



Agenda Date: 6/27/24
Agenda Item: 8L

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF SUCCESSOR SOLAR INCENTIVE)	ORDER
PROGRAM PURSUANT TO P.L. 2021, c. 169 REQUEST)	
FOR DETERMINATION OF ELIGIBILITY IN THE)	
ADMINISTRATIVELY DETERMINED INCENTIVE)	
PROGRAM - MANAN SHAH MASS ASSOCIATE AND)	DOCKET NO. QW23080568
CONSULTING UREENERGY)	
)	
IN THE MATTER OF DAKSHESH PATEL REQUEST)	
FOR INCLUSION INTO THE SOLAR RENEWABLE)	
ENERGY CERTIFICATE (SREC) PROGRAM)	
NJSRRE1544621473)	DOCKET NO. QO22080541

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Manan Shah, Pro Se
Dakshesh Patel, Pro Se

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a limited waiver of N.J.A.C. 14:8-11.4(b) to permit projects that received Permission to Operate (“PTO”) prior to the opening of the Administratively Determined Incentive (“ADI”) Program.

BACKGROUND

On May 23, 2018, the Clean Energy Act, L. 2018, c. 17 (“CEA”), was signed into law. Among other mandates, the CEA directed the Board to adopt rules and regulations to close the SREC Registration Program (“SRP”) to new registrations once 5.1% of the kilowatt (“kW”)-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 (“TREC’s”).¹ Rules for the TI Program took effect upon publication in the New Jersey Register on October 5, 2020 (“TI Rules”).²

On July 9, 2021, Governor Murphy signed into law the Solar Act of 2021 (“Solar Act” or “Act”).³ The Act directed the Board to establish a program to incent the development of 3,750 megawatts (“MW”) of solar by 2026 by establishing a new program for incentivizing solar in New Jersey through the mechanism of Solar Renewable Energy Certificate-IIs (“SREC-IIs”). The Act directed the Board to create both a solar facilities program for smaller projects, with administratively set incentive values, and a solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW.

On July 28, 2021, the Board took a major step toward implementing the Solar Act by creating the Successor Solar Incentive (“SuSI”) Program.⁴ The SuSI Program is divided into the ADI and the Competitive Solar Incentive (“CSI”) Programs. The ADI Program, which opened to new registrants on August 28, 2021, offers a fixed incentive in the form of New Jersey SREC-IIs for net metered residential projects, net metered non-residential solar projects of five (5) MW or less, and all community solar programs. Incentive values are set administratively; the values were set following comprehensive modeling of costs and multiple rounds of stakeholder involvement. Incentive values vary by market segment; in some cases, they vary according to project size and siting.

The Board’s rules for the ADI Program at N.J.A.C. 14:8-11.1 to -11.9 (“ADI Rules”) took effect February 22, 2022.⁵ 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 Board made the annual allocation of capacity to market segments for Energy Year 2024 (“EY24”) by Order dated May 10, 2023 and allocated the residential net metered market segment 200 MW direct current of capacity.⁶

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 that were not previously registered in the TI 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

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

² 52 N.J.R. 1850(a).

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

⁴ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO20020184, Order dated July 28, 2021 (“SuSI Program Order”).

⁵ 54 N.J.R. 368(a).

⁶ In re Certification of Energy Year 2022 Cost Cap Calculation and Setting ADI Program Megawatt Blocks for Energy Year 2024, BPU Docket No. QO23040206, Order dated May 10, 2023.

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).]

On October 12, 2022, the Board waived the above rule for a number of petitioners, including Dakshesh Patel ("Mr. Patel"), whose request to be admitted to the SRP was not addressed in that Order and is discussed below.⁷

PETITIONS

On August 28, 2022, Mr. Patel filed a petition seeking entrance to the SRP for a 4.8 kW alternating current ("kW AC") (approximately 5.1 kW DC) project located at his home. Mr. Patel stated that the 4.8 kW AC project was completed as an addition to an existing 7.5 kW AC (7.95 kW DC) system that is registered in the SRP. The Board addressed this petition in Docket No. QO22080541, by Order dated October 12, 2022; the Board allowed the 4.8 kW AC system to participate in the ADI Program but did not address the request to allow that capacity into the SRP. In August 2023, Mr. Patel again sought to have that capacity ruled eligible for the SRP. Board Staff ("Staff") recommends that the Board now address Mr. Patel's request to allow his additional capacity into the SRP. According to Mr. Patel's August 2022 petition, the 4.8 kW project completed installation on April 14, 2020, but had its activation delayed until July 6, 2020, due to the COVID-19 pandemic. Mr. Patel claimed that he provided the installer, Sunrun, with an affidavit on August 29, 2020, stating they would have received PTO prior to April 30, 2020, if not for the COVID-19 pandemic, but that Sunrun did not follow through to obtain the waiver that would have allowed the 4.8 kW AC project to register in the SRP.

On August 16, 2023, Manan Shah ("Mr. Shah") filed a petition seeking entrance to the TI Program for a project of undisclosed capacity located at his home. Mr. Shah stated that he received PTO from Jersey Central Power & Light Company on April 6, 2021. According to Mr. Shah, the installer, Mass Associate and Consulting, did not register in the TI Program at any time and can no longer be contacted. Mr. Shah asked for admittance to the TI Program and for TREC eligibility retroactive to the PTO date.

⁷ In re a New Jersey Solar Transition Pursuant to P.L. 2021, c. 169, BPU Docket No. QW22030128, Order dated October 12, 2022 ("October 2022 ADI Waiver Order").

STAFF RECOMMENDATION

Patel Petition

As noted above, the Board has previously allowed Mr. Patel's project to participate in the ADI Program, but with his August 2022 petition, he requested to be allowed to register it in the legacy SRP, either as an addition to the 7.5 kW AC project already registered in the SRP or as a separate registration in that program.

Whether as an addition or as a new registration, this is capacity sought to be added in a closed program. Staff notes that the Board's solar incentives are designed to decline over time. The programs through which those incentives are provided do not allow the addition of capacity to an existing system unless that system is registered in an open program. The SRP closed to new registrations in 2020 and thus capacity cannot be added to the project registered in that program.

Mr. Patel argued, however, that a "SREC Eligibility Waiver was also obtained." The petitioner referred to relief provided by the Board, through a Board Order issued in April 2020, for projects that would have received PTO prior to the SRP closure deadline of April 30, 2020, if not for the pandemic.⁸ Such projects were permitted to register in the SRP if certain specified documentation was provided and an application submitted to TRC Energy Solutions, the Board's SRP Administrator ("SRP Administrator") in a timely manner. Despite his assertion that his project received this waiver, Mr. Patel went on to blame his installer for the fact that it did not. He asserted that his project, which received municipal approval in April 2020 but did not receive PTO until July 27, 2020, should have received this relief and stated that despite many phone calls and emails from him, his installer failed to submit the necessary documentation in 2020.

Mr. Patel has not supported his claim to the "SREC Eligibility Waiver." First, the SREC Waiver Order itemizes the specific documentation required:

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 electric distribution company's ("EDC's") 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.

⁸ In re 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, Order dated April 27, 2020 ("SREC Waiver Order").

Mr. Patel attached some of these items to his petition but has not included date-stamped pictures or an executed milestone report form. Moreover, the timing of Petitioner's request to be admitted into the legacy SRP must also be considered. In support of his request, Mr. Patel pointed to a neighbor who had panels installed in April 2020 and successfully petitioned the Board for admittance to the SRP.⁹ However, his neighbor petitioned the Board in November 2020, shortly after being denied entry into the SRP. The Order granting his petition was issued in April 2021, and TRC closed the portal for the SRP during the same timeframe. In contrast, at the time Petitioner first sought admission into the SRP in August 2022, that portal had been closed for over a year. Although Mr. Patel asserted that "delay in this petition is also due to Sunrun," he did not substantiate that claim.

Staff recommends that the Board deny Mr. Patel's request for admittance to the SRP either as an addition to his existing registration or as a new registration. This project is eligible for the ADI Program. Although this program requires registration following the launch of the ADI Program, the Board waived this requirement for Mr. Patel's project in the October 2022 ADI Waiver Order. Staff notes that the new capacity must be metered separately to maintain the eligibility of both projects in their respective programs. Staff has confirmed that separate meters have already been installed.

Shah Petition

Mr. Shah requested that his residential project be registered in the TI Program. This Program is closed, and Staff does not recommend allowing this project into it. Rather than stranding it without an incentive, however, Staff recommends that the Board encourage this petitioner to apply to the ADI Program. The Board has previously allowed projects that received PTO prior to registration to register in the ADI program.¹⁰ Staff recommends that the Board deny the request to allow this project into the TI Program but encourage petitioner to register the project in the ADI Program and waive N.J.A.C. 14:8-11.4(b) for this project, such that its prior receipt of PTO does not render it ineligible for the ADI Program. Consistent with precedent set by the October 2022 ADI Waiver Order, 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. Staff recommends that the Board order that the qualification life for this project commence instead on August 28, 2021, the date on which the ADI registration portal opened to the public. Therefore, only the electricity generated by the project after the start of the ADI Program shall be eligible to create SREC-IIs.

In sum, the Board should not allow either petitioner to register his project in a closed legacy program but should encourage both to register in the ADI Program with appropriate conditions.

⁹ In re Dr. Vijay Kamath – Request for Inclusion into the Solar Renewable Energy Certificate (SREC) Program, BPU Docket No. QO20120737, Order dated April 8, 2021.

¹⁰ October 2022 ADI Waiver Order; 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); 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 conditional acceptance for an application in the ADI Program.).

DISCUSSION AND FINDINGS

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. 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 these residential customers benefits the public by promoting a smoothly functioning incentive program and a smooth transition between 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.

The Board **FINDS** that Mr. Shah is applying to a closed program and therefore **DENIES** his petition for admittance to the TI Program. However, the Board concurs with Staff that flexibility is warranted in these matters 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 facts and circumstances, the non-compliance of these projects with the provisions of N.J.A.C. 14:8-11.4(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, 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 Mr. Shah's project. The Board also recognizes that, as a result of this waiver, this project 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 fifteen (15)-year SREC-II qualification life for Mr. Shah's project to commence on August 28, 2021, the first day of ADI Program registration opening, rather than on the date of commercial operation.


The Board provided flexibility to customers impacted by the COVID-19 pandemic and provided specific requirements for impacted projects to gain entrance to the SRP. The Board **FINDS** that Mr. Patel did not follow these instructions and therefore **DENIES** his petition for admittance to the legacy SRP as either an addition to the project registered in the SRP or as a new registration. Staff has advised that Mr. Patel's two (2) projects are already separately metered, such that each project is eligible for its respective incentive program.

The Board notes that the relief granted in this Order is predicated upon the specific facts and circumstances alleged by these petitioners.

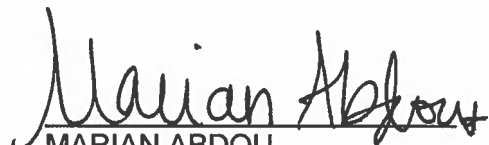
The effective date of this Order is July 5, 2024.

DATED: June 27, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL SADOY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRIL GOLDEN
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 SUCCESSOR SOLAR INCENTIVE PROGRAM PURSUANT TO P.L. 2021, C. 169 REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM - MANAN SHAH MASS ASSOCIATE AND CONSULTING UREENERGY

IN THE MATTER OF DAKSHESH PATEL REQUEST FOR INCLUSION INTO THE SOLAR RENEWABLE ENERGY CERTIFICATE (SREC) PROGRAM
NJSRRE1544621473

DOCKET NOS. QW23080568 & QO22080541

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