



Agenda Date: 2/14/24
Agenda Item: 8F

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

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

ORDER WAIVING CERTAIN
REQUIREMENTS FOR CUSTOMERS
OF UNRESPONSIVE SOLAR
INSTALLERS

IN THE MATTER OF ELIGIBILITY RULES)
FOR THE CUSTOMERS OF SOLAR INSTALLERS)
THAT HAVE BEEN DEBARRED FROM THE)
ADMINISTRATIVELY DETERMINED INCENTIVE)
PROGRAM)

DOCKET NO. QO20020184

REQUEST FOR DETERMINATION OF ELIGIBILITY IN)
THE ADMINISTRATIVELY DETERMINED INCENTIVE)
PROGRAM BY CUSTOMER OF BANKRUPT)
INSTALLER – JAMES PURDON AND VANESSA ROSA)
ZENERNET INSTALLATION COMPANY LLC)

DOCKET NO. QW23040243

DOCKET NO. QO23070429

Parties of Record:

James Purdon and Vanessa Rosa

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a limited waiver of certain Administratively Determined Incentive (“ADI”) Program eligibility rules in order to permit the customers of three (3) installers that have been debarred from participation in the Administratively Determined Incentive program (“ADI Program”) to be eligible 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 Solar Renewable Energy Certificate (“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.

On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (“Solar Act”).¹ The Solar Act directed the Board to establish a program to incent the development of at least 3,750 megawatts (“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.² The ADI Program is a part of the New Jersey Clean Energy Program (“NJCEP”). It launched on August 28, 2021, and is open to residential projects, net metered non-residential projects equal to or less than five (5) MW, and community solar projects. The Board specified that net metered projects would receive 12 months to achieve commercial operation, which is signified by submittal of permission to operate (“PTO”) from the electric distribution company (“EDC”). Filing of the post-construction certification package must also occur within the 12-month period.³ This 12-month timeline is codified in the Board’s ADI rules, N.J.A.C. 14:8-11.1 to -11.9 (“ADI Rules”). N.J.A.C. 14:8-11.5(g)(3)(i), -11.5(j). Once all these requirements have been met, the Program Administrator issues a New Jersey Certification Number for the solar facility.

To participate in the Board’s incentive programs, a person associated with a project must file a registration package with the Board’s Solar Renewable Energy Certificate (“SREC”) Registration Program Manager, TRC Environmental Corporation⁴ (“TRC”), and receive a registration acceptance letter before construction of the project and submittal of the post-construction certification package. The registration process for the ADI Program is governed by the Board’s rules at N.J.A.C. 14:8-11.5. For many residential and some commercial customers, their installer handles this process.

New Jersey’s solar industry has been very successful. Despite the impact of the pandemic, New Jersey has seen significant numbers of new participants in its solar industry as well as expanded operations by a number of established solar companies. One ancillary effect of this success appears to be an increase in the number of struggling companies as well as successful ones. In a few instances, solar installers have ceased responding to their customers and to TRC, the manager of the ADI Program (“ADI Program Manager” or “Program Manager”).

¹ L.2021, c.169; N.J.S.A. 48:3-114 et al.

² 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”).

³ SuSI Program Order at 29-30.

⁴ TRC Environmental Corporation is a wholly owned subsidiary of TRC Companies Inc.

Contractor Remediation Procedures

The Board first approved the Contractor Remediation Procedures (“CRP”) on October 5, 2010; the procedures were subsequently revised and updated on January 25, 2017.⁵ The CRP grants Program Managers, including the ADI Program Manager, the ability to address contractor violations of program procedures. All contractors who participate in the NJCEP are subject to the CRP. CRP Order at 2.

Non-Responsive Installers

In early 2023, the ADI Program Manager informed Board Staff (“Staff”) that a number of customers had contacted TRC regarding the non-responsiveness of their solar installers. TRC advised that it had itself experienced a similar lack of response and follow-up from the same installers, which it found no longer accessible via email or telephone contact: Orbit Energy and Power, LLC (“Orbit”) and Zenernet (“Zenernet”). In October 2023, the ADI Program Manager sent each company a letter requiring it to respond within five (5) business days to confirm that it was still in business and advising that suspension and debarment proceedings might be commenced if the company did not do so. Receiving no response, on October 25, 2023 TRC sent each company a notice providing a final opportunity to respond before suspension and debarment proceedings were begun (“November Letters”).⁶ Finally, on December 12, 2023, TRC sent each company a Notice of Suspension and Debarment.

In the summer of 2023, the ADI Program Manager informed Staff that a number of customers had contacted TRC regarding the non-responsiveness of their solar installer, Vision Solar, LLC (“Vision”). On September 7, 2023, TRC sent a Notice of Suspension to Vision. Although Vision responded and cooperated with the CRP process, Staff and TRC remained concerned about the relatively constant flow of consumer complaints that continued to arrive and the Notice remained in place. Thereafter, on November 29, 2023, TRC began to receive apparently credible third-party information that Vision had closed its doors and directed its employees to cease working, including a copy of a company-wide email from the Chief Executive Officer announcing Vision’s closing. On December 1, 2023, the ADI Program Manager sent Vision a letter requiring it to respond within five (5) business days to confirm that it was still in business and advising that suspension and debarment proceedings might commence if the company did not do so (“December 1 Letter”).⁷ Receiving no response, on December 20, 2023, TRC sent Vision a Notice of Suspension and Debarment. At the time the Notice was sent, Vision had at least 974 projects pending in the ADI Program. On January 3 2024, the Attorney General of Connecticut issued a press release announcing that Vision Solar LLC had filed for Chapter 7 bankruptcy protection on December 28, 2023.⁸

⁵ See In re the Clean Energy Programs and Budget for Fiscal Year 2017 (FY17) - Contractor Remediation Procedures, BPU No. QO16040353, Order dated January 25, 2017 (“CRP Order”).

⁶ Both the October and November Letters were sent via Email (Delivery Receipt Requested), Certified Mail/RRR, and Regular Mail.

⁷ The December 1 Letter was sent via Email and Overnight Courier (Delivery Receipt requested for each).

⁸ [Attorney General Tong Statement Regarding Vision Solar Bankruptcy Filing \(ct.gov\)](#)

In mid-January, the ADI Program Manager informed Staff that a number of customers had contacted TRC stating that another solar installer, Suntuity, had ceased operations and/or gone out of business. An email from a Suntuity employee with respect to one (1) project, a Reddit post by a customer, and communications from the New Jersey Division of Consumer Affairs further indicated that this company might have ceased operations.⁹ On January 24, 2024, TRC sent Suntuity a letter requiring that it certify whether or not it remained in business by February 8, 2024 and advising the company that in the event that it was no longer in business and had not arranged for completion of its pending registrations, TRC was likely to commence Suspension and Debarment proceedings. Having received no response by that date, TRC sent Suntuity a Notice of Suspension and Debarment. At the time the Notice was sent, Suntuity had hundreds of incomplete registrations pending in the Board's solar programs.

Together, Orbit, Zenernet, and Vision accounted for over 900 registrations pending in the ADI Program ("Affected Projects"). Program records reflect that the Affected Projects are at various stages of maturity, ranging from those for which only registrations have been submitted to those that have received PTO from the EDC and only require completion of their post-construction certification packages. At all stages, the abrupt departure of the installation company, which typically handles the registration process, has disrupted that process. As a result, various registration requirements in the Board's rules have not been met for many of the projects that these installers had registered.

Once a registration has been accepted, the next point at which a deadline in the Board's rules is implicated is the expiration date for a system to receive PTO. The rules provide that net metered facilities such as those at issue here must receive PTO from the relevant EDC before the one-year anniversary of the registrant's notice of conditional registration. N.J.A.C. 14:8-11.5(g)(3)(i) and N.J.A.C. 14:8-11.5(g)(4). The post-construction certification package is subject to the same timeframe. N.J.A.C. 14:8-11.5(j). A customer whose installer has declared bankruptcy before their project received PTO may be expected to have difficulty meeting this deadline since, as noted above, the installer typically handles the registration process, the installation, demonstrating code compliance to municipal inspectors and obtaining PTO from the EDC.

In addition, Affected Projects will likely need accommodations with respect to the installer signatures normally required in the registration package, referenced at N.J.A.C. 14:8-11.5(b), and in the post-construction certification package, referenced at N.J.A.C. 14:8-11.5(j). The original installers are no longer available to provide signatures and while another installer may be willing to assist the customers with Affected Projects in completing the necessary paperwork, that willingness is unlikely to include signing off on work that it did not perform.

In some cases, an Affected Project may require a waiver of additional registration requirements. Some Affected Projects may have commenced construction prior to their acceptance into the ADI Program. The Program Manager normally becomes aware of this situation upon reviewing a post-construction certification package and confirming the date of PTO. Since such a situation constitutes a violation of the Board's rules at N.J.A.C. 14:8-11.4(b), the Program Manager cannot issue a certification number to the project and will issue a rejection. As the rejection is based on a violation of the Board's rules, the usual process would be to petition the Board for a waiver of that rule. Where a customer has relied on its installer to manage the registration process, however, the customer may not know how to move forward upon receiving the rejection.

⁹ NJADRE1553082517;

https://www.reddit.com/r/solar/comments/19aj7o3/sunnova_says_suntuity_is_no_longer_installing_my/

Finally, like all other solar facilities, the Affected Projects will need to complete additional steps such that those with the rights to the Solar Renewable Energy Certificate-IIs (“SREC-IIs”) from the Affected Projects can receive payment for them. These projects must be registered with the Generation Attributes Tracking System of PJM Environmental Information Service (“GATS”), the Board’s REC tracking system manager, and have an account opened with InClimate, the SREC-II Administrator.¹⁰ Pursuant to the Board’s rules, an SREC-II must be redeemed in GATS in the energy year in which the electricity was produced or in the following energy year. N.J.A.C. 14:8-11.8(e). Under the Board’s rules, electricity that is not redeemed in GATS in the energy year in which the electricity was produced, or in the following year, is eligible to create a New Jersey Class I REC. A larger payment for a SREC-II may generally be expected than for a Class I REC. Once solar generation has been redeemed in GATS and memorialized in the form of an SREC-II, the corresponding SREC-II may be utilized in the renewable portfolio standard compliance in the energy year in which the SREC-II is generated, or in the following year. N.J.S.A. 48:3-115(b).

STAFF RECOMMENDATION

Staff is concerned that the Affected Projects will be prohibited from receiving an incentive, and in some cases completing construction, demonstrating the project’s code compliance, and obtaining PTO, in the absence of Board action. Over 900 Affected Projects would be at risk of losing viability. To the extent that a deadline or other regulatory requirement constitutes a barrier to completing the registration process, Staff believes that providing a limited waiver of the relevant rule(s) for the Affected Projects would provide the customers of those installers relief without unduly undermining the structure that the rules provide to the ADI program. Since the unresponsiveness of the three (3) developers in question and their associated withdrawal from the market occurred as much as six (6) months ago, in order for such waivers to be effective, they should be retroactive to the dates upon which violations of the relevant rules occurred.

If the customer with an Affected Project is unable to meet the deadlines in the ADI Rules, Staff recommends that such customers be encouraged to find a new installer and re-register. Staff further recommends that, in the event that such a customer has commenced construction prior to acceptance of a re-registration, the Board waive the provisions of N.J.A.C. 14:8-11.4(b) for the Affected Projects.

Staff also recommends that the Board direct the ADI Program Manager to accept the customer’s signature in lieu of the installer’s on the relevant forms if the customer signs an affidavit acknowledging its reliance on the work of the defunct installer and lack of personal familiarity with the installation work.

In addition, Staff recommends that the Board waive the prohibition on commencing construction prior to acceptance for Affected Projects and direct TRC to process, or re-process, these post-construction certification packages without reference to receipt of PTO prior to acceptance. Similarly, if the registration for an Affected Project has expired and a new ADI Program registration is submitted, Staff recommends that the Board waive N.J.A.C. 14:8-11.4(b) for those projects as well.

¹⁰ Further information on these steps can be found at the Board’s Clean Energy website, <https://www.njcleanenergy.com/renewable-energy/programs/susi-program> .

Given the delays experienced in registering the Affected Projects, Staff recommends that the Board waive the limits for redeeming SREC-IIs in GATS set by N.J.A.C. 14:8-11.8(e). Specifically, Staff recommends that the Board order that the SREC-IIs based on the generation of the Affected Projects may be redeemed in GATS during the latter of (a) the energy year in which the electricity was produced or in the following energy year or (b) in the energy year in which the New Jersey Certification Number was obtained or in the following energy year, provided that in no case shall SREC-IIs be redeemed more than three (3) years after the energy year in which the electricity was produced. Pursuant to N.J.S.A. 48:3-115(b), the resulting SREC-IIs received by the Affected Projects shall be eligible for use in renewable portfolio standards compliance for the energy year in which the SREC-II is created, or in the following energy year.

To the extent that a limited waiver of the specific Board rules discussed above for the Affected Projects can afford relief to the customers associated with these projects, Staff believes that such a waiver is warranted for the Affected Projects and recommends that for these projects the Board waive N.J.A.C. 14:8-11.5(g), -11.5(g)(3)(i), and 11.5(g)(4). Should Suntuity be debarred from the ADI Program, Staff recommends that the Board afford the same relief to that company's customers. In the event that Suntuity responds satisfactorily before the date the debarment takes effect and is not debarred from the ADI Program, its customers should not be entitled to the relief afforded to the Affected Projects.

Purdon Petition

On July 6, 2023, James Purdon and Vanessa Rosa ("Petitioners") filed a petition with the Board. Petitioners stated that they had been customers of Zenernet and that the company had gone bankrupt prior to addressing unspecified errors in the ADI registration of their facility. According to the petition, Petitioners have been trying to correct and resubmit their registrations for approximately a year and they have "already missed the opportunity for SRECs for several months now[.]" The ADI Program Manager has reported being unable to contact any representatives of Zenernet to ascertain their ability to complete the registration process for this project. Petitioners did not request waiver of any specific rule, but based on the above statements and the ADI Program Manager's efforts, Staff believes that their project is one of the Affected Projects. Therefore, Staff recommends that the Board waive the above-identified rules for Petitioners.

Assistance for Customers of Unresponsive Installers Moving Forward

Since the former customers of installers that become as unresponsive as those discussed in this Order will require assistance in addition to and more comprehensive than that afforded by waiving the Board's incentive rules as set forth above, Staff further recommends that the Board take additional action on this matter. More specifically, Staff suggests that the Board provide a resource that may facilitate these customers' search for new solar vendors. These customers may need such vendors to complete the installation and/or post-construction paperwork for the ADI Program; the customers may also need vendors to conduct the operation and maintenance ("O&M") work typically required for a solar facility and sometimes handled by the installer. Staff believes that the means to provide this resource already exists on the New Jersey Clean Energy ("NJCEP") website. To help customers in the selection of a solar vendor, the Board provides a list of solar installers and vendors ("Trade Ally Database").¹¹ That list contains multiple sub-headings reflecting the different types of vendors in the industry. Staff now recommends that the

¹¹ <https://njcleanenergy.com/findavendor>

Board direct Staff to add two (2) additional categories of solar vendors to the Trade Ally Database: Assistance for Distressed Customers and Operations and Maintenance. By creating these categories and directing Staff to publicize their existence to both customers and solar vendors, Staff believes that the Board will assist these customers to remain in the solar marketplace and receive not only the incentives of the Board's solar program but all the other benefits of becoming a customer-generator.

To ensure that the new vendors selected by these customers provide them with an acceptable level of service, Staff recommends that the Board authorize Staff to impose standards on such vendors as necessary.

DISCUSSION AND FINDINGS

The abrupt withdrawal of an installer from the market affects not only the business and its employees, but also its customers. The customers of solar companies, those New Jersey residents that opt to place a generation facility on their home or business, form an integral part of the success that New Jersey's solar industry has experienced. When a solar installer suddenly stops working on a project and returning phone calls, these customers are often left stranded.

The Board's rules state that "[i]n special cases and for good cause shown, the Board may . . . relax or permit deviations from these rules." N.J.A.C. 14:1-1.2(b). The rules go on to explain that "[t]he 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 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." N.J.A.C. 14:1-1.2(b)(1).

Staff recommends waiver of several ADI Rules, all involving project timelines in one way or another. The timelines in the Board's rules are designed to ensure that solar facilities are developed in a timely manner and that the ratepayer funds that incentivize them are not reserved for projects that are unable to begin operation within a reasonable period or to provide incentives that are not appropriately linked to the costs incurred in facility development. These continue to be valid policy goals. However, the Board recognizes that the customers of solar installers who abruptly abandon a project while the customer's registration is pending face unique challenges. For the Affected Projects, waiver of the applicable timelines in the Board's rules will increase the likelihood of successful completion of registration and receipt of a New Jersey Certification number. The Board has previously recognized the justification for some flexibility in the application of its rules in the context of rapidly changing incentive programs,¹² and the Board **FINDS** that the unique circumstances of the Affected Projects justify a similar flexibility now. The projects considered in this order were contracted for in good faith but would be denied incentives under the ADI Rules absent Board action. The Board believes that waiving the regulatory timelines for this limited class of projects will provide necessary regulatory flexibility and prevent these customers from becoming abandoned when their former installers/developers encounter difficulties or for some other reason cease attending to their customers. The Board **FINDS** that allowing these projects to receive incentives under the ADI Program will avoid stranding them without any incentive.

¹² In re Successor Solar Incentive Program Pursuant to P.L. 2021, c.169, BPU Docket No. QO2303128, Order dated April 26, 2023 ("ADI Waiver Order").

The Board **FINDS** that waiving the specific rules identified below accords with the general purpose and intent of the rules. The Board **FURTHER FINDS** that waiving the rules identified by Staff for the Affected Projects is in the public interest. Therefore, the Board waives the following rules for the Affected Projects as specified below. Customers with Affected Projects that are unable to meet the deadlines in the ADI Rules are encouraged to find a new installer and re-register. If construction has commenced on an Affected Project prior to the acceptance of a subsequent re-registration, the Board **WAIVES** the provisions of N.J.A.C. 14:8-11.4(b) for such projects. For the Affected Projects that received PTO prior to their acceptance into the ADI Program, the Board **WAIVES** N.J.A.C. 14:8-11.4(b).

As noted by Staff, an SREC-II must be redeemed in GATS in the energy year in which the electricity was produced or in the following energy year. N.J.A.C. 14:8-11.8(e). This requirement springs from the need to ensure that SREC-II creation and redemption proceeds in an orderly fashion such that ratepayers are not overburdened with accumulated requests for SREC-II cost recovery. The Board agrees with Staff that under the circumstances of the Affected Projects, this timeline would operate to unfairly curtail the SREC-II creation period for these projects. Therefore, the Board **WAIVES** the limit for redeeming SREC-IIs set by N.J.A.C. 14:8-11.8(e) and **ORDERS** that SREC-IIs based on the generation of the Affected Projects may be redeemed in the energy year in which the New Jersey Certification Number was obtained or in the following energy year. However, in no case, shall SREC-IIs be redeemed more than three (3) years after the energy year in which the electricity was produced.

All waivers are retroactive to the dates upon which violations of the relevant rules occurred.

The Board also concurs with Staff's reasoning regarding the installer signature normally required on the registration and post-construction certification package. Like the timelines in the Board's rules, this requirement serves a valid purpose. However, where the entity that performed the installation is no longer able to be contacted by its customers, obtaining its signature upon any paperwork has become impossible and insistence upon such signature serves instead to create a barrier to successful registration. The Board **DIRECTS** the Program Manager to accept the customer's signature in place of the installers' on the registration forms referenced in N.J.A.C. 14:8-11.5(b) and on the post-certification construction package referenced at N.J.A.C. 14:8-11.5(j). Such acceptance will be premised upon the customer signing an affidavit acknowledging that the customer did not personally install the system and is relying upon the work of its defunct installer.¹³

The Board notes that the relief granted relative to the Affected Projects in this Order is predicated upon the specific circumstances alleged by these petitioners. The Board **FINDS** that if Suntuity is debarred from the ADI Program, the Suntuity customers will be similarly situated to the Affected Projects. The Board **ORDERS** that the projects of Suntuity customers with pending ADI Program registrations shall, at that time, become eligible for the same relief afforded to the Affected Projects. If, on the other hand, Suntuity does not end by being debarred, the Board **FINDS** that its customers will not be similarly situated to the Affected Projects and **ORDERS** that these customers shall not receive the relief afforded to the customers with Affected Projects.

With respect to Staff's recommendation regarding the Trade Ally Database, the Board **FINDS** that customers whose solar installers have ceased responding to their customers or to the ADI

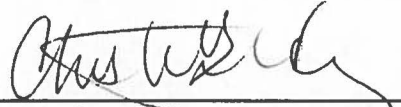
¹³ The Board is aware that EDCs and Authorities Having Jurisdiction have their own signature requirements, and this Order does not address any such requirements.

Program Manager will benefit from the addition of the two vendor categories proposed by Staff. The Board **AUTHORIZES** Staff to add the category of "Assistance for Distressed Customers" and "Operations and Maintenance" to the Trade Ally Database. The Board **FURTHER AUTHORIZES** Staff to develop standards and criteria by which solar industry members wishing to be listed in those categories shall be evaluated prior to being so listed.

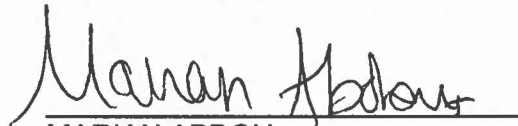
The effective date of this Order is February 21, 2024.

DATED: February 14, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

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

IN THE MATTER OF ELIGIBILITY RULES
FOR THE CUSTOMERS OF SOLAR INSTALLERS THAT HAVE BEEN DEBARRED FROM THE
ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM

IN THE MATTER OF A SUCCESSOR SOLAR INCENTIVE PROGRAM PURSUANT TO P.L. 2021, C. 169,
REQUEST FOR DETERMINATION OF ELIGIBILITY IN THE ADMINISTRATIVELY DETERMINED INCENTIVE
PROGRAM BY CUSTOMER OF BANKRUPT INSTALLER – JAMES PURDON AND VANESSA ROSA
ZENERNET INSTALLATION COMPANY LLC

DOCKET NOS. QO20020184, QW23040243 & QO23070429

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