



Agenda Date: 6/24/21
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

)	ORDER
)	
IN THE MATTER OF A NEW JERSEY SOLAR)	
TRANSITION PURSUANT TO P.L. 2018, C.17 –)	DOCKET NO. QO19010068
)	
ORDER ADDRESSING REQUESTS FOR EXTENSION)	
FOR PROJECTS IN THE SOLAR TRANSITION)	
INCENTIVE PROGRAM)	DOCKET NO. QO21060883
)	
COMMUNITY SOLAR ENERGY PILOT PROGRAM)	
APPLICATION FORM - MANCHESTER TOWNSHIP,)	
BLOCK 2, LOT: 7, 64, 65)	DOCKET NO. QO19091171
)	
IN THE MATTER OF THE PETITION OF AERO HAVEN)	
SOLAR LLC FOR AN ORDER FOR A)	
SECOND EXTENSION OF THE EXPIRATION DATE OF)	
THE CONDITIONAL APPROVAL IN THE)	
TRANSITION INCENTIVE PROGRAM UNTIL)	DOCKET NO. QO21020620
NOVEMBER 30, 2022)	
)	
ENTERSOLAR - REQUEST FOR TREC APPLICATION)	
AND EXTENSION FOR KEYSTONE INDUSTRIES)	DOCKET NO. QO21050755
SOLAR PROJECT)	
)	
NATIONAL ENERGY PARTNERS (NEP), LLC -)	
REQUEST FOR APPLICATION TREC FOR AN)	DOCKET NO. QO21050761
EXTENSION HAMMONTON HIGH SCHOOL SOLAR)	
PROJECT)	
)	
COMMUNITY SOLAR ENERGY PILOT PROGRAM)	
APPLICATION FORM – SPANO PARTNERS)	DOCKET NO. QO19091248
HOLDING, BLOCK 2, LOT 6, 23)	
)	
COMMUNITY SOLAR ENERGY PILOT PROGRAM)	
APPLICATION FORM – ADVANCED SOLAR)	
PRODUCTS, BLOCK 6, LOTS 6, 7 & 12)	DOCKET NO. QO19091246

BRIGHTCORE ENERGY LLC - EXTENSION OF)
SOLAR TRANSITION INCENTIVE PROGRAM (TREC))
DEADLINE FOR CONDITIONALLY - APPROVED TREC)
SOLAR PROJECT) DOCKET NO. QO21060894

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
John G. Valerie, Jr., Esq., Chiasa, Shahinian & Giantomasi, PC, on behalf of Aero Haven Solar, LLC
Kelsey A. McGucking-Anthony, Esq., Dasti, Murphy, McGucking, Ulaky, Koutsouris & Connors, PC, on behalf of Manchester Township
Benedetto Graziano on behalf of National Energy Partners, LLC and on behalf of EnterSolar
William R. Potter, Esq., Potter and Dickson, on behalf of Advanced Solar Products, Inc. and Spano Partners Holding, LLC
James A. Boyd, Esq., Archer & Greiner, PC, on behalf of Brightcore Energy, LLC

BY THE BOARD:

In this Order, the Board waives its rules and modifies prior orders to allow all solar projects that are registered in the Transition Incentive (“TI”) Program as of the effective date of this Order, including those registered through the Community Solar Energy Pilot Program (“Pilot Program”) Year 1 (“PY1”) additional time to reach TI Program deadlines. The Board anticipates that this extra time will allow more of these projects to satisfy TI program requirements and smooth the transition from the TI Program to the forthcoming Successor Program, ensuring continued access to low cost sources of capital for solar projects currently under development.

BACKGROUND

On May 23, 2018, the Clean Energy Act, L. 2018, c.17 (“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 are generated by solar electric power connected to the distribution system (known as the 5.1% Milestone), and develop a new solar incentive program.

Toward fulfillment of this mandate, by Order dated December 6, 2019, the Board ordered the creation of a TI Program, comprised 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 The TI Rules

¹ 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”).

² 52 N.J.R. 1048(a), (“TI Rule Proposal”).

³ 52 N.J.R. 1850(a)

provide specific completion deadlines for TI-eligible projects, including both those that transferred from the SRP and those that were accepted via new application to the TI Program.

Specifically, the TI Rules provide that a net metered project transferring into the Transition Incentive program⁴ must achieve commercial operations within 18 months of the date that the Board determined that the 5.1% Milestone had been attained. Projects granted conditional certification pursuant to N.J.S.A. 48:3-87(t) that transferred into the TI program received a new registration expiration date -- 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 had been attained. N.J.A.C. 14:8-10.4(d). Projects that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering and that are accepted into the Transition Incentive program directly via a new registration receive an expiration date on the 18-month anniversary from the date of their notice of conditional registration if the project was registered in the TI program prior to October 30, 2020 and on the one-year anniversary if registered in the TI program after October 30, 2020. New projects granted conditional certification pursuant to N.J.S.A. 48:3-87(t) receive an expiration date on the two-year anniversary from the date of the registrant's Board Order granting conditional certification. N.J.A.C. 14:8-10.4(e)(4)(ii). Successful applicants to the Board's Community Solar Energy Pilot Program ("Pilot Program") are also subject to the Board's order granting them conditional approval⁵ and to the Board's rules governing that program. The Board adopted the Pilot Program rules on January 17, 2019 and these rules were published in the New Jersey Register on February 19, 2019.⁶

On July 29, 2020, the Board issued an Order granting an extension to all currently active TI conditional registrations as defined in the Order ("TI Extension Order") to October 30, 2021.⁷ New projects that registered between the date of the TI Extension Order and October 30, 2020 were also assigned a deadline to commence commercial operation by October 30, 2021.

On April 26, 2021, Staff released its straw proposal for the Solar Successor Program ("Successor Straw"). Comments were accepted through May 27, 2021. Following consideration of these comments and incorporation as appropriate, Staff will make a recommendation to the Board which will be addressed in a future Board order. Several commenters recommended extensions to various deadlines associated with the TI program.

⁴ Defined as projects 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. N.J.A.C. 14:8-10.4(d)

⁵ In re the Community Solar Energy Pilot Program, BPU Docket No. QO18060646 et al., Order dated December 20, 2019.

⁶ 51 N.J.R. 232(a).

⁷ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Order Providing Extensions to Solar Transition Projects, BPU Docket Nos. QO19010068 and QO20070484, Order dated July 29, 2020.

Petitions

Several TI program registrants have petitioned the Board for extensions to applicable deadlines under existing TI registrations, including three entities that were accepted into the Pilot Program.⁸ Petitioners made a variety of arguments in favor of granting them additional time, including unanticipated interconnection related delays;⁹ delays associated with permitting and building on contaminated lands;¹⁰ and issues related to global supply chain and access to commodities associated with the global pandemic. These petitions are noted in the caption above and will be addressed through this Order.

STAFF RECOMMENDATION

Staff is concerned that many solar developers and installers believe that either they are unlikely to meet the TI program deadlines to qualify for an incentive under that program, or are finding it difficult to arrange for construction related financing due to the risk of missing the October 30, 2021 deadline if unanticipated delays occur. Staff recognizes that many developers are continuing to encounter significant delays in completing their projects because of factors such as interconnection related delays, delays due to the continuing impact of the COVID-19 pandemic and, specifically for community solar PY1 projects, delays inherent in the establishment of a new Pilot Program.¹¹ As noted above, multiple stakeholders have proposed that the Board grant extensions for projects in the TI program. Staff is especially sensitive to concerns that the regulatory uncertainty caused by the transition from the TI Program to the Successor Program is having a negative impact on the development of otherwise viable projects. While the temporary nature of the TI Program has been made clear from its inception, Staff understands that, until the Successor Program is established, investment and development decisions can only be made on the basis of existing program rules and regulations. Since neither the Board orders establishing the Transition Incentive program nor the TI Rules provide for extensions, the only avenue open to applicants in these circumstances is to petition to the Board for relief.

The Board faced a similar situation in the past. Then as now, the situation arose from the short-term nature of the TI program and the lack of an extension mechanism. As noted above, the Board granted a blanket extension to October 30, 2021 to commence commercial operation; this extension was given to all then-active TI conditional registrations in July 2020, as well as to those projects that would register between the date of the TI Extension Order and October 30, 2020.¹²

⁸ The Pilot Program enables New Jersey electric utility customers to participate in a solar energy project that may be remotely located from their properties and to receive a credit on their utility bills. Community solar therefore enables access to clean energy generation for utility customers currently unable to place solar generation directly on their own properties and is particularly significant for the increased access to solar energy that it affords to low- and moderate-income ("LMI") customers.

⁹ See *AeroHaven*, Petition at 6-8; *Entersolar*, Petition at 1; and *National Energy Company*, Petition at 1.

¹⁰ See *Manchester Township*, Petition at 3-4.

¹¹ Specific to Community Solar, Staff notes that 6 out of 45 projects, totaling approximately 13 MW out of 78 MW of awarded projects, have achieved commercial operation at the time of the issuance of this Order. Staff notes that while relatively few projects have come online thus far, it believes that the majority of the PY1 projects are on track to reach commercial operation.

¹² Some exceptions applied. See: In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Order Providing Extensions to Solar Transition Projects, BPU Docket Nos. QO19010068 and QO20070484, Order dated July 29, 2020.

Although the existing deadline is still several months away, Staff believes that there is good reason for the Board to act now. The imminent closure of the TI program to new applicants (as announced in the Successor Straw) makes it appropriate to take any corrective action now, in order to provide as much certainty as possible to developers during the transitional period. More importantly, the potential for a surge of Transition Incentive program participants seeking relief from the TI Rule requirements, the existing applicable SRP rules, and/or the relevant Pilot Program rules means that a second blanket extension of the TI program deadlines is warranted. Such an extension would provide additional certainty to the market and avoid the situation where viable projects may be cancelled due to the uncertainty associated with developing and implementing the Successor Incentive Program. In addition, a single extension granted via Board Order would be more equitably levied and less administratively burdensome than consideration of extension requests on a case-by-case basis.

Staff recommends that all projects that have submitted a complete registration to the TI program on or before the effective date of this Order, with the exception of those conditionally certified pursuant to Subsection (t), receive an automatic and immediate 6-month extension. Applicants that submit a complete TI application after the Order's effective date, but prior to the date on which the Board closes new registrations to the TI, should receive an expiration date pursuant to the TI Rules. N.J.A.C. 14:8-10.4(e)(4)(ii).

Staff recommends that Subsection (t) projects should receive an extension to the later of April 30, 2022 or the date set by the Board Order granting the project's conditional certification. No automatic extension would apply to any new Subsection (t) registrations filed between the date of this order and the opening of the Successor Program, since those projects have twenty-four months to complete construction.

With specific reference to the Pilot Program, one of the lessons learned from its implementation is that the 12-month timeline envisioned for the completion of community solar projects is likely too short. This can partly be attributed to the simple fact that community solar is new in New Jersey: PY1 project developers have worked collaboratively with the Electric Distribution Companies and Staff to establish new administrative processes and forms. Also, implementation of the Pilot Program was accomplished in the midst of the COVID-19 pandemic, which has undeniably slowed administrative processes at all levels of government. The competitive structure of the Pilot Program also means that the applications that were selected tended to be earlier in the development cycle than the typical project applying to the TI Program.

Staff recognizes that not all registrations in the TI Program necessarily require additional time. However, Staff believes that granting an extension to all registrations that submit a complete registration package prior to the effective date of this Order, will not only be more administratively efficient but will benefit the solar industry by eliminating the need for developers to go through the time-consuming process of filing extension request petitions and then waiting for case-by-case determinations.

Finally, Staff recommends that the Board direct Staff to propose amendments the TI Rules to clarify that projects must commence commercial operations and developers must submit all post-construction certification paperwork prior to a project's registration expiration date.

DISCUSSION AND FINDINGS

As the end of the first incentive program to follow the SRP approaches, the Board is cognizant that the solar industry is still in the process of adjusting to significant and rapid change in the wake of both the Clean Energy Act and the COVID-19 crisis. The Board notes that the Transition Incentive program has no established mechanism by which Staff can administratively grant extensions. In light of the numerous delays reported and anticipated, the Board **NOW FINDS** that good cause exists for granting an extension to projects in the Transition Incentive program to support their ability to fulfill the requirements of the TI Program.

The Board is authorized to relax or waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. In considering whether to grant a request for a waiver, the Board looks to the standards provided in this rule. In special cases upon a showing of good cause the board may relax or permit deviations from the rule. N.J.A.C. 14:1-1.2(b). Additionally, the board shall waive sections of the rule if it 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).

The general purpose of the TI Rules, as well as the timelines contained therein, is to provide a smooth transition to the Successor Program and support to New Jersey's thriving solar market while safeguarding the interest of the State's ratepayers by doing so at the lowest possible cost. Given the unanticipated delays encountered by multiple solar developers, and in particular the regulatory uncertainty that will exist until the Board establishes the new Successor Program, the Board **FINDS** that waiving the existing development timelines appropriately balances the TI Program's complementary goals. Further, full compliance with the existing rules may adversely affect the ratepayers as requiring strict compliance with timelines that a large number of developers are unable to meet would tend to disrupt the market. Requiring rigid compliance under these circumstances would likely increase the cost of financing, thus making solar development more expensive.

Thus, having reviewed the petitions and Staff's recommendation, the Board **FINDS** that full compliance with the timelines at N.J.A.C. 14:8-10.4(d) and (e) would adversely impact New Jersey ratepayers. Therefore, the Board **FINDS** good cause and hereby **WAIVES** the timelines at N.J.A.C. 14:8-10.4(d) and (e) to permit an extension of time to projects in the Transition Incentive program.

Similarly, to the extent that Transition Incentive Order or any other order implementing the program requires TI projects to comply with time limitations from the SRP rules enumerated in N.J.A.C. 14:8-2.4(h)(4), the Board modifies such orders to permit extensions of time to projects in the Transition Incentive program.¹³

¹³ N.J.S.A. 48:2-40(e).

The Board therefore **GRANTS** projects registered in the Transition Incentive program on or before the effective date of this Order an automatic and immediate six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4(d) or (e). The Board **GRANTS** subsection (t) applicants registered in the TI program on or before the effective date of this Order an extension to the latter of April 30, 2022 or the date set by the Board Order granting the project's conditional certification.

New applicants that submit a complete TI application after this Order's effective date, but prior to the date on which the Board closes new registrations to the TI, shall receive a registration expiration date in accordance with the TI Rules. N.J.A.C. 14:8-10.4(e)(4)(ii).

With respect to the Pilot Program, the Board notes that community solar is an important new program to increase access to solar energy for all ratepayers in the State, particularly low- and moderate-income residents. The Board remains committed to assessing and refining the Pilot Program to better reflect real world implementation and to ensuring LMI access to community solar. In the case of the timelines considered here, the Board believes that PY1 community solar projects have found themselves in extraordinary circumstances, being the first "cohort" of community solar projects while in the midst of a global pandemic. Having reviewed the petitions and Staff's recommendations, the Board **FINDS** that good cause exists to grant a six-month extension for TI Program eligibility to all PY1 projects. . Additionally, to the extent that any Order implementing the Pilot Program requires conditionally approved projects in the Pilot Program to comply with time limitations that do not comport with this extension, the Board modifies such orders to permit extensions of time to PY1 projects in the Pilot Program.¹⁴

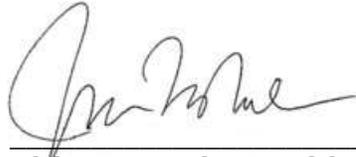
Lastly, the Board directs Staff to propose amendments the TI Rules to clarify that all projects must commence commercial operations and developers must submit all post-construction certification paperwork prior to a project's registration expiration date.

¹⁴ N.J.S.A. 48:2-40(e).

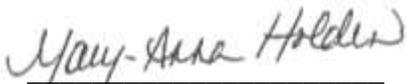
This Order takes effect on June 24, 2021.

DATED: June 24, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

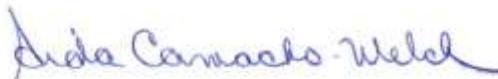


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17
ORDER ADDRESSING REQUESTS FOR EXTENSION FOR PROJECTS IN THE SOLAR
TRANSITION INCENTIVE PROGRAM

DOCKET NOS. QO19010068, QO21060883, QO19091171, QO21020620, QO21050755
QO21050761, QO19091248, QO19091246 & QO21060894

SERVICE LIST

New Jersey Division of Rate Counsel:

Stefanie A. Brand, Esq., Director
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.nj.gov

TRC Energy Solutions:

900 Route 9 North, Suite 404
Woodbridge, NJ 07095

Michael Ambrosio
Director, Policy and Planning
317 George Street, Suite 520
New Brunswick, NJ 08901
mambrosio@trccompanies.com

Thomas Kowalczyk
Manager, Regulatory Compliance
tkowalczyk@trccompanies.com

Tammy VanBlarcom
Manager, SREC Registration Program
tvanmarcom@trccompanies.com

Deputy Attorneys General:

Department of Law & Public Safety
Division of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Michael Beck, DAG
michael.beck@law.njoag.gov

Board of Public Utilities:

44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Christine Sadovy, Chief of Staff
Christine.sadovy@bpu.nj.gov

Aida Camacho-Welch
Secretary of the Board
board.secretary@bpu.nj.gov

Division of Clean Energy

Kelly Mooij, Director
kelly.mooij@bpu.nj.gov

Scott Hunter
benjamin.hunter@bpu.nj.gov

Ronald Jackson
ronald.jackson@bpu.nj.gov

Veronique Oomen
Veronique.oomen@bpu.nj.gov

Division of Policy and Planning

Ariane Benrey
Ariane.benrey@bpu.nj.gov

Office of General Counsel

Abe Silverman, General Counsel
Abe.silverman@bpu.nj.gov

Rachel Boylan, Esq.
Rachel.boyland@bpu.nj.gov

Suzanne Patnaude, Esq.
Suzanne.patnaude@bpu.nj.gov

Publication on the NJ Clean Energy Program
Renewable Energy listserv.

Aero Haven Solar, LLC

John G. Valerie, Jr., Esq.
Chiasa, Shahinian & Giantomasi, PC
One Boland Drive
West Orange, NJ 07052
jvaleri@csqlaw.com

Brightcore Energy, LLC

James A. Boyd, Esq.
Archer & Greiner, PC
One Centennial Square
Haddonfield, NJ 08033-0051
jaboyn@archerlaw.com

Manchester Township

Donna L. Markulic, Business Administrator
Manchester Township
One Colonial Drive
Manchester, New Jersey 08759
dmarkulic@manchestertwp.com

National Energy Products

Benedetto Graziano
State Street Associates
150 W. State Street
Trenton, NJ 08608
bgraziano@statestreetassociates.org

Entersolar

Benedetto Graziano
State Street Associates
150 W. State Street
Trenton, NJ 08608
bgraziano@statestreetassociates.org

Advanced Solar Products, Inc. and Spano Partner Holdings, LLC

William R. Potter, Esq.
Potter and Dickson
194 Nassau Street
Princeton, NJ 08542