND FINDINGS

The Board's rules are to be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues presented to the Board. In special cases upon a showing of good cause the Board may also relax or permit deviations from its rules. N.J.A.C. 14:1-1.2. The Board is cognizant of the toll the COVID-19 pandemic has taken upon New Jersey industry in general and upon the solar industry in particular. The inability for solar developers to arrange for final inspections in the face of the steps that have been taken to curb the spread of the Corona virus and safeguard human health should not, in the Board's view, prevent mechanically complete projects from receiving SRECs. The Board previously found that the COVID-19 health emergency warrants the Board's use of its discretion

⁷ N.J.A.C. 14:8-2.4(b)(7)(iii).

⁸ The Board notes that on April 14, 2020, Governor Murphy signed into law bill A-3903/S-2336 (2020), effective immediately, allowing remote notarial acts during the Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020. P.L. 2020, c. 26; https://www.njleg.state.nj.us/2020/Bills/AL20/26_.PDF

in the application of certain rules, and we believe this is an instance where relaxation or deviation from the rules is appropriate.

The Board **NOW FINDS** that the current COVID-19 health emergency represents good cause that warrants granting additional time to that limited subset of solar projects for which developers can demonstrate that projects were mechanically complete by April 30, 2020 and that, but for the health emergency and the restrictions on normal business activity it has necessitated, would have received the final inspections necessary for them to reach PTO prior to April 30, 2020.

The Board **DIRECTS** qualified developers and owners seeking relief to demonstrate that their projects fall into the category of special cases that would have received PTOs prior to the closure of the SRP to submit the following items to the SRP Administrator:

1. An affidavit from the project owner that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO;
2. An affidavit signed a person with direct personal knowledge stating that the project was complete but for final inspections and final permission to interconnect to the grid prior to April 30, 2020;
3. Date-stamped pictures of the array, inverter and balance of system equipment;
4. Date-stamped evidence that project representatives attempted to communicate with local code officials (e.g. emails with the local code officials requesting an inspection); or, if the project has already passed local code inspections, evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC;
5. An executed milestone report form that reflects the status of the project, including the date the request for inspection was filed with the municipal officials, date of receipt of inspection approval, and date of submission of application to energize (Part II of the interconnection application) with the EDC; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

The Board notes that this relief only applies in the context of determining whether a project is eligible to receive SRECs. If granted, the relief in no way eliminates the requirement for projects to receive all applicable permits and inspections, as well as PTO from the EDCs, prior to energizing.⁹ Pursuant to the Board rules at N.J.A.C. 14:8-5.4, N.J.A.C. 14:8-5.5, and N.J.A.C. 14:8-5.6, projects **may not** be energized prior to receiving PTO from the relevant EDC.

The Board **FURTHER FINDS** that in order to be eligible for SRECs, projects granted this relief shall obtain and file with the SRP Administrator evidence of final inspections and PTO no later than ninety (90) days following the end of the Public Health Emergency or State of Emergency established by Executive Order No. 103 (Murphy, 2020), whichever ends later. The Board **HEREBY DIRECTS** Staff to work with the SRP Administrator to determine how to process the post-construction certification packages for these projects.

⁹ N.J.A.C. 14:8-5.4, N.J.A.C. 14:8-5.5, N.J.A.C. 14:8-5.6

The Board also notes that the current crisis affects virtually all citizens of New Jersey, including solar developments in various stages of development. Undoubtedly, certain projects that are not currently complete would likewise have reached PTO but for the current health crisis. While the Board is sympathetic to the plight of such projects, the waiver of our rules regarding achievement of PTO balances the need to close the SREC program promptly upon the achievement of the 5.1% Milestone with the desire to prevent manifest unfairness to projects that are otherwise complete. For projects that are not complete, the Board notes that the Transition Incentive program ensures that they will continue to receive significant financial incentives and that projects will be automatically transitioned into this new program.

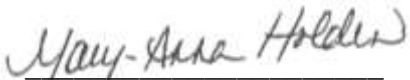
This Order shall be effective immediately.

DATED: April 27, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE CLOSURE OF THE SREC REGISTRATION PROGRAM
PURSUANT TO P.L. 2018, C. 17 – PROCEDURE FOR REQUESTING EXTENDED TIME TO
OBTAIN FINAL INSPECTIONS AND PERMISSION TO OPERATE

BPU DOCKET NO. QO18070698

SERVICE LIST

BPU

New Jersey Board of Public Utilities
Post Office Box 350
Trenton, NJ 08625-0350

Paul Flanagan, Executive Director
Paul.flanagan@bpu.nj.gov

Aida Camacho-Welch, Secretary
aida.camacho@bpu.nj.gov

Sara Bluhm
Sara.bluhm@bpu.nj.gov

B. Scott Hunter
B.hunter@bpu.nj.gov

Ariane Benrey
Ariane.benrey@bpu.nj.gov

DIVISION OF LAW

25 Market Street
Post Office Box 112
Trenton, NJ 08625-0112

Pamela Owen, DAG
pamela.owen@law.njoag.gov

Michael Beck, DAG
michael.beck@law.njoag.gov

Daren Eppley, DAG
Daren.eppley@law.njoag.gov

DIVISION OF RATE COUNSEL

140 East Frot Street, 4th Floor
Post Office Box 003
Trenton, New Jersey 08625

Stefanie A. Brand, Esq., Director
sbrand@rpa.nj.gov

Celeste Clark
cclark@rpa.nj.gov

James Glassen
jglassen@rpa.nj.gov

Debra Layugan
dlayugan@rpa.nj.gov

Brian Lipman
blipman@rpa.nj.gov

Ami Morita
amorita@rpa.nj.gov

Diane Schulze
schulze@rpa.nj.gov

Lisa Gurkas
Lgurkas@rpa.nj.gov

PSE&G

Terrance J. Moran
PSE&G
80 Park Plaza, T-13
Newark, NJ 07102-4194
Terrance.moran@pseg.com

Joseph A. Shea, Esq.
PSE&G
80 Park Plaza, T-5
Newark, NJ 07102-4194
Joseph.shea@pseg.com

ATLANTIC CITY ELECTRIC CO.

500 N. Wakefield Drive
Pepco Holdings, LLC – 92DC56
PO Box 6066
Newark, DE 19714-6066

Susan DeVito
Susan.devito@pepcoholdings.com

Joseph F. Janocha
joseph.janocha@pepcoholdings.com

Atlantic City Electric Company – 92DC42
500 N. Wakefield Drive
PO Box 6066
Newark, DE 19714-6066

Philip J. Passanante, Esq.
philip.passanante@pepcoholdings.com

Alison L. Regan
alison.regan@pepcoholdings.com

Thomas M. Hahn
Pepco Holdings, LLC-63ML38
5100 Harding Highway
Mays Landing, NJ 08330
Thomas.hahn@pepcoholdings.com

Daniel A. Tudor
Pepco Holdings, Inc.
701 Ninth Street NW
Washington, DC 20001
datudor@pepco.com

JCP&L

Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07962-1911

Sally J Cheong
scheong@firstenergycorp.com

Jennifer Spricigo
jspricigo@firstenergycorp.com

Greg Eisenstark
Windels, Marx & Mittendorf, LLP
120 Albany Street, 6th Floor
New Brunswick, NJ 08901
geisenstark@windelsmarx.com

ROCKLAND

John L. Carley, Esq.
Consolidated Edison Co. of NY
Law Dept., Room 1815-S
4 Irving Place
New York, NY 10003
carleyj@coned.com

James C. Meyer, Esq.
Riker, Danzig, Scherer, Hyland
& Perretti
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962
jmeyer@riker.com

William A. Atzl, Jr.
Rockland Electric Company
4 Irving Place – Room 515-S
New York, NY 10003
atzlw@coned.com

Margaret Comes, Esq.,
Consolidated Edison Co. of NY
Law Department, Room 1815-S
4 Irving Place
New York, NY 10003
comesm@coned.com

NJLEUC

Paul F. Forshay, Partner
Eversheds-Sutherland, LLP
700 Sixth Street, NW, Suite 700
Washington, D.C. 20001-3980
paul.forshay@eversheds-sutherland.com

Steven S. Goldenberg, NJLEUC, Esq.
Fox Rothschild LLP
Princeton Corporate Center
997 Lenox Drive, BLDG. 3
Lawrenceville, NJ 08648-2311
SGoldenberg@foxrothschild.com

Third Party Suppliers

Murray E. Bevan, Esq.
Bevan, Mosca, Giuditta & Zarillo, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
mbevan@bmgzlaw.com

Dana Swieson
EPEX
717 Constitutional Drive
Suite 110
Exton, PA 19341
dana.swieson@epex.com

Marc A. Hanks
Senior Manager, Government & Regulatory
Affairs
Direct Energy Services, LLC
Marc.Hanks@directenergy.com

Stacey Rantala
National Energy Marketers Association
3333 K Street, N.W., Suite 110
Washington, D.C. 20007
srantala@energymarketers.com

David B. Applebaum
Director, Regulatory Affairs
NextEra Energy Resources, LLC
21 Pardee Place
Ewing, New Jersey 08628
david.applebaum@nexteraenergy.com

David Gil
Manager, Regulatory Affairs
NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
david.gil@nexteraenergy.com

Kathleen Maher
Constellation NewEnergy
810 Seventh Avenue, Suite 400
New York, NY 10019-5818
kathleen.maher@constellation.com

BGS SUPPLIERS

Steven Gabel - IEPNJ
Gabel Associates
417 Denison Street
Highland Park, NJ 08904
steven@gabelassociates.com

James Laskey, Esq. - IEPNJ
Norris McLaughlin & Marcus
721 Route 202-206
Bridgewater, NJ 08807
jlasky@nmmlaw.com

Raymond Depillo
PSEG Services Corporation
80 Park Plaza, T-19
P.O. Box 570
Newark, NJ 07101
raymond.depillo@pseg.com

Shawn P. Leyden, Esq.
PSEG Energy Resources & Trade
80 Park Plaza, T-19
P. O. Box 570
Newark, NJ 07101
shawn.leyden@pseg.com

Mark Haskell
Cadwalader, Wickersham & Taft LLP
700 Sixth Street, SW
Washington, DC 20001
mark.haskell@cwt.com

David K Richter, Esq.
PSEG
Regulatory Department
80 Park Plaza, T-5C
P. O. Box 570
Newark, NJ 07101
david.richter@pseg.com

Craig S. Blume
Director, Power Marketing
UGI Energy Services / UGI Development
Company
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610
cblume@ugies.com

Marcia Hissong, Director, Contract
Administration/Counsel
DTE Energy Trading, Inc.
414 South Main Street
Suite 200
Ann Arbor, MI 48104
hissongm@dteenergy.com

Don Hubschman
American Electric Power
155 W. Nationwide Blvd.
Columbus, OH 43215
dmhubschman@aepes.com

Christine McGarvey
AEP Energy Partners, Inc.
Energy Trader
155 W Nationwide Blvd
Suite 500
Columbus, OH 43215
clmgarvey@aepes.com

Matthew Davies
TransCanada Power Marketing Ltd.
110 Turnpike Road, Suite 300
Westborough, MA 01581
Matthew_daview@transcanada.com

Glenn Riepl
AEP Energy Services
1 Riverside Plaza, 14th Floor
Columbus, OH 43215-2373
gfriepl@aep.com

Howard O. Thompson - BGS
Russo Tumulty Nester Thompson
Kelly, LLP
240 Cedar Knolls Road, Suite 306
Cedar Knolls, NJ 07927
hthompson@russotumulty.com

Sharon Weber
PPL Energy Plus
2 North 9th Street TW 20
Allentown, PA 18101
sjweber@pplweb.com

Glen Thomas
The P³ Group, GT Power Group LLC
1060 First Avenue, Suite 400
King of Prussia, PA 19406
Gthomas@gtpowergroup.com

Divesh Gupta, Esq.
Exelon Business Services Corp.
111 Market Place, Suite 1200C
Baltimore, Maryland 21202
divesh.gupta@constellation.com

Tom Hoatson
LS Power Development, LLC
2 Tower Center
East Brunswick, NJ 08816
thoatson@lspower.com

Adam Kaufman
Executive Director
Independent Energy Producers of NJ
Five Vaughn Drive, Suite 101
Princeton, NJ 08540
akaufman@kzgrp.com

Anthony Pietranico
ConEdison Solutions Inc.
Electricity Supply Specialist
Tel: 732-741-5822 x204
pietranicoa@conedsolutions.com

Aundrea Williams
Director Regulatory Affairs
NextEra Power Marketing LLC
700 Universe Boulevard
Juno Beach, FL 33408
aundrea.williams@nexteraenergyservices.com

Ira G. Megdal
Cozen O'Connor
457 Haddonfield Road
Suite 300 P.O. Box 5459
Cherry Hill, NJ 08002
imegdal@cozen.com

Christi L. Nicolay
Division Director
Macquarie Energy LLC
500 Dallas St., Level 31
Houston, TX 77002
Christi.Nicolay@macquarie.com

Becky Merola
Noble Americas Energy Solutions, LLC
5325 Sheffield Avenue
Powell, OH 43065
bmerola@noblesolutions.com

OTHER PARTIES

Chrissy Buteas
NJBIA
102 West State Street
Trenton, NJ 08608-1199
cbuteas@njbia.org

John Holub
NJ Retail Merchants Assoc.
332 West State Street
Trenton, NJ 08618
John@njrma.org

Holly Minogue
Gabel Associates
Energy, Environmental, and Public Utility
Consulting
417 Denison Street
Highland Park, NJ 08904
holly.minogue@gabelassociates.com

Larry Spielvogel, PE
L. G. Spielvogel, Inc.
190 Presidential Blvd # 310
Bala Cynwyd, PA 19004-1151
spielvogel@comcast.net

Robert Macksoud, Jr, CEP
Director Energy Procurement
EnergySolve
One Executive Drive, Suite 401
Somerset, NJ 08873
rmacksoud@energysolve.com

Lyle Rawlings
Mid-Atlantic Solar Energy Industries
Association
Rutgers EcoComplex, Suite 208-B
1200 Florence-Columbus Road, Bordentown,
NJ 08505
lrawlings@mseia.net

Bruce H. Burcat, Esq.
Executive Director
Mid-Atlantic Renewable Energy Coalition
208 Stonegate Way
Camden, DE 19934
bburcat@marec.us

Sean Gallagher
Solar Energy Industries Association
575 7th Street, NW
Suite 400
Washington, DC 20005
sgallagher@seia.org