



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CLOSURE OF THE SREC)
REGISTRATION PROGRAM PURSUANT TO P.L. 2018,)
C. 17 – PROCEDURE FOR REQUESTING EXTENDED)
TIME TO OBTAIN FINAL INSPECTIONS AND)
PERMISSION TO OPERATE) DOCKET NO. QO18070698

Party of Record:

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

BY THE BOARD:

In this Order the Board sets forth the procedure for registrants in the SREC Registration Program (“SRP”) pipeline that would have completed all necessary steps for SRP eligibility but were prevented by the COVID-19 emergency from obtaining the final inspections needed and/or their Permission to Operate (“PTO”) from their Electric Distribution Company (“EDC”) prior to April 30, 2020. That is the date on which the Board determined that 5.1% of the retail electricity kilowatt-hours sold in the State was generated by solar generation connected to the distribution system in the State (“5.1% Milestone”). To accomplish this, the Board waives certain of its rules to allow Board Staff and the SREC Registration Program administrator (“SRP Administrator”) flexibility in determining when projects commence commercial operations.

BACKGROUND AND PROCEDURAL HISTORY

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law (“Clean Energy Act” or “CEA” or “Act”), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the SREC program upon the attainment of the 5.1% Milestone, reducing the SREC term or “qualification life” to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandates, in relevant part, that the Board close the SRP to new applications once it determines that the 5.1% Milestone has been met. The Board implemented this directive through

a series of interconnected Orders and rulemaking proceedings, as detailed in two previous Orders.¹

Following the publication of the monthly 5.1% Milestone attainment report by Staff on March 31, 2020,² the Board determined that the State would generate 5.1% of its retail electricity sales from solar before May 1, 2020. Consequently, the Board ordered that this determination and the closure of the SRP would be effective on April 30, 2020. The Board ordered Staff to close the SRP to new registrations on that date. April 2020 Order at 5. Therefore, only projects in the SRP pipeline that had received a Permission to Operate (“PTO”) from their Electric Distribution Company (“EDC”) by April 30, 2020, and submitted the post-construction certification package no later than 90 days from the date of PTO, would be eligible to receive SRECs. Projects in the SRP pipeline that had not received a PTO by April 30, 2020, or failed to submit their post-construction certification package in a timely manner, would be not be so eligible and would instead become eligible for the Transition Incentive Program. Id.

Contemporaneously with the closure of the SRP and the Board’s actions in that regard, the COVID-19 outbreak has produced a national state of emergency.³ Travel both within and beyond the State has been severely restricted as both government and commercial carriers respond to the health threat. On March 16, 2020, Governor Murphy signed Executive Order No. 104 (“EO 104”),⁴ implementing aggressive social distancing measures to mitigate further spread of COVID-19 in New Jersey; on March 21, 2020, he issued Executive Order 107 (“EO 107”),⁵ expressly superseding the operative paragraphs of EO 104 with yet more stringent measures. And on April 8, 2020, the Governor ordered all “non-essential” construction to halt as of April 10, 2020.⁶

STAFF RECOMMENDATIONS

Staff understands that there are a number of solar projects that are fully constructed and would have achieved commercial operations but are prevented from reaching PTO because they cannot access municipal or EDC personnel to complete the required final inspection. In Staff’s view, projects that meet the requirements laid out below would have been extremely likely to have reached PTO prior to April 30, 2020, but for the pandemic and the extraordinary measures taken to combat it.

Specifically, Staff recommends that the Board waive, in certain cases, the portion of its rules that require projects with active registrations in the SRP pipeline to have a PTO letter issued by their EDC in order to formally commence commercial operations, subject to specific criteria as

¹ In re Closure of the SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated March 27, 2020; 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”).

² 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>

³ Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. Available at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (March 13, 2020; accessed April 17, 2020).

⁴ Exec. Order No. 104 (March 16, 2020, Murphy). <https://nj.gov/infobank/eo/056murphy/pdf/EO-104.pdf>

⁵ Exec. Order No. 107 (March 21, 2020, Murphy). <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

⁶ Exec. Order No. 122 (April 10, 2020, Murphy). <https://www.nj.gov/infobank/eo/056murphy/pdf/EO-122.pdf>

described further below.⁷ The inability to reach PTO directly affects these projects' right to be eligible for SRECs. April 2020 Order at 5; N.J.A.C. 14:8-2.4(b)(7)(iii). In light of the state of emergency, Staff urges the Board to waive its rules to the extent necessary to allow additional time to obtain the PTO to those projects that are only awaiting final inspections and final permission to interconnect to the grid prior to the April 30, 2020 closure of the SRP program. Staff notes that it proposes only a narrow and time-limited waiver of the need to have the PTO for purposes of determining SREC eligibility. State law continues to require that all electric generation facilities pass final inspections and receive a PTO prior to energizing.

Staff recommends that the Board require registrants seeking such relief to submit the following to TRC, the Board's SRP Administrator:

1. An affidavit⁸ from the project owner that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO;
2. An affidavit signed by a person with direct personal knowledge stating that the project was complete but for final inspections or final permission to interconnect to the grid prior to April 30, 2020;
3. Date-stamped pictures of the array, inverter and balance of system;
4. Date-stamped evidence that project representatives attempted to communicate with local code officials (e.g. emails with the local code officials requesting an inspection); or, if the project has already passed local code inspections, evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC;
5. An executed milestone report form that reflects the status of the project, including the date the request for inspection was filed with the municipal officials, date of receipt of inspection approval, and date of submission of application to energize (Part II of the interconnection application) with the EDC; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

DISCUSSION AND FINDINGS

The Board's rules are to be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues presented to the Board. In special cases upon a showing of good cause the Board may also relax or permit deviations from its rules. N.J.A.C. 14:1-1.2. The Board is cognizant of the toll the COVID-19 pandemic has taken upon New Jersey industry in general and upon the solar industry in particular. The inability for solar developers to arrange for final inspections in the face of the steps that have been taken to curb the spread of the Corona virus and safeguard human health should not, in the Board's view, prevent mechanically complete projects from receiving SRECs. The Board previously found that the COVID-19 health emergency warrants the Board's use of its discretion

⁷ N.J.A.C. 14:8-2.4(b)(7)(iii).

⁸ The Board notes that on April 14, 2020, Governor Murphy signed into law bill A-3903/S-2336 (2020), effective immediately, allowing remote notarial acts during the Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020. P.L. 2020, c. 26; https://www.njleg.state.nj.us/2020/Bills/AL20/26_.PDF

in the application of certain rules, and we believe this is an instance where relaxation or deviation from the rules is appropriate.

The Board **NOW FINDS** that the current COVID-19 health emergency represents good cause that warrants granting additional time to that limited subset of solar projects for which developers can demonstrate that projects were mechanically complete by April 30, 2020 and that, but for the health emergency and the restrictions on normal business activity it has necessitated, would have received the final inspections necessary for them to reach PTO prior to April 30, 2020.

The Board **DIRECTS** qualified developers and owners seeking relief to demonstrate that their projects fall into the category of special cases that would have received PTOs prior to the closure of the SRP to submit the following items to the SRP Administrator:

1. An affidavit from the project owner that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO;
2. An affidavit signed a person with direct personal knowledge stating that the project was complete but for final inspections and final permission to interconnect to the grid prior to April 30, 2020;
3. Date-stamped pictures of the array, inverter and balance of system equipment;
4. Date-stamped evidence that project representatives attempted to communicate with local code officials (e.g. emails with the local code officials requesting an inspection); or, if the project has already passed local code inspections, evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC;
5. An executed milestone report form that reflects the status of the project, including the date the request for inspection was filed with the municipal officials, date of receipt of inspection approval, and date of submission of application to energize (Part II of the interconnection application) with the EDC; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

The Board notes that this relief only applies in the context of determining whether a project is eligible to receive SRECs. If granted, the relief in no way eliminates the requirement for projects to receive all applicable permits and inspections, as well as PTO from the EDCs, prior to energizing.⁹ Pursuant to the Board rules at N.J.A.C. 14:8-5.4, N.J.A.C. 14:8-5.5, and N.J.A.C. 14:8-5.6, projects **may not** be energized prior to receiving PTO from the relevant EDC.

The Board **FURTHER FINDS** that in order to be eligible for SRECs, projects granted this relief shall obtain and file with the SRP Administrator evidence of final inspections and PTO no later than ninety (90) days following the end of the Public Health Emergency or State of Emergency established by Executive Order No. 103 (Murphy, 2020), whichever ends later. The Board **HEREBY DIRECTS** Staff to work with the SRP Administrator to determine how to process the post-construction certification packages for these projects.

⁹ N.J.A.C. 14:8-5.4, N.J.A.C. 14:8-5.5, N.J.A.C. 14:8-5.6

The Board also notes that the current crisis affects virtually all citizens of New Jersey, including solar developments in various stages of development. Undoubtedly, certain projects that are not currently complete would likewise have reached PTO but for the current health crisis. While the Board is sympathetic to the plight of such projects, the waiver of our rules regarding achievement of PTO balances the need to close the SREC program promptly upon the achievement of the 5.1% Milestone with the desire to prevent manifest unfairness to projects that are otherwise complete. For projects that are not complete, the Board notes that the Transition Incentive program ensures that they will continue to receive significant financial incentives and that projects will be automatically transitioned into this new program.

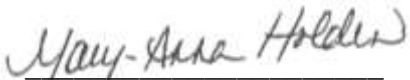
This Order shall be effective immediately.

DATED: April 27, 2020

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PURSUANT TO P.L. 2018, C. 17 – PROCEDURE FOR REQUESTING EXTENDED TIME TO
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BPU DOCKET NO. QO18070698

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