



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

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF A NEW JERSEY SOLAR)	ORDER GRANTING AN UP TO 12-
TRANSITION PURSUANT TO P.L. 2018, C.17)	MONTH EXTENSION FOR
)	PROJECTS SEEKING AN INCENTIVE
)	PURSUANT TO SUBSECTION (T) IN
)	THE SOLAR TRANSITION
)	INCENTIVE PROGRAM
)	
)	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 up to a 12-month extension to all solar projects that are registered in the Transition Incentive (“TI”) Program and have a conditional certification pursuant to N.J.S.A. 48:3-87(t) [“Subsection (t)"] or that have applied to the Board for conditional certification and are pending a recommendation on certification pursuant to Subsection (t) from the New Jersey Department of Environmental Protection (“NJDEP”). The Board anticipates that this extra time will allow more of these projects to satisfy TI program requirements and smooth the transition from the TI Program to the forthcoming Competitive Solicitation Incentive portion of the Successor Program, ensuring a reasonable opportunity of success for solar projects currently under development.

BACKGROUND

On May 23, 2018, the Clean Energy Act was signed into law and became effective immediately.² 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% 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.

¹ Commissioner Zenon Christodoulou abstained from voting in this matter.

² L. 2018, c. 17 (“Clean Energy Act” or “Act”).

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 (“TI Rules”), provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt-hour (“MWh”) of electricity produced.³ 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. Subsection (t) projects 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. Pursuant to Board order and the TI Rules, the TI Program remained open to new registrations until the establishment of a registration program for the new Successor Program.⁴ The TI Rules do not provide for automatic or administrative extensions to projects’ conditional registration “expiration dates” (also referred to as the “registration deadline”).

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 fifth workshop, held on May 7, 2021, specifically addressed the proposed transition from the TI Program to the Successor Program.

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).⁵

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.⁶ 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

³ 52. N.J.R. 1850(a) (“TI Rules”).

⁴ 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.

⁵ 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”).

⁶ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated July 28, 2021.

Incentive Program, which provides incentives for residential projects, community solar projects, non-residential net metered projects sized at 5 MW and less, and the Interim Subsection (t) program, 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.

On June 8, 2022, the Board granted a conditional six-month extension to ESNJ-KEY-GIBBSTOWN, LLC (“Gibbstown”) and made conditional extensions available to similarly situated parties provided that these projects could demonstrate that they met the conditions set by the Board and provide the specified documentation.⁷ The conditions included a showing of electrical and mechanical completion prior to the project’s TI Program expiration date; receipt and satisfaction of all necessary permits from authorities with jurisdiction; and reliance on representation from the applicable electric distribution company (“EDC”) that any necessary interconnection upgrades would be completed prior to the project’s TI Program expiration date, followed by a unilateral extension of the estimated upgrade completion date by the EDC.

STAFF RECOMMENDATION

Subsection (t) projects have long been recognized as providing benefits above and beyond the solar development that they enable. Because Subsection (t) projects are located on brownfields, areas of historic fill, or properly closed sanitary landfills, these projects provide a means of utilizing compromised sites that may not have another viable use and, in doing so, relieve some of the pressure for similar development on New Jersey’s remaining farmland and open space. The Legislature recognized the potential value of this development in enacting N.J.S.A. 48:3-87(t), and the Board has consistently demonstrated its commitment to these projects in its orders, including proposing an Interim Subsection (t) program in the Administratively Determined Incentive portion of the SuSI Program, a new competitive market segment committed exclusively to Subsection (t)-type projects in the forthcoming CSI Program. In another context, the Board allows projects located on compromised property to participate in the Board’s Community Solar Pilot Program.⁸ Since 2012, the Board has provided conditional certification to 38 Subsection (t) projects for nearly 364 megawatts (“MW”).⁹

Staff notes that Subsection (t) projects occupy a unique place in New Jersey’s energy mix, in particular, because Subsection (t) projects are one of the few “grid supply” solar projects supported through the Board’s solar incentive program. One of the consequences of being a grid supply project is that Subsection (t) projects are required to go through the interconnection process administered by PJM Interconnection, LLC (“PJM”), which administers the regional transmission network serving New Jersey, parts of 12 other states and the District of Columbia. Any grid supply projects, including Subsection (t) projects, are required to complete the PJM interconnection process before they receive permission to operate (“PTO”).

In recent years, Staff has noted a troubling trend towards increasing delays in the PJM interconnection process. Recognizing this concern, in April 2021, PJM initiated a “high priority”

⁷ In the Matter of Request for an Extension of Time to Complete NJSTRE1545046932 in Transition Incentive Program - 480 South Democrat Road, Gibbstown NJ ESNJ-Key-Gibbstown, LLC, BPU Docket No. QO22030156, Order dated June 8, 2022 (“June 2022 Order”).

⁸ Projects may not participate in both Subsection (t) and the Community Solar program.

⁹ All megawatt amounts are measured in direct current or MWdc.

process to address the growing backlog of interconnection requests.¹⁰ On June 14, 2022, PJM proposed a comprehensive reform of its interconnection processes to the Federal Energy Regulatory Commission (“FERC”).¹¹ PJM notes that in 2018 it began to see significant growth in the number of generation facilities seeking to interconnect to the PJM grid:

...the volume of New Service Requests has increased drastically over the past four full calendar years, with the number of 2018 requests representing a 25 percent increase over the 2017 amount, the number of 2019 requests representing a 50 percent increase over the 2018 amount, the number of 2020 requests more than double the 2018 amount, and the number of 2021 requests almost triple the 2018 amount. These increases have caused both the number of queued projects actively under study and the number of projects with backlogged studies to grow.¹²

The growth in the number of interconnection requests, as well as what PJM describes as a “large number of speculative projects,” has led to delays in PJM’s processing of new interconnection requests.¹³ The exact length of the delay depends on when the project entered the PJM queue, where it is located, and whether the project requires upgrades to the transmission grid to accommodate the injections of energy from the new facility.

In relevant part, PJM’s filing grouped interconnection requests into two (2) main categories: those filed between April 1, 2018 and September 30, 2021 (a period known as the “Transition Period”); and those filed post-October 1, 2021 (the “New Rules” period).¹⁴ Because applications to the TREC program were due on August 27, 2021, Staff anticipates that the majority of pending Subsection (t) projects seeking TRECs will be subject to the Transition Period Rules (i.e., the rules that apply to projects that filed their interconnection requests prior to September 30, 2021).

According to PJM’s proposed Transition Period Rules, projects early on in the Transition Period will be interconnected on a rolling basis, with priority given to those projects that filed interconnection requests earlier in time, as well as those that do not require extensive study or upgrades, or through a cluster study process for projects further down the queue. Projects that filed interconnection requests prior to September 30, 2021 are expected to complete the interconnection process between June 2025 and September 2025.¹⁵ The Transition Period Rules also impose numerous other new or modified requirements, including enhanced site control requirements and “Readiness Deposits that become increasingly at-risk as the project proceeds.”¹⁶ According to PJM, these reforms are “intended to dramatically reduce the time to process . . . as compared to the processing time under the current serial decision-making

¹⁰ See PJM’s Interconnection Process Reform Taskforce, available at <https://www.pjm.com/committees-and-groups/task-forces/iprtf>

¹¹ PJM’s Tariff Revisions for Interconnection Process Reform, at 5, FERC Docket No. ER22-2110-000 (filed June 14, 2022) (citations omitted) (hereinafter “PJM Interconnection Reform Filing”).

¹² *Id.* at 5.

¹³ *Id.* at 5.

¹⁴ PJM Interconnection Reform Filing at 9 (“Transition Period Rules will apply to projects in ... the period from April 1, 2018, through September 30, 2021...”).

¹⁵ *Id.* at 30.

¹⁶ PJM Interconnection Reform Filing at 33.

regime.”¹⁷

Staff is especially sensitive to potential repercussions that PJM’s proposed interconnection reform process will have for Subsection (t) projects and intends to continue to closely monitor the pending FERC proceeding and PJM’s implementation of any approved reforms. However, Staff also notes that Subsection (t) projects, due to the sensitive nature of their locations and the concomitant need for site-specific environmental protection measures, already face unique challenges in achieving commercial operation.

The Board’s existing rules provide Subsection (t) projects two (2) years after they receive conditional certification from the Board to reach PTO before their registrations expire. NJDEP’s review must, by statute, be completed prior to a project receiving conditional certification from the Board.¹⁸ The timeline for NJDEP review varies significantly but often takes 12 months or more. Historically, projects that began the PJM interconnection process contemporaneously with filing an application for conditional certification were able to reach PTO within two (2) years, particularly after taking into account what can be a lengthy NJDEP review of Subsection (t) projects.

Given the changes to the PJM interconnection process described above, Staff recommends that the Board find good cause to waive the two-year post-conditional certification requirement and provide up to 12 additional months for a project to reach PTO to account for delays in the PJM process. As noted above, a project entering the PJM interconnection queue prior to the closure of the TI Program to new registrations will expect to finish the interconnection process by September 2025. Staff notes that the expected delay for any particular project will depend on a variety of factors, including when the project filed to enter the PJM queue; whether it qualifies for PJM’s proposed “Fast Lane” process; and whether the project has “minimal grid impacts” (defined by PJM as less than \$5 million in expected system upgrade costs).

Existing deadlines for some projects are still months and, in some cases, years away, but Staff believes that there is good reason for the Board to act now, given the unforeseen complication of PJM’s decision to defer action on new interconnection applications by at least two (2) years. In addition, a single 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. Although Staff has traditionally been reluctant to recommend that the Board provide extensions for solar projects that miss expiration dates because of supply chain issues, general interconnection processing delays, and other factors, Staff believes that the PJM backlog is distinguishable and warrants granting a limited extension.

Staff makes this recommendation even after taking into account two (2) factors. First, Staff notes that solar developers have been aware of delays in the PJM process for multiple years and that PJM has been working to reform its process since at least April 2021, multiple months prior to the closure of the TI Program to new applicants in August 2021. Thus, developers knew or should have known, at the time they submitted their applications, that PJM was experiencing interconnection delays and taken that into consideration when deciding whether the TI Program was an appropriate program for their particular project. Second, the interim nature of the TI Program has been consistently communicated by the Board to market participants since the TI Program was first proposed in 2019. The requirement for projects to complete construction, commence commercial operation, and submit post-construction certification materials within two

¹⁷ Id. at 35.

¹⁸ N.J.S.A. 48:3-87(t).

years of projects' conditional acceptance in the program is embodied in the TI Rules. Those rules do not provide for extensions, and that absence of an extension policy was intentional. Despite these factors which might otherwise mitigate against an extension recommendation, Staff also understands that, until the CSI Program is established, investment and development decisions can only be made on the basis of existing program rules and regulations.

Staff does not, however, suggest an open-ended extension. An indefinite commitment to the TI Program's Subsection (t) incentive levels would not be in the interest of the ratepayers. Staff recommends that all Subsection (t) projects that have been conditionally certified and 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 commencing commercial operations.

To implement this limited waiver of program rules, Staff recommends the Board direct Subsection (t) registrants 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 project is conditionally registered in the TI Program, remains viable, and requires an extension of the project expiration date.

An extension request should be accompanied by the following documentation:

- A cover letter stating the intention to complete the project within the TI Program and summarizing the status of project development;
- A completed Milestone Reporting Form, which documents progress made toward completion and the dates anticipated for achievement of remaining milestones;
- Copies of all interconnection-related correspondence between the project and PJM Interconnection and its agents, including any interconnection applications, any draft or executed study agreements, evidence submitted to meet PJM milestones, and any other interconnection materials or correspondence between the project developer and PJM, the relevant agent, or utility; and
- Evidence that all 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 the 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 project sponsor updates the materials required above and additionally submits the following:

- A Milestone Reporting Form that demonstrates progress made toward completion and the dates anticipated for achievement of the remaining milestones; and
- Photos demonstrating progress toward completion of the project.

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

Specifically, Staff recommends that the Board waive, for Subsection (t) projects that have been conditionally certified or that are pending review at the Board or NJDEP, the portion of its rules

that require Subsection (t) projects with 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 some solar development projects may qualify for one or more blanket extensions. In such cases, Staff recommends that the Board find that any given project may only qualify for one type of blanket extension, and that extensions are not additive. Instead, the longest single extension would govern. For example, a project qualifying for an extension under this Order would not also be eligible for the up to two (2) six-month extensions authorized for public entity projects as discussed in a companion order in this docket. Instead, the project could select which of these extensions it wishes to avail itself of.

Staff recognizes that not all Subsection (t) registrations in the TI Program necessarily require this additional time. Staff likewise notes that, while one (1) or two (2) six-month extensions will not address the PJM interconnection delays associated with every Subsection (t) project, Staff believes that a limited extension provides additional commercial certainty for projects that are ready to move forward and deliver clean energy to New Jersey customers quickly, while growing solar jobs, moving contaminated lands into effective use, and promoting economic development in the affected communities. Additionally, Staff notes that Subsection (t) projects may petition to seek additional case-specific relief if the circumstances warrant and include facts relevant to each specific project. Staff anticipates, however, that the extension(s) provided herein will provide sufficient time for many projects such that further extensions for reasons such as supply chain delays will become moot.

However, the recommended extension process also appropriately slots projects that are more than three (3) years away (including both NJDEP processing time and the six-month extension recommended in this Order) from achieving PTO into the future CSI Program, which includes a specific dedicated market segment for Subsection (t) projects. This recommendation is also consistent with other Board decisions that have previously provided six-month extensions and with other Orders addressing TI Program extensions on this agenda.

Finally, Staff recommends that those Subsection (t) projects that have submitted an administratively complete application to the Board and are under review at the Board and NJDEP receive an automatic additional six months to the registration expiration date that would otherwise be set in the Board order granting the project's conditional certification pursuant to N.J.A.C. 14:8-10.4(e) or (f), along with the ability to seek an additional six (6) months from the Program Administrator in the future if the project meets the specified criteria. In this manner, pending Subsection (t) applications, if they receive a conditional certification, would have a total of thirty-months to achieve commercial operations from the effective date of conditional certification with the possibility of a further six-month extension.

DISCUSSION AND FINDINGS

The Board has been a longstanding supporter of solar in New Jersey. 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.

More specifically, the Board appreciates the additional benefits of solar development on sites that are potentially unavailable for other uses, such as the properly closed sanitary landfills, brownfields, and areas of historic fill identified in N.J.S.A. 48:3-87(t). The Board is also cognizant of the unique challenges faced by solar development on these sites.

At this time, the Board recognizes that PJM's Interconnection Reform Filing process has coincided with a period when the after-effects of the Covid-19 pandemic continue to be felt and when the CSI Program through which Subsection (t) projects will pursue incentives in the future has not yet launched. 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). 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.

Given the delays in the PJM interconnection process, and in particular the challenges faced by Subsection (t) developers in the time before the CSI Program opens to new applications, the Board **FINDS** that waiving the timelines enumerated in N.J.A.C. 14:8-10.4(e) and (f) for these projects appropriately balances the TI Program's complementary goals. Further, full compliance with the existing rules may be inappropriate when a delay in wholesale interconnection approvals coincides with the absence of an incentive program for grid supply projects. Requiring strict compliance with these timelines when interconnection timeframes are uncertain and the State's incentive programs are in flux may disrupt the market. Requiring rigid compliance under these circumstances has the potential to be counterproductive. In light of this unique set of facts, the Board **NOW FINDS** that good cause exists to grant a limited extension to Subsection (t) projects that are either conditionally certified in the TI Program or that are pending review at the Board or NJDEP.

Further, the Board **CLARIFIES** that nothing in this Order is intended to address any currently pending petition from any project developer, whether Subsection (t) or otherwise.

Thus, having reviewed the Staff's recommendations, the Board **AGREES** with those recommendations and **FINDS** that full compliance with the timelines at N.J.A.C. 14:8-10.4(e) and (f) for these projects would adversely impact New Jersey ratepayers. Therefore, the Board **HEREBY FINDS** good cause and **WAIVES** the timelines at N.J.A.C. 14:8-10.4(e) and (f) to permit up to two six-month extensions of time to Subsection (t) projects in the TI Program, for a total of up to 12 months.

Similarly, to the extent that the orders implementing the TI Program require TI projects to comply with time limitations from the SRP rules enumerated in N.J.A.C. 14:8-2.4(h)(4), the Board modifies such orders to permit an extension of time to Subsection (t) projects conditionally certified or pending NJDEP review.¹⁹

¹⁹ N.J.S.A. 48:2-40(e).

The Board therefore **GRANTS** Subsection (t) projects conditionally certified and 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 an extension 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. Furthermore, the Board **HEREBY GRANTS** Subsection (t) applicants with applications pending review at the Board or NJDEP, if conditionally certified, the same relief, resulting in an automatic additional six (6) months to the registration expiration date that would otherwise be set in the Board order granting the project's conditional certification pursuant to N.J.A.C. 14:8-10.4(e) or (f), along with the ability to seek an additional six (6) months from the Program Administrator in the future if the project meets the specified criteria.

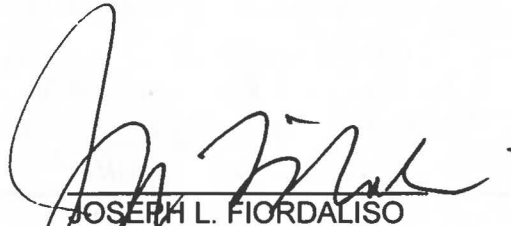
For qualifying projects seeking a second six-month extension, the Board **ORDERS** that such projects file an additional waiver application and provide satisfactory evidence to the TI Program administrator that the project is making progress towards completion and is reasonably likely to meet its revised 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 in addition to the requirements in Staff's Recommendation above. The Board **FURTHER ORDERS** that all Subsection (t) 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 a revised conditional acceptance letter with up to two six-month extensions from the prior expiration date.

The Board **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 up to two (2) six-month extensions authorized for public entity projects as discussed in a companion order in this docket. Instead, the project could select which of these extensions it wishes to avail itself of.

This Order shall become effective on August 24, 2022.

DATED: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:

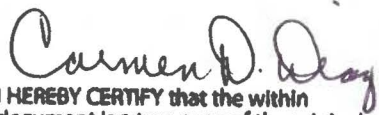

JOSEPH L. FIORDALISO
PRESIDENT


MARY ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

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ACTING SECRETARY


I HEREBY CERTIFY that the within
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IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17

DOCKET NO. QO19010068

SERVICE LIST

New Jersey Division of Rate Counsel:

Brian O. Lipman, Esq., Director
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
blipman@rpa.nj.gov

TRC Energy Solutions:

900 Route 9 North, Suite 404
Woodbridge, NJ 07095

Michael Ambrosio
Director, Policy and Planning
317 George Street, Suite 520
New Brunswick, NJ 08901
mambrosio@trccompanies.com

Thomas Kowalczyk
Manager, Regulatory Compliance
tkowalczyk@trccompanies.com

Tammy VanBlarcom
Manager, SREC Registration Program
tvanmarcom@trccompanies.com

New Jersey Division of Law:

Department of Law & Public Safety
Division of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

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

Michael Beck, DAG
michael.beck@law.njoag.gov

Publication on the NJ Clean Energy Program
Renewable Energy listserv.

Aero Haven Solar, LLC

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

Board of Public Utilities:

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

Carmen Diaz, Acting Secretary
Board.secretary@bpu.nj.gov

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

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

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

Division of Clean Energy

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

Scott Hunter
benjamin.hunter@bpu.nj.gov

Ronald Jackson
ronald.jackson@bpu.nj.gov

Veronique Oomen
veronique.oomen@bpu.nj.gov

Office of General Counsel

Rachel Boylan, Esq.
rachel.boyland@bpu.nj.gov

Abe Silverman, Executive Policy Counsel
abe.silverman@bpu.nj.gov

Miller Bros.

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

Aero Haven Solar, LLC

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

Miller Bros.

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