



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

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF A SUCCESSOR SOLAR)	ORDER WAIVING ADI PROGRAM)
INCENTIVE PROGRAM PURSUANT TO P.L. 2021,)	ELIGIBILITY RULES)
C.169))
)	DOCKET NO. QW22030128)
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IN THE MATTER OF REQUEST FOR DETERMINATION))
OF ELIGIBILITY IN THE ADMINISTRATIVELY))
DETERMINED INCENTIVE PROGRAM - MARK AND))
JULIENE FEATHERMAN)	DOCKET NO. QO22020073)
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IN THE MATTER OF REQUEST FOR DETERMINATION))
OF ELIGIBILITY IN THE ADMINISTRATIVELY))
DETERMINED INCENTIVE PROGRAM - IONUT DAVID)	DOCKET NO. QO22020042)
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IN THE MATTER OF REQUEST FOR DETERMINATION))
OF ELIGIBILITY IN THE ADMINISTRATIVELY))
DETERMINED INCENTIVE PROGRAM - CLARIBEL))
ROSADO)	DOCKET NO. QO21121239)
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IN THE MATTER OF REQUEST FOR DETERMINATION))
OF ELIGIBILITY IN THE ADMINISTRATIVELY))
DETERMINED INCENTIVE PROGRAM - KEWAL))
KRISHAN)	DOCKET NO. QO21121238)
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IN THE MATTER OF REQUEST FOR DETERMINATION))
OF ELIGIBILITY IN THE ADMINISTRATIVELY))
DETERMINED INCENTIVE PROGRAM - ANDREW B.))
SANFORD)	DOCKET NO. QO22020033)

Parties of Record:

Mark and Juliene Featherman, Pro Se
Mr. Ionut David, Pro Se
Ms. Claribel Rosado, Pro Se
Mr. Kewal Krishan, Pro Se
Mr. Andrew Sanford, Pro Se

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a limited waiver of N.J.A.C. 14:8-11.4(b) in order to permit projects that received Permission to Operate (“PTO”) prior to the opening of the Administratively Determined Incentive Program (“ADI”) Program, or those that began construction prior to their acceptance into ADI, eligibility for the ADI Program incentive.

BACKGROUND

On May 23, 2018, the Clean Energy Act, L. 2018, c.17 (“CEA” or “Act”), was signed into law. Among other mandates, the Act 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 were generated by solar electric power connected to the distribution system (known as the 5.1% Milestone), and to develop a new solar incentive program. In addition, the CEA directed the Board to complete a study that evaluates how to modify or replace the SRP to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State.

Toward fulfillment of this mandate, by Order dated December 6, 2019, the Board ordered the creation of the Transition Incentive Program (“TI”) Program, which provided incentives to eligible solar facilities by means of fixed price, factorized Transition Renewable Energy Certificates (“TRECs”).¹ A rule proposal for the TI Program was published on May 18, 2020,² and the rules took effect upon publication in the New Jersey Register on October 5, 2020 (“TI Rules”).³

On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (“Solar Act”).⁴ The Solar Act directed the Board to establish a program to incent the development of at least 3,750 MW of new solar by 2026.

On July 28, 2021, following an extensive stakeholder process, the Board approved the creation of the Successor Solar Incentive (“SuSI”) Program, consisting of the ADI Program and the Competitive Solar Incentive (“CSI”) Program.⁵ The ADI Program launched on August 28, 2021, and is open to residential projects, net metered non-residential projects equal to or less than five (5) megawatts, and community solar projects. The Board expressly limited ADI Program eligibility to projects that had not yet commenced construction, stating that “projects seeking eligibility in the ADI Program are required to submit a complete ADI Program registration package and receive a notice of conditional registration prior to beginning construction on the facility.”⁶ The Board’s ADI rules, N.J.A.C. 14:8-11.1 to -11.9 (“ADI Rules”), adopted by the Board on January 26, 2022 agenda and effective as of February 22, 2022, further prohibit solar generation facilities from registering in the ADI Program if they commenced commercial operation prior to the opening of

¹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019.

² 52 N.J.R. 1048(a).

³ 52 N.J.R. 1850(a).

⁴ L.2021, c.169; N.J.S.A. 48:3-114 et al.

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

⁶ SuSI Program Order, p. 50.

the ADI Program registration portal or began construction prior to receipt of a notice of conditional registration pursuant to N.J.A.C. 14:8-11.5(g):

The ADI Program shall only be open to new facilities that have not commenced commercial operation prior to the opening of the ADI Program registration portal . . . Additionally, facilities seeking eligibility in the ADI Program must submit a registration and receive a notice of conditional registration pursuant to N.J.A.C. 14:8-11.5(g) prior to beginning construction on the facility, unless the Board grants a waiver in response to a petition.

N.J.A.C. 14:8-11.4(b).

Currently there are over 250 projects seeking eligibility for the ADI Program that began construction, as evidenced by their post-construction certification packages, prior to receipt of the ADI notice of conditional registration, commonly referred to as the registration acceptance letter. Additionally, five projects seeking admission to the ADI Program have a PTO issued prior to the launch of the ADI Program. Both situations violate N.J.A.C. 14:8-11.4(b). None of these projects would qualify for the waiver granted by the Board in its January 26, 2022 Order as these projects do not possess valid TI registrations.⁷ Therefore, these projects will be disqualified from the ADI Program absent a broader waiver of the current rules.

Petitions

Several residential customers with projects that received PTO prior to ADI Program launch would like to register in the ADI Program and have petitioned the Board for a waiver of that portion of ADI Rule N.J.A.C. 14:8-11.4(b).⁸ Petitioners contend that they have invested in solar projects at their homes in good faith, in most cases were failed by their installers, and should be allowed to participate in the ADI Program to receive an incentive. These petitions are noted in the caption above and will be addressed in this Order.

STAFF RECOMMENDATION

Projects commencing construction prior to receipt of ADI conditional registration

Board Staff (“Staff”) recommends that the Board take action to ensure that solar projects that commenced construction prior to receipt of their ADI Program acceptance may register in the ADI Program, if otherwise eligible. Staff is concerned that these projects will be prohibited from receiving an incentive in the absence of Board action and over 250 newly constructed New Jersey solar facilities would be at risk of losing viability.

The prohibition on registration after starting construction is designed to ensure that solar incentives go only to projects that need incentives. Additionally, this provision was designed to ensure that, when confronted with the impending full subscription of an ADI Program megawatt block and the closure of a market segment to new registrations, developers would not rush to construct projects prior to registration in the hope that commencement of construction without a valid registration would lock in an incentive value.

⁷ In re A Solar Successor Incentive Program Pursuant to P.L. 2018, C. 17, BPU Docket No. QO20020184, Order dated January 26, 2022 (“January 2022 Order”).

⁸ Featherman, Sanford, Rosado, Krishan, and David filed petitions.

While the above goals remain legitimate policy concerns, Staff recognizes that the unique circumstances associated with the end of the TI Program and the beginning of the ADI Program required adaptation by all parties and may have caused confusion among market participants. During this time period, the review of TI registrations received prior to the program closure on August 27, 2021 took priority. The consequent delay in issuing notices of conditional registration in the ADI Program may have played a role in causing some developers to begin construction of their projects prematurely. Staff believes that these circumstances warrant flexibility.

Staff further believes that a limited waiver of the ADI Program eligibility requirement would appropriately recognize the current circumstances of the solar industry and the incentive programs. Staff proposes to work with the SREC-II program manager to appropriately notify and educate developers that only projects with valid registrations with notification of conditional registration issued prior to commencement of construction will be considered eligible for incentives at Energy Year 2022 incentive levels.

Staff recommends that the Board waive the construction prohibition in N.J.A.C. 14:8-11.4(b) for projects that have begun construction through May 31, 2022, without prior receipt of an ADI notice of conditional registration. Staff believes that this limited waiver period will provide necessary regulatory flexibility, address any delay in issuing notices of conditional registration, and allow for a smoother transfer to the successor program. The SuSI Program Order describes the process for allocation of capacity to market segments in the ADI Program. This allocation is conducted on an Energy Year basis. The closure of Energy Year 2022 on May 31, 2022 marks an appropriate time to end the waiver of the rule. The residential market segment of the ADI Program has 150 megawatts direct current ("MWdc") allocated and approximately 83 MWdc in capacity has been submitted over the first six months of operation. Thus, this market segment is not at risk of being oversubscribed before May 31, 2022. Staff anticipates the Board will address the ADI Program market segment capacity allocation before May 31, 2022. Staff recommends that the set of projects identified above receive a waiver of the ADI Program requirement that projects must submit a complete ADI Program registration package and receive a notice of conditional registration prior to beginning construction on the facility.

Projects commencing commercial operation prior to the opening of the ADI Program

The individual petitions captioned and discussed above involve projects that commenced construction, and commenced commercial operations, prior to the opening of the ADI registration portal. Staff recommends that the Board grant the petitions and waive N.J.A.C. 14:8-11.4(b) for these projects, and find that their prior receipt of PTO not render them ineligible for the ADI Program. Should other parties believe that they are similarly situated, Staff recommends that the Board advise such persons that they should file a petition. The transition from the SRP to the TI Program, followed in less than two (2) years by the transition from the TI Program to SuSI and the ADI Program, has required rapid adaption by both developers and their client customers at the same time that the COVID-19 pandemic and the ensuing public health emergency created both financial and logistical challenges for solar developers. In light of the unique challenges faced during this time of program transition during a pandemic, Staff believes that flexibility in the application of this particular rule provision would be appropriate. However, consistent with precedent set by Order dated November 17, 2021, Staff also recommends that the Board waive N.J.A.C. 14:8-11.6(a) and order that the 15-year SREC-II qualification life for these projects commence on August 28, 2021, the date on which the ADI registration portal opened to the

public.⁹ Therefore, only the electricity generated by the five (5) identified projects after August 28, 2021 shall be eligible to create SREC-IIs.

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 projects considered in this order were approved for construction but would be denied incentives under the ADI Rules. The Board **FINDS** that allowing these projects to receive incentives under the ADI Program will avoid stranding them without any incentive.

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).

In issuing the SuSI Program Order, the Board sought to provide a smooth transition to the Successor Program. As part of that effort, the Board provided in that order that although the ADI Program was generally limited to new projects that had not yet begun construction, developers could file a petition with the Board to allow them to participate. The ADI rule at N.J.A.C. 14:8-11.4(b) likewise contemplates the Board granting such waivers. Subsequently, as noted above, the Board created a general exemption permitting eligibility for ADI to projects that had a valid TI registration but had been unable to meet that program's deadlines prior to its closure.¹⁰ The Board has become aware that a large number of projects, where notices of conditional registration may have been delayed due to the confluence of the ADI and heightened TI registration processing activity, have sought to register in ADI despite having commenced construction or in some cases received a PTO. The Board **FINDS** that facilitating the ability of these projects to enter the ADI Program will benefit the solar industry, provide equal treatment for all similarly placed registrants, and further administrative efficiency. The Board **FURTHER FINDS** that waiving N.J.A.C. 14:8-11.4(b) for a limited class of solar electric generation facilities seeking admission into the ADI Program that began construction prior to receipt of the ADI notice of conditional registration is in the public interest.

Therefore, having considered the petitions and Staff's recommendation, the Board **FINDS** good cause and **HEREBY WAIVES** the prohibition against commencing construction prior to receipt of the ADI Program notice of conditional registration enumerated in N.J.A.C. 14:8-11.4(b). The Board **FINDS** that the closure of Energy Year 2022 on May 31, 2022 marks an appropriate time to end the waiver of the rule and therefore **WAIVES** this prohibition for projects that begin construction on or before May 31, 2022.

With respect to the residential customers that received a PTO prior to the opening of the ADI registration portal and that petitioned the Board for a waiver of N.J.A.C. 14:11-4(b), the Board is cognizant that these projects achieved commercial operation during a time of pandemic, when novel challenges affected many aspects of solar development. In addition, the Board closed one

⁹ In re Petition for Eligibility of Solar Photovoltaic Project (NJSTRE1547234718) in the Transition Incentive Program (Vishal Patel), BPU Docket No. QO21081080, Order dated November 17, 2021.

¹⁰ January 2022 Order.

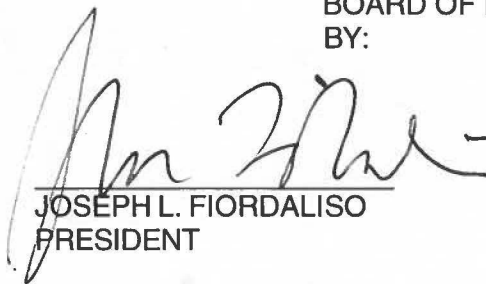
incentive program, opened and closed a second, and opened a third within the span of two (2) years. The Board concurs with Staff that flexibility is warranted in this matter, and that deviation from the strict application of the rule provision is reasonable and appropriate. The Board **FINDS** that in this case, and under these particular circumstances, the non-compliance of these projects with the provisions of N.J.A.C. 14:11-4(b) prohibiting commercial operation prior to the opening of the ADI Program should not render them ineligible. Therefore, having considered the petitions and Staff's recommendation, the Board **GRANTS** the petitions, and having found good cause, **HEREBY WAIVES** the prohibition against commencing commercial operations prior to the opening of the ADI Program registration portal by the board enumerated in N.J.A.C. 14:8-11.4(b) for the five projects identified in this Order. The Board **FURTHER FINDS** good cause, under these particular facts and circumstances, to divorce the date of commercial operation from the date the SREC-II qualification life begins. Therefore, the Board **HEREBY WAIVES** N.J.A.C 14:8-11.6(a) to the extent necessary to permit the 15-year SREC-II qualification life for these projects to commence on August 28, 2021, the first day of ADI Program registration opening.

The Board notes that the relief granted in this Order is predicated upon the specific circumstances alleged by these petitioners. Should other entities that wish to register in the ADI Program believe that they are situated similarly to the individual petitioners addressed in this Order, then those entities may file a petition setting forth their facts and basis for relief.

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

DATED: April 6, 2022

BOARD OF PUBLIC UTILITIES
BY:



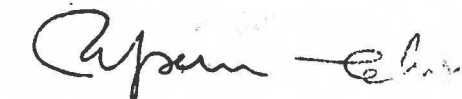
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ATTEST: 
CARMEN D. DIAZ
ACTING SECRETARY

IN THE MATTER OF A SUCCESSOR SOLAR INCENTIVE PROGRAM
PURSUANT TO P.L. 2021, C.169

DOCKET NOS. QW22030128, QO22020073, QO22020042, QO21121239, QO21121238 &
QO22020033

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