



Agenda Date: 7/29/20
Agenda Item: LSA

STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

CLEAN ENERGY

ORDER

IN THE MATTER OF A NEW JERSEY SOLAR)	DOCKET NO. QO19010068
TRANSITION PURSUANT TO P.L. 2018, C.17 –)	
)	
ORDER PROVIDING EXTENSIONS TO SOLAR)	
TRANSITION PROJECTS)	DOCKET NO. QO20070484

Party of Record:

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

BY THE BOARD:

In this Order the Board waives its rules and modifies orders to allow solar projects that are registered in the Transition Incentive (“TI”) program additional time to reach commercial operation. The Board anticipates that this extra time will allow more of these projects to reach commercial operation, supporting the Board’s goals of achieving 100% clean energy by 2050 and ensuring continued access to low cost sources of capital for solar projects currently under development.

BACKGROUND

On May 23, 2018, the Clean Energy Act, L. 2018, c.17 (“Act”), was signed into law, and directed the Board to adopt rules and regulations to close the SREC Registration Program (“SRP”) to new registrations once 5.1% of the kilowatt-hours sold in the State are generated by solar electric power connected to the distribution system (known as the 5.1% Milestone), and develop a new solar incentive program.

By Order dated December 6, 2019, the Board ordered the creation of a Transition Incentive program, comprised of fixed-price, factorized Transition Renewable Energy Certificates (“TRECs”).¹ The Transition Incentive Order requires TI projects to comply with all rules and regulations of the SRP. Of particular relevance here, N.J.A.C. 14:8-2.4(h)4 sets time limits for registered projects to achieve certain milestones.

¹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“Transition Incentive Order”).

By Order dated January 8, 2020, the Board ordered that the Transition Incentive program will remain open to new registrations until the establishment of a registration program for the Successor Program currently under development.²

On April 6, 2020, the Board determined that the 5.1% Milestone would be attained on or before May 1, 2020, and therefore directed Staff to close the SRP to new registrations on April 30, 2020.³ A rule proposal for the Transition Incentive program was published on May 18, 2020.⁴ The TI Rule Proposal provides specific completion deadlines for both behind the meter and grid supply projects, including those that transfer from the legacy SRP and those that are accepted in the Transition Incentive program directly via a new registration.

Specifically, the TI Rule proposal provides that a net metered project transferring into the Transition Incentive program⁵ must achieve commercial operations within one year of the date that the Board determines that the 5.1% Milestone has been attained, April 30, 2020. A project granted conditional certification pursuant to N.J.S.A. 48:3-887(r) and transferring into the TI program retains the registration expiration date set by the Board Order granting the project conditional certification. Projects granted conditional certification pursuant to N.J.S.A. 48:3-87(t) that transfer into the TI program will receive a new registration expiration date of the later of the date set by the Board Order granting the project conditional certification, plus any extensions that have been granted, or April 30, 2021, which is one year from the date that the Board determines that the 5.1% Milestone has been attained. TI Rule Proposal at N.J.A.C. 14:8-10.4(d). Projects that are net metered provide on-site generation or provide power for a qualified customer engaged in aggregated net metering accepted into the Transition Incentive program directly via a new registration receive an expiration date on the one-year anniversary from the date of their notice of conditional registration. New projects granted conditional certification pursuant to N.J.S.A. 48:3-87(t) receive an expiration date on the two-year anniversary from the date of the registrant's Board Order granting conditional certification. TI Rule Proposal at N.J.A.C. 14:8-10.4(e)(4)(ii).

Absent the proposed TI Rules, the Transition Incentive Order requires that TI projects comply with the rules and regulations established for the SRP. Relevant here is N.J.A.C. 14:8-2.4(h)4 which provides in part that projects that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering shall have an expiration date 12 months after notice of conditional registration, and that facilities where Board approval, designation, or conditional certification is required shall have an expiration date 24 months after the effective date of Board approval.⁶

² In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020.

³ In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO18079698 and In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Calculation of 5.1% Milestone for SREC Program Closure, BPU Docket No. QO18079698, Order dated April 6, 2020 (“April 6 Closure Order”).

⁴ 52 N.J.R. 1048(a), (“TI Rule Proposal”).

⁵ Defined as projects that have received a conditional registration for SRECs pursuant to N.J.A.C. 14:8-2.4(h)4 that has not expired, been cancelled, or commenced commercial operations prior to the 5.1% Milestone and have not submitted a post-construction certification package within 90 days of the 5.1% Milestone, that have been transferred to the Transition Incentive registration program. TI Rule Proposal at N.J.A.C. 14:8-10.4(d)

⁶ N.J.A.C. 14:8-2.4(h)(4).

STAFF RECOMMENDATION

It has come to Staff's attention that many solar developers and installers are encountering significant delays in completing their projects, including those caused by the COVID-19 pandemic. Staff anticipates that the timely completion of a substantial number of projects in the Transition Incentive are likely to be affected by these delays.⁷ However, the Transition Incentive program was designed to be a short-term, interim program, and neither the Board Orders establishing the Transition Incentive program nor the TI Rule Proposal explicitly provide for extensions, absent a petition to the Board seeking relief.

Given the anticipated surge of Transition Incentive program participants seeking relief from the TI Rule Proposal requirements and/or the existing applicable SRP rules, Staff believes that a blanket extension of the deadlines imposed for commencing commercial operations is warranted to provide additional certainty to the market. Such an extension will be more equitably levied and will be much less administratively burdensome than consideration of extension requests on a case-by-case basis. Staff recommends granting all registrations that have transferred into the Transition Incentive program from the SRP pursuant to proposed N.J.A.C. 14:8-10.4(d) an automatic and immediate extension to October 30, 2021. Subsection (r) projects will retain the expiration date granted in the Order designating them as connected to the distribution system. Subsection (t) projects should receive the later of October 30, 2021 or the date set by the Board Order granting the project's conditional certification, plus any extensions. Staff also recommends granting an automatic and immediate extension to all new registrations that have been submitted directly to the Transition Incentive program and received a notice of conditional registration pursuant to proposed N.J.A.C. 14:8-10.4(e)(4)(ii)(1). This group of registrations would receive an expiration date that is either October 30, 2021 or 12 months from the date of conditional registration, whichever is later. If a new registration is accepted after October 30, 2020, its expiration date will be the one-year anniversary of the registrants notice of conditional registration pursuant to proposed N.J.A.C. 14:8-10.4(e)(4)(ii)(1). No extension would apply to new Subsection (t) registrations, since those projects have twenty-four months to achieve commercial operations and will thus still have valid registrations beyond October 30, 2021.

Not all registrations in the Transition Incentive program will necessarily require this additional time. However, Staff believes that granting this extension to all registrations will benefit the solar industry by eliminating the requirement that developers go through the time-consuming process of filing extension request petitions for case-by-case determinations.

DISCUSSION AND FINDINGS

The Board is cognizant that the solar industry is in the process of adjusting to significant and rapid change in the wake of both the Clean Energy Act and the COVID-19 crisis. The Board notes that the Transition Incentive program has no established mechanism by which Staff can administratively grant extensions. In light of the numerous delays reported and anticipated, the Board **NOW FINDS** that good cause exists for granting an extension to projects in the Transition Incentive program to support their ability to reach commercial operation.

The Board **FURTHER FINDS** that projects registering in the Transition Incentive program on or before October 30, 2020 should receive an extension until October 30, 2021 to reach commercial operation.

⁷ See TI Rule Proposal at N.J.A.C. 14:8-10.4(d) and N.J.A.C. 14:8-10.4(e)(4)(ii).

To effectuate this relief, the Board will waive any existing rule setting a one year time limit for projects in the Transition Incentive program and waive relevant rules that may be eventually adopted as part of the TI Rule Proposal.⁸ Similarly, to the extent that Transition Incentive Order or any other order implementing the program requires TI projects to comply with time limitations from the SRP rules enumerated in N.J.A.C. 14:8-2.4(h)(4), the Board modifies such orders to permit extensions of time to projects in the Transition Incentive program.⁹

Waivers of the Board's rules are governed by N.J.A.C. 14:1-1.2(b)(1). This rule provides that:

The Board shall, in accordance with the general purposes and intent of its 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 [or] 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.

The general purpose of the TI Rule Proposal, as well as the timelines contained therein, is to provide support to New Jersey's thriving solar market while safeguarding the interest of the State's ratepayers in doing so at the lowest possible cost. Given the unanticipated delays encountered by multiple solar developers, the Board **FINDS** that waiving the existing and proposed timelines appropriately balances these two complementary goals. Further, full compliance with the existing or proposed rules may adversely affect the ratepayers as requiring strict compliance with timelines that a large number of developers are unable to meet would tend to disrupt the market. Requiring rigid compliance under these circumstances would likely increase the cost of financing, thus making solar development more expensive. An increase to the cost of developing solar would adversely impact ratepayers, who ultimately bear these costs. Thus, the Board **FINDS** that full compliance with the timelines in N.J.A.C. 14:8-2.4(h)4 and the timelines proposed at N.J.A.C. 14:8-10.4(d) and (e) would adversely impact New Jersey ratepayers. Therefore, the Board **FINDS** good cause and hereby **WAIVES** N.J.A.C. 14:8-2.4(h)4 and the timelines proposed at N.J.A.C. 14:8-10.4(d) and (e) to permit an extension of time to projects in the Transition Incentive program.

The Board **HEREBY APPROVES** Staff's recommendation to grant an immediate extension through October 30, 2021 to all currently active TI conditional registrations as defined above. The TI registration expiration dates are therefore defined as follows: any project that had an SRP registration that was transferred to the TI program with a new registration expiration date of April 30, 2021 is now granted an expiration date of October 30, 2021. However, projects granted conditional certification under the subsection (r) program will retain the registration expiration date set by the Board Order granting the project conditional certification pursuant to N.J.S.A. 48:3-87(r)(3), and projects granted conditional certification under the subsection (t) program prior to April 30, 2020, will retain the expiration date of the later of the date set by the Board Order granting the project conditional certification, plus any extensions that have been granted, or October 30, 2021.

The Board **FURTHER APPROVES** an extension through October 30, 2021 to achieve commercial operations for all facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering that will register in the TI program between the date of this Order and October 30, 2020. New registrations in the TI program accepted after October 30, 2020 will have an expiration date one-year following the

⁸ Such limits are found in the TI Rule Proposal at proposed N.J.A.C. 14:8-10.4(d) and (e).

⁹ N.J.S.A. 48:2-40(e).

registrant's notice of conditional registration pursuant to proposed N.J.A.C. 14:8-10.4(e)(4)(ii)(1). The Board may address in a future order any possible extension for such projects registering after October 30, 2020, evaluating both the public health crisis as well as the development of the Successor Solar program.

No extensions described herein apply to newly submitted subsection (t) projects because they will have an expiration date beyond October 30, 2021 pursuant to proposed N.J.A.C 14:8-10.4(e)(4)(ii)(2) which provides for a registration expiration date two-years following the Board's order granting conditional certification.

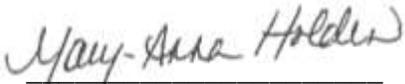
This Order takes effect on August 8, 2020.

DATED: July 29, 2020

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BY:



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PRESIDENT



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COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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ORDER PROVIDING EXTENSIONS TO SOLAR TRANSITION PROJECTS
DOCKET NOS. QO19010068 AND QO20070484

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