



Agenda Date: 11/18/20  
Agenda Item: 8C

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

IN THE MATTER OF A NEW JERSEY SOLAR	)	ORDER
TRANSITION PURSUANT TO P.L. 2018, C.17 –	)	DOCKET NO. QO19010068
ORDER ADDRESSING TREC ELIGIBILITY FOR	)	
PROJECTS COMMENCING COMMERCIAL	)	
OPERATIONS BEFORE PROGRAM ESTABLISHMENT	)	DOCKET NO. QX20030253

**Party of Record:**

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

BY THE BOARD:

In this Order the Board addresses Transition Incentive (“TI”) program eligibility of projects which commenced commercial operations prior to the May 1, 2020 TI program registration opening date established by the Board.

**BACKGROUND**

On May 23, 2018, the Clean Energy Act, L. 2018, c.17 (“Act”), was signed into law, and directed the Board to adopt rules and regulations to close the SREC Registration Program (“SRP”) to new registrations once 5.1% of the kilowatt-hours sold in the State are generated by solar electric power connected to the distribution system (known as the 5.1% Milestone), and continue the efficient and orderly development of solar renewable energy throughout the State.

By Order dated December 6, 2019, the Board ordered the creation of a Transition Incentive program, comprised of fixed-price, and factorized Transition Renewable Energy Certificates (“TRECs”).<sup>1</sup> The Transition Incentive Order required projects seeking eligibility for TRECs to comply with all rules and regulations of the SRP.

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<sup>1</sup> 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”).

By Order dated January 8, 2020, the Board ordered that the TI program will remain open to new registrations until the establishment of a registration program for the Successor Program currently under development.<sup>2</sup> On April 6, 2020, the Board determined that the 5.1% Milestone would be attained on or before May 1, 2020, and therefore directed Staff to close the SRP to new registrations on April 30, 2020.<sup>3</sup> The Board also directed Staff to work with market participants to facilitate the process for registering proposed solar electric generation facilities for TREC eligibility, with the goal of making the process as transparent and seamless as possible.

On April 30, 2020, the SRP was closed to new registrants. Projects that did not otherwise qualify to receive an extension because of COVID-19 related delays were required to submit their post-construction certification packages to the SRP within 90 days. On May 1, 2020, the TI program online portal was opened to new registrants.

On May 18, 2020, a rule proposal for the Transition Incentive program (“TI Rule Proposal”) was published in the New Jersey Register.<sup>4</sup> The TI Rule Proposal amended the RPS rules to provide the structure, mechanics, and eligibility requirements of the TI Program. The proposal contained specific project completion deadlines for behind the meter and grid supply projects, both those that transfer from the legacy SRP and those that are accepted in the TI program directly via a new registration. The Board adopted the TI Rule Proposal at its September 9, 2020 Agenda Meeting, and the rules became effective on October 5, 2020, commensurate with their publication in the New Jersey Register.<sup>5</sup>

The text of the TI Rules does not contemplate the inclusion of projects that had achieved commercial operations prior to the start of the TI program. The rule expressly limits eligibility to projects which had active registrations in the SRP and which had not commenced commercial operations prior to the opening of the TI registration process:

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[.]

N.J.A.C. 14:8-10.1 (emphasis added).

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<sup>2</sup> 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”).

<sup>3</sup> In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO18079698 and In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Calculation of 5.1% Milestone for SREC Program Closure, BPU Docket No. QO18079698, Order dated April 6, 2020 (“April 6 Closure Order”).

<sup>4</sup> 52 N.J.R. 1048(a).

<sup>5</sup> 52. N.J.R. 1850(a) (“TI Rules”).

The number of potential TI applicants with PTOs dating from before May 1, 2020 continues to grow. On October 7, 2020 the SREC/TREC Processing Team advised Staff of 153 such projects totaling around 15 MW. However, as of mid-October at least 175 similarly-situated projects, totaling approximately 15 MW, had registered in the TI program and had each commenced commercial operations prior to the opening of the registration portal.<sup>6</sup> Generally, the larger the size of the project and the earlier the date the project received permission to operate (“PTO”) from the electric distribution company, the greater the amount of electricity potentially eligible for a renewable energy certificate.

Many of the TI project registrations submitted with PTOs between 2015 and 2019 had SRP registrations that had previously expired or been rejected. The research done by the SRP/TI Program Processing Team shows a diversity of registration activity across these projects. It appears probable that each project has a unique situation with respect to registration activity.

### **STAFF RECOMMENDATION**

Staff recommends that the Board waive the TI program eligibility requirements for those projects which commenced commercial operations prior to the May 1, 2020 TI program registration opening date.<sup>7</sup> The limitation of eligibility to projects that did not have PTOs prior to that date appears at N.J.A.C. 14:8-10.1 and -10.4. Staff further recommends that the Board implement this waiver in a manner that will bound the potential cost impact. N.J.A.C. 14:8-10.6(d) provides a natural limit on the time period for which those projects could create TRECs. This subsection describes the eligibility characteristics of the electricity underlying the creation of TRECs and the eligibility of projects in the TI program for NJ Class I RECs at the conclusion of their qualification life. The relevant language provides that “[a] TREC may be redeemed in [PJM-Environmental Information Services’ Generation Attribute Tracking System (“GATS”)] in the energy year in which the electricity was produced or in the following energy year.”<sup>8</sup> Thus, if applied to projects that had received a PTO and begun producing energy prior to the launch date of the TI program, this rule provision would permit the creation of TRECs only on the basis of energy produced after the opening of the TI Program. Energy produced earlier was produced when TRECs did not yet exist and thus could not be eligible for this incentive.

Staff notes that if experience with the SRP may be relied upon as a guide, additional similarly situated projects will continue to come forward and seek incentives from the TI program as this program provides the only opportunity for solar incentives currently available. In addition, the TI program will remain open until the launch of the successor program.

To bound the potential cost impact from both the projects already known to exist and the unknown quantity of projects for which TI eligibility will be sought in the future, Staff recommends that the Board condition the TREC eligibility for this class of projects as follows. Qualification Life should begin upon the date of commencement of commercial operations, as evidenced by the date of PTO, but eligibility for the creation of TRECs should be limited to electricity produced on or after

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<sup>6</sup> The oldest project dates back to November 2015.

<sup>7</sup> Staff recommends that this waiver encompass N.J.A.C. 14:8-2.4(b)(7)(ii), which also limits TI program eligibility to projects that had not received a PTO prior to May 1, 2020.

<sup>8</sup> N.J.A.C. 14:8-10.6(d)

May 1, 2020, when the TREC registration program opened. Thus, for projects that qualify, Staff recommends that eligibility to generate TRECs only begins from May 1, 2020, and does not extend back to the date of PTO if that date precedes May 1, 2020. The amount of TREC eligible electricity would be established by GATS through its standard PVWatts-based estimation techniques after the project registrant submits a current production meter reading.

Lastly, Staff urges the Board to be mindful that, as noted at the beginning of this Order, projects seeking eligibility for TRECs must comply with all rules and regulations of the SRP. Transition Incentive Order at 33. Of particular relevance here, N.J.A.C. 14:8-2.4(h)(4) and 8-2.4(k) set time limits for SRP-registered projects to achieve certain milestones. Staff recommends that the Board waive the timelines provided in N.J.A.C. 14:8-2.4(h)(4) for the projects that received a PTO prior to May 1, 2020 and that seek eligibility through the TI program. With respect to N.J.A.C. 14:8-2.4(k), Staff recommends that the Board waive that rule's requirement of a post-construction certification package within 90 days of commencing commercial operations and, instead, require these projects to submit completed post construction certification documentation to the TI portal no later than December 31, 2020. Staff recommends that these projects be required to meet this deadline in order to be issued a New Jersey certification number that gives them eligibility to generate TRECs. If this requirement is not met, these projects should be barred from qualification.

## **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. The Board also has the authority to waive its rules pursuant to N.J.A.C. 14:1-1.2(b), which provides that "[i]n special cases and for good cause shown," the Board may relax or permit deviations from these rules. Further, in accordance with the general purposes and intent of its rules, the Board shall waive sections of its rules if "full compliance with the rule would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public."<sup>9</sup>

The TI Rules are "designed to provide a bridge between the SREC Program and a solar Successor Incentive Program under development by the Board."<sup>10</sup> The Board did not originally anticipate that this bridge might be needed by projects that had received a PTO prior to the opening of the TI program. The language of the rules reflects this, limiting eligibility to projects that "have not received a Permission to Operate at the time the Board determines that the State has attained [the 5.1% Milestone.]"<sup>11</sup> However, the Board did intend the TI program to apply such that no gap would exist in incentive availability between the closure of the SRP and the launch of the Successor Program.<sup>12</sup> Staff has now identified a subset of projects that will have no incentive availability if the Board does not take action to waive the relevant TI and SRP Rules. In creating the TI Program the Board stated that New Jersey has become one of the most vibrant solar marketplaces in the world. With the TI Program the board committed to maintaining the State's position as a marketplace leader and acknowledged the importance of controlling ratepayer

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<sup>9</sup> N.J.A.C. 14:1-1.2.

<sup>10</sup> N.J.A.C. 14:8-10.1.

<sup>11</sup> N.J.A.C. 14:8-10.4.

<sup>12</sup> January 2020 Order at 2-3.

costs.<sup>13</sup> The Board, with this Order, continues to foster the dual goals of supporting the solar marketplace while balancing the costs to ratepayers.

The Board **FINDS** that requiring full compliance with the definition of a TI project at N.J.A.C. 14:8-2.2, the Scope of the TI program as set forth at N.J.A.C. 14:8-10.1, and the TI program eligibility requirements at N.J.A.C. 14:8-10.4, would adversely affect the interests of the general public by thwarting the underlying policy of providing a bridge for projects otherwise stranded between the closure of the SRP and the launch of the Successor Program. The Board, having found good cause, **THEREFORE WAIVES** the definition of TI program eligibility at N.J.A.C. 14:8-2.2, the Scope of the TI program as set forth at N.J.A.C. 14:8-10.1, and the eligibility requirements of N.J.A.C. 14:8-10.4 for projects that received their PTO prior to April 30, 2020, and **HEREBY FINDS** that such projects may apply to the TI program.

For the same policy reasons the Board **ALSO FINDS** good cause and **HEREBY WAIVES** those SRP Rules at N.J.A.C. 14:8-2.4(h)(4) and 8-2.4(k) that set certain time limits that would otherwise restrict eligibility of this subset of projects that received their PTO prior to April 30, 2020, provided that they submit a complete post construction registration package to the TI Portal prior to December 31, 2020. Projects in this class that fail to submit a complete post construction registration package by December 31, 2020 shall be not be eligible for the TI Program.

While determining that these projects should receive an incentive, the Board believes it advisable to restrict the extent to which these incentives increase the cost of the TI program by imposing the limits recommended by Staff.

The Board **FURTHER ORDERS** that the 15-year qualification life for TREC eligibility will begin upon the date of commercial operations as evidenced by the PTO, while only electricity produced on or after May 1, 2020, the official opening of the TREC registration program, shall be eligible for the creation of TRECs. Mindful of ratepayer costs, the Board **FINDS** that this reduction in energy eligible for TRECs is a reasonable and important TI cost mitigation measure. Finally, the Board **DIRECTS** that the amount of TREC eligible electricity shall be established by GATS through their standard PVWatts-based estimation techniques, and that this shall be done after the project registrant submits a current production meter reading.

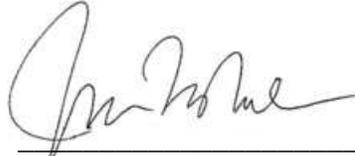
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<sup>13</sup> Transition Incentive Order at 33.

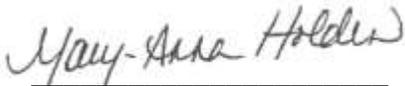
This Order takes effect on November 28, 2020.

DATED: November 18, 2020

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ORDER ADDRESSING TREC ELIGIBILITY FOR PROJECTS COMMENCING COMMERCIAL  
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