



Agenda Date: 1/26/22
Agenda Item: 8H

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 SOLAR SUCCESSOR)
INCENTIVE PROGRAM PURSUANT TO P.L. 2018,)
C.17)
)
) ORDER MODIFYING ADI
PROGRAM ELIGIBILITY
CONDITIONS
) DOCKET NO. QO20020184

Party of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) modifies a prior order to facilitate the ability of certain solar generation facilities registered in the Transition Incentive Program (“TI Program”) to re-register in the Administratively Determined Incentive Program (“ADI Program”).¹ The Board’s proposed Successor Solar Incentive Program (“SuSI Program”) rules, which are being considered for adoption on the same agenda, along with the SuSI Program Order, prohibit solar generation facilities from registering in the ADI Program if they have started construction.² The Board now proposes to allow a limited exception for projects that started construction under a valid TI Program registration to register in the ADI Program if they do not meet their TI Program deadlines. The Board recognizes that, without this action, projects currently under construction could miss deadlines under the TI Program and subsequently be barred from registering in the ADI Program, which creates an unacceptable amount of commercial risk for the affected projects, and which could chill investment in otherwise viable solar generation projects.

¹ In re Solar Successor Incentive Program Pursuant to P.L. 2018, C.17, BPU Docket No. QO20020184, Order dated July 28, 2021 (“SuSI Program Order”).

² The Board notes that the proposed rules for the SuSI Program (52 N.J.R. 1337(a)) are implicated in this proceeding, since these rules provide that facilities seeking eligibility for the ADI Program must submit a registration and receive a notice of conditional registration prior to beginning construction. Proposed N.J.A.C. 14:8-11.4(b). The adoption of these rules is being considered by the Board simultaneously with this Order.

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 are 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 TI Program, which provided incentives to eligible solar facilities by means of fixed-price, factorized Transition Renewable Energy Certificates (“TRECs”).³ A rule proposal for the TI Program was published on May 18, 2020,⁴ and the rules took effect upon publication in the New Jersey Register on October 5, 2020 (“TI Rules”).⁵ The TI Rules 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.

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, 2021.⁶ 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 June 9, 2021, Governor Murphy signed the Solar Act of 2021 (“Solar Act”).⁷ 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 June 24, 2021, the Board granted a second blanket extension (“Second TI Extension Order”), this one available to all projects that had submitted a complete registration to the TI Program on or before the effective date of the Order. The Second TI Extension Order granted projects registered in the TI Program an automatic six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4(d) or (e). Projects that had submitted an application pursuant

³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019.

⁴ 52 N.J.R. 1048(a).

⁵ 52 N.J.R. 1850(a).

⁶ 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.

⁷ L.2021, c.169.

to Subsection (t) received an extension to the later of April 30, 2022 or the date set by the Board Order granting the project's conditional certification.^{8,9}

From its inception, the TI Program was designed to be a temporary program that would remain open to new registrations only until the Board opened the new Successor Program. On July 28, 2021, following an extensive stakeholder process, the Board approved the creation of the SuSI Program, consisting of the ADI Program and the Competitive Solar Incentive Program ("CSI Program").¹⁰ 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."¹¹

STAFF RECOMMENDATION

Board Staff ("Staff") recommends that the Board take action to ensure that solar projects currently registered in the TI Program may subsequently register in the ADI Program if they fail to meet the commercial operation deadlines established under the TI Program. Staff notes that many solar developers and installers are attempting to meet the TI Program deadlines to qualify for an incentive under that program and have begun construction activities with the intent of meeting those deadlines. However, some of these projects may not reach commercial operation before the deadlines imposed by the TI Program.

Under the Board's current orders, and the SuSI Program Rules, projects must register in the ADI Program *prior* to starting construction. Section 14:8-11.4(b) of the SuSI Program Rules adopted contemporaneously with this Order, state that:

...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.

Staff's concern is that a project that faces delays in reaching commercial operation could end up in a situation where they miss the TI Program deadline, but are then prohibited from entering the ADI Program, effectively denying those projects any access to solar incentives. Even the danger of an "incentive cliff" may discourage investment in New Jersey solar facilities or create higher financing costs.

⁸ In re 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, BPU Docket Nos. QO19010068, QO21060883, et al, Order dated June 24, 2021.

⁹ See N.J.S.A. 48:3-87(t)(1). Pursuant to Subsection (t), only those projects proposed to be located on sites meeting the definition of a brownfield, an area of historic fill, or a properly closed sanitary landfill facility, pursuant to N.J.S.A. 48:3-51, and which meet all the statutory requirements under Subsection (t) were considered as being 'connected to the distribution system' for purposes of SREC eligibility.

¹⁰ SuSI Program Order.

¹¹ SuSI Program Order, p. 50.

While the prohibition on registration after starting construction is designed to ensure that solar incentives go only to projects that need the incentives, Staff recognizes that the unique circumstances associated with the end of the TI Program and the beginning of the ADI Program, coupled with the ongoing impact of the global pandemic, warrant greater flexibility in the treatment of projects that applied under the TI Program but may not achieve commercial operation prior to their deadlines under that program. Staff believes that such a waiver to the ADI Program eligibility requirements would appropriately recognize the particular circumstances of the solar industry and the incentive programs at this point in time.

Although the first existing TI Program deadlines do not occur for a few more months, Staff believes that there is good reason for the Board to act now to relax the eligibility requirements for the ADI Program. Taking corrective action now will provide developers with readier access to capital and avoid creating a situation where projects fail because of the risk that they would receive no incentive. Removing the need to seek a waiver from the Board, and the uncertainty associated with a petition, will avoid the situation where viable projects may be cancelled due to the uncertainty associated with the need to wait for the Board's decision on an individual petition. In addition, granting a general waiver now will help to avoid a potential surge of TI Program participants filing waiver petitions to enter the ADI Program. Moreover, a single change to eligibility requirements via Board Order would be more equitably levied and less administratively burdensome than consideration of requests for special dispensation on a case-by-case basis.

Staff recommends that the Board modify the SuSI Program Order by ordering that projects that have registered in the TI Program receive a general 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. For the avoidance of any doubt, Staff's recommendation is limited: Staff is not recommending that projects be permitted to file simultaneous registrations in both the TI and the ADI Programs. Staff's recommendation also would not guarantee entry into the ADI Program for projects currently registered in the TI Program, as they would still be required to meet all other eligibility requirements, program rules and regulations, including the limitations on available capacity.

Finally, Staff recommends that the Board direct Staff to propose amendments to the SuSI Program Rules to permit projects that were registered in the TI Program, but failed to meet the TI Program deadlines for commercial operation, to apply to the ADI Program despite the projects having commenced construction.

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. In order to avoid the situation where projects could jeopardize their access to any solar incentive because of the unique transition from the TI Program to the ADI Program, the Board **FINDS** that increasing the availability of the ADI Program will decrease the likelihood that an unknown but increasing number of projects will be stranded without an incentive.

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 Board **FINDS** that facilitating

the ability of projects currently registered in the TI Program 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 granting a waiver of the prohibition on construction activities will facilitate a healthy solar market and avoid putting developers in the untenable situation where even a minor delay in reaching commercial operations results in no incentive payment.

Thus, having reviewed Staff's recommendation, the Board **FINDS** that projects that currently hold a valid TI Program registration shall not be subject to the requirement in the SuSI Program Order that projects seeking eligibility in the ADI Program submit a complete ADI Program registration package and receive a notice of conditional registration prior to beginning construction on the facility. Therefore, the Board **ORDERS** that projects registered in the TI Program that commenced construction but failed to meet the TI deadline for commercial operation shall be eligible to apply to the ADI Program.

Finally, the Board **DIRECTS** Staff to propose amendments to the SuSI Program Rules to permit projects that were registered in the TI Program, but failed to meet the TI Program deadlines for commercial operation, to apply to the ADI Program despite the projects having commenced construction.

This Order takes effect on February 2, 2022.

DATED: January 26, 2022

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 SOLAR SUCCESSOR INCENTIVE PROGRAM PURSUANT TO P.L.
2018, C.17 – MODIFICATION OF ELIGIBILITY CONDITIONS

DOCKET NO. QO20020184

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