



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF HARTZ SOLAR) ORDER
LLC FOR EXTENSION OF TIME TO COMPLETE A 3.9)
MW COMMUNITY SOLAR PROJECT REGISTERED IN)
THE TRANSITION INCENTIVE (TI) PROGRAM; TI)
APPLICATION NUMBER NJSTRE154084015) DOCKET NO. QW24010070

Parties of Record:

Brian Lipman, Esq., on behalf of New Jersey Division of Rate Counsel
Curtis L. Michael, Esq., Horowitz, Rubino & Patton, LLP, on behalf of Hartz Solar, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “NJBPU”) considers the petition of Hartz Solar, LLC (“Hartz Solar” or “Petitioner”) for an extension of time for the registration of a 3.916 MW solar generation facility (“Project”) within the Transition Incentive (“TI”) Program and for the Project’s conditional acceptance in the Community Solar Energy Pilot Program (“Pilot Program”) (“Petition”).

BACKGROUND

On May 23, 2018, the Clean Energy Act of 2018 (L. 2018, c. 17) (“CEA”) was signed into law and became effective immediately.¹ The CEA directed the Board to adopt rules and regulations to close the Solar Renewable Energy Certificate (“SREC”) Registration Program (“SREC Program”) to new applications once the Board determined that 5.1 percent of the kilowatt-hours sold in the State by third party suppliers and basic generation service providers had been generated by solar electric power generators connected to the distribution system (“5.1% Milestone”). The SREC Program was replaced in two (2) stages. First, on December 6, 2019, the Board established the TI Program to provide a bridge between the legacy SREC Program and a to-be-developed Successor Incentive program. TI Program incentives are delivered based on megawatt hours (“MWh”) of electricity produced and are tailored to specific project types through the use of factors. Community solar projects receive a factor of 0.85 and thus \$129.20/MWh. The 5.1% Milestone was found to have occurred on April 30, 2020. The TI Program portal opened to new project registrations on May 1, 2020, and remained open to new registrations until the establishment of

¹ L. 2018, c. 17.

a registration program for the new Successor Program.² In the second phase, the Board developed and launched the Successor Solar Incentive (“SuSI”) Program, based on the Solar Act of 2021 (L. 2021, c.169), signed by Governor Murphy on July 9, 2021, and on extensive stakeholder engagement conducted by Board Staff (“Staff”). On July 28, 2021, the Board announced the closure of the TI Program and the opening of the SuSI Program. The TI Program closed on August 27, 2021, and the SuSI Program opened on August 28, 2021.

The CEA also directed the Board to adopt rules and regulations establishing a pilot program for Community Solar in New Jersey. The CEA directed the Board to develop rules that would establish access to solar projects for low- to moderate income (“LMI”) customers and that would limit the land use impact of the solar facilities. The Board established the pilot program through rules published in the New Jersey Register on February 19, 2019 (“Pilot Program”).³ The Pilot Program enabled New Jersey electric utility customers to participate in a solar energy project that may be remotely located from their properties and receive a credit on their utility bills. Community solar therefore enables access to clean energy generation for utility customers unable to place solar generation directly on their own properties. As directed by the statute, the Board particularly emphasized its interest in ensuring that LMI customers are able to access community solar and that the Pilot Program did not compromise the preservation of open space or protected lands in New Jersey.⁴ The Pilot Program was designed to provide the necessary experience and to lay the groundwork for the development and implementation of a full-scale community solar energy program.

Community solar projects were selected by the Board for participation in the Pilot Program via a competitive solicitation process, as directed by N.J.A.C. 14:8-9.3(c). During the second solicitation, the Board received 412 applications and selected 105 applications on October 28, 2021, representing approximately 165 megawatts (“MW”). These projects initially had a deadline to become fully operational within eighteen (18) months; before or on May 4, 2023, with the possibility of extensions for projects that demonstrated substantial progress towards completion.⁵

In the PY2 Order, the Board also waived its rules authorizing capacity for a third program year and directed Staff to conduct stakeholder proceedings and report back to the Board with recommendations regarding the establishment of rules for the permanent program. PY2 Order at 9.

On August 17, 2022, the Board issued an Order extending the project completion deadlines for the Program Year Two (“PY2”) projects in the Pilot Program by six (6) months to November 4, 2023.⁶

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 51 N.J.R. 232(a).

⁴ In re the Community Solar Energy Pilot Program, BPU Docket No. QO18060646, Order dated March 29, 2019.

⁵ In re the Community Solar Energy Pilot Program Year 2 Application Form and Process – Application Awards, BPU Docket No. QO20080556, Order dated October 28, 2021 (“PY2 Order”).

⁶ In re the Community Solar Energy Program, BPU Docket No. QO18060646 et al., Order dated August 17, 2022 (“August 2022 Order”).

On August 16, 2023, the Board established the permanent Community Solar Energy Program (“CSEP”).⁷ Additionally, on August 16, 2023, the Board approved a CSEP rule proposal for publication in the New Jersey Register (“NJR”).⁸ The CSEP permits projects that were conditionally approved to participate in the Pilot Program, but did not reach operation in the allotted time, to submit a new application for the CSEP without counting against, or being subject to, otherwise applicable capacity limits. Projects conditionally approved in the Pilot Program seeking to roll over into the CSEP were required to meet all applicable requirements of participation in the CSEP, other than the capacity limits. Such projects must also commit to a guaranteed bill credit discount consistent with the discount indicated in their Pilot Program application in order to be exempt from capacity limits.

Petition

Hartz Solar was awarded participation in PY2 on October 28, 2021. Petitioner received conditional acceptance into the TI Program, with a final deadline of November 4, 2023. Petitioner documented its receipt of the municipal Certificate of Approval on September 12, 2023 and included some follow up emails regarding scheduling meter work that were dated at the end of September and beginning of October. Petition at Par. 9 and Exhibit 7. However, Petitioner did not receive permission to operate (“PTO”) from its electric distribution company (“EDC”) by the deadline, and there is no record of Hartz Solar submitting documentation of the delay prior to the November 4, 2023 deadline.

On January 31, 2024, Hartz Solar filed the Petition seeking extension in the TI Program for a 3.916 MWdc community solar Project at 201 Bay Avenue, Elizabeth, New Jersey. According to the Petition, construction of the community solar project was completed in September 2023 and received a Certificate of Approval from the City of Elizabeth on September 12, 2023. However, for reasons that the petition stated were beyond Hartz Solar’s control, it did not receive PTO from Public Service Electric and Gas Company (“PSE&G”) until December 12, 2023. After receiving PTO, Hartz Solar submitted its Post-Construction Packet in January 2024. At that time the program manager for the Administratively Determined Incentive (“ADI”) program component within the SuSI program (“Program Manager”) advised Petitioner that the TI Program does not allow submittal after the November 4, 2023 expiration date.

Hartz Solar requested that the Board waive the November 4, 2023 deadline and grant an extension of time to file its Post-Construction Packet.

DISCUSSION AND FINDINGS

The Board has long supported New Jersey’s solar industry. It always endeavors to support that industry’s continued growth while at the same time minimizing costs to ratepayers to the greatest extent possible. As a part of pursuing these twin goals, the TI Program Rules and the timelines contained therein were designed to provide a smooth transition to the Successor Program for a limited time. Similarly, the Pilot Program was intended to be a trial of the community solar approach to renewable energy equity in New Jersey. Thus, when faced with a petition seeking a waiver of the timelines in the TI Program rules and the Pilot Program rules, the Board carefully

⁷ In re the Community Solar Energy Program: Order Launching the Community Solar Energy Program, BPU Docket No. QO22030153, Order dated August 16, 2023.

⁸ 55 N.J.R. 1985(a).

reviews the facts and circumstances of each such petition to determine whether such an extension is in the public interest.

As noted above, community solar enables New Jersey electric utility customers to receive a credit on their utility bills from a solar energy project that may be remotely located from their properties. As implemented by the Board community solar expands clean energy equity, since all projects conditionally approved in the Pilot Program must have committed at least 51% of their capacity to LMI subscribers. The Pilot Program therefore enables these customers to access clean energy generation even though they are currently unable to place solar generation directly on their own properties. The Board remains deeply committed to this effort to increase clean energy equity, and it recognizes the challenges faced by solar developers seeking to install solar facilities while registering low-income customers who may be difficult to reach and who lack experience with solar installations.

However, Hartz Solar's request to extend the TI Program deadlines necessitates a waiver of the TI Program rules and the deadlines established therein. The Board must balance Hartz Solar's interests as a solar developer with the public's interest in timely completion and interconnection of projects, the ratepayers' interest in controlling the cost of solar subsidies, and the State's interest in ensuring that incentive levels appropriately reflect the time period during which a project reaches commercial operation.

The Board's rules state that "[i]n special cases, upon a showing of good cause the [B]oard may relax or permit deviations from the rule." N.J.A.C. 14:1-1.2(b). The rules go on to explain that "the 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 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 requires that a registrant must submit its post-construction certification package as well as receive its PTO by the deadline. N.J.A.C. 14:8-11.5(g)(4). Hartz Solar based its request for an extension on the delay in the receiving PTO for its Project before the November 4, 2023 deadline. However, no extension request was filed with the Program Manager or the Board prior to the November 4, 2023 deadline. The Petition and supplemental filings were filed on January 31, 2024, weeks after that deadline passed. Additionally, the Petition and supplemental filings did not provide any evidence to prove that the delays in obtaining PTO prior to the November 4, 2023 deadline were beyond the scope of known EDC delays in PTO turnaround time. The one week's worth of emails between Petitioner and the EDC does not demonstrate any extraordinary effort to obtain PTO by the deadline. Furthermore, the evidence presented by Hartz Solar does not include any communications with the EDC regarding the delay in PTO issuance, nor is Hartz Solar's claim of "PSE&G scheduling issues" substantiated with any documented communications regarding the issue. Petition at 4.

The Board also recognizes that this PY2 Project has already benefited from a blanket six (6)-month extension. August 2022 Order at 13. Moreover, denial of an extension will not strand Petitioner without an incentive. The Board has given projects that do not complete within the allotted time in PY2 the opportunity to transition to the CSEP without requiring such projects to comply with the capacity limitations of that program; the Board has also granted projects that do not meet their expiration date in the TI Program the ability to transfer to the ADI Program with an exemption from the usual requirement to commence construction prior to acceptance in that program.

Following careful review of the petition and the records in this matter, the Board **FINDS** that Hartz Solar has not established good cause to warrant the multiple waivers of the Board's rules needed to grant extensions. As more particularly described above, though Hartz Solar has established that it did not receive PTO for its project as quickly as it anticipated, it failed to submit its petition prior to the November 4, 2023 deadline. For this reason, as well as the existence of alternative incentive programs for which the Project is eligible, the Board **FINDS** that Hartz Solar has failed to adequately demonstrate good cause to justify a waiver of both the TI Program Rules and Pilot Program Rules. The Board therefore **DENIES** the Petition. However, the Board encourages Hartz Solar to apply to the permanent CSEP and **HEREBY WAIVES** for these projects the requirement at N.J.A.C. 14:8-11.4(b) that projects in the ADI Program obtain a notice of conditional registration prior to beginning construction.


The effective date of this Order is July 31, 2024.

DATED: July 24, 2024

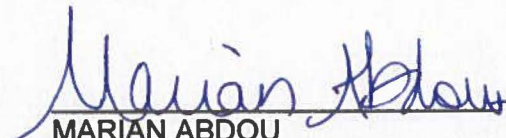
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ATTEST:



SHERRI L. 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 HARTZ SOLAR LLC FOR EXTENSION OF TIME TO COMPLETE A 3.9 MW COMMUNITY SOLAR PROJECT REGISTERED IN THE TRANSITION INCENTIVE (TI) PROGRAM; TI APPLICATION NUMBER NJSTRE154084015
DOCKET NO. QW24010070

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