



Agenda Date: 8/17/22
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER GRANTING
EXTENSIONS TO PUBLIC
ENTITIES SEEKING AN
INCENTIVE PURSUANT TO
THE SOLAR TRANSITION
INCENTIVE PROGRAM

IN THE MATTER OF A NEW JERSEY SOLAR)
TRANSITION PURSUANT TO P.L. 2018, C.17) DOCKET NO. QO19010068

BY THE BOARD:¹

In this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) waives its rules and modifies prior orders to allow a six-month extension to all solar projects serving public entities that are registered in the Transition Incentive (“TI”) Program.² The Board anticipates that this extra time will allow more of these important public projects to satisfy TI Program requirements and enjoy the benefits associated with participation in the solar market. An extension of TI Program deadlines will also enable a smooth transition from the TI Program to the forthcoming Successor Program, ensuring a reasonable opportunity of success for solar projects currently under development that will benefit public entities.

BACKGROUND

Over the past decade, an increasing number of public entities have pursued solar power, which has the potential to allow public entities to reduce electricity expenditures and to participate in New Jersey’s clean energy economy. Many of these entities are currently benefitting, directly or indirectly, from the Board’s solar incentives. As such, they are subject to and impacted by the timelines in the Board’s solar programs, including the TI Program.

¹ Commissioner Zenon Christodoulou abstained from voting on this matter.

² The Board defines “public entities” consistent with the definition previously utilized by the Board in the Administratively Determined Incentive Program at N.J.A.C. 14:8-11.2: an electric utility customer that is a State entity, school district, county, county agency, county authority, municipality, municipal agency, municipal authority, or New Jersey public college or university.

On May 23, 2018, the Clean Energy Act was signed into law and became effective immediately.³ 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 system. 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.

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. The TI Program, subsequently codified in rules, provides eligible projects with Transition Renewable Energy Certificates (“TREC”) for each megawatt-hour (“MWh”) of electricity produced.⁴ 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 either the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Net metered non-residential projects located on rooftops and carports are eligible to receive a factor of 1.0 and thus the full amount of the base incentive, \$152/MWh. The TI Program portal opened to new registrations on May 1, 2020 and, pursuant to the Board’s December 6, 2019 Order and the TI Rules, remained open to new registrations until the establishment of a registration program for the new Successor Program.⁵ The TI Rules do not provide for automatic or administrative extensions to projects’ conditional registration deadlines.

On July 29, 2020, the Board granted a blanket extension to all projects that registered in the TI Program on or before October 30, 2020, setting the new expiration date for all impacted registrations to October 30, 2021.

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-pronged incentive program design suggested in the Capstone Report and 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. The workshop held on May 7, 2021 specifically addressed the proposed transition from the TI Program to the Successor Program.

³ L. 2018, c. 17 (“Clean Energy Act” or “Act”).

⁴ 52. N.J.R. 1850(a) (“TI Rules”).

⁵ 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”); N.J.A.C. 14:8-10.1; and N.J.A.C. 14:8-10.4.

On June 24, 2021, the Board granted projects registered in the TI Program on or before the effective date of the order an automatic six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4(e) or (f).⁶

On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (L. 2021, c. 169) into law, effective immediately. Among other requirements, this law directed the Board to develop and launch the Successor Program. On July 28, 2021, the Board announced the closure of the TI Program, effective 30 days later, and the opening of the Successor Solar Incentive (“SuSI”) Program.⁷ The TI Program closed to new registrations on August 27, 2021, and the SuSI Program opened on August 28, 2021. The SuSI Program has two (2) components: the Administratively Determined Incentive Program, which provides incentives for residential projects, Community Solar projects, and non-residential net metered projects sized at 5 MW and less, and the Competitive Solicitation Incentive (“CSI”) Program, which provides incentives for grid supply projects and non-residential net-metered projects over 5 MW in capacity. The CSI Program is still under development and planned to launch in the last quarter of 2022.

Further, a number of public entities are also enrolled in the Board’s Energy Savings Improvement Program (“ESIP”), which was established in 2009 to govern a type of performance contract into which government entities in New Jersey may enter to finance energy-related improvements to their facilities. ESIP encourages allows municipalities, boards of education, counties, and other public agencies to accomplish retrofit and upgrade strategies using the value of energy savings that result from the improvements in order to finance those energy efficiency improvements. Participants in ESIP must produce an Energy Savings Plan (“ESP”) to be approved by the Board, which lays out what measures will be implemented to save energy, the expected payback period, and how it fits into the overall plan to reduce consumption. The energy conservation measures must keep the ESPs cash flow positive for the 15–20-year duration of the project.

STAFF RECOMMENDATION

Municipal and public school solar projects have been recognized as providing benefits beyond the solar development that they enable. These projects provide financial security to public entities and allow them to provide services with lower energy costs, reducing the burden on taxpayers. In addition, solar projects on public buildings can provide visibility for and education about solar energy. These benefits are only magnified when the underlying public entity participates in the ESIP program, which allows public entities to leverage their solar savings to help fund energy efficiency or other allowable ESIP projects

Many government entities have chosen to undertake solar power projects in recent years, and the savings in utility electricity purchases from onsite generation are then relied upon in their budgets or to help finance ESPs.

Staff is thus especially sensitive to potential repercussions that expiration of TI registrations may have for these public entities. These projects, due in part to the requirements for public contracting and permitting processes, also face unique challenges in achieving commercial

⁶ 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, BPU Docket Nos. QO19010068 & QO21060883, Order dated June 24, 2021 (“June 2021 Order”).

⁷ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated July 28, 2021.

operation. Staff seeks to ensure that the budgeting and planning capabilities of public entities are not disrupted by an inability to complete construction and begin operation by the current deadlines.

While the temporary nature of the TI Program has been made clear from its inception, Staff understands that public entities that have chosen to pursue solar energy have committed to projects that may no longer be viable without an extension of eligibility in the TI Program. Since neither the Board orders establishing the TI Program nor the TI Rules provide for extensions, the only avenue open to applicants in these circumstances is to petition to the Board for relief.

Although Staff has traditionally been reluctant to recommend that the Board provide extensions for solar projects that miss their TI Program expiration dates because of supply chain issues, general interconnection processing delays, and other factors, Staff believes that the importance of promoting participation in the solar program by public entities warrants granting a limited extension. Staff notes that public entities provide unique benefits and experience unique challenges, particularly in terms of public procurement processes. For public entities engaging in an ESIP project, these challenges are magnified by the fact that ESIP projects usually involve exposure to multiple different supply chains because of the integrated nature of the solar installation and other construction initiatives, which often include heating, ventilation and air conditioning (“HVAC”) upgrades that take place contemporaneously with solar installations.

Moreover, Staff believes that special consideration should be given to public entities. The State has an interest in ensuring that the projects of municipalities, school districts, and the like are successful; such projects not only help the public by contributing to the budgets of publicly financed institutions but also afford an opportunity to showcase solar energy for that public.

Existing deadlines for some of these projects are still months away, but Staff believes that there is good reason for the Board to act now. The uncertainty surrounding development timelines, which in turn affects the availability of necessary project financing, makes it appropriate to act now to provide as much certainty as possible to developers. An extension would provide additional certainty to the market and avoid the situation where viable projects whose installation is tied to other building improvements, municipal budgets, or an ESP may be cancelled due to the uncertainty associated with potential delays. In addition, a blanket extension granted via Board Order would be more equitably levied and less administratively burdensome than consideration of extension requests on a case-by-case basis.

Staff does not, however, suggest an open-ended extension. An indefinite commitment to the current incentive levels for these projects would not be in the interest of the ratepayers. Staff recommends that all public entity projects that have submitted a complete registration to the TI Program receive up to two (2) six-month extensions to their existing deadline, so long as the projects continue to make satisfactory progress towards their commencing commercial operations.

To implement this limited waiver of program rules, Staff recommends that the Board direct public entities with the need for an extension in the TI Program to submit documentation to the TI Program administrator via the registration portal showing that the solar projects are conditionally registered in the TI Program, remain viable, and require an extension of the project expiration date.

An extension request should be accompanied by the following documentation:

- a cover letter summarizing the reasons for project delay justifying an extension;
- a completed Milestone Reporting Form, which documents progress made toward completion and the dates anticipated for achievement of remaining milestones;
- an executed contract between the primary solar installer and a representative of the public site host;
- a letter on official stationery of the public entity under signature of a bona fide officer, elected official, or employee attesting to the entity's qualification as a State entity, school district, county, county agency, county authority, municipality, municipal agency, municipal authority, or New Jersey public college or university;
- documentation of the Interconnection Approval (executed Part 1 of the Interconnection Agreement) issued by the local electric distribution company; or a written attestation explaining why an Interconnection Approval has not been obtained and the estimated timeframe for obtaining the approval; and
- evidence that any required federal, state, or local permits have been applied for with the authority having jurisdiction.

In addition, Staff recommends that the Board require projects that receive an extension(s) to submit quarterly updates using the standardized Milestone Reporting Form available through the TI Program manager. If this information is provided and satisfies the conditions established by the Board, the TI Program manager would issue Petitioner a revised conditional acceptance letter with a six-month extension from the prior expiration date. A project may be extended by a second six-month period if the public entity submits the following:

- a Milestone Reporting Form that demonstrates progress made toward completion and the dates anticipated for achievement of the remaining milestones;
- photos demonstrating progress toward completion of the project; and
- a fully executed Part 1 Interconnection Agreement with the local Electric Distribution Company.

This second extension will be granted by the TI Program manager if the manager finds that the solar project is making progress and is reasonably on track to meet the new deadline.

Specifically, Staff recommends that the Board waive the portion of its rules that require public projects with valid registrations in the TI Program to commence commercial operations on or before the existing deadline established at N.J.A.C. 14:8-10.4(e) or (f) in order to permit up to two (2) six-month extensions to these projects as described above. Staff notes that several public entities have projects in the Community Solar Pilot Program ("Pilot Program"). Staff recommends that the Board find that any given project may only qualify for one blanket extension and that extensions are not additive. For example, a project qualifying for an extension under this Order would not also be eligible for the six-month extension authorized for projects located on a landfill, brownfield, or area of historic fill or a Community Solar project extension as discussed in the companion orders in this docket. Instead, the project could select which of these extensions it wishes to avail itself of.

Staff recognizes that not all public entity registrations in the TI Program necessarily require this additional time. However, Staff believes that granting an extension to all registrations in this class will be more administratively efficient, as well as beneficial to public entities, by eliminating the need for them to go through the time-consuming process of filing extension request petitions and

then waiting for case-by-case determinations.

DISCUSSION AND FINDINGS

The Board has been a longstanding supporter of public entities in New Jersey and their efforts to reduce their energy footprint. The Board particularly appreciates the benefits of solar development by public entities, including municipalities, counties, and public schools, and is cognizant of the challenges faced by these entities in seeking to install solar facilities. The Board recognizes the unique challenges of public procurement and the fact that solar upgrades are often undertaken in conjunction with lengthy and complicated energy efficiency retrofits through an ESIP or similar public entity funding options. By taking action here today, the Board seeks to ensure that public entities can reach their goals of facility improvement, energy efficiency, and financial savings. While always mindful of the costs and benefits to ratepayers, the Board aims to design policies and programs that support the continued growth of the solar industry. The TI Rules, and the timelines contained therein, reflect this policy goal. Their general purpose is to provide a smooth transition to the Successor Program and support to New Jersey's thriving solar market, even as the Board seeks to do so at the lowest possible cost.

The Board also notes that the TI Program does not include a mechanism by which Staff can administratively grant extensions. Board action is required to provide an extension. The Board's rules may be liberally construed to permit the Board to carry out its statutory functions. N.J.A.C. 14:1-1.2. "In special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules." N.J.A.C. 14:1-1.2(b). 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 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).

The Board **FINDS** that waiving the existing development timelines for public entities with solar projects currently registered in the TI Program appropriately balances the Board's goal of promoting solar development, on the one hand, and ensuring that the ratepayers' dollars are supporting projects that will be completed in a reasonable time period, on the other. Further, full compliance with the existing rules may adversely affect the interest of the general public in the success of and the benefits deriving from these projects; requiring strict compliance with timelines for projects subject to the public procurement process may result in hardship to schools and other local municipalities. The Board **NOW FINDS** that good cause exists for granting an extension to public entity projects that are conditionally registered in the TI Program.

Thus, having reviewed the Staff's recommendation and agreeing with the same, the Board **FINDS** that full compliance with the timelines at N.J.A.C. 14:8-10.4(e) and (f) for these public entity projects would adversely impact the interest of the general public in these projects. Therefore, the Board **FINDS** good cause and **HEREBY WAIVES** the timelines at N.J.A.C. 14:8-10.4(e) and (f) to permit a limited extension of time to eligible projects.

The Board therefore **GRANTS** public entity projects conditionally registered in the TI Program up to two (2) six-month extensions to their existing deadline established at N.J.A.C. 14:8-10.4(e) or (f), subject to the TI Program administrator's review and approval of a waiver application. Any project developer that believes it is thus eligible for a waiver of the Board's rules may, at its election, apply to the Board's TI Program administrator, TRC, through a request submitted prior

to the project's TI Program expiration date. This request must be supported by the documentation recommended by Staff and submitted via a Milestone Reporting Form.

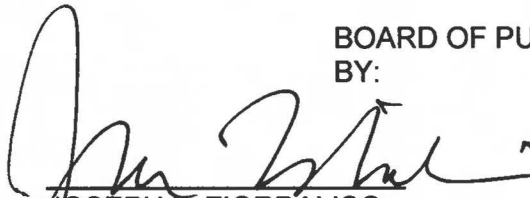
For qualifying projects seeking a second six-month extension, the Board **ORDERS** that such projects file an additional waiver application and provide satisfactory evidence to the TI Program administrator that the project is making progress towards completion and is reasonably likely to meet its revised deadline. Evidence of progress must include evidence of progress toward completion via a Milestone Reporting Form and may also include purchase orders, work orders, solar developer contracts, or similar evidence that the revised date remains feasible. The Board **FURTHER ORDERS** that all public entity projects that receive a first or second extension pursuant to this order must submit quarterly reports documenting their progress. For projects that meet the criteria listed in Staff's recommendation above, the Board **DIRECTS** the TI Program administrator to issue Petitioner a revised conditional acceptance letter with up to two (2) six-month extensions from the prior expiration date.

The Board **FURTHER FINDS** that any given project may only qualify for one blanket extension. For example, a project qualifying for an extension under this Order would not also be eligible for the six-month extension authorized for projects located on a landfill, brownfield, or area of historic fill as discussed in the companion orders in this docket. Instead, the project could select which of these extensions it wishes to avail itself of. With respect to those public entities that have projects in the Pilot Program, these projects are considered in a companion order on this agenda, and the Board **FINDS** that their specific circumstances are addressed in that Order. The Board **ORDERS** that the extension(s) granted by this Order does not apply to Pilot Program projects.

This Order takes effect on August 24, 2022.

DATED: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:

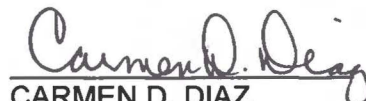

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ACTING SECRETARY


I HEREBY CERTIFY that the within
document is a true copy of the original
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IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17
ORDER GRANTING EXTENSIONS TO PUBLIC ENTITIES SEEKING AN INCENTIVE PURSUANT TO
THE SOLAR TRANSITION INCENTIVE PROGRAM

DOCKET NO. QO19010068

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