



Agenda Date: 12/16/20
Agenda Item: 8E

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

IN THE MATTER OF A NEW JERSEY SOLAR)	ORDER ADDRESSING WAIVER
TRANSITION PURSUANT TO P.L. 2018, C.17)	OF CERTAIN REQUIREMENTS
)	ESTABLISHED BY N.J.A.C.
)	14:8-10.3(d)
)	
)	DOCKET NO. QO19010068
)	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 the implementation of a provision of the Transition Incentive (“TI”) rules¹ that requires the existence of an Irrevocable Standing Order (“Standing Order”) before otherwise eligible energy may be used as the basis for a Transition Renewable Energy Certificate (“TREC”).

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 TRECs.²

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.³ On April 6, 2020, the Board determined that the 5.1% Milestone would be

¹ 52. N.J.R. 1850(a) (“TI Rules”).

² 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”).

³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020.

attained on or before May 1, 2020, and therefore directed Staff to close the SRP to new registrations on April 30, 2020.⁴ The SRP was closed to new registrants on that date, and 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.⁵ 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.

Of particular relevance here, the TI Rules at N.J.A.C. 14:8-10.3(d)(1) provide that TRECs shall be automatically transferred upon creation to the joint account created for the New Jersey Electric Distribution Companies (“EDCs”) (“Joint EDC Account”) in the Generation Attribute Tracking System (“GATS”). This transfer shall occur via the Irrevocable Standing Order created for each project, and only via the Irrevocable Standing Order. N.J.A.C. 14:8-10.3(d)(1)(i) states that “[th]e Irrevocable Standing Order shall require for [the renewable energy generator] that 100 percent of the certificates be automatically transferred from each meter reading to the EDC Joint GATS Account.” In addition, the rules provide that “[a] Standing Order is not activated until the transferor confirms, and the TREC administrator accepts, the Standing Order transfer.” N.J.A.C. 14:8-10.3(d)(1)(ii).

In drafting and recommending Board approval of the TI Rule Proposal, Staff anticipated that the TI Project owner would establish the Standing Order shortly after receiving its TREC NJ Certification and registering the project in GATS. Thus, there would be no meaningful delay between a project’s certification in the TI program and the transfer of the TRECs created on the basis of its energy into the Joint EDC Account. The experience of the first six months of the TI program demonstrates that this is not the case. The applicant must submit its Final as Built paperwork to the Program Administrator and receive its NJ certification number before a Standing Order can be activated. It is not uncommon for one or more months to elapse between a project’s receipt of a Permission to Operate (“PTO”) from the EDC and activation of the Standing Order for the transfer of that project’s TRECs. In one illustrative example, a solar project received its Permission to Operate in May 2020. However due to inspections issues, the project did not receive its TREC NJ certification number from the Program Administrator until August 2020. When the applicant activated the Standing Order, it could not enter a “From Date” prior to August 2020. As a result, 473 TRECs created based on the energy generated by this project from May to July could not be transferred to the TREC-Joint NJ EDC account.⁶

When the TI program began in May 2020, the GATS account holder could not enter a Standing Order with a “From Date” prior to the current TREC Processing Month.⁷ As GATS was originally

⁴ 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”).

⁵ 52 N.J.R. 1048(a).

⁶ Hartz Mountain solar project.

⁷ The processing month is the current Month. If the current month is November 2020, the GATS From Date would be November 2020.

configured, there was no automatic transfer of any TRECs for electricity generation which occurred in months prior to the customer's establishment of a GATS account and Standing Order. Although a system modification was implemented in September 2020 to allow an earlier "From Date" to be entered, GATS account holders must still manually transfer to the TREC Administrator any TRECs created prior to the activation of the Standing Order – which, as noted above, may not occur for some months.

The TI rule requirement that "100%" of a generator's TRECs be transferred via Standing Order currently prohibits the TI Administrator from manually transferring any TRECs created prior to the activation of the Standing Order. Without such a transfer, the TRECs cannot be retired and the renewable energy generator cannot realize the total incentive the Board intended the TRECs to provide.

STAFF RECOMMENDATION

Staff believes that the Standing Order requirements, as currently codified in the TI Rules, undermine the Board's policy goal of providing a smooth transition from the SRP to a successor program. Staff therefore recommends that the Board waive N.J.A.C. 14:8-10.3(d)(1)(i) and N.J.A.C. 14:8-10.3(d)(3)(ii), only insofar as it requires that 100% of the TRECs generated for any project registered in the TI be transferred pursuant to a Standing Order. More precisely, Staff recommends that the Board waive this requirement only with respect to the energy otherwise TI-eligible projects generate prior to the date a Standing Order is activated. Staff further recommends that the Board direct Staff to initiate a rulemaking proceeding to amend the TI Rules such that this waiver will no longer be necessary.

DISCUSSION AND FINDINGS

The Board 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."⁸

The TI Program and its implementing rules are "designed to provide a bridge between the SREC Program and a solar Successor Incentive Program under development by the Board."⁹ The Standing Order mechanism was incorporated into the TI Rules to facilitate the speedy transfer of large numbers of TRECs into the Joint EDC Account. In so doing, the Standing Order requirement was intended to further the underlying goal of providing a seamless transition from the SRP to a successor program. In light of the issues raised by this requirement, however, the Board **FINDS** that requiring full compliance with the Standing Order provisions at N.J.A.C. 14:8-10.3(d) would adversely affect the interests of the general public by reducing the incentives available to solar projects. The unanticipated delay arising from this administrative requirement undermines the policy goal of ensuring a smooth transition from the SRP to the successor program. The Board, having found good cause, **THEREFORE WAIVES** the requirement of N.J.A.C. 14:8-10.3(d)(1)(i) and N.J.A.C. 14:8-10.3(d)(3)(ii), that 100% of the energy generated by a project registered in the TI program must be transferred pursuant to a Standing Order. The Board **HEREBY FINDS** that

⁸ N.J.A.C. 14:1-1.2(b).

⁹ N.J.A.C. 14:8-10.1.

energy generated by projects accepted into the TI program may serve as the basis for the creation of TREC's prior to the creation of a Standing Order, provided that energy is otherwise TREC-eligible. This waiver shall in no way defer the need for, nor delay the creation of, a Standing Order for any project.

The Board **HEREBY DIRECTS** Staff to initiate a rulemaking proceeding to amend the TI Rules to conform to this Order.

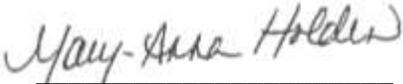
This Order takes effect on December 26, 2020.

DATED: December 16, 2020

BOARD OF PUBLIC UTILITIES
BY:



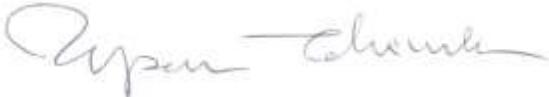
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COMMISSIONER



ATTEST:

AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17
ORDER ADDRESSING TREC ELIGIBILITY FOR PROJECTS COMMENCING COMMERCIAL
OPERATIONS BEFORE PROGRAM ESTABLISHMENT

DOCKET NO. QO19010068
DOCKET NO. QX20030253

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