

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Transition Incentive Program Rules

Proposed Amendments: 14:8-2.2, 10.1, 10.3, 10.4, 10.5, and 10.6

Proposed New Rule: N.J.A.C. 14:8-10.7

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Authority: N.J.S.A. 48:3-87, 48:3-87.11, and 48:2-13.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: [QX21040725](#).

Proposal Number: PRN 2021-066.

Comments may be submitted through October 1, 2021, by email in Microsoft Word format, or in a format that can be easily converted to Word, to: rule.comments@bpu.nj.gov or on paper to:

Aida Camacho-Welch, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: [QX21040725](#)

44 S. Clinton Ave., 9th Floor, PO Box 350

Trenton, NJ 08625-0350

The agency proposal is as follows:

Summary

The Board of Public Utilities (Board) is proposing to amend its existing Transition Incentive Program (TI Program) rules to improve the implementation of the TI Program based on lessons learned from program implementation since May 1, 2020. The Clean Energy Act of 2018,

P.L. 2018, c. 17 (Clean Energy Act), mandated that the Board close the Solar Renewable Energy Certificate (SREC) Program upon the State's attainment of 5.1 percent of its retail electricity sales from solar electric generation facilities (5.1% Milestone). In accordance with this mandate, the Board modified the State's solar energy program in two stages. The first is the TI Program established through rules published on October 5, 2020, at 52 N.J.R. 1048(a) and the second, a long-term solar Successor Incentive Program, which will be established through a separate rulemaking in Board Docket No. QO21040728. The TI Program delivers incentives through Transition Renewable Energy Certificates (TREC). It is designed to ensure a smooth and efficient transition from the legacy SREC Program to the new solar Successor Incentive Program by providing stability to developers and owners of solar installations in the SREC Program pipeline at the time the Board closed the SREC Program to new registrations, as well as to developers and owners of new projects until the Board implements the successor incentive program.

After a year's experience with the TI Program, the Board realized that certain amendments to the rules promulgated in October 2020 will facilitate both administration by the Board and participation by the solar industry.

At N.J.A.C. 14:8-2.2, the Board proposes to create a new definition for the term "floating solar" to mean solar projects located on bodies of water. At N.J.A.C. 14:8-2.2, the Board proposes to delete a phrase from the definition of "Transition Incentive Eligible Project" regarding the commencement of commercial operations prior to attainment of the 5.1 % Milestone. At N.J.A.C. 14:8-2.2, the Board proposes to clarify the definition of "qualification life" to reflect that the qualification life of a project is determined by its registration date. For example, projects accepted into the legacy solar program on or before October 30, 2018, have a qualification life of 15 years, while projects that were accepted into this program after that date have a qualification life of 10

years.

The proposed amendments at N.J.A.C. 14:8-10.1 and proposed new N.J.A.C. 14:8-10.4(b) and 10.6(f), the Board proposes to amend the TI rules so that an otherwise eligible project that commenced commercial operations prior to April 30, 2020, may qualify for TRECs if the project submitted final post-construction certification paperwork before December 30, 2020, or attempted to submit post-construction certification paperwork before December 30, 2020, and cured deficiencies by February 15, 2021. The qualification life of each such project will begin on the date that it commenced commercial operations, but only energy generated after April 30, 2020, will be eligible to serve as the basis of TRECs.

At N.J.A.C. 14:8-10.3(d)1, the Board proposes to amend the provisions pertaining to the use of a standing order, so that energy generated by projects accepted into the TI program may serve as the basis for the creation of TRECs prior to the creation of the irrevocable standing order, provided that energy otherwise meets the TREC eligibility criteria. There is a natural delay between the time a facility becomes eligible to generate electricity that can serve as the basis of a TREC and the creation of the irrevocable standing order that authorizes the transfer of the TREC from GATS to the TREC Administrator. As currently codified, the rule prevents the creation of TRECs on the basis of electricity that is generated during the time after the facility becomes eligible and before the standing order is executed.

At new N.J.A.C. 14:8-10.3(e), the Board proposes to expressly allow a solar facility owner to assign ownership of TRECs generated by a project to a third-party through a contract, upon sale of the facility, or upon facility owner bankruptcy.

At recodified N.J.A.C. 14:8-10.4(e), the Board proposes to clarify the registration length for projects that transferred into the TI Program from the SREC Registration Program, and to state

that facilities not eligible for TRECs may be eligible for the Successor Incentive Program.

At new N.J.A.C. 14:8-10.4(f)4ii(4), the Board proposes to specify that projects granted conditional acceptance in the Community Solar Energy Pilot Program have a TREC registration period of 18 months from the effective date of the Board order granting the projects conditional acceptance.

At N.J.A.C. 14:8-10.4(f)4iii, the Board proposes to clarify that the requirements that must be met prior to a project's registration expiration date are the same for new projects registering for the TI Program as they are for projects that were transferred into the TI Program from the SREC Registration Program. Projects must commence commercial operations and submit a post-construction certification package prior to registration expiration to be eligible for TRECs.

At new N.J.A.C. 14:8-10.4(k), the Board proposes to clarify that solar generation facilities for which a complete registration has been submitted to the TI Program prior to the closure of the TI Program to new registrations shall be eligible for the creation of TRECs. The Board also proposes to clarify that subsection (t) projects that submitted a complete subsection (t) application prior to the Board order announcing the closure of the TI Program will be eligible for TRECs, if the Board grants the project conditional certification.

At N.J.A.C. 14:8-10.5, the Board proposes to assign floating solar projects a TREC factor of 0.6 and to clarify that floating solar projects may petition the Board should they seek to receive a factor higher than 0.6.

At new N.J.A.C. 14:8-10.7, the Board proposes to state that TRECs are eligible for Board financial assistance subject to prevailing wage for projects one Megawatt dc (MWdc) or greater, pursuant to N.J.S.A. 48:2-29.47.

As the Board provided a 60-day comment period on this notice of proposal, this notice is

excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

This rulemaking will have a positive social impact on New Jersey by fine-tuning the TI Program to further facilitate a seamless transition between the closure of the SREC Program and the opening of a new solar successor incentive program. The TI Program has proven extremely popular during the one year of its existence, fulfilling the goal of continuing to support a thriving solar industry in New Jersey. By incorporating the lessons learned regarding such matters as the appropriate treatment of solar projects that received permission to operate prior to April 30, 2020, and the use of the standing order, the proposed amendments will allow the program to function more smoothly. These benefits will continue to accrue after the TI Program has been closed to new entrants, since they will allow for a better functioning program for all the projects that have been accepted into the TI Program.

Economic Impact

When the TI rules were proposed in May 2020, the Board noted that the implementation of the proposed TI Program would, over its expected life, stimulate an estimated \$980 million in investments through the installation of approximately 430 MWdc of new solar electricity generating capacity. Through April 1, 2021, the program performed better than expected. Approximately 227 MWdc of solar has been installed and approximately 548 MWdc are in the pipeline, for a total of approximately 775 MWdc of new resources and a total estimated program cost of \$1.8 billion.

However, the proposed amendments and new rule are expected to have only a *de minimis* financial impact on the program. As with most capital infrastructure investments, the Board notes that continued investment in solar electricity generating capacity will stimulate additional indirect

economic benefits through local jobs and services. The program, as amended, will better promote clean, local, renewable electricity generation that reduces greenhouse gas emissions, as well as those linked to negative impacts on human health and biodiversity. Cleaner air brings real economic benefits from improved health.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., require State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. This rulemaking has no Federal analogue and is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the proposed amendments and new rule.

Jobs Impact

This rulemaking is designed to fine tune the existing TI rules, which were adopted to facilitate the continued development of the solar market in New Jersey by providing a bridge between the closure of the SREC Program and the opening of a successor incentive program. To the extent the clarifications and modifications embodied in this rulemaking will streamline participation in the TI Program going forward, they will promote the existing New Jersey Class I RPS of which the TI is a part, and, thus, contribute to maintaining jobs in the development, construction, and operation of solar facilities.

Agriculture Industry Impact

This rulemaking does not establish additional standards for the preservation of farmland in New Jersey *per se*, but by adhering to the prerequisite that only those grid supply projects approved

by the Board pursuant to subsection (t) or subsection (r) of the Solar Act of 2012 are eligible for TRECs, it builds upon the eligibility criteria established in earlier solar incentive programs. Specifically, existing solar rules at N.J.A.C. 14:8-2.4(g) prohibit the siting of solar projects on land designated as farmland. These rules have been incorporated into the TI Program and the proposed amendments and new rule do not alter those rules nor the higher level of incentive to projects that are located on rooftops, landfills, and brownfields, or that participate in the New Jersey Community Solar Energy Pilot Program.

Regulatory Flexibility Statement

The proposed amendments and new rule will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. With regard to utilities, these proposed amendments and new rule do not change the requirements of the existing rules regarding the obligation of the electric distribution companies (EDCs) to jointly procure a TREC Administrator that will have the responsibility to obtain and allocate TRECs to load serving entities with obligations to comply with the Board's Renewable Portfolio Standard rules. The EDCs will continue to recover program costs from their ratepayers. With regard to businesses that qualify as small businesses under the Act, the proposed amendments and new rule, like the existing TI Program, are part of a voluntary program and, as such, will not impose any requirements on any small business that chooses not to participate in the program.

Housing Affordability Impact Analysis

This rulemaking will not impact the affordability of housing in New Jersey, nor is it anticipated that these proposed amendments and new rule will have an impact on the average costs

associated with housing. This rulemaking only addresses amendments to a solar energy program and will not directly affect housing prices or the housing market.

Smart Growth Development Impact Analysis

This rulemaking will not impact smart growth development in New Jersey. This rulemaking will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The scope of the rulemaking is limited to modifying certain programmatic elements of a program that is designed to allow the solar industry in New Jersey to smoothly transition to a new solar incentive program.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board evaluated the proposed amendments and new rule and determined that they will not have an impact on pretrial, detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Floating solar” means a solar generation facility located on a body of water.

...

"Qualification life" means, for any solar electric generation facility, the period [beginning] **of time during which a project is eligible to generate renewable energy certificates in compliance with the rules of the incentive program for which the facility is eligible. The qualification life begins** on the date on which the facility was authorized to energize [under] **pursuant to** N.J.A.C. 14:8-5.8, or its equivalent at PJM Interconnect LLC [, and ending on the first May 31 that is at least 10 years after the date of authorization to energize] **and ends on the date specified by the program rules.** A solar facility's qualification life applies to the facility itself, and to each piece of equipment included in the facility, regardless of any interruption in the solar facility's operation; or of any disassembly, relocation, sale, or transfer of any piece of equipment included in the facility.

...

"Transition Incentive ("TI")-Eligible Project" means a solar electric generation facility that registered its intent to participate in the SREC market pursuant to N.J.A.C. 14:8-10.4(a) after October 29, 2018, and has maintained its SREC eligibility[, but has not commenced commercial operations before the Board determines that the State has attained 5.1 percent of its retail sales from solar electric generation facilities]. Following the closure of the SREC Program, the Board shall allow projects that meet the TI eligibility requirements an opportunity to register to participate in the TI Program until the establishment of a registration program for a solar [Successor Incentive Program] **successor incentive program.**

...

SUBCHAPTER 10. SOLAR TRANSITION INCENTIVE

14:8-10.1 Purpose and scope

This subchapter sets forth the rules for the establishment of a solar energy Transition Incentive (TI) Program designed to provide a bridge between the SREC Program and a solar [Successor Incentive Program] **successor incentive program** under development by the Board. Owners and developers of proposed solar electric generation facilities that received a conditional registration pursuant to N.J.A.C. 14:8-2.4(h)4 that has not expired, been cancelled, or commenced commercial operations prior to the State's attainment of 5.1 percent of its retail electricity sales from solar electric generation facilities (5.1% Milestone), which the Board determined to be April 30, 2020, and submitted a post-construction certification package within 90 days of the 5.1% Milestone, will be instructed by Board staff on how to transfer their project to the Transition Incentive registration pipeline. **Solar electricity generated by an otherwise eligible facility that commenced commercial operations prior to April 30, 2020, and submitted post-construction certification paperwork that was either complete by December 31, 2020, or that was submitted by December 31, 2020, and cured by February 15, 2021, shall be eligible to register in the TI Program. Although the qualification life of each of these projects began when it received its permission to operate, said projects shall only be eligible to produce TRECs for electricity generated after April 30, 2020, and until the end of each project's qualification life.** Following April 30, 2020, and prior to the Board's announcement of the opening of a registration process for the solar [Successor Incentive Program] **successor incentive program**, solar electric generating facilities meeting the TI eligibility criteria established in this subchapter may register for the Transition Incentive Program.

14:8-10.3 Transition Incentive Program structure

(a)-(c) (No change.)

(d) Irrevocable [Standing Orders] **standing orders** shall be treated as follows.

1. An [Irrevocable Standing Order] **irrevocable standing order**, defined in the GATS Operating Rule as “A reoccurring automatic transfer of certificates for a given generating unit from the account holder’s active subaccount to the active subaccount held by different account holders,” shall be created in GATS for each TREC eligible project **as soon as such creation is feasible**. The [Irrevocable Standing Order] **irrevocable standing order** will cause the automatic transfer of TRECs created by an eligible solar project to the EDC Joint GATS Account.

i. The [Irrevocable Standing Order] **irrevocable standing order** shall require for that [Generator] **generator** that **following the creation of the standing order**, 100 percent of the certificates be automatically transferred from each meter reading to the EDC Joint GATS Account.

ii. (No change.)

2.-3. (No change.)

4. Energy generated by projects accepted into the TI Program may serve as the basis for the creation of TRECs prior to the creation of an irrevocable standing order, provided that energy is otherwise TREC-eligible. In the absence of an irrevocable standing order, account holders shall be authorized to manually transfer TRECs to the TREC Administrator within GATS.

[4.] **5.** (No change in text.)

(e) **A solar facility owner may assign ownership of a project’s TRECs to a third party when one of the following occurs:**

1. The facility is sold;

2. The solar facility owner files a bankruptcy proceeding in any court; or

3. The solar facility owner enters into a contract assigning ownership to a third party.

14:8-10.4 Transition Incentive eligibility

(a) The Transition Incentive shall be available to projects that submitted a complete SREC Registration Program registration or a complete subsection [t] **(t)** application after October 29, 2018, but have not received a Permission to Operate at the time the Board determines that the State has attained **the 5.1 percent** [of its retail sales from solar electric generation facilities] **Milestone** and closes the SRP to new registrations. The Transition Incentive shall also be available to the [Subsection r] **subsection (r)** applications that received conditional certification from the Board in an Order dated March 29, 2019, if they have not received a Permission to Operate at the time the Board determines that the State has attained **the 5.1 percent** [of its retail sales from solar electric generation facilities (5.1%) Milestone[]]. The Transition Incentive eligibility criteria for these projects that will be transferred into the Transition Incentive Program are set forth at [(d)] **(e)** below.

(b) Solar electricity generated by an otherwise eligible facility that received a Permission to Operate prior to April 30, 2020, and submitted post-construction certification paperwork that was either complete by December 31, 2020, or that was submitted by December 31, 2020, and cured by February 15, 2021, shall be eligible to register in the TI Program. These facilities shall only be eligible to create TRECs for electricity generated after April 30, 2020, regardless of the date of the project's Permission to Operate, and until the end of each project's qualification life.

[(b)] **(c)** In the event that the SREC Registration Program is closed to new registrations before the

establishment of a registration program for the solar [Successor Incentive Program] **successor incentive program**, the Board may allow projects that comport with the SREC eligibility requirements at N.J.A.C. 14:8-2.4, the Board's [Implementing Orders] **implementing orders**, and the definition of "connected to the distribution system" at N.J.A.C. 14:8-1.2, to register for the TI Program. However, no new registrations for [Subsection] **subsection (r)** applications shall be accepted. The Transition Incentive eligibility criteria for these new projects registering for the Transition Incentive Program after the attainment of the 5.1% Milestone are set forth at [(e)] **(f)** below.

[(c)] **(d)** (No change in text.)

[(d)] **(e)** Solar electric generation facilities that have received a conditional registration for SRECs pursuant to N.J.A.C. 14:8-2.4(h)4 that has not expired, been cancelled, or commenced commercial operations prior to the 5.1% Milestone and have not submitted a post-construction certification package within 90 days of the 5.1% Milestone that have been transferred to the Transition Incentive registration program will receive a new conditional registration. The new registration will incorporate a requirement to commence commercial operations and submit a post-construction certification package [within] **no later than October 30, 2021, which is** 18 months [of] **from** the date that the Board [determines] **determined** that the 5.1% Milestone [has] **had** been attained, except for projects granted conditional certification under the [Subsection] **subsectoin (r)** program (N.J.S.A. 48:3-87(r)), which will retain the registration expiration date set by the Board [Order] **order** granting the project conditional certification; projects granted conditional certification under the [Subsection] **subsection (t)** program (N.J.S.A. 48:3-87(t)) prior to April 30, 2020, which will receive a new registration on the later of the date set by the Board [Order] **order** granting the project conditional certification, plus any extensions that have been granted, or

October 30, 2021, which is 18 months from the date that the Board [determines] **determined** that the 5.1% Milestone has been attained.

1. (No change.)

2. Facilities registered for TREC eligibility, if they commence commercial operations and submit a post-construction certification package prior to the [one-year] **18-month** anniversary of the date that the Board determined the 5.1% Milestone was attained (or as described in this subsection for [Subsection] **subsection** (t) and [Subsection] **subsection** (r) projects), will be assigned a New Jersey State Certification Number for use in obtaining TRECs from PJM-EIS GATs.

3. Facilities registered for TREC eligibility, if they do not commence commercial operations and submit a post-construction certification package prior to the [one-year] **18-month** anniversary of the date that the Board determined the 5.1% Milestone was attained (or as described in this subsection for Subsection (t) and Subsection (r) projects), will not be eligible for TRECs. **Facilities not eligible for TRECs may be eligible to apply for the successor incentive program, if allowed by the Board's successor incentive program rules.**

[(e)] **(f)** (No change in text.)

[(f)] **(g)** When construction of the solar electric generating facility is complete, the facility owner shall submit a post-construction certification package that meets the requirements [of (g)] **at (h)** below, and shall request an inspection of the facility by Board staff, or an inspection waiver, through the Board's NJCEP website at www.njcleanenergy.com.

1.-3. (No change.)

4. If the solar facility, as described in the initial registration package, meets TREC eligibility requirements, Board staff shall issue notice to the registrant of a conditional registration

for the facility. The notice of the conditional registration shall:

i. (No change.)

ii. Include an expiration date occurring on:

(1)-(3) (No change.)

(4) For projects granted conditional acceptance to participate in the Community Solar Energy Pilot Program, the 18-month anniversary of the registrant's Board order granting acceptance.

(iii) Include notice that [construction of] the facility must [be completed] **commence commercial operations and submit a post-construction certification package** prior to the expiration of the conditional registration.

Recodify existing (g) and (h) as **(h) and (i)** (No change in text.)

[(i)] **(j)** Except as modified in this subchapter, all TI Program projects must comply with all rules [and regulations] of the SREC Registration program at N.J.A.C. 14:8-2.4.

(k) If a complete registration has been submitted to the TI Program prior to the closure of the TI Program to new registrations, the solar generation facility for which the registration has been submitted shall be eligible for the creation of TRECs. Applications submitted pursuant to subsection (t) before the closure of the TI Program shall be eligible for conditional certification following New Jersey Department of Environmental Protection review if the Board determines all eligibility criteria for conditional registration have been met, regardless of whether conditional certification occurs prior to or after the closure of the TI Program to new registrations. After the facility is constructed and Board staff determines that all conditions for certification have been met, Board staff shall fully certify the application and energy generated will be eligible for the creation of TRECs.

14:8-10.5 TREC value

(a) (No change.)

(b) Each project registered in the SREC or TREC registration program shall be assigned a TREC factor by staff based on the following defined market segments.

1. The factors for the defined market segments are as follows:

<u>Defined Market Segments</u>	<u>Factor</u>
...	
Net-metered non-residential ground mount	0.6
Floating solar	0.6

2.-3. (No change.)

4. An applicant with a floating solar project may petition the Board to demonstrate that the project should receive a factor higher than 0.6.

(c) (No change.)

14:8-10.6 Mechanism for creation of TRECs

(a)-(e) (No change.)

(f) An otherwise eligible facility that commenced commercial operations prior to April 30, 2020, and submitted post-certification paperwork that was either complete by December 31, 2020, or that was submitted by December 31, 2020, and cured by February 15, 2021, shall only be eligible to create TRECs for electricity generated after April 30, 2020.

Recodify existing (f) and (g) as **(g) and (h)** (No change in text.)

14:8-10.7 TRECs deemed eligible for Board financial assistance

Wages paid in connection with the construction of a solar electricity generating facility with output capacity of one megawatt dc or greater, which facility is registered to generate TRECs pursuant to P.L. 2009, c. 89 (N.J.S.A. 48:2-29.47) are subject to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.