



Agenda Date: 7/28/21
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

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

Party of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this order, the Board proposes to close the Transition Incentive solar incentive program (“TI Program”) to new registrations 30 days after the effective date of this order. Registrations for solar incentives available under the new Successor Solar Incentive program, addressed in a parallel order also on this agenda, will be available upon the closure of the TI Program to new registrations.

BACKGROUND

Clean Energy Act

On May 23, 2018, the Clean Energy Act was signed into law and became effective immediately.¹ Among many other mandates, the Clean Energy Act directed the Board to adopt rules and regulations to close the 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 each TPS/BGS provider had been generated by solar electric power generators connected to the distribution 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.

¹ L. 2018, c. 17 (“Clean Energy Act” or “Act”).

The Act required the Board to consult with public utilities, industry experts, regional grid operators, solar power providers and financiers, and other State agencies to determine whether the Board can modify the SREC program such that the program will: continually reduce, where feasible, the cost of achieving the State's solar energy goals; provide an orderly transition from the SREC program to a new or modified program; develop megawatt targets for grid connected and distribution connected solar systems, including residential and small commercial rooftop systems, community solar systems, and large scale behind the meter systems, as a share of the overall solar energy requirement, which targets the board may modify periodically based on the cost, feasibility, or social impacts of different types of projects; establish and update market-based maximum incentive payment caps periodically for each of the above categories of solar electric power generation facilities; encourage and facilitate market-based cost recovery through long-term contracts and energy market sales; and where cost recovery is needed for any portion of an efficient solar electric power generation facility when costs are not recoverable through wholesale market sales and direct payments from customers, utilize competitive processes such as competitive procurement and long-term contracts where possible to ensure such recovery, without exceeding the maximum incentive payment cap for that category of facility.

On December 26, 2018, Staff issued a Straw Proposal that proposed to modify and replace the SREC Program in two phases: first, a Transition Incentive ("TI") Program for solar projects already in the SREC pipeline, and second, a long-term incentive program (referred to as the "Successor Program") for new solar projects.² Staff's Proposal to create a short-term Transition Incentive was driven by recognition of the rapid timeframe mandated by the Clean Energy Act and the desire to minimize the associated market uncertainty.

Transition Incentive Program

Following a year-long, public, and iterative process, which incorporated substantial stakeholder input through a variety of in-person meetings and written comments, the Board issued an Order establishing the Transition Incentive Program on December 6, 2019.³

On January 8, 2020, the Board issued an Order stating that the TI program would remain open to new registrations until the establishment of a registration program for the new Successor Program.⁴ The TI Program was subsequently codified in rules, which became effective upon publication on February 3, 2020.⁵ The Board recently approved the publication of proposed amendments to the TI Rules on June 9, 2021.⁶

² See

[https://njcleanenergy.com/files/file/Renewable_Programs/Solar%20Transition%20Straw%20Proposal%20-%202018-12-26%20clean%20\(final\).pdf](https://njcleanenergy.com/files/file/Renewable_Programs/Solar%20Transition%20Straw%20Proposal%20-%202018-12-26%20clean%20(final).pdf)

³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 ("Transition Incentive Order").

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").

⁵ 52. N.J.R. 1850(a) ("TI Rules").

⁶ In re the Proposed Amendments to the Transition Incentive Program Rules: N.J.A.C. 14:8-2.2; 14:8-10.1; 14:8-10.3; 14:8-10.5; 14:8-10.6; and 14:8-10.7, BPU Docket No. QX21040725.

Following the publication of the monthly 5.1% Milestone attainment report by Staff on March 31, 2020,⁷ the Board determined that the State would generate 5.1% of its retail electricity sales from solar before May 1, 2020. Consequently, on April 6, 2020, the Board ordered that this determination and the closure of the SRP to new registrations would be effective on April 30, 2020.⁸ The TI Program began accepting applications on the following day.

As of June 30, 2021, approximately 322 MWdc of solar have been installed under the TI Program. With an additional roughly 744 MWdc in the pipeline, the TI Program has motivated development of approximately 1,066 MWdc of solar resources since its inception in May 2020.

Development of the Successor Incentive Program

On April 21, 2021, 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 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.

In the Successor Straw Proposal, Staff specifically recommended that “[f]ollowing the close of the [Successor Program] stakeholder process, the Board will issue an Order directing Staff to provide 30 days’ notice of the close of the TI Program. The Board will separately issue an Order establishing the incentives and other program criteria to initiate the Successor Program upon the closure of the TI Program and will additionally propose rules for the Successor Program.”⁹

On July 9, 2021, Governor Murphy signed into law L. 2021, c.169 effective immediately, authorizing the Board to develop and launch the Successor Program.

STAFF RECOMMENDATIONS

The Board will be considering a recommendation for the establishment of the Successor Program in a separate item on this Agenda. In light of this, the need for the bridge provided by the TI Program is almost over. Staff therefore recommends that the Board close the TI Program to new registrations, thirty days from the effective date of this order.

The Transition Incentive Program was designed to provide a bridge between the legacy SRP program and the Successor Incentive Program that is about to launch. In developing a recommendation on the creation and design of a Transition Incentive, Staff was mindful of the

⁷ BPU Monthly Report on Status toward Attainment of the 5.1% Milestone for Closure of the SREC Program, dated March 31, 2020, <https://www.nj.gov/bpu/pdf/publicnotice/Notice%20on%205-1%20Percent%20Milestone%203-31-20.pdf>

⁸ In re Closure of the SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated April 6, 2020 (“April 2020 Order”).

⁹ See

https://njcleanenergy.com/files/file/Solar%20Transition/FY21/Solar%20Successor%20Program%20Notice%20and%20Straw%20Proposal_revised_05-05-2021.pdf

general principles announced at the outset of the Solar Transition process.¹⁰ In particular, the Transition Incentive Program was designed with the goal of providing maximum benefit to ratepayers at the lowest cost, supporting the continued growth of the solar industry, and providing certainty and stability to the market during the transition. The TI Program has succeeded in these aims, as evidenced by the number of projects installed and under development.

Staff recommends that all projects that have submitted a complete registration package to the TI Program on or before the final day that TI Program is open to new registrations be allowed to remain in the TI Program pipeline so long as they remain in compliance with the rules and regulations of the TI Program. Any projects that have submitted an application in which minor deficiencies have been noted, and which cure those deficiencies within 7 days of being notified of the minor deficiencies, are allowed to remain in the TI Program. Projects that have not submitted a complete registration package by the deadline, that submitted a registration package with major deficiencies, or that submitted a registration package with minor deficiencies but that did not cure the deficiencies within the time provided in the notice of deficiencies shall not be eligible for the TI Program.

Staff notes that the January 2020 Order stated that the closure of the TI Program would happen concurrently with the opening of the registration program for the new Successor Program, which is addressed in a separate item on this Agenda:

[T]he Transition Incentive program will remain open to new registrations until the establishment of a registration program for the to-be-determined Successor Program.... If the Successor Program is not in place at the time the Board determines that the 5.1 % Milestone has been attained, any projects that enter the registration pipeline after the date of attainment of the 5.1 % Milestone and before the date at which the Board initiates a registration program for the Successor Program, and that remain in compliance with the requirements of the SRP, will be eligible for the Transition Incentive.

With the creation of the Successor Program registration process in the companion order on this agenda, Staff recommends that the Board specifically determine that the Board's commitment to a smooth transition between the TI Program and the Successor Program has been fulfilled.

Staff notes that for most solar resources, there is a new incentive program that will immediately go into place upon the closure of the TI Program to new applicants. Because some resources that were eligible to participate in the TI Program are being moved to a competitive solicitation, there may be a perceived "gap" in the availability of incentives. Staff disagrees with this characterization. As noted by the Board in the January 8 Order, the key date for the end of the Transition Incentive Program is the initiation of a *registration* program for the Successor Program. The companion order to this proceeding initiates just such a registration program. However, for the avoidance of doubt, Staff likewise recommends that the Board find that the process established in this order, to the extent that it is different from the Board's directive in the January 8 Order or other orders, supersedes and amends those orders.

Transition Issues Specific to Subsection (t) Projects:

Within the TI Program, the primary path for grid supply projects has been Subsection (t), which allows grid supply projects on qualifying landfills, brownfields or areas of historic fill to receive TI

¹⁰ See December 26, 2018 Staff Straw Proposal

Program incentives. Staff likewise recommends that the Board continue to accept applications submitted pursuant to Subsection (t) until the close of the TI Program to new applicants. Any complete Subsection (t) application that is received by the Board within 30 days of the date of this order would continue to be reviewed by the Board following the normal Subsection (t) process. If a Subsection (t) application submitted prior to the close of the TI Program is granted conditional certification by the Board, the project should be allowed to register in the TI Program, even if said conditional certification occurs after the TI Program is closed.

Transition Issues Specific to Community Solar Pilot Projects:

On October 2, 2020, the Board issued an Order and Application Form establishing Program Year 2 of the Community Solar Energy Pilot Program. In order to provide certainty to community solar applicants, the Board stated that “Applications selected as part of Program Year 2 will be eligible to register for the current Transition Incentive program, even if said Applications are selected after the establishment of the Successor Program.” Therefore, Staff recommends that Applications selected to participate in Program Year 2 of the Community Solar Energy Pilot Program also be allowed to register for the TI Program regardless of when these Applications are selected by the Board.

Transition Issues Specific to Certain Projects in “Eligible for Transition Incentive” status:

Staff believes that the Board should take this opportunity to address a large number of projects that were transferred from the SRP to the TI program at the time that program opened but which the registrant has not acted upon since. Each of these projects were placed in the status “Eligible for TI Program” until such time as the registrant selected a TI project type for it, completing the transfer to the TI program. Once this action had been performed, the project would move to the same status in the TI program that it had had while in the SRP. However, there are currently over one thousand registrations that have remained in the status “Eligible for TI Program” since they were placed there in mid-2020. With respect to those projects, the TI Program Administrator has sent multiple emails to the persons who registered them without receiving a response. Since more than a year has now elapsed without action by or communication from these persons, Staff recommends that the Board allow them thirty days to complete the registration of their projects. If no action is taken by the end of August 27, 2021, Staff recommends that the Board terminate those registrations.

FINDINGS AND DISCUSSION

In implementing the orderly closure of the SREC program and the establishment of a permanent Successor Solar program, the Board has been mindful of the need to maintain clear line-of-sight for developers to access solar incentives in order to ensure the ongoing health of the solar industry and the achievement of the State’s vital clean energy goals. Thus, the TI Program opened on the day the SRP was closed, and has remained open to new registrations while the Board considered options for the development of the new, long-term Successor Program.

The Board is considering recommendations on a Successor Program in a companion item on this agenda. The time for a temporary program to serve as bridge to the Successor Program is therefore coming to an end. The Board **FINDS** that with the creation and opening of the Successor Program, the TI Program has served its purpose and should close to new registrations, as indicated below.

The Board **HEREBY ORDERS** that the Transition Incentive program shall close to new registrations on 11:59:59 p.m. EST on August 27, 2021. The Board **ORDERS** that projects that submitted complete TI Program registrations on or before 11:59:59 p.m. EST on August 27, 2021, or that submitted a registration in which minor deficiencies have been noted and which cured those deficiencies within 7 days of the notice of deficiencies, may remain in the TI Program until their TI registration expires.

The Board **FURTHER ORDERS** that projects that have not submitted a complete TI registration by the aforementioned deadline, that submitted a TI registration that was found to have major deficiencies, or that submitted a TI registration with minor deficiencies and failed to cure those deficiencies within 7 days of the notice of deficiency, will not be eligible for the Transition Incentive Program. These projects may be eligible for an incentive through the Successor Program.

The closure of the TI Program constitutes a fitting moment to also close the Subsection (t) process. In taking this step, the Board does not intend to change the State's policy supporting solar development on contaminated sites; rather, it seeks to align the processing of grid supply solar applications with the process contemplated in the Successor Program, as well as with the current statutory framework.

Therefore, the Board **DIRECTS** Staff to close the Subsection (t) application process to new applicants on the date that the TI Program closes, that is to say on 11:59:59 p.m. EST on August 27, 2021. An application which has been received on or before that deadline will be reviewed for administrative completeness. If found to be administratively complete, it will be transferred to the New Jersey Department of Environmental Protection ("NJDEP") for review under the existing Subsection (t) application process and the Board will rule on their certification under that process. If the application receives conditional certification from the Board, it will be allowed to register for the TI Program, and will be eligible for a two-year registration deadline, consistent with the rules and regulations of the TI Program as they exist prior to the closure of the Program to new registrants.

The Board **FINDS** that projects selected to participate in Program Year 2 of the Community Solar Energy Pilot Program shall be allowed to register for the TI Program regardless of when these Applications are selected by the Board. While these projects are currently pending final selection by the Board, the projects were submitted based on the premise that they would qualify for the incentives specified in the TI Program, and the Board seeks to avoid any disruption to this key equity program.

Turning to Staff's recommendation regarding the over one thousand projects that have remained in the status "Eligible for TI" since being transferred from the SRP in 2020, the Board **FINDS** that no action has been taken by the registrants of these projects. The Board **FINDS** that multiple attempts to contact the registrants of these projects have been made and that there has been no response. The Board **THEREFORE ORDERS** that if the registration of these projects is not completed by 11:59:59 p.m. on August 27, 2021, these registrations shall be terminated. The registrants, or other parties if applicable, may have the opportunity to register these projects in the Successor Program.

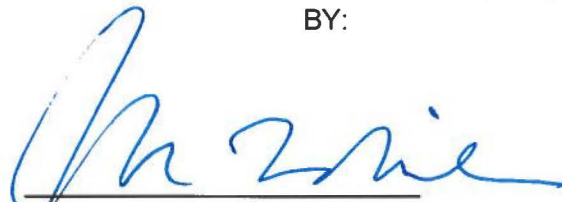
The Board notes that the TI Program was designed to be a temporary program, and that developers have been on notice for over a year that the TI Program would end upon the commencement of a registration program associated with the Successor Program. The Board sees no merit in claims of detrimental reliance or other remedies premised on the availability or

unavailability of incentives for a particular class of resources, whether because of a perceived gap in incentives, or because a developer invested at-risk capital in a project that may not immediately (or ever) be eligible to participate in the Successor Program, or may no longer be economic under the evolving Successor Program rules. The Board agrees with Staff that establishment of a Successor Program registration system fulfills its obligations under previous Board orders to maintain the TI Program as a bridge between the legacy SRP and the Successor Program. The Board therefore **FINDS** that with establishment of the Successor Program registration process it is reasonable and appropriate to close the TI Program to new registrations as detailed in this order. To the extent that the process established in this order differs from the Board's prior directives in any particular, the Board **HOLDS** that this order and process supersedes and amends those orders.

This Order shall be effective on July 28, 2021.

DATED: 7/28/2021

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