



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

CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR ASSIGNMENT) ORDER
OF 1.0 TREC FACTOR FOR THE PANYNJ CONRAC)
PARKING-DECK CANOPY (AT EWR).)
DOCKET NO. QO21030648

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Megan Lee, Assistant General Counsel, Port Authority of New York and New Jersey

BY THE BOARD:

In this Order the New Jersey Board of Public Utilities (“Board”) considers the request of the Port Authority of New York and New Jersey (“PANYNJ”) for assignment of a TREC Factor of 1.0 for its proposed 5 MW solar facility for purposes of the Board’s Transition Incentive program (“TI Program”).

BACKGROUND AND PROCEDURAL HISTORY

On May 23, 2018, Governor Murphy signed 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 a mandate that the Board close the SREC market to new entrants once it determines that 5.1% of the total retail electric sales in the State have been generated by solar electric facilities (“the 5.1% Milestone”) and that it develop a new solar incentive program.

After determining that the State would reach the 5.1% Milestone before May 1, 2020, the Board ordered that this determination and the closure of the Solar Energy Renewable Certificate Registration Program (“SRP”) effective April 30, 2020.¹ By Order dated December 6, 2019, the Board ordered the creation of a TI program, comprised of fixed-price and factorized Transition

¹ 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 Order”) at 5.

Renewable Energy Certificates (“TRECs”).² Subsequently, the Board codified the requirements of the TI Program in rules that took effect upon publication in the New Jersey Register on October 5, 2020 (“TI Rules”).³ The TI Rules provide definitions, detailed eligibility criteria and a compensation structure that is differentiated by various market segments.

The purpose of incentive differentiation is to reduce the risk of over-compensation of a particular market segment, with the aim of ensuring maximum effectiveness of the TI program at least cost to ratepayers. Each of the eight different market segments identified in the TI Rules at N.J.A.C. 14:8-10.5 is assigned one of three TREC factors, based upon the financial need of representative projects within that market segment. The factor levels are multiplied by the base compensation level of \$152 per MWh to determine the amount of performance-based incentive that a project will receive over its fifteen-year qualification life. Thus a project in a market segment with a factor of 1.0 will receive \$152 per MWh, while a project within a segment that has been assigned a factor of 0.85 will receive \$129.20 per MWh, or eight-five percent of the full amount.

Projects meeting the definition of a net metered non-residential rooftop and canopy project receive a factor of one. The term “net metered non-residential” is defined as “a solar system that receives a net metering credit on a non-residential tariff. A net-metered non-residential system must be a “customer-generator” as the term is defined at N.J.A.C. 14:8-4.2. A 1.0 factor is also provided to rooftop or canopy projects for which the Board had provided conditional certification for eligibility for SRECs under Subsection r of the Solar Act of 2012.⁴ “Subsection r” is also defined within the TI rule as “the provision of the Solar Act of 2012 that provides the criteria for SREC eligibility for grid supply solar installations not addressed by Subsection (q), Subsection (s), or Subsection (t) of the Solar Act of 2012.”⁵

PETITION

On March 12, 2021, PANYNJ submitted a request for the Board to assign a TREC factor of 1.0 for its 5 MW rooftop solar facility (“the Project”). PANYNJ proposes to locate the Project on a new, six-story structure at Newark Liberty International Airport (“EWR”), consisting of a three-story consolidated rental car facility (“ConRAC”) and above it, a three-story parking facility for the use of EWR passengers (“the Parking Facility”). According to PANYNJ, the 19.31 acre site is zoned “Airport/Airport Support” by the City of Newark.

The Project is intended to achieve commercial operations in the fall of 2021. The Parking Facility on which it will be located will not be fully complete at that time. Petitioner advises that the Parking Facility will be built in two phases; only Phase I is expected to open for commercial operation in Fall 2021. However, the Project will be located on the portion anticipated to be open and occupied at that time, and according to PANYNJ construction of the Project must therefore be complete. According to Petitioner, the Project must commence operation in full at that time, even though its full load will not be in place until Phase 2 of the Parking Facility is completed (“Facility Completion”). Facility Completion is currently scheduled for Spring 2023.

Thus, Petitioner states that although the Project will have a behind-the-meter connection at all times, approximately 75% of its generation will be sold to the grid through a Public Service Electric

² 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”).

³ 52 N.J.R. 1850(a).

⁴ N.J.A.C. 14:8-10.5

⁵ N.J.A.C. 14:8-10.2.

and Gas Company (“PSEG”) “Purchased Electric Power” (“PEP”) tariff until Facility Completion. Petitioner advises that under this arrangement the Project will receive fewer New Jersey solar benefits than a conventional net metered system. Both before and after Facility Completion, the Project will offset on-site purchases at retail rates but will not receive net metering credits at retail rates for its generation. Rather than being able to bank its surplus generation as would a net metered project, the Project will receive wholesale energy value for any excess generation.

Petitioner asserts that the proposed system should be considered “connected to the distribution system”, as defined at N.J.S.A. 48:3-51, for a number of reasons. First, Petitioner notes that the Project will be directly connected to the electric grid at 69 kilovolts or less. There will be two distinct interconnection points, each on the Facility side of the electric meters.⁶ Second, according to Petitioner, the Project will generate entirely behind-the-meter on an annual basis once the Parking Facility is complete and tenants are on-site. While admitting that its project does not fit neatly within the market segments identified provided factors in the Transition Incentive program, Petitioner claims that the Project fulfills all the essential characteristics and provides the benefits of a net metered interconnection. Output will be generated on-site and consumed on-site behind-the-meter, once full load exists in Spring 2023. As such, contends Petitioner, the Project will reduce electric system distribution grid load and avoid transmission and distribution losses. Petitioner maintains that PSEG’s PEP tariff treatment of excess generation does not change the behind-the-meter qualities of the Project; it only changes the value of the excess generation for the Port Authority.

In further support of its request, Petitioner notes that the Project’s 5 MW size means that it will have a significant impact; that it is a canopy project installed on a rooftop; and that the site of the Parking Facility is marginal land that had been classified as a brownfield at one time. Petitioner contends that since both net metered non-residential rooftop/canopy projects and grid supply projects installed on brownfields pursuant to Subsection t receive a 1.0 factor in the TI Program, the Project “more than meets the Board’s preferred criteria as described in the Board’s [Transition Incentive] Order dated 12/06/19”.

In addition, Petitioner claims that TREC incentives at the 1.0 factorization are critically important to the Project’s success. Given the construction schedule of the Parking Facility, Petitioner believes that it would be problematic to wait until Facility Completion and a new successor incentive program opportunity whose availability and value is still unknown.

Moreover, Petitioner asserts that the Parking Facility and the Project are key elements of the Port Authority’s sustainability efforts, noting that the Parking Facility will consolidate all rental car companies at EWR in a single space. Petitioner points to the specific mention of the Project in New Jersey’s 2019 Energy Master Plan: Pathway to 2050 (“EMP”); the EMP recommended that the State support and work with the Port Authority to successfully complete its aggressive greenhouse gas reduction program and mentioned the Project as an example of the progress made toward New Jersey’s goal of installing solar facilities on Port Authority property.⁷

Therefore, Petitioner requests that the Board issue an Order that provides a conditional certification of the Project at a 1.0 Factor despite the fact that the Project does not meet the TI Program’s definition of “non-residential net metered.” Petitioner asserts that the Board should

⁶ Petitioner advises that PSEG has found that there is adequate distribution capacity for the Project at the interconnection points. See petition at Exhibit C (load analysis performed by Burns Engineering, Inc.)

⁷ See EMP at Goal 1.3.3.

qualify the Project for the TREC program's 1.0 factor because it provides identical or greater economic benefits as a net metered project and is being constructed to serve on-site load.

STAFF RECOMMENDATION

Staff believes that the unique facts of this matter support deeming the Project eligible for the 1.0 TREC factor provided to projects in the non-residential net metered rooftop/canopy market segment.⁸ The Project will have a behind-the-meter connection at all times, despite initially disposing of the majority of its generation through PSE&G'S PEP tariff. Once the Parking Facility is complete and tenants are on-site, Petitioner represents that the proposed system will generate entirely behind-the-meter on an annual basis. Petitioner will thus be utilizing the Project's generation as a net metered system for more than thirteen years, far longer than the time during which it will primarily export to the grid. Staff notes that it would be wasteful to have solar panels installed on site, but not generating, because the facility construction timeline requires that the solar be installed at the Parking Facility prior to the full on-site load materializing. Staff's recommendation is limited to the specific facts set forth in this petition, where a State-affiliated entity is seeking an advance waiver of the Board's rules, supported by a highly detailed project plan and high degree of certainty of project completion. Staff concurs with Petitioner that the PEP tariff treatment of excess generation changes only the value of the excess generation for the Port Authority and does not operate to change the behind the meter character of the Project. The Project's output will be generated on-site throughout its useful life and, after a relatively brief initial period, consumed on-site as well.

Staff believes that notwithstanding the delay in the Parking Facility's full load coming on line, the Project will function primarily as a net metered solar generation facility, irrespective of its commitment to forgo any net metering revenues, and should be considered as such for the purposes of the TI Program. Staff recommends that the Board consider the unique combination of operational and financial factors, grant the petition, and make the Project eligible for a 1.0 Factor under the TI Program.

DISCUSSION AND FINDINGS

The Board has reviewed the record and Staff's recommendation. Although Petitioner does not directly request a waiver of the Board's net metering or TI Rules, the relief sought arguably requires a waiver of these rules and the Board will conduct the appropriate analysis.

The Board is authorized to relax or waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. In considering whether to grant a request for a waiver, the Board looks to the standards provided in this rule. In special cases upon a showing of good cause the board may relax or permit deviations from the rule. N.J.A.C. 14:1-1.2(b). Additionally, the board shall waive sections of the rule if it adversely affects ratepayers, hinders safe, adequate and proper service, or is in the interest of the general public. N.J.A.C. 14:1-1.2(b)(1).

The TI Program was designed to provide an interim incentive that would serve as a bridge for projects and developers between the legacy SRP and the successor incentive program currently

⁸ Because Staff is recommending granting the petition based on the fact that the facility is a rooftop system, it does not to address Petitioner's assertion that the former brownfield status of the facility warrants a certain incentive level. The process for qualifying a subsection t project are complex and entail following a specific process, which has not been followed here.

under development. As noted above, the TI Program provides incentives for different market segments based on the costs and revenue streams available to projects within each segment. These determinations were made after careful evaluation of New Jersey Clean Energy Program data, substantial stakeholder input, and detailed modelling.

Policy decisions also factored into the TI Program design. One such decision involved limiting TI Program eligibility for grid supply projects applying pursuant to Subsection r to projects conditionally approved prior to TI Program launch. That avenue for TI incentives is thus closed to Petitioner. Another policy decision was to provide the highest incentive available to “preferred siting” projects located on marginal lands incentivized under Subsection t and the built environment, namely rooftops and carports.

In reviewing the facts of this matter, the Board takes note that the Project is installed behind the meter and that for the bulk of its useful life its generation will be consumed onsite. The Board **FINDS** that once the Parking Facility’s load comes on-line, the Project will operate as a net metered facility, generating entirely behind-the-meter on an annual basis, even accepting Petitioner’s statement that it will forgo any net metering credits. The Board **FINDS** that the disposal of the excess generation through the PEP tariff does not operate, in this instance, to change the behind-the-meter character of the Project. The Board **FINDS** that the Project’s configuration is unique.

Moreover, the Project will materially advance one of the EMP’s primary goals, reducing emissions from the Port Authority’s energy-intensive transportation operations. Noting that environmental justice communities have been disproportionately impacted by poor air quality due in large part to “the geographic location of the marine terminals, bus depots, and Newark Airport,” the EMP points to a variety of initiatives undertaken to change that state of affairs. More specifically, it identified the construction and operation of the Parking Facility and its incorporation of a solar roof.⁹ The prominence accorded the Project in the EMP underscores its singular position and unique attributes.

Given the manner in which the Project will operate, the Board **FINDS** that good cause exists to permit relaxation of its rule requirements. The Board’s rules require that a net-metering customer must have installed and activated the entire proposed load against which the renewable energy generation will be netted prior to commencing commercial operations. N.J.A.C. 14:8-4.1(c). Despite the Project’s initial excess generation through the PEP tariff, the Board nonetheless **FINDS** that the unique characteristics of the Project make it a net metered facility, and therefore eligible for TRECs. Petitioner has also noted its willingness to forego net metered credits, because it will ultimately consume the entirety of the solar production behind the meter. Petitioner has demonstrated good cause for the Board to relax its rule, and the Board therefore **WAIVES** the application of N.J.A.C. 14:8-4.1(c) in this instance.

The Board **FURTHER FINDS** that the public policy considerations discussed above mean that strict adherence to the rule provisions in question would not be in the interest of the general public. Therefore, the Board **GRANTS** the petition and **APPROVES** a conditional certification for TRECs at a 1.0 factor for this non-residential rooftop canopy project.


The unique circumstances of the petition under review merit the action taken by the Board in this Order. This relief is based upon these unique circumstances and is limited to them.

⁹ EMP at 1.3, 1.3.3.

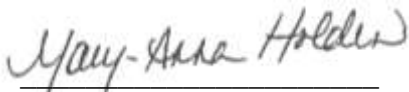
This Order will take effect on May 24, 2021.

DATED: May 19, 2021

BOARD OF PUBLIC UTILITIES
BY:



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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 PETITION FOR ASSIGNMENT OF 1.0 TREC FACTOR FOR THE
PANYNJ CONRAC PARKING-DECK CANOPY (AT EWR)**

BPU DOCKET NO. QO21030648

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