



Agenda Date: 4/6/22
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER CLARIFYING POST-
CONSTRUCTION
CERTIFICATION
REQUIREMENTS

IN THE MATTER OF A NEW JERSEY SOLAR)	DOCKET NO. QO19010068
TRANSITION PURSUANT TO P.L. 2018, C.17)	
)	
IN THE MATTER OF 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)	DOCKET NO. QX21040725

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) clarifies the requirements of the Transition Incentive (“TI”) Program with respect to the submittal requirements for post-construction certification packages.

BACKGROUND

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 Solar Renewable Energy Certificates (“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 Third Party Supplier and Basic Generation Service provider (“TPS/BGS providers”) 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.

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,

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

subsequently codified in rules, provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt hour of electricity produced.² Incentives are tailored to specific project types by 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, for example, receive a factor of 1.0 and thus the full amount of the base incentive. 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.³

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(d) or (e).⁴

On July 9, 2021, Governor Murphy signed L. 2021, c.169 into law, effective immediately, which among other requirements authorized the Board to develop and launch the Successor Solar Incentive (“SuSI”) Program. On July 28, 2021, the Board announced the closure of the TI Program⁵ and the opening of the SuSI Program.⁶ The TI Program closed on August 27, 2021, and the SuSI Program opened on August 28, 2021.

Post-Construction Certification Timeline

Every solar incentive program the Board has implemented has included a requirement that the registrant submit a post-construction certification package, commonly referred to as the “Final As-Built.” In the SRP, if a Final As-Built was received on or before the SRP registration expiration date and was deemed incomplete, the registrant would be given an opportunity to cure deficits in the paperwork so long as the registrant had made a “good faith effort” in submitting the final documents. The Board recognized that practice in its Orders closing the SRP and addressing petitions seeking to remain with the SRP.

Specifically, the Board mandated that access to the SRP portal be closed on the ninety first (91st) day following the Board's determination that the 5.1% Milestone was attained. The Board directed Staff to require developers to complete SRP post-construction certification packages within 90 days of receipt of PTO or of the Board's determination that the 5.1% milestone had been attained, whichever was earlier. Those projects which did not cure all deficiencies in their post-construction certification package in a timely manner were held ineligible for

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

³ 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”).

⁴ 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”).

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17, BPU Docket No. QO19010068, Order dated July 28, 2021 (“TI Closure Order”).

⁶ In re a New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, BPU Docket No. QO20020184, Order dated July 28, 2021 (“Successor Program Order”).

SRECs, regardless of the date of their PTO, and were advised to register for the Transition Incentive program.⁷

More recently, however, Staff has become aware that some confusion has arisen regarding the ability to cure an incomplete Final As-Built submitted in the TI Program. The TI Rules as originally adopted in October 2020, stated simply at N.J.A.C. 14:8-10.4(f) that “the facility owner shall submit a post-construction certification package that meets the requirements of (g) below...” The Board subsequently amended the TI Rules effective February 22, 2022.⁸ The Amended TI Rules, while very prescriptive with regard to the deadline by which a post-construction certification package must be submitted, are silent regarding the opportunity to cure. The Amended TI Rules state that notice of conditional registration shall include notice that “the facility must commence commercial operations and submit a post-construction certification package prior to the expiration of the conditional registration.” N.J.A.C. 14:8-10.4(f)(4)(iii). The rules are silent as to a registrant’s ability to cure an incomplete Final As-Built, but they do explicitly link the expiration date and the submittal of the Final As-Built packet.

The June 2021 Order refers to submitting “all” post-construction certification paperwork prior to the expiration of a registration: “Lastly, the Board directs Staff to propose amendments to the TI Rules to clarify that all projects must commence commercial operations and developers must submit all post-construction certification paperwork prior to a project’s registration expiration date.” June 2021 Order at 7 (emphasis added). This phrasing, together with the language of the amended TI Rules, has given rise to uncertainty regarding a registrant’s ability to cure an incomplete Final As-Built.

STAFF RECOMMENDATION

The strong market participation in the TI Program has led to a current pipeline of projects far exceeding the historic average. As a result of the extensions granted by the June 2021 Order, over 3,300 projects currently in the TI Program pipeline have an April 30, 2022 registration expiration date. Approximately 200 of the 3,300 projects have submitted their Final As-Built packet and are currently under or pending review by the Board’s TI Program manager. The TI Program manager is receiving inquiries regarding the ability to cure deficient or incomplete post-construction certification packages. This uncertainty is becoming a significant strain upon the projects that registered in the TI Program. To date, relying on the language in the amended rules and in the June 2021 Order, the TI Program manager has informed registrants that they must submit a complete Final As-Built packet by April 30, 2022.

Because of the vast amount of projects expected to file post-construction certification packages on or just before the projects’ TI expiration date, Board Staff (“Staff”) also anticipates instances where the TI Program manager may receive a registrant’s Final As-Built packet prior to the project’s expiration date but not review the same until after the expiration date. In this situation, a developer may not be able to cure a deficiency in its post-construction certification prior to the project expiration date simply due to the anticipated delays in administrative review process due to the large number of projects with similar expiration dates filing at the same time. Staff believes

⁷ In re the Petition(s) of Vision Solar to Review the Transfer of the SREC Registration to the Transition Incentive Program, BPU Docket. Nos. QO21010005-QO21010007 and QO21010022 through QO21010032, Order dated March 24, 2021 (“March 2021 Order”). See also In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated March 27, 2020 at 5 (“SRP Closure Order”).

⁸ 54 N.J.R. 368(a), February 22, 2022 (“Amended TI Rules”).

that this may lead to a situation where certain registrants have sufficient time to cure a deficient Final As-Built packet while others do not, simply because of administrative processing time. Accordingly, Staff believes that administrative flexibility is necessary to address the volume of projects in the current pipeline arising from the closure of the TI Program.

Staff notes that the Board's solar incentive programs have historically provided an opportunity to cure incomplete post-construction certification paperwork. The SRP Closure Order recognizes that practice in the context of setting conditions to remain in the SRP. Staff does not believe that any reason exists to change that practice for the TI Program. Moreover, the post-construction submission requirement involves only paperwork and, unlike an extension to construction or commercial operations deadlines, does not change the timeline during which a solar project must be built or implicate the appropriateness of the TI Program incentives.

Staff recommends the Board waive N.J.A.C. 14:8-10.4(f)(4)(iii) for the limited group of registrants that submit a post-construction certification package prior to a project's expiration date in the TI Program where the TI Program manager determines the package is deficient or incomplete. Staff recommends that registrants that filed a post-construction certification package, and achieved Permission to Operate prior to the registration expiration date, which is found deficient by the TI Program manager be provided thirty-days from the date of deficiency notice to cure the deficiencies.

DISCUSSION AND FINDINGS

The Board is cognizant that the solar industry continues to adjust to significant and rapid change in the wake of the CEA and the resulting restructuring of New Jersey's solar programs. The Board **FINDS** that an unprecedented number of post-construction certifications are expected to be filed with the TI Program manager, and possible delays in reviewing timely submitted post-construction certifications could inadvertently lead to a project's non-compliance with the TI Rules. As Staff notes, a developer may not be able to cure a deficiency in its post-construction certification prior to the project expiration date simply due to potential delays in the administrative review process due to the large number of projects with similar expiration dates filing at the same time.

The Board's rules state that "[i]n special cases, upon a showing of good cause the [B]oard may relax or permit deviations from the rule." N.J.A.C. 14:1-1.2(b). The Board's rules go on to explain that "the Board shall, in accordance with the general purpose and intent of the rules, waive section(s) of the rule if full compliance with the rule(s) would adversely affects ratepayers, hinders safe, adequate and proper service, or is in the interest of the general public." N.J.A.C. 14:1-1.2(b)(1). The general purpose of the TI Rules, as well as the timelines contained therein, is to provide a smooth transition to the Successor Program.

The Board **FINDS** that the language of the Amended TI Rules and the June 2021 Order has created uncertainty in the regulated community with regard to the filing of post-construction certification packages. As evidenced by the SRP Closure Order and the March 2021 Order that cites it, the Board previously permitted registrants in the SRP to cure incomplete post-construction certification packages "in a timely manner." The Board **FINDS** that a similar cure period for a limited class of TI Program registrants is now warranted in light of 1) the closure of the TI Program, 2) the resulting large number of projects expected to file post-construction certifications at the same time, and 3) anticipated processing delays that could negatively affect some projects.

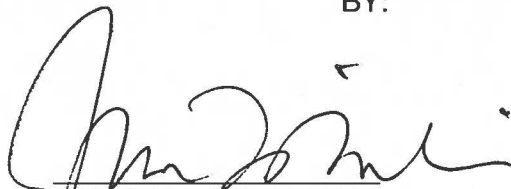
The Board **FINDS** that where a TI project timely filed a post-construction certification package prior to its conditional registration expiration, and where the TI Program manager subsequently

determined that the package is incomplete or deficient, good cause exists to waive the provision of N.J.A.C. 14:8-10.4(f)(4)(iii) requiring submission of the certification package prior to a project's expiration date. For this limited class of registrants, the Board **WAIVES** N.J.A.C. 14:8-10.4(f)(4)(iii) and **ORDERS** that where the TI Program manager determines that a registrant's TI Program post-construction certification package was submitted on or before the project's expiration date and is incomplete or deficient, the TI Manager shall notify the registrant and provide the registrant with 30 days from the date of such notice to cure the post-construction certification package. Finally, the Board **DIRECTS** Staff to prepare an amendment to the TI Rules to codify the treatment of incomplete or deficient TI Program post-construction certification submissions as described in this Order.

The effective date of this Order is April 13, 2022.

DATED: April 6, 2022

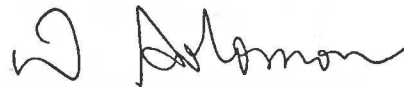
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IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17

IN THE MATTER OF 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

DOCKET NOS. QO19010068 & QX21040725

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