

the facility owner, and create an irrevocable standing order for each eligible facility for which it is reporting generation into GATS.

3. The NJ SREC-II Administrator will confirm that:

- i. Each account holder created an irrevocable standing order;
- ii. Each irrevocable standing order is complete, identifies the transferor, and represents 100 percent of all NJ SREC-IIs for that generator;
- iii. The solar aggregator, broker, installer, or other account holder has the authority to create the irrevocable standing order; and
- iv. The automatic transfer of NJ SREC-IIs has occurred.

4. Irrevocable standing orders authorizing transfers can only be terminated with the written consent of both parties.

(c) One NJ SREC-II shall be created for each megawatt-hour (MWh) of eligible electricity produced from a SuSI-eligible facility. A NJ SREC-II created for eligible electricity shall not be used for a purpose other than satisfying the SuSI Program carve-out to the NJ Class I requirements of the RPS.

(d) All solar electricity must be metered using an ANSI c-12 certified meter in conformance with N.J.A.C. 14:8-2.9(c).

(e) A NJ SREC-II may be redeemed in GATS in the energy year in which the electricity was produced or in the following energy year.

(f) Electricity generated by a SuSI-eligible facility that is not redeemed in GATS in the energy year in which the electricity was produced, or in the following year, shall not be eligible for a NJ SREC-II, but shall be eligible to create a New Jersey Class I REC.

#### 14:8-11.9 Prevailing wage requirement

NJ SREC-IIs are deemed Board of Public Utilities financial assistance subject to prevailing wage rates pursuant to section 1 of P.L. 2009, c. 89 (N.J.S.A. 48:2-29.47) for all SuSI-eligible facilities sized one MWdc or greater.

## (a)

### BOARD OF PUBLIC UTILITIES

#### Transition Incentive Program Rules

#### Adopted Amendments: N.J.A.C. 14:8-2.2, 10.1, 10.3, 10.4, 10.5, and 10.6

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

Proposed: August 2, 2021, at 53 N.J.R. 1243(a).

Adopted: January 26, 2022, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: January 26, 2022, as R.2022 d.030, **without change**.

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

BPU Docket Number: QX21040725.

Effective Date: February 22, 2022.

Expiration Date: February 27, 2026.

#### Summary of Public Comments and Agency Responses:

Written comments were submitted by: Brian O. Lipman and Sarah H. Steindel, New Jersey Division of Rate Counsel (RC); two comments by Jean Public (referred to herein as "Jean Public 1" and "Jean Public 2," respectively); Tim Eustace on behalf of North Jersey District Water Supply Commission (NJWSC); and PJM Environmental Information Services (PJM-EIS).

The following is a summary of the comments received from members of the public and the Board of Public Utilities' ("BPU" or "Board") response.

#### General Comments

1. COMMENT: The commenter supports the rule proposal, stating that it includes clarifications and improvements to the implementation of the Transition Incentive (TI) Program based on lessons learned since the program was implemented on May 1, 2020. The commenter notes that the TI Program was closed to new applicants as of 11:59 P.M. Eastern

Standard Time on August 27, 2021, but states that the proposed amendments should facilitate the process of closing out the program for applications that were complete by this deadline. (RC)

RESPONSE: The Board notes the commenter's support for the rulemaking.

2. COMMENT: The commenter disapproves of the proposed amendments, asking that the Board review how prior ratepayer funding is working out and improving life in New Jersey before establishing new programs. (Jean Public 1)

RESPONSE: The rule amendments, made to the existing TI Program, were proposed based on the experience gained in the implementation of the TI Program since inception in May 2020. They are designed to facilitate administration by the Board and participation by the solar industry in an existing program, not to create a new expenditure of ratepayer funding. Generally, the Board believes that supporting the development of solar resources through programs, such as the TI Program is important to meeting the State's clean energy goals.

#### N.J.A.C. 14:8-10.5

3. COMMENT: The commenter supports the proposed amendment to create a new Transition Renewable Energy Certificates (TREC) factor for floating solar projects, stating that it would codify the Board's existing policy regarding the value of the TREC incentive for these projects. (RC)

RESPONSE: The Board notes the commenter's support for the rulemaking.

4. COMMENT: The commenter does not support floating solar projects, and does not believe that they will withstand severe weather events. (Jean Public 1)

RESPONSE: The TI Program provides eligible solar electric generation facilities a per megawatt-hour (MWh) production-based incentive, meaning that solar projects only receive an incentive for electricity produced during their 15-year qualification life. A system that breaks down or otherwise does not produce electricity will, therefore, not receive State incentives through the TI Program.

5. COMMENT: The commenter is concerned about floating solar as a possible source of pollution and believes that more research is needed. (Jean Public 2)

RESPONSE: Floating solar is an emerging type of solar deployment, and more information is becoming available as new projects are installed. These amendments impact only the incentive eligibility, not the standards or conditions for construction or operation of the systems. All floating solar projects participating in the TI Program will remain subject to all applicable laws, rules, and regulations, and will be required to receive all necessary permits from local, State, and Federal entities.

#### N.J.A.C. 14:8-10.6(d)

6. COMMENT: The commenter believes that the rule unduly limits the eligible life of a TREC by requiring that it be redeemed in the Generation Attribute Tracking System (GATS) in either the year that the energy was generated or the following year. The commenter notes that only 15 months elapse between June 1, 2020-the earliest date that generation for May 2020 can be reported in GATS-and September 1, 2021, the deadline by which the TREC Administrator must procure TRECs for energy year (EY) 2020, if they are to be used for EY 2021 Renewable Portfolio Standard (RPS) Compliance. For EY 2020, the commenter notes that there are currently 534 TRECs available that presumably can no longer be accepted by the TREC Administrator. In the commenter's opinion, the process for TRECs to be procured and retired by the TREC Administrator may be overwhelming, especially for residential homeowners. Moreover, the commenter believes that the mechanism for creating a Class I REC from a TREC based on when and by whom the REC is retired would add complexity for the TREC Administrator and the GATS Administrator, as well as the system owner.

The commenter proposes modifying N.J.A.C. 14:8-10.6(d) and 2.8 to add another year for TRECs to be retired for RPS compliance, making the rule for a TREC the same as for a Class I REC. In addition, the commenter believes that the Board should delete N.J.A.C. 14:8-10.6(e) that allows for the creation of a New Jersey Class I REC after it is no longer eligible as a TREC. In support of its position, the commenter states that TREC project owners are already incentivized to create and deliver TRECs as soon as

possible and that there is no need to penalize owners, especially residential homeowners, for delays outside of their control or beyond their expertise. With an additional year to complete the steps needed to create and deliver TRECs to the TREC Administrator, the commenter believes that there would be no need for a provision allowing for the creation of Class I RECs from TRECs.

In the alternative, the commenter suggests modifying N.J.A.C. 14:8-10.6(e) to state that electricity generated by a TREC-eligible facility that is not redeemed in GATS in either the energy year in which it was produced or in the following year shall not be accepted by the TREC Administrator. Rather than creating a New Jersey Class I REC in place of the TREC once that time has expired, the commenter proposes that TRECs could be redeemed as-is to satisfy the Class I requirement, similar to how Class I RECs were able to be used to satisfy the Class II requirement in past years. (PJM-EIS)

RESPONSE: The Board notes that experience with the TI Program is limited to one year at present. Given this scant record, the Board is not persuaded that this issue is significant enough or sufficiently likely to recur as to require a rule amendment. Any initial delays in registration and redemption should not recur in future energy years. The existing rule is designed to motivate timely submission of electricity metering readings toward the creation and ultimately the retirement of TRECs, so that accumulated TRECs do not unbalance anticipated retirements and costs. The commenter points to a set of EY 2020 TRECs that were not retired within the time proscribed by the rules, but Board staff has learned that the great majority of these TRECs originated with a market participant that has a history of slow compliance. Fifteen months should be more than sufficient to satisfy the requirements to establish an account, enter meter readings, and create TRECs eligible for procurement and retirement. As to the delays outside of an electricity producer’s control referenced by the commenter, these may be addressed with a petition to the Board. In addition, while the commenter alleges that converting TRECs to Class I RECs will unduly complicate the process, the Board believes that the TREC Administrator should not have issues facilitating reclassification. The solution proposed by PJM-EIS of allowing unredeemed TRECs to accrue to the electric distribution companies (EDCs) is unworkable as the EDCs do not represent all regulated entities with an obligation to comply with the Board’s RPS rules.

7. COMMENT: The commenter, a public body formed by its member municipalities to develop and operate a water supply system in New Jersey’s 12 northernmost counties, has a TI Program registration for an approximately 10 MW floating solar project intended to operate behind the meter at the commenter’s main pumping and filtration facility. This registration will expire if permission to operate (PTO) has not been received and a post-construction certification package received by the Board’s registration processing team by December 29, 2022. The commenter states that this deadline is creating economic uncertainty for its project, whose anticipated schedule includes approximately 12 months of engineering and permit acquisition followed by roughly six months of construction. In the event that the project does not complete construction and receive its PTO by the TI Program deadline, the commenter states that it will have to reduce the project’s size to comply with the Administratively Determined Incentive (ADI) program’s five MW cap. Consequently, the commenter proposes some amendments to the TI Program rules, or alternatively to the rules for the ADI Program.

For the TI Program, the commenter recommends that the BPU modify the criteria for the TI Program eligibility. Rather than requiring PTO by a date certain, the commenter proposes that the Board instead require proof of “continued and ongoing project development.” In the commenter’s opinion, an applicant should not be required to file a formal petition for an extension, the only avenue available under current rules, because of the expense and the development risk inherent from the potential denial of any such petition. Instead, the commenter proposes that the Board accept demonstration of continued and ongoing project development through work product (engineering work, permit applications, permit approvals) or capital spent (paid invoices and purchase orders). Further, the commenter suggests that if at least 25 percent of a project has been deployed, then such project should remain eligible for TI Program incentives provided that milestone reporting demonstrates ongoing project development. The commenter fears that without this modification,

the TI Program requirements may lead to too much uncertainty for its project. (NJDWSC)

RESPONSE: The Board notes the interim nature of the TI Program, which was designed as a short-term measure providing a bridge between the legacy SREC Program and a successor incentive program. The Board believes that the bright line deadline provided in the TI Program requiring that PTO be obtained and post-construction documentation be submitted by a set deadline is preferable to the more complicated and ambiguous multi-factor “ongoing project development” metric proposed by the commenter. This vague standard would tend to cloud not only the status of a particular project, but also the market’s sightline into which projects can reasonably be anticipated to come online. The Board also does not believe that allowing a project to proceed if it has achieved only 25 percent deployment, as proposed by commenter, would foster the kind of certainty in the market that the Board seeks to achieve. Furthermore, the incentive values established for the TI Program were based upon contemporary financial conditions, including costs exhibited in the legacy SREC Program as early as 2019. Given that solar costs have traditionally declined year-over-year, it is critical to the integrity of the Board’s solar program that the incentive level matches when a project is anticipated to reach commercial operation. Otherwise, the Board’s programs risk significantly over-incenting such projects and unnecessarily increasing ratepayer costs. To ensure that this does not happen, the TI Program was closed to new registrants on August 27, 2021, and replaced with the Successor Solar Incentive (SuSI) Program, particularly the ADI Program, which opened on August 28, 2021. The incentive values established for the ADI Program were based on more recent financial conditions and, hence, are expected to be more appropriate for projects that have yet to commence construction, like the one described by the commenter.

Further, the incentive level for larger projects (that is, those over five MW) is scheduled to be established through a competitive process as part of the Competitive Solar Incentive (CSI) Program, which is currently under development. Providing the rule changes proposed by commenter would exempt some projects from the competitive pricing provisions of the CSI Program, which could significantly over-compensate generators. In short, the effort to allow individual projects a longer opportunity to complete within the TI Program would have the unintended consequence of introducing uncertainty into the program as a whole and, consequently, to the market. The Board believes that individual projects and circumstances are best addressed through an individual petition to the Board.

**Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq., requires 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. The Transition Incentive Program rules have no Federal analogue and are 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 adopted amendments and new rule.

Full text of the adoption follows:

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 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 pursuant to N.J.A.C.

14:8-5.8, or its equivalent, at PJM Interconnect LLC 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. 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.  
 ...

#### 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 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, 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 shall be treated as follows.

1. An 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 will cause the automatic transfer of TRECs created by an eligible solar project to the EDC Joint GATS Account.

i. The irrevocable standing order shall require for that generator that following the creation of the irrevocable 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.

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) 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 Milestone and closes the SRP to new registrations. The Transition Incentive shall also be available to the 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 Milestone. The Transition Incentive eligibility criteria for these projects that will be transferred into the Transition Incentive Program are set forth at (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.

(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, 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, 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 (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 (f) below.

(d) (No change in text.)

(e) Solar electric generation facilities that have received a conditional registration for TRECs 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 no later than October 30, 2021, which is 18 months from the date that the Board determined that the 5.1% Milestone had been attained, except for projects granted conditional certification under the subsection (r) program (N.J.S.A. 48:3-87(r)), which will retain the registration expiration date set by the Board order granting the project conditional certification; projects granted conditional certification under the 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 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 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 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 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 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.

(f) Solar electric generation facilities seeking Transition Incentive program eligibility following the determination that the 5.1% Milestone has been met and prior to the Board's announcement of the opening of a registration process for the successor incentive program must complete the following process in order to be issued a notice of conditional registration:

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 the facility must commence commercial operations and submit a post-construction certification package prior to the expiration of the conditional registration.

(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 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](http://www.njcleanenergy.com).

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

(j) Except as modified in this subchapter, all TI Program projects must comply with all rules 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 that 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.