

IN THE MATTER OF THE PETITION OF PIVOT) DOCKET NO. QO22070444
ENERGY FOR AN EXTENSION OF THE EXPIRATION)
DATES OF TWO PROJECTS IN THE TRANSITION)
INCENTIVE PROGRAM LOCATED AT 152 US)
HIGHWAY 206 HILLSBOROUGH TOWNSHIP)
NJSTRE1547393209 NJSTRE1547393282, *et al.*¹)

Parties of Record to the Joint Motion:

R. William Potter, Esq., Potter and Dickson, on behalf of Advanced Solar Products, Ecological Systems LLC, Pivot Energy Commercial Solar, LLC, and Presidential Place Realty, LLC

BY THE BOARD:²

By Order dated November 9, 2022, the New Jersey Board of Public Utilities (“Board” or “BPU”) denied the petitions of multiple entities seeking extensions of time for registrations within the Transition Incentive (“TI”) Program.³ On December 1, 2022, R. William Potter, Esq. filed a Joint Motion for Reconsideration of the November 2022 Order (“Joint Motion”).

In the Joint Motion, Mr. Potter indicated that the Joint Motion was by and on behalf of Advanced Solar Products, Ecological Systems LLC, HP Solar Power LLC, NJ Solar Power, LLC, Pivot Energy Commercial Solar, LLC, Presidential Place Realty, LLC, Safari Energy, LLC and solar projects similarly situated. By email to the Board Secretary dated January 6, 2023, Advanced Solar Products withdrew from the Joint Motion for the Egan Properties project, Docket No. QO22040319. By correspondence dated February 17, 2023, Safari Energy, LLC withdrew its participation in the Joint Motion for projects identified in Docket No. QO22030126. The Board did not address petitions from entities known as HP Solar Power LLC or NJ Solar Power LLC in its November 2022 Order. Therefore, the movants before the Board are: Advanced Solar Products for HP Scotch Road, Ecological Systems LLC, Pivot Energy Commercial Solar, LLC, and Presidential Place Realty (collectively, “Movants”). The Board does not address any “solar projects similarly situated” as the facts and circumstances considered here are particular to the Movants.

BACKGROUND

On May 23, 2018, the Clean Energy Act was signed into law and became effective immediately.⁴ Among many other mandates, the Clean Energy Act directed the Board to adopt rules and regulations to close the Solar Renewable Energy Certificate (“SREC”) Registration Program (“SREC Program” or “SRP”) 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

¹ The full caption listing all petitioners is found at In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17, 2022 N.J. PUC LEXIS 357, BPU Docket No. QO19010068, Order dated Nov.9, 2022 (“November 2022 Order”).

² Commissioner Marian Abdou abstained from voting on this matter.

³ November 2022 Order.

⁴ L. 2018, c. 17 (“Clean Energy Act” or “Act”).

system (“5.1% milestone”). The Clean Energy Act also directed the Board to complete a study (“Capstone Report”) that evaluates how to modify or replace the SREC Program to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State and to reduce the cost of achieving the State’s solar energy goals.

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.⁵ The TI Program, subsequently codified in rules,⁶ provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt hour of electricity produced. Incentives are tailored to specific project types through the use of factors, which are applied to a base incentive rate to provide a particular project type the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects located on rooftops and carports, like those of petitioners, receive a factor of 1.0 and thus the full amount of the base incentive of \$152/MWh. The TI Program portal opened to new applications on May 1, 2020, and, pursuant to Board Order, remained open to new registrations until the establishment of a registration program for the Successor Program.⁷ The TI Program rules do not provide for automatic or administrative extensions to the projects’ conditional registration “expiration dates” (also referred to as the registration deadline). The TI Rules contain a twelve-month registration expiration pursuant to N.J.A.C. 14:8-10.4(f).

By Order dated July 29, 2020, the Board granted projects registered in the TI Program on or before October 30, 2020 an extension through October 30, 2021 to reach commercial operation.⁸ The extension also applied to facilities that transferred from the legacy SRP to the TI Program, with the exception of legacy subsection (r) and certain subsection (t) registrants.⁹ The Board found that the solar industry was, at that time, adjusting to significant changes caused by both the COVID-19 pandemic and the changes in solar incentive programs and that, under those circumstances, waiving the Board’s rules to permit additional time for project completion appropriately balanced the needs of the solar industry with the cost to the ratepayers.¹⁰ The Board forecasted in the July 2020 Order that it may address in a future order extension requests from projects registering in the TI Program after October 30, 2020, considering the public health crisis and the development of the Successor Solar program.¹¹

On April 21, 2021, BPU Staff (“Staff”) issued the New Jersey Successor Program Staff Straw Proposal (“Successor Straw Proposal”). The Successor Straw Proposal expanded on the two-part incentive program design suggested in the capstone report prepared by the Cadmus Group,

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, 2019 N.J. PUC LEXIS 471, BPU Docket No. QO19010068, Order dated December 6, 2019.

⁶ 52 N.J.R. 1850(a) (Oct. 5, 2020), (“TI Rules”).

⁷ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020 (“January 2020 Order”).

⁸ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17 – Order Providing Extensions to Solar Transition Projects, 2020 N.J. PUC LEXIS 342, BPU Docket Nos. QO19010068 & QO20070484, Order dated July 29, 2020 (“July 2020 Order”).

⁹ Id. at 4.

¹⁰ Id. at 3-4.

¹¹ Id. at 5.

LLC, proposing an administratively determined incentive program for smaller projects and a competitive incentive program for most non-residential projects over five (5) megawatts (“MW”). The Successor Straw Proposal also provided Staff’s recommendations for suggested incentive levels, processes, market segment capacity caps, calculation of the statutorily mandated cost cap, and overall implementation of the Successor Program. Five (5) public stakeholder workshops were conducted to address questions about the straw proposal and collect stakeholder feedback on Staff’s recommendations. Workshop #5, held on May 7, 2021, specifically addressed the proposed transition from the TI Program to the Successor Program.

On June 24, 2021, the Board found good cause to grant projects registered in the TI Program on or before the effective date of the order a six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4.¹² Nearly a year following its July 2020 Order, the Board again found that the solar industry was still adjusting to the changes resulting from the Clean Energy Act and the impact of the COVID-19 crisis.¹³ The Board additionally acknowledged the regulatory uncertainty resulting from the pending launch of the Successor Program and noted that the general purpose of the TI Rules and the timelines contained therein is to provide a smooth transition to the Successor Program.¹⁴ With the creation of the Successor Program still pending, the Board found that waiving the existing TI development timelines would both support the solar industry and protect ratepayers from potential market disruptions that might occur if a large number of developers are unable to meet those timelines.¹⁵

On July 9, 2021, Governor Murphy signed L. 2021, c. 169 into law, effective immediately, directing the Board to develop and launch the Successor Program, among other requirements. On July 28, 2021, the Board announced the closure of the TI Program and the opening of the Successor Solar Incentive (“SuSI”) Program.¹⁶ The TI Program closed on August 27, 2021, and the SuSI Program opened on August 28, 2021.

On January 26, 2022, the Board issued an Order granting a waiver of N.J.A.C. 14:8-11.4(b) of the SuSI Program Rules, which requires receipt of conditional registration in the Administratively Determined Incentive (“ADI”) Program prior to beginning construction on the solar facility.¹⁷ The January 2022 Order permitted projects that held a valid TI Program registration and had commenced construction to apply for the ADI Program.¹⁸ The Board found that facilitating the ability of projects registered in the TI Program to enter the ADI Program would benefit the solar industry, promote a smooth transition from one program to the other, and avoid stranding without

¹² In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17 – Order Addressing Requests for Extension for Projects in the Solar Transition Incentive Program, 2021 N.J. PUC LEXIS 279, BPU Docket Nos. QO19010068 & QO21060883, Order dated June 24, 2021 (“June 2021 Order”).

¹³ Id. at 6.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, 2021 N.J. PUC LEXIS 299, BPU Docket No. QO19010068, Order dated July 28, 2021 (“SuSI Program Order”).

¹⁷ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, C.17, Order Modifying ADI Program Eligibility Conditions, BPU Docket No. QO20020184, Order dated January 26, 2022 (“January 2022 Order”).

¹⁸ Id. at 5.

an incentive an increasing number of TI registrants that may be unable to complete their projects within the TI deadlines.¹⁹

On June 8, 2022, the Board issued an Order granting a conditional extension in the TI Program to ESNJ-KEY-GIBBSTOWN, LLC, subject to a showing that certain specified conditions applied.²⁰ In the Gibbstown Order, the Board found good cause to grant a conditional extension to the petitioner's project since it was electrically and mechanically complete; had secured all necessary permits; and was prevented from meeting its TI Program deadline only by a unilateral change to the interconnection agreement requirements made by the electric distribution company ("EDC") following the developer's reliance on the original terms, specifically the time in which EDC interconnection upgrades would be completed.²¹ The Gibbstown Order also established a process for petitioners who believe that they are similarly situated to apply for extensions to their registration, subject to making a similar showing.²²

A significant number of TI registrants petitioned the Board for extensions. On August 17, 2022, the Board issued an Order denying 15 petitioners' requests to extend the deadlines for the projects as unsupported by the record and inconsistent with the interim nature of the TI Program.²³ Petitioners were encouraged to withdraw their TI registration and submit a registration in the ADI Program if the petitioners found that they could not complete the projects by the existing TI Program deadlines.²⁴ Where petitioners filed an ADI registration, the Board waived the ADI Program rule enumerated at N.J.A.C. 14:8-11.4(b) that prohibits projects from commencing construction without first obtaining a notice of conditional registration in the program.²⁵

On November 9, 2022, the Board issued the November 2022 Order that is the subject of this motion, denying 28 petitions seeking waivers of the Board's TI Rules in order to receive extensions of time in the TI Program, and on December 1, 2022, Movants filed the Joint Motion.

On April 5, 2023, Movants filed a request that the Board grant oral argument to consider the Joint Motion.

¹⁹ Id. at 4-5.

²⁰ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17 – Order Addressing Request for an Extension of Time to Complete NJSTRE1545046932 in Transition Incentive Program – 480 South Democrat Road, Gibbstown, NJ ESNJ-KEY-GIBBSTOWN, LLC, 2022 N.J. PUC LEXIS 187, BPU Docket Nos. QO19010068 & QO22030156, Order dated June 8, 2022 ("Gibbstown Order").

²¹ Id. at 8-9.

²² Id. at 9-10.

²³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17, 2022 N.J. PUC LEXIS 246, BPU Docket No. QO19010068, Order dated August 17, 2022 ("August 2022 Order").

²⁴ Id. at 12.

²⁵ Ibid.

JOINT MOTION

The Joint Motion alleged that the Board relied on two (2) errors of law that necessitate reconsideration of the November 2022 Order and a further hearing on the issue of extensions for TI Program registrants:

1. The Board erred by misconstruing and misapplying the “good cause” standard set forth in N.J.A.C 14:1-1.2.
2. The Board erred by not implementing the Gibbstown criteria formally within the public notice rulemaking process.

The Joint Motion focused not upon the November 2022 Order but primarily on the Gibbstown Order. Noting that the Board’s rules provide it with the discretion to waive its rules upon a showing of good cause, N.J.A.C. 14:1-1.2(b), Movants alleged that the Gibbstown Order effectively eliminated a case-by-case analysis of good cause by creating a new “extraordinarily high and discriminatory standard” for finding good cause. Motion at 10. According to Movants, the Board misapplied its good cause standard in deciding the November 2022 Order.

Movants also argued that the criteria established in the Gibbstown Order should have been adopted via the rulemaking process and in accordance with Metromedia v. Director of Division of Taxation.²⁶ Movants claimed that the Gibbstown criteria dramatically changed solar policy, and as such, Movant requested that the Board reconsider the Gibbstown Order in addition to the November 2022 Order. Motion at 15. According to Movants, the Gibbstown Order criteria discriminates in favor of EDCs as the criteria excuse EDCs from supply chain delays for “impossibility of performance” but not solar developers. Motion at 15.

Movants also indicated that they relied in good faith “on application by the Board of established criteria for reviewing and granting modest time extensions.” Motion at 17. The Motion further claimed that “projects were entitled to and did rely to their detriment on previously recognized factors delaying project completion.” Ibid. But for the Gibbstown Order, according to Movants, their “otherwise routinely granted petitions [for extension]” would have been granted. Ibid. Movants submitted three (3) certifications in support of the Joint Motion.

Rawlings Certification – Advanced Solar Products

In a certification dated December 1, 2022, appended to the Motion as Exhibit 1, Lyle Rawlings, P.E, president of Advanced Solar Products, Inc., claimed that the Board erred by providing the June 2021 Order’s six-month extension only to those projects that had registered in the TI Program as of the date of the Order. He contended that those who had not yet registered in the TI Program – specifically, “private and non-profit” projects - should also have received a six-month extension. Mr. Rawlings claimed that projects that registered after the June 2021 Order through the close of the TI Program on August 27, 2021 received no advance notice that those projects would not also receive extensions of time from the Board. Mr. Rawlings further posited that no one in late summer 2021 could have predicted subsequent trends affecting solar development.

²⁶ Metromedia, Inc. v. Director, Div. of Taxation, 497 N.J. 313 (1984) (“Metromedia”).

Kadam Certification – Pivot Energy Jamesburg project

In a certification dated November 30, 2022, appended to the Motion as Exhibit 2, Suparna Kadam, VP Business Development for Pivot Energy Commercial Solar, LLC (“Pivot”), argued that the Board’s November 2022 Order denying the Jamesburg project’s one-year extension request was arbitrary because the denials in the November 2022 Order were based “solely on conclusions regarding project maturity.” Kadam Certification at 3.

Kadam Certification – Pivot Energy Hillsborough project

In a certification dated November 30, 2022, appended to the Motion as Exhibit 3, Suparna Kadam, VP Business Development for Pivot Energy Commercial Solar, LLC, argued that the Board made a factual error regarding Pivot’s Hillsborough project in the November 2022 Order by stating that Pivot had filed for a Gibbstown waiver. Kadam Certification at 4. Mr. Kadam further argued that whether or not a project applied for a Gibbstown waiver should not factor into the Board’s consideration of its waiver request, and that the interconnection delays described in Pivot’s petition demonstrated good cause for granting a waiver of the Board’s TI Rules. Ibid.

DISCUSSION AND FINDINGS

Oral Argument

Pursuant to N.J.A.C. 14:1-8.2, parties may seek oral argument before the Board. The regulation provides that the Board in its discretion decides whether to grant a request oral argument. The Board believes that the Movants have well and fully articulated their arguments in the moving papers and exhibits, and that those writings, in conjunction with the underlying petitions, are sufficient for deciding this motion. The Board **DENIES** the motion for oral argument.

Motion for Reconsideration

A motion for reconsideration requires the moving party to allege in separately numbered paragraphs “errors of law or fact” that were relied upon by the Board in rendering its decision. N.J.A.C. 14:1-8.6(a)(1). In addition, pursuant to N.J.A.C. 14:1-8.6(a)(2) where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. The Joint Motion identified no errors of fact and alleged two errors of law²⁷:

1. The Board erred by misconstruing and misapplying the “good cause” standard set forth in N.J.A.C 14:1-1.2.
2. The Board erred by not implementing the Gibbstown criteria formally within the public notice rulemaking process.

Following extensive review of the Joint Motion, exhibits submitted in support of the Joint Motion, the underlying petitions, and Staff’s prior recommendations, the Board **FINDS** that nothing in the Movants’ request requires the Board to modify or otherwise reconsider its decision. Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those

²⁷ An error of fact is alleged in the Kadam Certification and addressed below.

cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious or unreasonable. D’Atria, 242 N.J. Super. at 401. But this Board will not modify an Order in the absence of a showing that the Board’s action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not find that the issues raised by Movants are sufficient to warrant reconsideration or modification.

Absent a legislative restriction, administrative agencies have the inherent power to reopen or to modify and rehear prior decisions, e.g., In re Trantino Parole Application, 89 N.J. 347, 364 (1982). As to the Board, N.J.S.A. 48:2-40 expressly provides that the Board at any time may order a rehearing and/or extend, revoke or modify an order made by it. An administrative agency may invoke its inherent power to rehear a matter “to serve the ends of essential justice and the policy of the law.” Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950). The power to reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest and thereby to serve the ends of essential justice. Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975).

As always, and as stated in its November 2022 Order, the Board is mindful that its decisions have a public policy impact. It is in the nature of evolving energy policy that situations change and require reevaluation. Under these circumstances, the Board has considered the Movants’ positions whether or not the arguments fall strictly under the standards for reconsideration. In so ruling, however, the Board emphasizes that it is not legally compelled to reconsider mere re-arguments, but rather it has exercised its discretion to consider all of the arguments on their merits.

Pursuant to N.J.A.C. 14:8-10.4, Movants’ projects were required to commence commercial operations and submit a post-construction certification package prior to the expiration of their conditional registrations. Applicable to the projects here, the TI Rules contain a twelve-month registration expiration pursuant to N.J.A.C. 14:8-10.4(f).²⁸ The TI Program rules have no provision for automatic or administrative extensions to the deadlines.

Movants’ petitions each requested that the Board waive the TI Rules to permit extensions of time for their projects to reach commercial operation. 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 Board’s rules go on to explain that “[t]he 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, 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).

Movants alleged that the Gibbstown Order eliminated a case-by-case analysis of good cause by creating a new standard for finding good cause, and that the Gibbstown criteria should have been adopted via the rulemaking process and in accordance with Metromedia v. Director of Division of Taxation. Presidential Place Realty, LLC, one the Movants here, made these arguments in its

²⁸ The conditional registration expiration dates vary based on the type of project with Community Solar and Subsection (t) projects having different timelines, as well as when the project registered in the TI Program relative to the 5.1% Milestone. See generally N.J.A.C. 14:8-10.4

petition and the Board addressed them in its November 2022 Order.²⁹ While the Board does not find that re-argument is sufficient to warrant reconsideration, we take the opportunity to again review the Gibbstown arguments because they have now been adopted by all of the Movants. N.J.S.A. 48:2-40.

The Gibbstown Order was an individual adjudication finding good cause to waive portions of the Board's TI rules pursuant to N.J.A.C. 14:1-1.2, based upon the very specific facts presented in that petition. Where the Board permitted applicants with the exact factual prerequisites to administratively apply for an extension, it did so on a non-discriminatory basis as a means of administrative efficiency with the understanding that it likely applied to only a very narrow subset of projects – those that were registered in TI, were electrically and mechanically complete, had secured all necessary permits, and were prevented from meeting the TI Program deadline only by a unilateral EDC change to the interconnection agreement, specifically the time in which EDC interconnection upgrades would be completed following the developer's reliance on the original terms.³⁰ In other words, if a developer could demonstrate the underlying facts supporting the Board's decision to grant a conditional waiver to the Gibbstown project, then the Board also found good cause has been shown for that project.

After Movants applied for a waiver of the TI deadlines, the Board applied the "good cause" standard set forth at N.J.A.C. 14:1-1.2 to the petitions and solar installations at issue, and did not find good cause to waive the TI rules. Procedurally, the Board did the same thing in the Gibbstown Order, except it found that the petitioner in that matter did demonstrate good cause for a waiver of the TI rules. The Movants' dissatisfaction with the Board's application of its standard to the facts in their petitions does not imply that the Board changed its standard in any way, nor does it warrant reconsideration of the Board's prior order.

Moreover, the Movants' argument that the Board erred by misconstruing and misapplying the "good cause" standard set forth in N.J.A.C. 14:1-1.2 is predicated on flawed premises, including, but not necessarily limited to: that the Gibbstown Order established a new standard of good cause and/or that this "new standard" was applied by the Board to Movants' projects in the November 2022 Order. The Board **FINDS** that the Gibbstown Order did not alter, modify or replace the standard enumerated at N.J.A.C. 14:1-1.2, and clarifies that all projects that sought waivers of the TI Rules were individually evaluated by the Board pursuant to N.J.A.C. 14:1-1.2. Having found that the Board did not modify its rules or apply a different standard in the November 2022 Order, the Board **ALSO FINDS** that Movants' argument that Board erred by not implementing the Gibbstown criteria via the rulemaking process similarly fails.

Additionally, the Board **FINDS** no merit in the Movants' contention that their projects "were entitled to and did rely to their detriment on previously recognized factors delaying project completion."³¹ To the extent the Movants were unable to timely complete their projects and claim now to have detrimentally relied upon the Board granting their projects a discretionary waiver of the TI eligibility rules, the Board **FINDS** such reliance to be misplaced. The Board also disagrees with Movants' contention that it is "routine" for the Board to waive the TI Rules to permit extensions of time for projects to complete.³² Consideration of a waiver of the Board's rules is not a ministerial task.

²⁹ November 2022 Order at 38-40.

³⁰ Gibbstown Order, at 8-9.

³¹ Joint Motion at 17.

³² Joint Motion at 14, 17, 20.

Rather, when the Board considered petitions seeking a waiver of its TI Program Rules in its November 2022 Order, the Board carefully reviewed the facts and circumstances of each individual petition to determine whether waiving the Board's rules was warranted and in the public interest. The Board balanced the interest of solar developers with the public's interest in timely completion 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, finding, in part, that full compliance with the rules in these cases furthers the interests of the State and the general public in maintaining an orderly transition from the legacy SRP to the SuSI Program and in reducing the cost of achieving the State's solar energy goals.³³ The fact that Movants disagree with the Board's decision denying what they considered to be "routine" petitions, is not cause for reconsideration. D'Atria, 242 N.J. Super. at 401.

The Joint Motion also stated that the November 2022 Order "represents an existential threat to the viability of the solar industry in New Jersey. . ." leaving projects at a substantial risk of stranding.³⁴ The Board strongly disagrees. First, the Board takes this opportunity to indicate that 2022 was a record year for New Jersey solar installations with 455 total MW of solar generating capacity added including more than 800 new commercial installations representing 269 MW of aggregate capacity.³⁵ Second, as stated above, the Board worked to ensure a smooth transition from the TI Program to the SuSI programs. When the TI Program closed on August 27, 2021, the ADI portion of the SuSI Program opened the next day ensuring that projects would not be stranded without an incentive. Many developers that were unable to timely complete their projects in TI, including Safari Energy, LLC one of the original movants in this case, have withdrawn their TI registrations and have now registered in the ADI program. Another movant, Advanced Solar Products, has likewise withdrawn its TI registration for one of the projects initially listed in the Joint Motion and registered that project in the ADI program. The Board **FINDS** the November 2022 Order creates no threat to New Jersey's thriving solar industry, despite the hyperbole in the Joint Motion.

Though not properly identified in the Joint Motion pursuant to N.J.A.C. 14:1-8.6, Mr. Kadam, in his Hillsborough certification, argued that the Board made a factual error regarding Pivot's Hillsborough project, Docket QO22070444, by stating that Pivot Energy had filed for a Gibbstown waiver.³⁶ As stated above, the Board did not apply a new standard of review or otherwise base its decision on whether or not Pivot applied for a Gibbstown waiver.

As summarized in the November 2022 Order, Pivot's petition indicated that on November 24, 2021, Public Service Electric and Gas Company ("PSE&G") advised Pivot that the interconnection applications for the projects were approved. According to Pivot, on April 28, 2022, PSE&G's meter inspector conducted a preconstruction site visit for the projects and requested that Petitioner provide single line diagrams, which Pivot did on May 24, 2022. According to the petition, on May 24, 2022, in a telephone conversation, the PSE&G wiring inspector advised Petitioner it would not accept the hot sequencing interconnection method that was included in the

³³ November 2022 Order at 43-45.

³⁴ Joint Motion at 13.

³⁵ New Jersey Clean Energy Program, Solar Activity Reports, njcleanenergy.com, <https://njcleanenergy.com/renewable-energy/project-activity-reports/project-activity-reports>

³⁶ Joint Motion, Exhibit 3 at 4.

interconnection application because of the service size. Pivot argued that the required change substantially altered the projects, requiring redesign and sourcing of different equipment thereby resulting in a construction schedule delay of approximately seven to eight months.³⁷ The Board uses this opportunity to expand upon its reasoning in Docket QO22070444. N.J.S.A. 48:2-40.

Mr. Kadam, in his Hillsborough certification, urged the Board to reconsider its decision by recognizing that the interconnection delay was unusually long, beyond the control of Pivot, and was the sole reason the projects at issue were not completed by the TI expiration date.³⁸ Mr. Kadam also argued that denial of the extension request would result in an injustice based on its reliance on TRECs to finance its projects and the possible loss of Pivot's at-risk capital.³⁹ The Board does not agree.

While Staff and the program administrator misinterpreted Pivot's extension request filed in the program portal as an application for a Gibbstown waiver because the administrator's portal is not intended to accept petitions to the Board, Staff's ultimate recommendation to deny the petition was based upon the conclusion that, at the time of conditional registration, the project was not mature enough to complete in TI.⁴⁰ Staff correctly identified that Pivot Energy received its conditional registrations in the TI Program in August 2021, days before the program closed to new registrants, and was aware the TI Program provided no opportunity for extensions of the twelve-month project completion eligibility requirement.⁴¹ Staff also recommended a denial because the interconnection delays described in the petition were not so extraordinary an occurrence as to warrant waiving the TI program deadlines.⁴² The Board agrees with Staff's recommendations.

The Board notes that Pivot's argument is premised on there being an interconnection delay beyond its control. Pivot's petition states that its interconnection application was approved "based upon single-line drawings that showed a hot-sequence installation."⁴³ Exhibit B purports to contain "Interconnection Applications and Single Line Diagrams for each Project," but no single-line diagrams are provided with its petition and the included Interconnection Application and Agreement Attachment D (Generation and Interconnection One-Line) is blank.⁴⁴ The Board notes that the PSE&G November 29, 2021, interconnection approval emails each required that Pivot, in addition to other requirements, complete certain parts of the Interconnection Application and "contact our wiring inspector, James Beirne . . . before beginning construction."⁴⁵ The petition alleged that PSE&G's meter inspector conducted a preconstruction site visit on April 28, 2022 and requested that the Petitioner provide single line diagrams, which Pivot stated it provided on

³⁷ November 2022 Order at 41.

³⁸ Joint Motion, Exhibit 3 at 4.

³⁹ Id.

⁴⁰ November 2022 Order at 41

⁴¹ Ibid.

⁴² Ibid.

⁴³ Pivot petition at 1,

⁴⁴ See Exhibit B to Pivot petition. The Board notes that for each of Pivot's projects Attachments B through G to the Interconnection Application and Agreement are blank.

⁴⁵ Pivot Petition at Exhibit C.

May 24, 2022.⁴⁶ According to the petition, on May 24, 2022, PSE&G advised Petitioner for the first time that its completed hot sequence metering installation would not be accepted.⁴⁷ In a confirming email dated May 25, 2022, PSE&G's wiring inspector, James Beirne, confirmed that cold sequencing was required due to the service size.⁴⁸ However, the single-line drawings attached to the Joint Motion as "Updated Single Line Diagram Depicting Required Revised Installation Method" are dated 8/25/21 and marked as "revision 0," while showing all switches and meters to be located outside the electrical building.⁴⁹

Pivot did not provide the Board with either utility-executed Interconnection Agreements or a copy of its single-line drawings showing a hot-sequence installation for either of its projects. Additionally, Pivot's petition is noticeably silent as to when it attempted to schedule the required inspections with Mr. Beirne. Pivot does not allege that PSE&G was dilatory in scheduling inspections, which appear to have occurred some five (5) months following Pivot's receipt of the interconnection approval emails that required preconstruction inspections. Despite this, Pivot claimed that the delay was unforeseeable.

The Board continues to **FIND** that petitioners such as Pivot should not receive extensions for missed expiration dates because of general interconnection processing delays. Here, there is no information in Pivot's petition indicating the cause the five-month delay in scheduling required inspections. Pivot's projects registered in the final days of the TI Program, appear to have had access to all of the information necessary to make an informed decision about whether to register in the TI Program understanding of the constraint of a one-year registration expiration.

General interconnection delays, while regrettable, do not rise to the level necessitating that the Board waive its rules to grant an extension. The Board **FINDS** that ongoing interconnection processing necessarily relates to project maturity. By virtue of the operation of the expiration dates established by rule at N.J.A.C. 14:8-10.4, TI Program eligibility was always intended to be limited to those projects mature enough to complete in 12 months. The Board continues to **FIND** that the projects described Pivot's petition were not mature enough to comply with the Board's TI Program registration deadlines. The Board **FINDS** that the delays encountered during Pivot's interconnection and development process do not, based on the record before the Board, warrant waiver of the Board's rules. The Board **FURTHER FINDS** that the TI program administrator's misinterpretation of Pivot's extension request filed in the program portal, described as a Gibbstown waiver in the November 2022 Order, to be harmless error.

Accordingly, having carefully considered the Joint Motion and the exhibits thereto, the Board **FINDS** that nothing in the Joint Motion's request for reconsideration challenges the facts relied on by the Board or changes the conclusions reached. The Movants have not established any grounds for reconsideration of the November 2022 Order. The arguments in the Joint Motion have already been considered by the Board and rejected. Therefore, for the reasons stated above, the Board **HEREBY DENIES** the request for reconsideration of the November 2022 Order. The Board reiterates that the ADI Program is open and accessible to these projects and **FINDS** that the ADI Program provides Movants with an alternative path to project completion.

⁴⁶ Pivot petition at 4.

⁴⁷ *Id.* at 1-2.

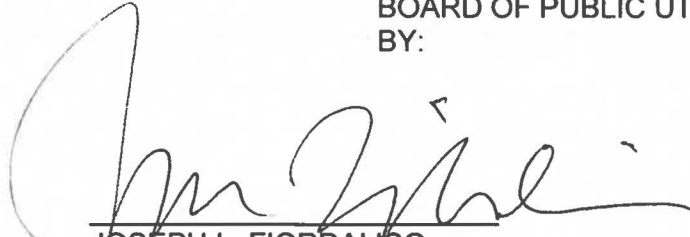
⁴⁸ Joint Motion, Exhibit E.

⁴⁹ Pivot Petition, Exhibit F.

The effective date of this Order is July 6, 2023.

DATED: June 29, 2023

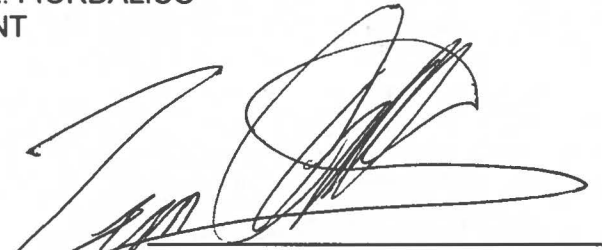
BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER

ATTEST:



SHERRIL 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 A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17
DOCKET NO. QO19010068

IN THE MATTER OF REQUEST FOR EXTENSION OF TREC ELIGIBILITY BY ADVANCED SOLAR PRODUCTS
INC. FOR HP SCOTCH ROAD, LLC NJSTRE1547357945
DOCKET NO. QO22080475

IN THE MATTER OF THE REQUEST FOR EXTENSION OF TREC ELEGIBILITY FOR TI APPLICATION NUMBER
NJSTRE1547322414, LIBERTY DRUG, 195 MAIN STREET, CHATHAM TOWNSHIP, MORRIS COUNTY, NEW
JERSEY 07928
DOCKET NO. QO22080487

IN THE MATTER OF VERIFIED PETITION OF PRESIDENTIAL PLACE REALTY, LLC FOR AN EXTENSION OF
TIME TO COMPLETE A SIX-ROOFTOP MULTI-FAMILY PROJECT LOCATED AT PRESIDENT DRIVE IN
LEBANON, NJ, 08833 AND REGISTERED IN THE TRANSITION INCENTIVE PROGRAM: NJSTRE1547439926
(Building 1) NJSTRE1547451075 (Building 2) NJSTRE1547451203 (Building 3) NJSTRE1547455670 (Building 4)
NJSTRE1547451989 (Building 5), and NJSTRE1547455618 (Building 6)
DOCKET NO. QO22080546

IN THE MATTER OF THE REQUEST FOR WAIVER AND EXTENSION OF TIME TO COMPLETE
NJSTRE1547253964 IN TRANSITION INCENTIVE PROGRAM – PIVOT ENERGY COMMERCIAL SOLAR LLC FOR
WILLIAMS SONOMA/JAMESBURG PROJECT
DOCKET NO. QO22040259

IN THE MATTER OF THE PETITION OF PIVOT ENERGY FOR AN EXTENSION OF THE EXPIRATION DATES OF
TWO PROJECTS IN THE TRANSITION INCENTIVE PROGRAM LOCATED AT 152 US HIGHWAY 206
HILLSBOROUGH TOWNSHIP NJSTRE1547393209 NJSTRE1547393282, *et al.*
DOCKET NO. QO22070444

SERVICE LIST

Sunwealth, LLC

Genova Burns LLC
494 Broad Street
Newark, NJ 07102

Rebecca Moll Freed, Esq.
rfreed@genovaburns.com

Sean Dew
sean@sunwealth.com

PowerFlex Solar, LLC & ESJP-Logan LLC

Riker Danzig Scherer Hyland &
Perretti LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981

James C. Meyer, Esq.
jmeyer@riker.com

Matthew Karmel, Esq.
mkarmel@riker.com

Alexandra Wineholt
alexandra.wineholt@powerflex.com

Chris Thurston
cthurston@linealogistics.com

New Jersey Division of Rate Counsel

Brian O. Lipman, Esq., Director
140 East Front Street, 4th Floor
Trenton, NJ 08625-0003
blipman@rpa.nj.gov

New Jersey Division of Law

R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen
Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Matko Ilic, DAG
matko.ilic@law.njoag.gov

Brandon Simmons, DAG
brandon.simmons@law.njoag.gov

Advanced Solar Products & Ecological Systems LLC

R. William Potter, Esq.
Potter and Dickson
194 Nassau Street
Princeton, New Jersey 08542
potterrex@cs.com

PosiGen Solar

Eric S. Goldberg, Esq.
Stark & Stark
993 Lenox Drive
Lawrenceville, NJ 08648
egoldber@stark-stark.com

Arosa Solar Energy Services

Maurice I. Rosenberg, Esq.
930 County Line Road
Building B & Suite 101
Lakewood, NJ 08701
maurice@mauricerosenberglaw.com

Safari Energy LLC

Steven S. Goldenberg, Esq.
Giordano, Halleran and Ciesla
125 Half Mile Rd., Suite 300
Red Bank, NJ 07701
sgoldenberg@ghclaw.com

Prologis Services Logistics, Inc.
PowerFlex Systems, LLC
PowerFlex Solar, LLC
Pivot Energy Commercial Solar LLC

Barbara J. Koonz Esq.,
Greenbaum Rowe Smith & Davis
75 Livingston Avenue, Suite 301
Roseland, NJ 07068
bkoonz@greenbaumlaw.com

ECS Energy and CEN-MED & Canal Road Solar Partners, LLC

Howard Thompson, Esq.
Russo Tumulty Nester Thompson & Kelly, LLP
1099 Mt. Kemble Avenue, Suite B
Morristown, NJ 07960
hthompson@russotumulty.com

HP Scotch Road LLC
Advance Solar Products

Dante DiPirro, Esq.
Dante DiPirro, LLC
77 Snyderstown Road
Hopewell, NJ 08525
dante@dantelawyer.com

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

General Counsel's Office

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Rachel Boylan, Legal Specialist
rachel.boylan@bpu.nj.gov

James Creech, Legal Specialist
james.creech@bpu.nj.gov

Division of Clean Energy

Kelly Mooij, Director
kelly.mooij@bpu.nj.gov

Benjamin S. Hunter, Manager
benjamin.hunter@bpu.nj.gov

Ronald Jackson, Research Scientist
ronald.jackson@bpu.nj.gov

Sawyer Morgan, Research Scientist
sawyer.morgan@bpu.nj.gov

Evergreen Energy LLC and Innova Atlantic WH Operations LLC

John G. Valeri, Jr., Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052
jvaleri@csglaw.com

Ecogy Energy NJ IV LLC
Peddie School,
American Red Cross

Michael R. Butler, Esq.
Eckert Seamans Cherin & Mellott, LLC
Princeton Pike Corporate Center
2000 Lenox Drive, Suite 203
Lawrenceville, NJ 08648
mbutler@eckertseamans.com

Francesco Ranieri
francesco@ecogysolar.com

Jack Bertuzzi
jackbertuzzi@ecogyenergy.com

Peter Quinn, Head of School
pquinn@peddie.org

Sanjeev Puri, COO
spurri@peddie.org

Presidential Place Realty, LLC
Ampericon

Norris McLaughlin, P.A.
400 Crossing Blvd, 8th Floor
Bridgewater, NJ 08807

James H. Laskey, Esq.
jaskey@norris-law.com

Laura Miller, Esq.
lmiller@norris-law.com

Harrah's Boulevard I & II Solar Project 2021
Pacific Avenue I & II Solar Project 2021
Dev Road Solar Project 2021, LLC
North Brunswick Carolier Lane Solar LLC

Stephen B. Pearlman, Esq.
Pearlman & Miranda, LLC
110 Edison Place, Suite 301
Newark, New Jersey 07102
spearlman@pearlmanmiranda.com

Adam L. Peterson, Esq.
apeterson@pearlmanmiranda.com

Distributed Solar Developers, LLC
200 Harborside Drive, Suite 200 Schenectady, NY 12305

Andrew Gibbons, Esq.
andrew.gibbons@dsdrenewables.com

DG MAC 2, LLC

Decotiis, Fitzpatrick, Cole & Giblin, LLP
61 South Paramus Road Paramus,
New Jersey 07652

James S. King, Senior Attorney
james.king@nee.com

William Harla, Esq.
wharla@decotiislaw.com

Ryan J. Scerbo, Esq.
rscerbo@decotiislaw.com

Alice M. Bergen, Esq.
abergen@decotiislaw.com