

Agenda Date: 4/26/23  
Agenda Item: 8C

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION  
OF L. 2012, C. 24, THE SOLAR ACT OF 2012

ORDER ON MOTION FOR  
RECONSIDERATION

IN THE MATTER OF A NEW JERSEY SOLAR )  
TRANSITION PURSUANT TO P.L. 2018 , C. 17 )

DOCKET EO12090832V

IN THE MATTER OF A NEW JERSEY SOLAR )  
TRANSITION PURSUANT TO P.L. 2018, C.17 - )  
ORDER GRANTING AN UP TO 12- MONTH )  
EXTENSION FOR PROJECTS SEEKING AN )  
INCENTIVE PURSUANT TO SUBSECTION (T) IN )  
THE SOLAR TRANSITION INCENTIVE PROGRAM - )  
MOTION FOR RECONSIDERATION )

DOCKET NO. QO19010068

DOCKET NO. QO22090551

**Parties of Record:**

**Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel  
**Angelo J. Genova, Esq.**, on behalf of CEP Renewables, LLC

**BY THE BOARD:**

On August 30, 2022, pursuant to N.J.A.C. 14:1-8.6(a), CEP Renewables, LLC (“CEP” or “Movant”), filed a motion for reconsideration (“Motion”) of the Board’s Order granting an extension of up to 12 months in the Transition Incentive Program (“TI Program”) for projects seeking certification pursuant to N.J.S.A. 48:3-87(t) [“Subsection (t)”].<sup>1</sup> CEP asked the Board to reconsider the extensions provided in the August 2022 Order.

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<sup>1</sup> In re a New Jersey Solar Transition Pursuant To P.L. 2018, C.17 Order Granting An Up To 12- Month Extension For Projects Seeking An Incentive Pursuant To Subsection (T) In The Solar Transition Incentive Program, BPU Docket No. QO19010068, Order dated August 17, 2022 (“August 2022 Order”).

## **BACKGROUND**

### **Transition Incentive Program**

On May 23, 2018, the Clean Energy Act was signed into law and became effective immediately.<sup>2</sup> Among many other mandates, the Clean Energy Act directed the Board to adopt rules and regulations to close the Solar Renewable Energy Certificate (“SREC”) Registration Program (“SREC Program” or “SRP”) to new applications once the Board determined that 5.1 percent of the kilowatt-hours sold in the State by Third Party Suppliers and Basic Generation Service providers had been generated by solar electric power generators connected to the distribution system. The Clean Energy Act also directed the Board to complete a study (“Capstone Report”) that evaluates how to modify or replace the SREC Program to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State.

On December 6, 2019, the Board established the TI Program to provide a bridge between the legacy SREC Program and a to-be-developed Successor Incentive program. The TI Program, subsequently codified in rules, provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt-hour (“MWh”) of electricity produced.<sup>3</sup> Incentives are tailored to specific project types through the use of factors, which are applied to a base incentive rate to provide a particular project type either the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Subsection (t) projects are eligible to receive a factor of 1.0 and thus the full amount of the base incentive, \$152/MWh. The TI Program portal opened to new registrations on May 1, 2020. Pursuant to Board order and the TI Rules, the TI Program remained open to new registrations until the establishment of a registration program for the new Successor Program.<sup>4</sup> The TI Rules do not provide for automatic or administrative extensions to projects’ conditional registration “expiration dates” (also referred to as the “registration deadline”).

On July 29, 2020, the Board granted a blanket extension to all projects that registered in the TI Program on or before October 30, 2020, setting the new expiration date for all impacted registrations to October 30, 2021.

On April 8, 2021, PJM Interconnection, LLC (“PJM”) proposed a reform of its interconnection process via a stakeholder working group that was open to public participation.

On June 24, 2021, the Board granted projects registered in the TI Program on or before the effective date of the order an automatic six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4(e) or (f).<sup>5</sup>

On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (L. 2021, c.169) into law, effective immediately. Among other requirements, this law directed the Board to develop and launch the

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<sup>2</sup> L. 2018, c. 17 (“Clean Energy Act” or “Act”).

<sup>3</sup> 52. N.J.R. 1850(a) (“TI Rules”).

<sup>4</sup> In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020 (“January 2020 Order”); N.J.A.C. 14:8-10.1; and N.J.A.C. 14:8-10.4.

<sup>5</sup> 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, Order dated June 24, 2021 (“June 2021 Order”).

Successor Program. On July 28, 2021, the Board announced the closure of the TI Program, effective 30 days later, and the opening of the Successor Solar Incentive (“SuSI”) Program.<sup>6</sup> The TI Program closed to new registrations on August 27, 2021, and the SuSI Program opened on August 28, 2021. The SuSI Program has two components: the Administratively Determined Incentive (“ADI”) Program, which provides incentives for residential projects, Community Solar projects, non-residential net metered projects sized at 5 megawatts (“MW”) and less, and the Interim Subsection (t) program, and the Competitive Solicitation Incentive (“CSI”) Program, which provides incentives for grid supply projects and non-residential net-metered projects over 5 MW in capacity.

On June 8, 2022, the Board granted a conditional six-month extension to ESNJ-KEY-GIBBSTOWN, LLC, (“Gibbstown”) and made conditional extensions available to similarly situated parties provided that these projects could demonstrate that they met the conditions set by the Board and provide the specified documentation.<sup>7</sup> The conditions included a showing of electrical and mechanical completion prior to the project’s TI Program expiration date; receipt and satisfaction of all necessary permits from authorities with jurisdiction; and reliance on representation from the applicable electric distribution company (“EDC”) that any necessary interconnection upgrades would be completed prior to the project’s TI Program expiration date, followed by a unilateral extension of the estimated upgrade completion date by the EDC.

PJM’s generator interconnection process is designed to ensure that new generation resources, including those being developed by Movant, are able to connect to the electrical grid safely and reliably. Generally, PJM conducts a three-phase study of each proposed generator: a feasibility study, a system impact study, and a facilities study. Each subsequent study involves an increasingly detailed electrical engineering analysis, and eventually leads to the proposed generator being tendered an Interconnection Services Agreement (“ISA”). The ISA generally lists all of the upgrades necessary to connect the proposed development project to the grid, including cost responsibility for those upgrades. While PJM traditionally completed this process in approximately two years, the number of new generators seeking to interconnect to the PJM grid has risen significantly, leading to lengthy delays in PJM’s completing the necessary studies.

On June 14, 2022, PJM made a public filing with FERC to reform its interconnection application process (“Interconnection Reform Filing”), which was accepted by the Federal Energy Regulatory Commission (“FERC”) on November 29, 2023.<sup>8</sup> PJM explained that:<sup>9</sup>

...its existing serial approach is time-intensive and, when coupled with the recent exponential increase in New Service Requests, has resulted in a mounting backlog that compels the reforms proposed in the instant filing. PJM states that the volume of New Service Requests has more than tripled in the past three years and that delays are exacerbated by the large number of speculative projects that often

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<sup>6</sup> In re a New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, BPU Docket No. QO19010068, Order dated July 28, 2021.

<sup>7</sup> In re the Request for an Extension of Time to Complete NJSTRE1545046932 In Transition Incentive Program - 480 South Democrat Road, Gibbstown NJ ESNJ-Key-Gibbstown, LLC, BPU Docket No. QO22030156, Order dated June 8, 2022 (“June 2022 Order”).

<sup>8</sup> *PJM Interconnection, LLC*, 181 FERC ¶ 61,162 (2022), *order denying reh’g*, 182 FERC ¶ 62,055 (2023).

<sup>9</sup> *Id.* at ¶ 5 (citations omitted).

withdraw from the queue late in the interconnection process and trigger restudies. PJM explains that its current interconnection process provides little incentive for such speculative projects to exit the queue.

The Interconnection Reform Filing constituted a comprehensive reform of the PJM interconnection process, designed to more efficiently and timely process New Service Requests by transitioning from a serial “first-come, first-served” queue approach to a “first-ready, first-served” clustered, cycle approach. As FERC explained, under the existing approach, PJM “accepts New Service Requests during two six-month queue windows each year (from April 1 to September 30 and October 1 to March 31 of the following year).”<sup>10</sup> PJM assigns an alphanumeric code to projects entering each six-month queue window, with projects registering between November 1, 2016 through March 31, 2017 assigned to the AC2 queue window, projects registering between April 1, 2018 through September 30, 2018 assigned to the AD1 queue window, etcetera.<sup>11</sup> Projects in the AD2 or earlier queue windows remain subject to PJM’s existing interconnection procedures.<sup>12</sup> Going forward, PJM has divided pending interconnection requests into clusters based on application queue date, resulting in a “fast-lane” expedited process, transition cycle 1 (“TC1”), transition cycle 2 (“TC2”), and new process groups.<sup>13</sup>

On August 17, 2022, the Board waived its rules and granted up to two conditional six-month extensions to the completion deadline of all solar projects that are registered in the TI Program and have a conditional certification pursuant to Subsection (t), or that have applied to the Board for conditional certification and are pending a recommendation on certification pursuant to Subsection (t) from the New Jersey Department of Environmental Protection (“NJDEP”). In waiving the rule, the Board took into consideration the fact that PJM’s Interconnection Reform Filing process coincided with the after-effects of the Covid-19 pandemic and that the CSI Program was still under development and not yet available as a vehicle for grid supply projects to pursue incentives.

On August 30, 2022, CEP filed the Motion. CEP asked the Board to reconsider the length of extensions provided in August 2022 Order, alleging several errors in the Board’s characterization of the PJM process and surrounding circumstances. CEP subsequently supplemented the Motion with additional filings on December 2, 2022,<sup>14</sup> December 27, 2022,<sup>15</sup> and February 10, 2023.<sup>16</sup>

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<sup>10</sup> *Id.* at ¶ 4

<sup>11</sup> See PJM Interconnection filing in ER22-2110 at p. 9, June 14, 2022.

<sup>12</sup> *Id.*

<sup>13</sup> The interconnection reforms are set forth in their entirety in FERC Docket No. ER22-2110.

<sup>14</sup> Report by Sustainable Energy Advantage, LLC (“SEA Report”); letter from Vincent Duane, Principal, Copper Monarch LLC (“Duane Letter”).

<sup>15</sup> 12/21/22 Report prepared by Alicia Ortego of Ernst & Young LLP (“Ortego Report”); 12/14/22 Memo prepared by Pamela Frank of Gabel Associates (“December 2022 Gabel Memo”).

<sup>16</sup> 2/9/23 memo prepared by Pamela Frank of Gabel Associates (“February 2023 Gabel Memo”). February 10, 2023 letter from Ken Sheehan, Esq. of Genova Burns LLC (“February 2023 Letter”).

On October 25, 2022, Solar Energy Industries Association (“SEIA”) filed a letter supporting CEP’s Motion. SEIA stated concerns that the August 2022 Order does not provide commercial certainty for projects that filed interconnection requests prior to September 30, 2021 and requests that the Board grant CEP’s motion for reconsideration.<sup>17</sup>

On November 29, 2022, FERC issued an order conditionally approving PJM’s interconnection reform filing and its proposed division of its interconnection application queue into a “fast-lane” expedited process, TC1, TC2, and new cycle 1 groups. FERC conditioned its approval on two compliance filings, one of which has already been submitted by PJM.<sup>18</sup>

On December 7, 2022, the Board established the CSI Program, thereby completing implementation of the SuSI Program. The CSI Program was opened to qualifying grid supply solar installations and non-residential net metered solar installations with a capacity greater than 5 MW, as well as to eligible grid supply solar installations in combination with energy storage. Among its five tranches, there is one for installations on contaminated sites. Additionally, siting requirements were established for many solar facilities designed to ensure the affordable expansion of New Jersey’s commitment to renewable energy while not compromising the State’s commitment to preserving and protecting open space and farmland.

### **MOTION FOR RECONSIDERATION**

CEP asked the Board to reconsider the length of extension provided for Subsection (t) projects in the August 2022 Order, alleging several errors that, in CEP’s opinion, result in insufficient extensions. CEP first asserted that the Board miscalculated PJM’s new timeline when it stated that projects that filed interconnection requests with PJM prior to September 30, 2021 were expected to complete the interconnection process between June 2025 and September 2025 when CEP states that “most pending subsection (t) projects will not obtain a final interconnection agreement with PJM until the end of 2026.”<sup>19</sup> Next, CEP contended that the Order mistakenly assumes that if a project “completes the interconnection process” with PJM, that project will achieve commercial operation within the time required by the project’s Subsection (t) award.<sup>20</sup> In addition, Movant argued that since the Board acknowledged that PJM’s interconnection process is subject to a two-year delay, it should have provided “for at least a 2-year extension of the generally applicable 2-year construction time[.]”<sup>21</sup> CEP also claimed that at the time the TI Program was closed, “developers had no way of knowing that subsection (t) projects could be delayed by as many as five or six years due to the PJM queue.”<sup>22</sup> Finally, CEP took issue with the Board’s statement that the two six-month conditional extensions provided greater commercial certainty, asserting that in light of the unanticipated PJM queue reform process delays, the Board should have given subsection (t) projects “sufficient time to achieve commercial operation [within the TI Program].”<sup>23</sup>

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<sup>17</sup> SEIA Letter, October 25, 2022.

<sup>18</sup> See FERC Docket No. ER22-2110.

<sup>19</sup> Motion at Par. 2(a).

<sup>20</sup> Motion at Par. 2(b).

<sup>21</sup> Motion at Par. 2(c)

<sup>22</sup> Motion at Par. 2(d) (emphasis in original).

<sup>23</sup> Motion at Par. 2(e).

## **STAFF RECOMMENDATION**

Staff recommends the Board deny CEP's motion for reconsideration for the reasons set out below. Staff also recommends that the Board clarify the August 2022 Order's description of the PJM timelines. Staff agrees with the Movant's contention that the August 2022 Order incorrectly described some of the timelines in the PJM Interconnection Reform process insofar as they relate to those Subsection (t) projects that filed interconnection requests between October 1, 2020 and September 30, 2021.

In an effort to alleviate the backlog of interconnection studies, PJM proposed an extensive set of reforms to its interconnection processing timelines. As noted above, PJM has clustered interconnection requests submitted prior to September 30, 2021 into three different groupings based on their queue dates. See Appendix A. Projects that filed between 4/1/2018 – 9/30/2020 (identified as PJM queue windows AE1-AG1 by PJM's Manager of Interconnection Analysis) will be eligible for the expedited "fast-lane process" if their network upgrades are less than \$5 million and meet specified eligibility criteria.<sup>24</sup> The expedited projects will go through the PJM interconnection process and receive a final interconnection services agreement by no later than December 2024.<sup>25</sup> Projects filed between 4/1/2018 – 9/30/2020 (AE1-AG1) that do not qualify for the expedited process and require network upgrades equaling \$5 million or greater will go through the transition cycle 1 (TC1) process. The TC1 projects will reach final agreement by September 2025.<sup>26</sup> Projects filed between 10/1/2020 – 9/30/21 (AG2 – AH1) will go through the transition cycle 2 (TC2) process and these projects will reach final agreement by November 2026.<sup>27</sup>

The August 2022 Order stated that projects that filed interconnection requests "prior to September 30, 2021" were expected to complete the interconnection process between June 2025 and September 2025. Movant correctly noted that this statement holds true only for projects that submitted interconnection requests prior to September 30, 2020. Projects that submitted interconnection requests to PJM between October 1, 2020 and September 30, 2021 fall into PJM groupings AG2 and AH1 and will reach a final agreement between September and November 2026.<sup>28</sup> With respect to those projects, Staff recommends that the Board clarify that the projected date of reaching final agreement falls between September and November of 2026.

However, Staff rejects Movant's contention that this error nullifies the relief afforded by the August 2022 Order. As noted by more than one of Movant's witnesses, projects that submitted interconnection requests between October 1, 2020 and September 30, 2021 (PJM queue windows AG2 and AH1 and transition cycle TC2) are projected to conclude between September 2026 and November 2026.<sup>29</sup> See Appendix A. CEP further alleged that the August 2022 Order

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<sup>24</sup> See PJM Filing in Docket No. ER22-2110, affidavit of Mark Sims, at Par. 14, June 14, 2022 ("All projects in PJM's current interconnection queue associated with queue windows AE1 through AG1 (2018-2020) that do not have an executed service agreement in place and have not been tendered a service agreement for execution are eligible for inclusion in the fast lane process.")

<sup>25</sup> *PJM Filing in Docket No. ER22-2110 at Figure 9.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Appendix A.

<sup>29</sup> SEA Report at 1 and attached spreadsheet; Duane Letter at 1; Ortego Report at 8-9; February 2023 Gabel Memo at 2-3.

affords relief to only one or two of the Subsection (t) projects addressed by the Order, with the remaining projects either already on track to achieve permission to operate (“PTO”) timely or else in need of an extension of more than 12 months because they have final interconnection approval dates falling between 2025 and 2027.<sup>30</sup> In addition, CEP criticized the Board for continuing to conditionally certify Subsection (t) projects that will not be able to meet the TI Program deadlines because of PJM interconnection delays.<sup>31,32</sup>

None of these assertions affects the analysis in the August 2022 Order. The Order noted that “not all Subsection (t) registrations in the TI Program necessarily require this additional time;” it also acknowledges that “the (1) or two (2) six-month extensions will not address the PJM interconnection delays associated with every Subsection (t) project[.]”<sup>33</sup> Staff does not dispute Movant’s assertion that a significant number of conditionally certified projects and projects pending NJDEP review will not achieve commercial operation by November 2026. However, Staff takes issue with CEP’s conclusion that the Board should grant an extension “at least commensurate with the delays actually contemplated by PJM.”<sup>34</sup> In fact, CEP asserted that the Board should extend the deadline to allow as much time as it takes for the interconnection agreements to be signed and the physical construction to occur.<sup>35</sup> In other words, CEP wants the Board to grant an extension that would allow every currently pending Subsection (t) project to reach commercial operation before its TI Program deadline. Its witnesses acknowledge as much, stating that the two six-month extensions “would appear to be insufficient for all of the Subsection (t) projects currently pending conditional certification to reach commercial operation before the deadline[.]”<sup>36</sup> Although CEP alleged that its request is not ‘open ended,’<sup>37</sup> an extension that specifies no time period and asks instead for “at least as long [as needed] for the interconnection agreements to be signed and for the necessary construction to occur following the final interconnection agreement” is very open ended.

CEP misapprehended the Board’s intention in affording the conditional twelve-month extension to Subsection (t) projects. Movant pointed to statements in the August 2022 Order that reference “more” or “many” projects benefitting from the up to twelve-month extension.<sup>38</sup> While the Board anticipated that “many” Subsection (t) projects would benefit, it did not intend to guarantee every Subsection (t) applicant all the time needed to satisfy the TI Program’s timelines and qualify for its incentives. Indeed, it specifically rejected the type of open-ended extension proposed by

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<sup>30</sup> Motion at Par. 30; SEA Report at 2; December 2022 Gabel filing at 3-5; February 2023 Gabel Memo at 4.

<sup>31</sup> As of the March 7, 2023 Summary of Application Status in Sub t, there are 15 conditionally certified subsection (t) projects and another 14 subsection (t) projects pending Staff or NJDEP review.

<sup>32</sup> SEA Report at 3; December 2022 Gabel Memo at 4; February 2023 10 Letter at 6-7; February 2023 Gabel Memo at 4.

<sup>33</sup> August 2022 Order at 7.

<sup>34</sup> Motion at Par. 18.

<sup>35</sup> Motion at Par. 22.

<sup>36</sup> SEA Report at 2 (emphasis added); see also November 2022 Gabel Memo at 2.

<sup>37</sup> Motion at Par. 45

<sup>38</sup> Ortego Report at 13.

CEP.<sup>39</sup> Recognizing the exceptional processing delays created by the PJM Interconnection Reform, the Board afforded applicants up to twelve additional months to aid those projects “that are ready to move forward and deliver clean energy to New Jersey customers quickly[.]”<sup>40</sup>

Movant purported to find support for its position in comments filed by the Board at FERC in Docket RM22-14-000.<sup>41</sup> Noting that it concurred with the Board’s statements that New Jersey solar programs depend upon developers’ ability to interconnect to the PJM grid in a timely manner and that the current interconnection process has failed, CEP goes on to assert that the Board should solve the problem caused by the PJM delays by granting the open-ended extension that it advocates in the Motion. Failure to do so, according to CEP, means that “the biggest threat to developers is not PJM, but the Board itself.”<sup>42</sup>.

Movant’s efforts to lay its difficulties at the Board’s door fail. As previously stated, the two conditional extensions were intended to aid projects that “are ready to move forward and provide clean energy to New Jersey customers quickly [.]”<sup>43</sup> The fact that a number of Movant’s projects, including the 10 filed or amended in the closing weeks of the TI Program, had not made that progress does not warrant giving them even more time to do so.<sup>44</sup> CEP’s critique of the Board’s recent conditional certifications falls even wider of the mark. As the Board conditionally certifies pending Subsection (t) projects, it is following the process established for these projects under N.J.S.A. 48:3-87(t) and fulfilling its responsibilities under that statute. However, neither the statute, the Board’s rules, nor anything else makes the Board responsible for guaranteeing these projects a specific incentive through a particular program.

Moreover, Staff notes that the reports of Movant’s witnesses did not take into consideration the expedited “fast-lane” process in their calculations. According to Staff’s January 30, 2023 analysis, six (6) of the approximately 30 Subsection (t) projects that have received conditional certification or are pending certification may qualify for the fast-lane process based on their queue clustering group and upgrade costs of less than \$5 million. In making this analysis, Staff took into account the substantial interconnection cost increases that have occurred in parallel with the tremendous growth of PJM’s interconnection queue.

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<sup>39</sup> August 2022 Order at 6, 8.

<sup>40</sup> August 2022 Order at 7.

<sup>41</sup> February 2023 10 Letter at 1, citing <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=53F5B169-C09CCE1F-A47D-83D329100000> and <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=A49DE463-E237-C8E1-A5AE-851291800000>.

<sup>42</sup> February 10 Letter at 2

<sup>43</sup> August 2022 Order at 7.

<sup>44</sup> Ortego Report at Exhibit 1.

More fundamentally, as noted above, the extension was not intended to be a guarantee. As noted in the August 2022 Order, projects that are unable to meet the TI Program deadlines after receiving prior extensions totaling 12 months and after receiving the up to twelve-month extension afforded in the August 2022 Order may be more appropriately served by the CSI Program. Movant's own filings indicate that at least 10 of the relevant projects were filed in the closing days of the TI Program, with the knowledge that this program did not provide for extensions and that a successor program was being designed.<sup>45</sup>

CEP next argued that the Board mischaracterized how PJM completes the interconnection process by conflating the term "final agreement" with the term "completion of the interconnection process."<sup>46</sup> "Final agreement" is the term sometimes used by PJM to refer to "interconnect related agreements" such as the Interconnection Service Agreement.<sup>47</sup> According to CEP, the Board's use of 'completion of the interconnection process' results in an assumption that the pending Subsection (t) projects will achieve commercial operation sooner than is actually the case. Noting that actual construction and interconnection can take months or years from that date of final agreement, CEP goes on to reiterate that the Board must provide "an extension that fully covers the PJM interconnection agreement, construction, and operation process[.]"<sup>48</sup>

Staff continues to disagree with Movant. First, Movant bases its claim of 'confusion' on the use of the term "complete the interconnection process" in the August 2022 Order. However, in the context of the August 2022 Order, the Board's use of this term clearly refers to achieving interconnection agreements, in particular the ISA, and not to completion of the interconnection process or achievement of commercial operations. The Board identifies "PJM's proposed interconnection reform process" as one involving how interconnection requests are prioritized. "[S]taff has noted a troubling trend towards increasing delays in the PJM interconnection process....PJM initiated a "high priority" process to address the growing backlog of interconnection requests."<sup>49</sup>

At one point the Board noted that in the past, projects that began the PJM interconnection process at the same time their applications for conditional certification were filed were able to reach PTO – that is, complete actual interconnection activities - within two years.<sup>50</sup> However, the August 2022 Order nowhere links its discussion of the current delays in processing interconnection requests to the timing of actual construction of the interconnection. In fact, the Board specified that the extensions granted to Subsection (t) projects are intended "to account for delays in the PJM process" and not for delays in the subsequent interconnection activities required to reach PTO.<sup>51</sup> Thus, the terminology chosen by the Board does not change the effect of its action or create confusion.

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<sup>45</sup> SEA Report at Attachment 1; Ortego Report at Exhibits 1-3.

<sup>46</sup> Motion at Par. 23-28; SEA Report at 13; Duane Letter at 2; Ortego Report at 8-11 and Exhibit 2; December 2022 Gabel Memo at 2-3; February 2023 Gabel Memo at 3.

<sup>47</sup> Interconnection Reform Filing at page 64, Par. 2; see also page 37, "Figure 9: Transition Period Sequencing And Process" (reproduced below).

<sup>48</sup> Motion at Par. 27.

<sup>49</sup> August 2022 Order at 3-4 (emphasis added).

<sup>50</sup> August 2022 Order at 5.

<sup>51</sup> Id.

Second, this argument constitutes another attempt to wrest from the August 2022 Order a guarantee it was never intended to provide and that the Board should not give. As stated in the August 2022 Order, the Board intended to provide Subsection (t) TI registrants with additional time “to account for delays in the PJM [Interconnection Reform] process.”<sup>52</sup> It expressly stated that it did not intend to guarantee these registrants as much time as they wished to satisfy the requirements of the TI Program, stating that an indefinite commitment to the TI Program’s Subsection (t) incentive levels would not be in the interest of ratepayers.<sup>53</sup> The Motion and the supporting filings of Movant’s experts make much of the additional time that will be needed to physically connect these projects once a final interconnection agreement has been executed.<sup>54</sup> However, nothing in the record indicates that the timeline of physical connection has been impacted by the PJM Interconnection Reform. As noted by Movant’s witness, that timeline is and has been highly variable.<sup>55</sup> There is no reason to furnish Movant and the other registrants with still more time to meet the TI Program deadlines.

CEP next claimed that the Board improperly assumed that developers were aware of PJM delays and the reform process. Pointing to PJM’s “Problem/Opportunity Statement” that generally identifies “69 unique concerns and 135 unique suggestions,”<sup>56</sup> CEP alleged that developers did not know that PJM would be delaying final agreements on the interconnection process for approximately five years and that this timeframe was not made public by PJM.

Neither the record of the interconnection reform proceeding nor CEP’s own witnesses support CEP’s claim. In its June 14, 2022 filing to FERC, PJM noted that the significant growth in the number of generation facilities seeking to interconnect to the PJM grid, and the associated increasing backlog, dated as far back as 2018. Thus, developers have known of this problem for approximately five years. PJM issued its “Interconnection Process Reform Problem Statement” identifying the issues faced by PJM and stakeholders on April 8, 2021, months before the closure of the TI Program to new registrations. And, as acknowledged by CEP’s witnesses, the proposed categorization and associated timelines submitted to FERC “[f]ollowing an over 18-month stakeholder process to vet PJM’s queue reform proposal” begun in October 2020.<sup>57</sup>

The slide reproduced below comes from PJM’s April 20, 2021 presentation<sup>58</sup> and, unlike Movant’s Exhibit 1, clearly sets out a plan for a three-year process:

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<sup>52</sup> Id.

<sup>53</sup> August 2022 Order at 6.

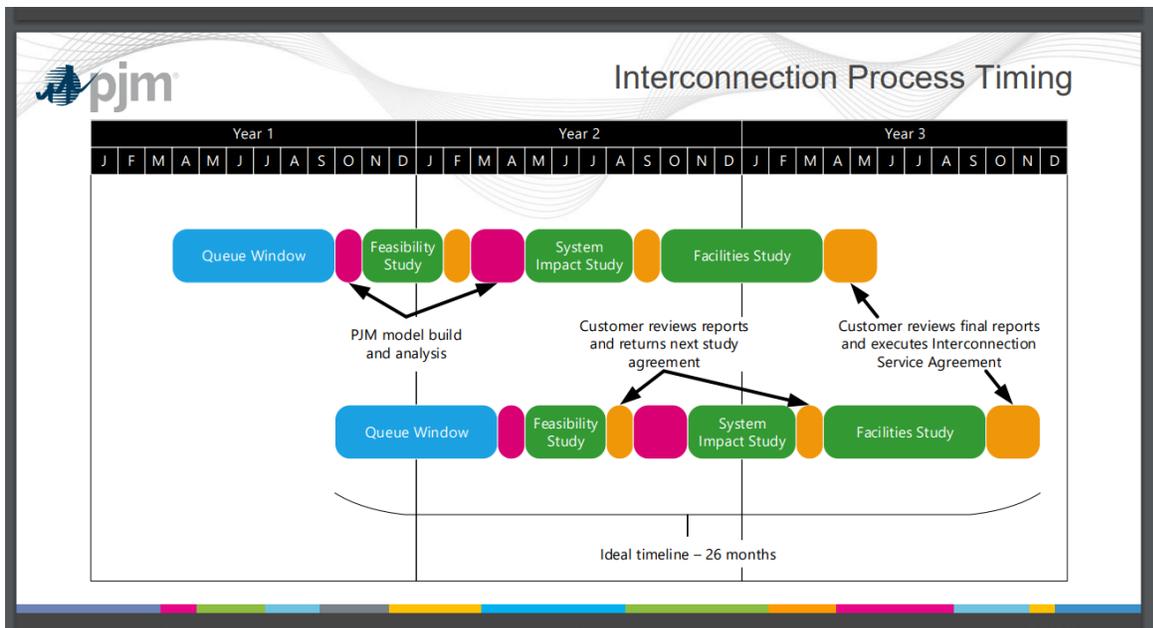
<sup>54</sup> SEA Report at 13; Ortego Report at 8-13; February 2023 Gabel Memo at 3.

<sup>55</sup> Ortego Report at 13.

<sup>56</sup> Motion at Exhibit 1

<sup>57</sup> SEA Report at 8.

<sup>58</sup> <https://www.pjm.com/-/media/committees-groups/task-forces/iprtf/2021/20210423/20210423-item-06-process-education.ashx>



The main unknown was thus not the likely impact of PJM’s interconnection process reform but only the timing of FERC’s approval. The months and years during which the backlog under PJM’s prior interconnection process grew preclude CEP’s claim that “developers had no way of knowing” that their projects could be delayed by multiple years.<sup>59</sup> Developers may not have known exactly how long the delay would be; but they certainly knew that a delay was inevitable and, moreover, knew that the TI Program provided one year to reach PTO and did not provide for extensions.

In the course of making its argument on the extent of developers’ awareness of the PJM queue delays, CEP took the opportunity to criticize the Interim Subsection (t) Program that the Board created within the ADI Program.<sup>60</sup> As that program was not the subject of the August 2022 Order, and the Board did not rely on its existence as support for its ruling, CEP’s comments are outside the scope of this matter and will not be addressed.

Lastly, CEP critiqued the August 2022 Order on the ground that it does not provide the additional “commercial certainty” that the Board envisioned. Again, CEP mischaracterized the extent of the relief the Board sought to provide. As noted above, with this purposely limited extension the Board provided “additional commercial certainty for projects that are ready to move forward and deliver clean energy to New Jersey customers quickly[.]”<sup>61</sup>

<sup>59</sup> Motion at Par. 2(d).

<sup>60</sup> Motion at Par. 35.

<sup>61</sup> August 2022 Order at 7 (emphasis added).

The Board did not offer the same certainty to projects that were not ready to do so. In this connection, Staff notes that five of CEP's Subsection (t) applications were filed on August 27, 2021, the last day of the TI Program, with another five filed or amended within a few weeks of that date.<sup>62</sup> Projects that are not able to achieve PTO within the extended timeframes of the August 2022 Order, and/or that are more than three years away from commercial operation, were appropriately slotted into the CSI Program.

Movant objected that the CSI Program was not yet accepting projects as of the date of the August 2022 Order or of the Motion. However, as noted above, the CSI Program opened to new registrations on December 7, 2022. It includes a tranche for projects located on contaminated sites – that is, it includes a tranche for precisely the class of projects at issue in this matter. Thus, the Board was correct in referring to the CSI Program projects that cannot meet the TI Program deadlines despite multiple extensions.

CEP also asserted that the Board should have granted at least a two year extension because “[t]he Order acknowledges that the typical PJM process is delayed by at least two (2) years.” This statement is yet another mischaracterization of the August 2022 Order.<sup>63</sup> What the Order acknowledges is “PJM’s decision to defer action on new interconnection applications by at least two years.”<sup>64</sup> As Movant has documented in multiple filings, the projects impacted by the August 2022 Order were not “new” for purposes of the PJM filing – they were filed before September 30, 2021 and in some cases before September 30, 2020.<sup>65</sup> CEP identified only one project that may be processed as a new interconnection request.<sup>66</sup>

In sum, with one exception, Movant’s criticisms of the August 2022 Order lack merit. While CEP has correctly identified one mischaracterization of the PJM interconnection reform timelines, it has failed to demonstrate that this mischaracterization impacted the basis for the Board’s determination to give two conditional six month extensions rather than the open-ended extension sought by CEP. Nor has Movant supported its claim that the Board confused a final interconnection agreement with the construction of the interconnection; that developers were unaware of the extent of the delay in the PJM interconnection process; or that the Board was bound to provide commercial certainty to projects that are not able to meet TI Program deadlines despite an additional 12 months of time.

Staff recommends that the Board clarify that projects filing interconnection requests with PJM between October 1, 2020 and September 30, 2021 will receive final interconnection agreements between September and November of 2026 and that the Board deny the motion.

## **DISCUSSION AND FINDINGS**

Pursuant to N.J.A.C. 14:1-8.6(a) a motion for rehearing, re-argument, or reconsideration of a proceeding may be filed by any party within 15 days after the effective date of any final decision or order by the Board. Pursuant to N.J.A.C. 14:1-8.6(a)(1) the moving party must allege “errors of law or fact” that were relied upon by the Board in rendering its decision. Reconsideration should

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<sup>62</sup> SEA Report at Attachment 1, Ortego Report at Exhibits 1-3.

<sup>63</sup> Motion at Par. 40.

<sup>64</sup> August 2022 Order at 5 (emphasis added).

<sup>65</sup> SEA Report at Attachment 1, Ortego Report at Exhibits 1-3.

<sup>66</sup> Id.

not be based on the movant's dissatisfaction with the decision, D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990) and should be based on a decision with a "palpably incorrect or irrational basis" or where it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Further, the moving party must show that the action was arbitrary, capricious, or unreasonable. D'Atria, 242 N.J. Super. at 401. Disagreement with a Board Order is not a basis to grant a motion for reconsideration. Id. In the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law, the Board will not modify an Order.<sup>67</sup>

Movant has identified an error of fact in the August 2022 Order, although this error does not have the significance with which Movant seeks to imbue it. In incorrectly stating that projects that filed interconnection requests between October 1, 2020 and September 30, 2021 would reach a final interconnection agreement between June and September 2025, the Board removed a year from the actual time required for those projects to have an executed interconnection agreement. However, that error does not alter the fact that the conditional 12 month extension was aimed only at those projects that were ready to complete and begin producing clean energy "quickly." Had the Board not made this error, its analysis and its ruling would have been the same. Thus, while Movant may disagree with the Board on how to weigh the competing ratepayer and solar development interests, disagreement on policy considerations does not constitute legal error.

As outlined by Staff above, and contrary to Movant's apparent belief, the August 2022 Order was not meant to give relief to all Subsection (t) projects. The Board sought to allow the subset of Subsection (t) projects "ready to move forward and deliver clean energy to New Jersey customers quickly" to benefit from the TI Program incentives. Thus, the Board's error in characterizing the end date of two PJM queues is not "fundamental," as alleged by Movant. Regardless of whether a Subsection (t) project executes its interconnection agreement between June and September of 2025 or between September and November of 2026, developers registered in the TI Program with the knowledge that it afforded them one year to complete and did not afford the opportunity for extensions.

CEP, however, argued for an extension at least long enough for all pending Subsection (t) projects to have executed interconnection agreements to be signed and for the necessary construction to occur following that.<sup>68</sup> In other words, CEP proposed that the Board take all the risk in the PJM queue process, shift it off of the developers, and place it squarely on ratepayers.

The Board declines to do so. As noted in the August 2022 Order, "[a]n indefinite commitment to the TI Program's Subsection (t) incentive levels would not be in the interest of the ratepayers."<sup>69</sup> The Board has a statutory mandate to safeguard that interest as well as to promote the solar industry. For that reason, the limited extension granted to accommodate the PJM queue delays is appropriate while an extension designed to guarantee TI Program incentive levels to all pending Subsection (t) projects would not be. Furthermore, as outlined by Staff, in its June 14, 2022 filing to FERC, PJM noted that the significant growth in the number of generation facilities seeking to

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<sup>67</sup> In re Pub. Serv. Elec. & Gas Co. for approval of its clean energy future-energy efficiency ("CEF-EE") program on a regulated basis, 2019 N.J. PUC LEXIS 363 at \*9 (Nov. 13, 2019); In re Michael Manis and Manis Lighting, LLC—New Jersey clean energy program renewable energy incentive program, 2015 N.J. PUC LEXIS 99 at \*7 (April 15, 2015).

<sup>68</sup> Motion at Par. 22.

<sup>69</sup> August 2022 Order at 6.

interconnect to the PJM grid, and the associated increasing backlog, dated as far back as 2018. Therefore, developers have known of this problem for approximately five years. Additionally, PJM issued its “Interconnection Process Reform Problem Statement” identifying the issues faced by PJM and stakeholders on April 8, 2021, months before the closure of the TI Program to new registrations.

Moreover, the Board did not mischaracterize the completion of the interconnection process. As noted above by Staff, the Board’s use of the phrase “complete the interconnection process” did not indicate any confusion between a final interconnection approval and physical construction of the interconnection. The Board is in agreement with Staff that in the context of the August 2022 Order, the Board’s use of this term clearly refers to achieving interconnection agreements, in particular the Interconnection Service Agreement, and not to completion of the interconnection process or achievement of commercial operations.

The Board has reviewed the Motion, the supplemental filings, and Staff’s recommendation. The Board **FINDS** that CEP has identified an error in the Board’s characterization of the PJM interconnection agreement timeline for Subsection (t) projects that submitted an interconnection request between October 1, 2020 and September 30, 2021. The Board now **CLARIFIES** that projects that filed interconnection requests between October 1, 2020 and September 30, 2021 will have final interconnection agreements between September 2026 and November 2026.

The Board **FINDS** that the misstatement of the PJM timeline had no material effect on the Board’s determination to grant two six-month extensions to pending Subsection (t) projects. The Board further **FINDS** that developers knew or should have known of the increasing delays in the PJM interconnection process for months or years before the close of the TI Program to new registrations. More specifically, the Board **FINDS** that PJM shared the proposed categorization and associated timelines in its “Interconnection Process Reform Problem Statement” with stakeholders before it filed with FERC and before the TI Program closed. The Board further **FINDS** that the August 2022 Order provided commercial certainty to those projects that were ready to move forward and deliver clean energy to New Jersey customers quickly, to move forward with the two six-month extensions it provided. The Board **FINDS** that projects that need more than 12 additional months to meet the TI Program deadlines are not appropriately registered in the TI Program.

In brief, Petitioner has demonstrated one error in the way the Board characterized the PJM interconnection queue reform process, but has failed to demonstrate that the Board materially relied upon that fact in determining the length of the extension to be granted. As previously noted, Petitioners’ disagreement with the Board’s decision does not constitute grounds for reconsideration.

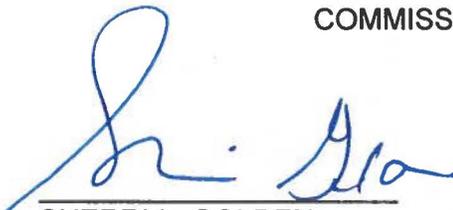
The Board **HEREBY DENIES** the Motion.

The effective date of this Order is May 3, 2023.

DATED: April 26, 2023

BOARD OF PUBLIC UTILITIES  
BY:

  
\_\_\_\_\_  
JOSEPH L. FIORDALISO  
PRESIDENT  
\_\_\_\_\_  
MARY-ANNA HOLDEN  
COMMISSIONER  
\_\_\_\_\_  
DIANNE SOLOMON  
COMMISSIONER  
\_\_\_\_\_  
DR. ZENON CHRISTODOULOU  
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 THE IMPLEMENTATION OF L. 2012, C. 24, THE SOLAR ACT OF 2012

IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C. 17

IN THE MATTER OF A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17 - ORDER GRANTING  
AN UP TO 12- MONTH EXTENSION FOR PROJECTS SEEKING AN INCENTIVE PURSUANT TO SUBSECTION  
(T) IN THE SOLAR TRANSITION INCENTIVE PROGRAM – MOTION FOR RECONSIDERATION

DOCKET NOS. EO12090832V, QO19010068, AND QO22090551

SERVICE LIST

**New Jersey Board of Public Utilities**

44 South Clinton Avenue, 1<sup>st</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Sherri L. Golden, Board Secretary  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Bob Brabston, Esq., Executive Director  
[robert.brabston@bpu.nj.gov](mailto:robert.brabston@bpu.nj.gov)

Stacy Peterson, Deputy Executive Director  
[stacy.peterson@bpu.nj.gov](mailto:stacy.peterson@bpu.nj.gov)

Taryn Boland, Chief of Staff  
[taryn.boland@bpu.nj.gov](mailto:taryn.boland@bpu.nj.gov)

General Counsel's Office

Michael Beck, General Counsel  
[michael.beck@bpu.nj.gov](mailto:michael.beck@bpu.nj.gov)

Carol Artale, Deputy General Counsel  
[carol.artale@bpu.nj.gov](mailto:carol.artale@bpu.nj.gov)

Rachel Boylan, Senior Counsel  
[rachel.boylan@bpu.nj.gov](mailto:rachel.boylan@bpu.nj.gov)

Division of Clean Energy

Kelly Mooij, Director  
[kelly.mooij@bpu.nj.gov](mailto:kelly.mooij@bpu.nj.gov)

Scott Hunter  
[Benjamin.hunter@bpu.nj.gov](mailto:Benjamin.hunter@bpu.nj.gov)

Ron Jackson  
[Ronald.Jackson@bpu.nj.gov](mailto:Ronald.Jackson@bpu.nj.gov)

Veronique Oomen  
[veronique.jackson@bpu.nj.gov](mailto:veronique.jackson@bpu.nj.gov)

Saadia Chaudhry  
[saadia.chaudhry@bpu.nj.gov](mailto:saadia.chaudhry@bpu.nj.gov)

Earl Thomas Pierce  
[earl.pierce@bpu.nj.gov](mailto:earl.pierce@bpu.nj.gov)

**New Jersey Division of Rate Counsel**

140 East Front Street, 4th Floor  
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director  
[blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)

Maura Caroselli, Esq.  
Manager of Gas & Clean Energy  
[mcaroselli@rpa.nj.gov](mailto:mcaroselli@rpa.nj.gov)

Sarah Steindel, Esq.  
Deputy Rate Counsel  
[ssteindel@rpa.nj.gov](mailto:ssteindel@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](mailto:mambrosio@trccompanies.com)

Thomas Kowalczyk  
Manager, Regulatory Compliance  
[tkowalczyk@trccompanies.com](mailto:tkowalczyk@trccompanies.com)

Tammy VanBlarcom  
Manager, SREC Registration Program  
[tvanmarcom@trccompanies.com](mailto:tvanmarcom@trccompanies.com)

**CEP Renewables, LLC**

Kenneth J. Sheehan, Esq.  
Genova Burns, LLC  
494 Broad Street  
Newark, NJ 07102  
[ksheehan@genovaburns.com](mailto:ksheehan@genovaburns.com)

**Aero Haven Solar, LLC**

John G. Valerie, Jr., Esq.  
Chiasa, Shahinian & Giantomasi, PC  
One Boland Drive  
West Orange, NJ 07052  
[jvaleri@csglaw.com](mailto:jvaleri@csglaw.com)

**Miller Bros.**

Steven S. Goldenberg, Esq.  
Giordano, Halleran & Ciesla

125 Half Mile Road, Suite 300  
Red Bank, NJ 07701  
[sgoldenberg@ghclaw.com](mailto:sgoldenberg@ghclaw.com)  
Publication on the NJ Clean Energy Program Renewable  
Energy listserv

**New Jersey Division of Law**

Public Utilities Section  
R.J. Hughes Justice Complex  
25 Market Street, P.O. Box 112  
Trenton, NJ 08625

Daren Eppley, Section Chief, DAG  
[daren.eppley@law.njoag.gov](mailto:daren.eppley@law.njoag.gov)

Pamela Owen, Assistant Section Chief, DAG  
[pamela.owen@law.njoag.gov](mailto:pamela.owen@law.njoag.gov)

Steven Chaplar, DAG  
[steven.chaplar@law.njoag.gov](mailto:steven.chaplar@law.njoag.gov)

**APPENDIX A**

<b>QUEUE WINDOW</b>	<b>TIME PERIOD</b>
AC2	11/1/2016 – 3/31/2017
AD1	4/1/2018 – 9/30/2018
AD2	10/1/2017 – 3/31/2018
AE1	4/1/2018 – 9/30/2018
AE2	10/1/2018 – 3/31/2019
AF1	4/1/2019 – 9/30/2019
AF2	10/1/2019 – 3/31/2020
AG1	4/1/2020 – 9/30/2020
AG2	10/1/2020 – 3/31/2021
AH1	4/1/2021 – 9/30/2021

Figure Description: Queue window time periods