



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF A SUCCESSOR SOLAR INCENTIVE PROGRAM PURSUANT TO P.L. 2021, C.169	) ) ) )	ORDER WAIVING ADI PROGRAM ELIGIBILITY RULES  DOCKET NO. QW22030128
IN THE MATTER OF THE VERIFIED PETITION OF NICOLE BUCK FOR APPROVAL OF A WAIVER OF THE REQUIREMENT TO SUBMIT A COMPLETE ADI PROGRAM REGISTRATION PRIOR TO BEGINNING CONSTRUCTION ON THE FACILITY	) ) ) ) ) ) ) )	DOCKET NO. QO22090550
IN THE MATTER OF THE VERIFIED PETITION OF ROSELIND EDMAN FOR APPROVAL OF A WAIVER OF THE REQUIREMENT TO SUBMIT A COMPLETE ADI PROGRAM REGISTRATION PRIOR TO BEGINNING CONSTRUCTION ON THE FACILITY	) ) ) ) ) ) ) )	DOCKET NO. QO22090552
IN THE MATTER OF THE VERIFIED PETITION OF FREEDOM FOREVER NEW JERSEY, LLC FOR APPROVAL OF A WAIVER OF THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM RULES WITH RESPECT TO THE SOLAR FACILITY LOCATED AT 4 FARVIEW ROAD, TENAFLY, NJ 07670	) ) ) ) ) ) ) )	DOCKET NO. QO22090560
IN THE MATTER OF REQUEST FOR DETERMINATION OF ELGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM - DAVID GUIDARINI	) ) ) ) ) ) ) )	DOCKET NO. QO22090559
IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM - ALEXANDRA AND CHRISTIAN HANSIS	) ) ) ) ) ) ) )	DOCKET NO. QO22080476

IN THE MATTER OF REQUEST FOR DETERMINATION ) OF ELIGIBILITY IN THE ADMINISTRATIVELY ) DETERMINED INCENTIVE PROGRAM BRIAN ) HENDERSON - NJSTRE1546362567 ) )	DOCKET NO. QO22080508
IN THE MATTER OF DAKSHESH PATEL REQUEST ) FOR INCLUSION INTO THE SOLAR RENEWABLE ) ENERGY CERTIFICATE (SREC) PROGRAM ) NJSRRE1544621473 ) )	DOCKET NO. QO22080541
IN THE MATTER OF THE CLEAN ENERGY PETITION ) TO BPU FOR ADI REGISTRATION - ) NJADRE1548091176 ) )	DOCKET NO. QO22090570
IN THE MATTER OF REQUEST FOR DETERMINATION ) OF ELIGIBILITY IN THE ADMINISTRATIVELY ) DETERMINED INCENTIVE PROGRAM – SEAN AND ) KAREN LEWIS NJADRE1549659052 ) )	DOCKET NO. QO22070457
IN THE MATTER OF REQUEST FOR DETERMINATION ) OF ELIGIBILITY IN THE ADMINISTRATIVELY ) DETERMINED INCENTIVE PROGRAM – MARC STAHL ) NJADRE1549516539 ) )	DOCKET NO. QO22080495
IN THE MATTER REQUEST FOR DETERMINATION OF ) ELIGIBILITY IN THE ADMINISTRATIVELY ) DETERMINED INCENTIVE PROGRAM - CHRISTINE ) STEVENS ) )	DOCKET NO. QO22070456
IN THE MATTER OF REQUEST FOR DETERMINATION ) OF ELIGIBILITY IN THE ADMINISTRATIVELY ) DETERMINED INCENTIVE PROGRAM – VITO ) CHIARELLA NJADRE1549664568 ) )	DOCKET NO. QO22070470
IN THE MATTER OF THE REQUEST FOR WAIVER OF ) N.J.A.C. 14:8-11.5(k) IN THE ADMINISTRATIVE ) DETERMINED INCENTIVE PROGRAM - AMANDO AND ) RACHEL GUERRERO NJADRE1547927009 ) )	DOCKET NO. QO22090569
IN THE MATTER OF THE VERIFIED PETITION OF ) TRINITY SOLAR FOR APPROVAL OF A WAIVER OF ) THE ADMINISTRATIVELY DETERMINED INCENTIVE ) PROGRAM RULES WITH RESPECT TO THE SOLAR ) FACILITY LOCATED AT 1609 OSPREY COURT POINT ) PLEASANT BORO 08742 ) )	DOCKET NO. QO22090563
IN THE MATTER OF THE REQUEST FOR WAIVER OF ) N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY ) DETERMINED INCENTIVE PROGRAM – TRINITY ) SOLAR, INC. DAVID LOFFREDO NJADRE1548227167 ) )	DOCKET NO. QO22050348

IN THE MATTER OF THE REQUEST FOR WAIVER OF )  
N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY )  
DETERMINED INCENTIVE PROGRAM TRINITY SOLAR, ) DOCKET NO. QO22050345  
INC. YASMAEL ALMANZAR NJADRE1547723339 )  
)  
IN THE MATTER OF THE REQUEST FOR WAIVER OF )  
N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY )  
DETERMINED INCENTIVE PROGRAM – )  
NJADRE1548197963 JOSEPH MONTALBAN, JR. ) DOCKET NO. QO22040312  
TRINITY SOLAR, INC. )  
)  
IN THE MATTER OF THE REQUEST FOR WAIVER OF )  
N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY )  
DETERMINED INCENTIVE PROGRAM - ) DOCKET NO. QO22040311  
NJADRE1547872981 FRANKIE CHOW TRINITY SOLAR, )  
INC. )  
)  
IN THE MATTER OF THE REQUEST FOR WAIVER OF )  
N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY )  
DETERMINED INCENTIVE PROGRAM – ) DOCKET NO. QO22040314  
NJADRE1547937537 SHARON DONNELLY TRINITY )  
SOLAR, INC. )  
)  
IN THE MATTER OF THE REQUEST FOR WAIVER OF )  
N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY )  
DETERMINED INCENTIVE PROGRAM – ) DOCKET NO. QO22040313  
NJADRE1547960424 HARRY SMITH TRINITY SOLAR, )  
INC. )  
)  
IN THE MATTER OF REQUEST FOR DETERMINATION )  
OF ELIGIBILITY IN THE ADMINISTRATIVELY )  
DETERMINED INCENTIVE PROGRAM – JEFFREY ) DOCKET NO. QO22040294  
CRAWFORD )  
)  
IN THE MATTER OF REQUEST FOR DETERMINATION )  
OF ELIGIBILITY IN THE ADMINISTRATIVELY ) DOCKET NO. QO22040293  
DETERMINED INCENTIVE PROGRAM - EDWARD MICK )  
)  
IN THE MATTER OF THE PETITION OF WALTER )  
WINKLER FOR APPROVAL OF A WAIVER OF THE )  
REQUIREMENT TO SUBMIT A COMPLETE ADI )  
PROGRAM REGISTRATION PRIOR TO BEGINNING )  
CONSTRUCTION ON THE FACILITY – ) DOCKET NO. QO22090604  
NJADRE1549776133 )  
)  
IN THE MATTER OF THE VERIFIED PETITION OF )  
TRINITY SOLAR INC FOR APPROVAL OF A WAIVER )  
OF THE ADMINISTRATIVELY DETERMINED )  
INCENTIVE PROGRAM RULES WITH RESPECT TO )  
THE SOLAR FACILITY LOCATED AT 71 KOHLMAYER ) DOCKET NO. QO22090607  
DRIVE, PENNSAUKEN, NEW JERSEY 08110 )

IN THE MATTER OF THE SUCCESSOR INCENTIVE )  
PROGRAM PURSUANT TO P.L. 2021.C.169 REQUEST )  
FOR DETERMINATION OF ELGIBILITY IN THE )  
ADMINISTRATIVELY DETERMINED INCENTIVE ) DOCKET NO. QO22090608  
PROGRAM - MAYA OLLSON )  
)

IN THE MATTER OF THE VERIFIED PETITION OF )  
TRINITY SOLAR, INC. FOR APPROVAL OF A WAIVER )  
OF THE ADMINISTRATIVELY DETERMINED )  
INCENTIVE PROGRAM RULES WITH RESPECT TO )  
THE SOLAR FACILITY LOCATED AT 1454 DIVISION )  
AVENUE, PISCATAWAY, NJ 08854, ) DOCKET NO. QO22090614  
NJADRE1548367818 )  
)

**Parties of Record:**

**Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel  
**Anthony Sposaro, Esq.**, on behalf of Nicole Buck and Rosalind Edman  
**Edward Mick, Pro Se**  
**David Guidarini, Pro Se**  
**Alexandra and Christian Hansis, Pro Se**  
**Brian Henderson, Pro Se**  
**Dakshesh Patel, Pro Se**  
**Daniella Gordon, Esq.**, on behalf of Freedom Forever  
**Ashen Khan, Pro Se**  
**Sean and Karen Lewis, Pro Se**  
**Marc Stahl, Pro Se**  
**Christine Stevens, Pro Se**  
**Vito Chiarella, Pro Se**  
**Amando and Rachel Guerrero, Pro Se**  
**Jeffrey Crawford, Pro Se**  
**Edward Mick, Pro Se**  
**Joshua S. Fischer, Esq.**, on behalf of Trinity Solar  
**Walter Winkler, Pro Se**  
**Maya Ollson, Pro Se**

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a limited waiver of three (3) eligibility provisions within the Administratively Determined Incentive (“ADI”) Program. More specifically, the Board considers a limited waiver of the prohibitions contained in N.J.A.C. 14:8-11.4(b) for: 1) projects that received Permission to Operate (“PTO”) prior to the opening of the ADI Program; and 2) projects that began construction prior to their acceptance into the ADI Program. In addition, the Board considers a limited waiver of N.J.A.C. 14:8-11.5(k), which forbids an increase in generation capacity by more than 10 percent or 25 kWdc, whichever is smaller, over the size indicated in the registration accepted into the ADI Program.

**BACKGROUND**

On May 23, 2018, the Clean Energy Act, L. 2018, c. 17 (“CEA” or “Act”), was signed into law. Among other mandates, the Act 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 were generated by solar electric power connected to the distribution system (known as the 5.1% Milestone), and to develop a new solar incentive program. In addition, the CEA directed the Board to complete a study that evaluates how to modify or replace the SRP to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State.

Toward fulfillment of this mandate, by Order dated December 6, 2019, the Board ordered the creation of the Transition Incentive (“TI”) Program, which provided incentives to eligible solar facilities by means of fixed price, factorized Transition Renewable Energy Certificates (“TRECs”).<sup>1</sup> Rules for the TI Program took effect upon publication in the New Jersey Register on October 5, 2020 (“TI Rules”).<sup>2</sup>

On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (“Solar Act”).<sup>3</sup> The Solar Act directed the Board to establish a program to incent the development of at least 3,750 MW of new solar by 2026.

On July 28, 2021, following an extensive stakeholder process, the Board approved the creation of the Successor Solar Incentive (“SuSI”) Program, consisting of the ADI Program and the Competitive Solar Incentive (“CSI”) Program.<sup>4</sup> The CSI Program is under development, and the ADI Program launched on August 28, 2021. The ADI Program is open to residential projects, net metered non-residential projects equal to or less than five (5) megawatts, and community solar projects. Rules governing the ADI Program took effect on February 22, 2022. N.J.A.C. 14:8-11.1 to 11.9 (“ADI Rules”).

Pursuant to the ADI Rules, the Board makes an annual allocation of capacity to each market segment established in the ADI Program. N.J.A.C. 14:8-11.7. The annual allocation of capacity to market segments for Energy Year 2023 (“EY23”) was made by Order dated May 18, 2022.<sup>5</sup> The Board allocated the EY23 residential net metered market segment 150 MWdc of capacity.

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<sup>1</sup> In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019.

<sup>2</sup> 52 N.J.R. 1850(a).

<sup>3</sup> L. 2021, c. 169; N.J.S.A. 48:3-114 et al.

<sup>4</sup> In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated July 28, 2021 (“SuSI Program Order”).

<sup>5</sup> In re Certification of Energy Year 2021 Cost Cap Calculations and Setting ADI Program Megawatt Blocks for Energy Year 2023, BPU Docket No. QO22040246, Order dated May 18, 2022.

The ADI rules prohibit solar generation facilities from registering in the ADI Program if they either commenced commercial operation prior to the opening of the ADI Program registration portal or began construction prior to receipt of a notice of conditional registration:

The ADI Program shall only be open to new facilities that have not commenced commercial operation prior to the opening of the ADI Program registration portal . . . Additionally, facilities seeking eligibility in the ADI Program must submit a registration and receive a notice of conditional registration pursuant to N.J.A.C. 14:8-11.5(g) prior to beginning construction on the facility, unless the Board grants a waiver in response to a petition.

[N.J.A.C. 14:8-11.4(b).]

The ADI rules also limit increases in project generating capacity after registration in the ADI Program to 10 percent or 25 kWdc, whichever is smaller. N.J.A.C. 14:8-11.5(k). This provision, like N.J.A.C. 14:8-11.4(b), has been the subject of multiple petitions for waiver.

### **Petitions**

Seven (7) residential customers with projects that received PTO prior to the receipt of the notice of conditional registration, which necessarily entails having commenced construction prior to receipt, have petitioned the Board to waive N.J.A.C. 14:8-11.4(b) in order to register in the ADI Program.<sup>6</sup> An additional seven (7) residential customers with projects that received PTO prior to ADI Program launch have petitioned the Board for a waiver of the relevant portion of ADI Rule N.J.A.C. 14:8-11.4(b).<sup>7</sup> Petitioners contend that they have invested in solar projects at their homes in good faith and should be allowed to participate in the ADI Program to receive an incentive. Some allege that they relied on their installers for completion of program requirements and were failed by them.

There are also 12 pending petitions from residential customers or their installers seeking approval of solar electric generation facilities at a capacity that exceeds the size submitted in the initial registration package.<sup>8</sup> These petitions seek a waiver of the ADI rules at N.J.A.C. 14:8-11.5(k). Petitioners contend that the relatively small amount of additional capacity installed for each residential customer will not result in undue uncertainty in management of the residential ADI market segment and will only benefit the individual customer.

In addition, Board Staff ("Staff") is aware of additional solar project registrations that have commenced construction prior to receipt of ADI notice of conditional registration or have installed solar capacity that exceeds the amount in entered in their initial registration. Pending direction from the Board, the ADI registration processing team has placed an administrative hold on these projects.

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<sup>6</sup> Docket Nos. QO22090550, QO22090552, QO22070457, QO22080495, QO22070470, QO22090604, and QO22090608.

<sup>7</sup> Docket Nos. QO22090559, QO22080476, QO22080508, QO22080541, QO22070456, QO22040294, and QO22040293.

<sup>8</sup> Docket Nos. QO22090560, QO22090570, QO22090569, QO22090563, QO22050348, QO22050345, QO22040312, QO22040311, QO22040314, QO22040313, QO22090614, and QO22090607.

## **STAFF RECOMMENDATION**

### ***Projects commencing construction prior to receipt of ADI conditional registration***

Staff recommends that the Board take action to ensure that the seven (7) solar projects referenced above, that commenced construction prior to receipt of their ADI Program acceptance, may register in the ADI Program if otherwise eligible. Staff is concerned that these projects will be prohibited from receiving an incentive in the absence of Board action.

The prohibition on registration after starting construction is designed to ensure that solar incentives go only to projects that need incentives. This provision also recognizes the structure of the ADI Program in blocks of available capacity. It is intended prevent developers from rushing to construct projects prior to registration in an attempt to lock in an incentive value when confronted with the impending full subscription of an ADI Program megawatt block and the closure of a market segment to new registrations. These continue to be valid policy goals; moreover, Staff notes that the conditions confronting the ADI Program, participating developers, and the registration processing team are different than they were in early April 2022. The ADI registration processing team have cleared the backlog of TI initial registrations, which had previously slowed the issuance of ADI notices of conditional registration. Nonetheless, Staff believes that the unique circumstances associated with the end of the TI Program and the beginning of the ADI Program still warrant flexibility in the application of this restriction. In the last three (3) years, the solar incentive program has changed twice, and there has been some confusion regarding the requirements of the different programs. The Board has previously recognized the justification for some flexibility under these circumstances and Staff recommends that it do so now and waive N.J.A.C. 14:8-11.4(b) for these petitioners.<sup>9,10</sup>

### ***Projects commencing commercial operation prior to the opening of the ADI Program***

Seven (7) of the individual petitions identified above involve projects that commenced commercial operations prior to the opening of the ADI registration portal. As with the projects that commenced construction prior to receipt of their ADI acceptance, Staff is concerned that these projects will be stranded without an incentive in the absence of Board action. Staff believes that a waiver of the ADI Program eligibility requirement for these projects is appropriate given the relatively rapid change in incentive programs described above and the consequent potential for confusion among solar market participants. As with the projects that commenced construction prior to receipt of ADI conditional registration, there is precedent for Board action.<sup>11</sup> Staff recommends that the Board grant the petitions and waive N.J.A.C. 14:8-11.4(b) for these projects, such that their prior receipt of PTO does not render them ineligible for the ADI Program. Consistent with precedent

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<sup>9</sup> In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17 – Modification of Eligibility Conditions, BPU Docket No. QO20020184, Order dated January 26, 2022 (“January 2022 Order”) (allowing projects registered in the TI Program that had commenced construction but failed to meet the TI deadline for commercial operation to be eligible to apply to the ADI Program).

<sup>10</sup> In re a Successor Solar Incentive Program Pursuant to P.L. 2021, c. 169 Order Waiving ADI Program Eligibility Rules, BPU Docket Nos. QW22030128 et al., Order dated April 6, 2022 (“April 2022 Order”) (granting a limited waiver of N.J.A.C. 14:8-11.4(b) to projects that had not previously registered in the TI Program but had commenced construction prior to receiving a conditional acceptance for an application in the ADI Program.)

<sup>11</sup> April 2022 Order at 5–6.

set by Order dated November 17, 2021, Staff also recommends that the Board waive N.J.A.C. 14:8-11.6(a), which provides that the 15-year SREC-II qualification life for a SuSI eligible facility begins on the date commercial operation is commenced, and order that the qualification life for these projects commence instead on August 28, 2021, the date on which the ADI registration portal opened to the public.<sup>12</sup> Therefore, only the electricity generated by the identified projects after the start of the ADI Program shall be eligible to create SREC-IIs. Should other parties believe that they are similarly situated, Staff recommends that the Board direct such parties to file a petition, and if granted, treat their qualification lives in the same manner.

### **Projects which constructed solar capacity which exceeds the initial registration by the maximum allowed by rule**

Twelve petitions were received from the owners or developers of projects which were constructed to capacities that exceeded the generation capacity for which their registrations had been approved by over ten percent; the rules prohibit increases of over ten percent or 25 kW, whichever is smaller. N.J.A.C. 14:8-11.5(k). The aggregate capacity for which the 12 projects were originally registered was roughly 115 kW. The increase for the 12 projects over the initial registered capacity was approximately 30 kW, or approximately 26%. Individual system size increases ranged from an increase of 10% to 100%. There are an additional 14 similarly situated projects which the ADI registration processing team have placed an administrative hold over and advised to submit a petition. Staff is concerned about the implications for the megawatt block approved by the Board should there be greater interest in increasing system sizes closer to the closure of a market segment allocation block.

The rule provision at issue is designed to ensure that project capacity aggregated across solar facilities within an ADI market segment does not exceed the amount of capacity allocated to that market segment by the Board. As noted above, the Board allocated the residential net metered market segment 150 MWdc of capacity in EY23. As of September 28, 2022, the ADI Program portal reports almost 81 MWdc of capacity in the residential net metered market segment has been subscribed.<sup>13</sup> This means that the EY23 capacity block for the residential net metered market segment is approaching one-half subscription after less than one third of the annual period has lapsed. If this pace of registration in the residential net metered market segment continues, the 150 MW of capacity could be fully subscribed by January 2023.

The 30 kW of capacity that will be added by the petitions under review will not place the residential market segment megawatt allocation in jeopardy. Therefore, the benefit to these solar market participants from allowing them to participate in the ADI Program will not result in any detriment to the public interest in adhering to the ADI megawatt caps set by the Board. The public may also benefit from the environmental attributes of these solar facilities. Moreover, the ADI Program is still relatively new and the megawatt caps included in this program did not previously exist. While prior programs required registrants to notify Staff if installed capacity exceeded what had been approved, incentives have not to date been denied for the excess capacity. Staff recommends that the Board grant these petitions, but notes that since the current ADI Program now sets limits on increases to approved capacity, Staff does not anticipate recommending leniency should similar rule violations occur in future. Staff further recommends that the Board direct staff to monitor future requests for similar relief for their potential impact on ADI market segment

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<sup>12</sup> In re Petition for Eligibility of Solar Photovoltaic Project (NJSTRE1547234718) in the Transition Incentive Program (Vishal Patel), BPU Docket No. QO21081080, Order dated November 17, 2021.

<sup>13</sup> <https://njadi.programprocessing.com>



allocations and advise market participants that the waiver of N.J.A.C. 14:8-11.5(k) in these instances should not be presumed to be the Board's position should developers continue to install projects which exceed the limits established in the rule.

In summary, Staff recommends that the Board grant the petitions addressed in this Order, with the provisos that the qualifying life of the projects receiving a waiver of N.J.A.C. 14:8-11.4(b) should commence on August 28, 2021, and that Staff monitor future requests for approval of increases in capacity size. As previously mentioned, these rules continue to serve legitimate policy goals. N.J.A.C. 14:8-11.4(b) and N.J.A.C. 14:8-11.5(k) are anticipated to enable effective management of the ADI registration process in the face of full subscription of a market segment allocation. Thus, Staff does not recommend a blanket waiver of these provisions but rather recommends that the Board direct all other solar project registrations that are currently out of compliance with the above rules to file a petition for waiver if they wish to remain in the ADI Program.

### **DISCUSSION AND FINDINGS**

The projects considered in this order fall into three (3) groups: those that commenced construction, as evidenced by receipt of PTO, without receiving notice of conditional registration; those that received PTO prior to the opening of the ADI registration portal; and those that installed capacity that exceeded system size for which they had been approved by more than the 10% allowed in the Board's rules. As a result of their non-compliance with the ADI rules, all of these projects would be denied incentives absent a waiver by the Board. The Board **FINDS** that waiving the applicable rule for these projects will avoid stranding them without any incentive.

The Board's rules state that "[i]n special cases and for good cause shown, the Board may . . . relax or permit deviations from these rules." N.J.A.C. 14:1-1.2(b). The 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 the rule 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).

In launching the SuSI Program, the Board sought to provide a smooth transition to that program for projects already under development. As part of that effort, the Board provided in the SuSI Program Order that although the ADI Program was generally limited to new projects that had not yet begun construction, developers could file a petition with the Board to allow them to participate. That provision is codified in the ADI rules at N.J.A.C. 14:8-11.4(b), which also contemplates the Board granting such waivers. Subsequently, the Board created a general exemption permitting eligibility for the ADI Program to projects that had a valid TI registration but had been unable to meet that program's deadlines prior to its closure.<sup>14</sup> The Board **FINDS** that facilitating the ability of the petitioners' projects to participate in the ADI Program will benefit the constituents and the solar industry. The Board **FURTHER FINDS** that waiving N.J.A.C. 14:8-11.4(b) for a limited class of solar electric generation facilities seeking admission into the ADI Program that began construction prior to receipt of the ADI notice of conditional registration is in the public interest. The public benefits from a smoothly functioning incentive program and from smooth transitions between such programs. In circumstances such as those present here, a smooth transition is furthered by limited waivers of rules that would otherwise have the unintended consequence of stranding solar facilities without an incentive. Moreover, as noted above, the megawatt caps

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<sup>14</sup> See January 2022 Order.

included in the ADI Program did not previously exist and in the past registrations were not denied because of excess capacity installed. While solar market participants must adapt to the current incentive program and its requirements, the Board concurs with Staff that some flexibility is appropriate at the present time.

Therefore, having considered the petitions and Staff's recommendation, the Board **FINDS** good cause and **HEREBY WAIVES**, for these petitions, the prohibition against commencing construction prior to receipt of the ADI Program notice of conditional registration enumerated in N.J.A.C. 14:8-11.4(b).

With respect to the residential customers that received a PTO prior to the opening of the ADI registration portal and that petitioned the Board for a waiver of N.J.A.C. 14:11-4(b), the Board is cognizant that these projects achieved commercial operation during a time of novel challenges which affected many aspects of solar development. The Board closed one incentive program, opened and closed a second, and opened a third within the span of two (2) years. The Board concurs with Staff that flexibility is warranted in this matter, and that deviation from the strict application of the rule provision is reasonable and appropriate. The Board **FINDS** that at this point in the progression of the Board's solar incentive programs, and under these particular circumstances, the non-compliance of these projects with the provisions of N.J.A.C. 14:11-4(b) prohibiting commercial operation prior to the opening of the ADI Program should not render them ineligible. Therefore, having considered the petitions and Staff's recommendation, the Board **GRANTS** the petitions, and having found good cause, **HEREBY WAIVES** the prohibition against commencing commercial operations prior to the opening of the ADI Program registration portal by the Board enumerated in N.J.A.C. 14:8-11.4(b) for the seven (7) projects identified in this Order. The Board also recognizes that as a result of this waiver, these projects will benefit from the incentive for which they would not otherwise qualify. Thus, the Board **FURTHER FINDS** good cause, under these particular facts and circumstances, to modify the date on which the SREC-II qualification life begins. Therefore, the Board **HEREBY WAIVES** N.J.A.C. 14:8-11.6(a) to the extent necessary to permit the 15-year SREC-II qualification life for these projects to commence on August 28, 2021, the first day of ADI Program registration opening, rather than on the date of commercial operation.

With respect to the petitions seeking a waiver of the prohibition on exceeding their approved registration capacity by over ten percent, the Board notes that the aggregate increase for these projects over the initial registered capacity was approximately 30 kW, much less than 1% of the 150 MW market segment allocation. The Board **FINDS** that waiving the prohibition of N.J.A.C. 14:8-11.5(k) in this instance for these particular projects will not create a risk of breaching this allocation, that the aggregate increase is de minimus, and that a waiver will benefit the solar program participants without harming the public interest. The Board therefore **GRANTS** these petitions and, having found good cause, **WAIVES** for these projects the prohibition on increasing the registered size of a project more than ten percent.

The Board notes that there are an additional 14 projects on which the registration processing team has placed an administrative hold. As stated above, N.J.A.C. 14:8-11.5(k) is designed to ensure that project capacity aggregated across solar facilities within an ADI market segment does not exceed the amount of capacity allocated to that market segment by the Board. Staff pointed out that more than 81 MWdc of capacity, or almost one half of the allocated capacity in the residential net metered market segment, has been subscribed.<sup>15</sup> The Board **FINDS** that this rate

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<sup>15</sup> <https://njadi.programprocessing.com>

of registration means that this market segment could be fully subscribed by January 2023. The Board shares Staff's concern regarding the implications for the megawatt block approved by the Board should increasing system sizes continue to be sought as market segment allocation blocks move closer to full subscription and closure.

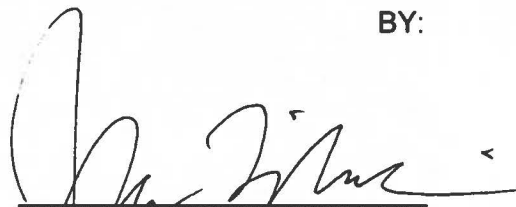
Therefore, the Board **ADVISES** market participants that the waiver of the N.J.A.C. 14:8-11.5(k) in these particular instances should not be presumed to be reflective of the Board's position regarding developers that install projects which exceed the limits established in the rule. Additionally, the Board **DIRECTS** Staff to monitor any further requests for similar relief to assess the potential impact upon the relevant ADI market segment allocation and to make a recommendation on Staff's findings in a future ADI stakeholder proceeding.

The Board notes that the relief granted in this Order is predicated upon the specific facts and circumstances alleged by these petitioners. Should other entities that wish to register in the ADI Program believe that they are situated similarly to the individual petitioners addressed in this Order, then those entities may file a petition setting forth their facts and basis for relief.

The effective date of this Order is October 19, 2022.

DATED: October 12, 2022

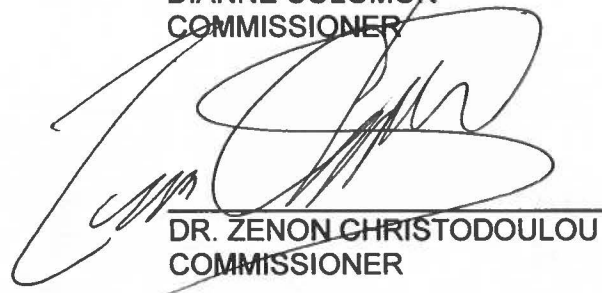
BOARD OF PUBLIC UTILITIES  
BY:

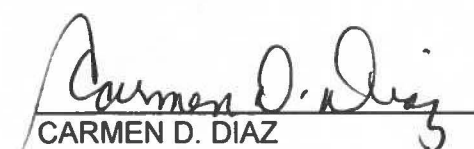
  
\_\_\_\_\_  
JOSEPH L. FIORDALISO  
PRESIDENT

  
\_\_\_\_\_  
MARY-ANNA HOLDEN  
COMMISSIONER

  
\_\_\_\_\_  
DIANNE SOLOMON  
COMMISSIONER

  
\_\_\_\_\_  
ROBERT M. GORDON  
COMMISSIONER

  
\_\_\_\_\_  
DR. ZENON CHRISTODOULOU  
COMMISSIONER

ATTEST:   
\_\_\_\_\_  
CARMEN D. DIAZ  
ACTING SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF A SUCCESSOR SOLAR INCENTIVE PROGRAM PURSUANT TO P.L. 2021, C.169  
DOCKET NO. QW22030128

IN THE MATTER OF THE VERIFIED PETITION OF NICOLE BUCK FOR APPROVAL OF A WAIVER OF THE  
REQUIREMENT TO SUBMIT A COMPLETE ADI PROGRAM REGISTRATION PRIOR TO BEGINNING  
CONSTRUCTION ON THE FACILITY  
DOCKET NO. QO22090550

IN THE MATTER OF THE VERIFIED PETITION OF ROSELIND EDMAN FOR APPROVAL OF A WAIVER OF THE  
REQUIREMENT TO SUBMIT A COMPLETE ADI PROGRAM REGISTRATION PRIOR TO BEGINNING  
CONSTRUCTION ON THE FACILITY  
DOCKET NO. QO22090552

IN THE MATTER OF THE VERIFIED PETITION OF FREEDOM FOREVER NEW JERSEY, LLC FOR APPROVAL OF  
A WAIVER OF THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM RULES WITH RESPECT TO THE  
SOLAR FACILITY LOCATED AT 4 FARVIEW ROAD, TENAFLY, NJ 07670  
DOCKET NO. QO2209560

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELGIBILITY IN THE ADMINISTRATIVELY  
DETERMINED INCENTIVE PROGRAM - DAVID GUIDARINI  
DOCKET NO. QO22090559

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY  
DETERMINED INCENTIVE PROGRAM - ALEXANDRA AND CHRISTIAN HANSIS  
DOCKET NO. QO22080476

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY  
DETERMINED INCENTIVE PROGRAM BRIAN HENDERSON - NJSTRE1546362567  
DOCKET NO. QO22080508

IN THE MATTER OF DAKSHESH PATEL REQUEST FOR INCLUSION INTO THE SOLAR RENEWABLE ENERGY  
CERTIFICATE (SREC) PROGRAM NJSRRE1544621473  
DOCKET NO. QO22080541

IN THE MATTER OF THE CLEAN ENERGY PETITION TO BPU FOR ADI REGISTRATION - NJADRE1548091176  
DOCKET NO. QO22090570

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY  
DETERMINED INCENTIVE PROGRAM – SEAN AND KAREN LEWIS NJADRE1549659052  
DOCKET NO. QO22070457

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY  
DETERMINED INCENTIVE PROGRAM – MARC STAHL NJADRE1549516539  
DOCKET NO. QO22080495

IN THE MATTER REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY DETERMINED  
INCENTIVE PROGRAM - CHRISTINE STEVENS  
DOCKET NO. QO22070456

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY  
DETERMINED INCENTIVE PROGRAM – VITO CHIARELLA NJADRE1549664568  
DOCKET NO. QO22070470

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(k) IN THE ADMINISTRATIVE  
DETERMINED INCENTIVE PROGRAM - AMANDO AND RACHEL GUERRERO NJADRE1547927009  
DOCKET NO. QO22090569

IN THE MATTER OF THE VERIFIED PETITION OF TRINITY SOLAR FOR APPROVAL OF A WAIVER OF THE  
ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM RULES WITH RESPECT TO THE SOLAR FACILITY  
LOCATED AT 1609 OSPREY COURT POINT PLEASANT BORO 08742  
DOCKET NO. QO22090563

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM – TRINITY SOLAR, INC. DAVID LOFFREDO NJADRE1548227167 DOCKET NO. QO22050348

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM TRINITY SOLAR, INC. YASMAEL ALMANZAR NJADRE1547723339 DOCKET NO. QO22050345

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM – NJADRE1548197963 JOSEPH MONTALBAN, JR. TRINITY SOLAR, INC. DOCKET NO. QO22040312

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM - NJADRE1547872981 FRANKIE CHOW TRINITY SOLAR, INC. DOCKET NO. QO22040311

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM –NJADRE1547937537 SHARON DONNELLY TRINITY SOLAR, INC. DOCKET NO. QO22040314

IN THE MATTER OF THE REQUEST FOR WAIVER OF N.J.A.C. 14:8-11.5(K) IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM – NJADRE1547960424 HARRY SMITH TRINITY SOLAR, INC. DOCKET NO. QO22040313

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM – JEFFREY CRAWFORD DOCKET NO. QO22040294

IN THE MATTER OF REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM - EDWARD MICK DOCKET NO. QO22040293

IN THE MATTER OF THE PETITION OF WALTER WINKLER FOR APPROVAL OF A WAIVER OF THE REQUIREMENT TO SUBMIT A COMPLETE ADI PROGRAM REGISTRATION PRIOR TO BEGINNING CONSTRUCTION ON THE FACILITY – NJADRE1549776133 DOCKET NO. QO22090604

IN THE MATTER OF THE VERIFIED PETITION OF TRINITY SOLAR INC FOR APPROVAL OF A WAIVER OF THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM RULES WITH RESPECT TO THE SOLAR FACILITY LOCATED AT 71 KOHLMAYER DRIVE, PENNSAUKEN, NEW JERSEY 08110 DOCKET NO. QO22090607

IN THE MATTER OF THE SUCCESSOR INCENTIVE PROGRAM PURSUANT TO P.L. 2021.C.169 REQUEST FOR DETERMINATION OF ELGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM - MAYA OLLSON DOCKET NO. QO22090608

IN THE MATTER OF THE VERIFIED PETITION OF TRINITY SOLAR, INC. FOR APPROVAL OF A WAIVER OF THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM RULES WITH RESPECT TO THE SOLAR FACILITY LOCATED AT 1454 DIVISION AVENUE, PISCATAWAY, NJ 08854, NJADRE1548367818 DOCKET NO. QO22090614

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