



**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 PETITION OF NJR CLEAN )  
ENERGY VENTURES III CORPORATION FOR AN )  
ORDER FOR AN ADDITIONAL EXTENSION OF THE )  
EXPIRATION DATE OF THE CONDITIONAL )  
APPROVAL IN THE TRANSITION INCENTIVE )  
PROGRAM FOR TREC REGISTRATION NO. )  
NJSTRE1545322666 - AERO HAVEN LANDFILL )

ORDER

DOCKET NO. QO22040322

**Party of Record:**

**John A. Soltesz III, Esq.**, NJR Clean Energy Ventures III Corporation  
**Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:<sup>1</sup>

This Order concerns a petition by NJR Clean Energy Ventures III Corporation (“NJRCEV” or “Petitioner”) for extension of the deadline for conditional certification granted by the New Jersey Board of Public Utilities (“Board” or “BPU”) pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. NJRCEV seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the solar electric generation facility located at the Aero Haven Landfill in Evesham Township, Burlington County, New Jersey.

**BACKGROUND**

On July 23, 2012, the Solar Act was signed into law. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the Board to conduct proceedings to establish new standards and to develop new programs to implement the statute’s directives.

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<sup>1</sup> Commissioner Marian Abdou abstained from voting on this matter.

By Order dated October 10, 2012, the Board directed Board Staff (“Staff”) to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.<sup>2</sup>

The Solar Act – specifically, Subsection (t) – provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered “connected to the distribution system” [and] shall not require such designation by the board[.]

[N.J.S.A. 48:3-87(t).]

The Solar Act defines the terms “brownfield,” “area of historic fill,” and “properly closed sanitary landfill facility.” A “brownfield” is “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.” N.J.S.A. 48:3-51. “Historic fill” is “generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site . . . .” Id. A “properly closed sanitary landfill facility” means “a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection . . . .” Id.

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection (“NJDEP” or “Department”). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by then-Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

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<sup>2</sup> In re the Implementation of L. 2012, c. 24, the Solar Act of 2012; In re the Implementation of L.2012, c. 24, N.J.S.A 48:3-87(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System; In re the Implementation of L. 2012, c.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.<sup>3</sup> The certification process for projects seeking approval pursuant to Subsection (t) provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which NJDEP has determined no further remedial or protective action is necessary. The process incorporates the expertise of NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site.<sup>4</sup>

The January 24, 2013 Order stated that certification would be limited to those areas delineated by NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited, and NJDEP reviews this material in making its recommendation.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfill facilities was necessary to initiate the certification process and directed Staff to work with NJDEP to develop an application. Id. at 33.

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certificate ("SREC") program by no later than June 2021, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated that the Board close the SREC Registration Program ("SRP") once it determined that 5.1% of the kilowatt-hours sold in the state had been generated by solar electric power generators connected to the distribution system ("5.1% Milestone") or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.<sup>5</sup> Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

On December 6, 2019, the Board established the Transition Incentive ("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 TRECs for each

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<sup>3</sup> In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(U) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27, Order dated January 24, 2013 (January 24, 2013 Order).

<sup>4</sup> January 24, 2013 Order at 31–33.

<sup>5</sup> 51 N.J.R. 138(e) (Jan. 22, 2019).

megawatt-hour (“MWh”) of electricity produced.<sup>6</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>7</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”).

At a Special Agenda Meeting held on April 27, 2020, the Board approved a TI rule proposal<sup>8</sup> that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.<sup>9</sup> On September 10, 2020, the Board adopted the rule proposal, and the rules became effective on October 5, 2020 when published in the New Jersey Register.<sup>10</sup> The rule provides that the transition incentive “shall be available to projects that submitted a complete SREC Registration Program registration or a complete Subsection (t) application after October 29, 2018” (emphasis added) but that have not received a Permission to Operate (“PTO”) at the time that the 5.1% Milestone is achieved.<sup>11</sup> The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s implementing orders, and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.<sup>12</sup> Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.<sup>13</sup>

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<sup>6</sup> 52. N.J.R. 1850(a) (“TI Rules”).

<sup>7</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>8</sup> In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253 (“TI Rule Proposal”).

<sup>9</sup> 52 N.J.R. 1048(a) (May 18, 2020).

<sup>10</sup> 52. N.J.R. 1850(a) (October 5, 2020).

<sup>11</sup> N.J.A.C. 14:8-10.4(a).

<sup>12</sup> N.J.A.C. 14:8-10.4(h).

<sup>13</sup> N.J.A.C. 14:8-10.4(i).

On July 15, 2020, the Board considered the request of two (2) solar developers, including the original developer of the Aero Haven landfill project, to have their projects deemed eligible for the TI Program.<sup>14</sup> The three (3) projects which were the subject of the Order had previously received conditional certification in the SRP but had not commenced commercial operations.

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.<sup>15</sup> The Board found that the solar industry was, at that time, adjusting to significant changes caused by both the COVID-19 pandemic and the changes in solar incentive programs and that, under those circumstances, waiving the Board's rules to permit additional time for project completion appropriately balanced the needs of the solar industry with the cost to the ratepayers.<sup>16</sup> In the July 2020 Order, the Board forecasted that it may address in a future order extension requests from projects registering in TI after October 30, 2020, considering the public health crisis and the development of the Successor Solar program.<sup>17</sup>

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>18</sup> Nearly a year following its July 2020 Order, the Board again found that the solar industry was still adjusting to the changes resulting from the Clean Energy Act and the impact of the COVID-19 crisis.<sup>19</sup> The Board additionally acknowledged the regulatory uncertainty resulting from the pending launch of the Successor Program and noted that the general purpose of the TI Rules and the timelines contained therein is to provide a smooth transition to the Successor Program.<sup>20</sup> With the creation of the Successor Program still pending, the Board found that waiving the existing TI development timelines would both support the solar industry and tend to reduce costs to ratepayers.<sup>21</sup>

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<sup>14</sup> In re the Petition Of Aero Haven Solar LLC for a Determination That the Company's Application Pursuant to Subsection (t) of the Solar Act of 2012 Is Eligible to Participate In the Transition Incentive Program, BPU Docket No. QO20060398, Order dated July 15, 2020.

<sup>15</sup> 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 & QO20070484, Order dated July 29, 2020 (“July 2020 Order”).

<sup>16</sup> Id. at 3-4.

<sup>17</sup> Id. at 5.

<sup>18</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”).

<sup>19</sup> Id. at 6.

<sup>20</sup> Id.

<sup>21</sup> Id.

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 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>22</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 (2) components: the Administratively Determined Incentive (“ADI”) Program, which provides incentives for residential projects, Community Solar projects, non-residential net metered projects sized at five (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 five (5) MW in capacity.

On August 17, 2022, the Board provided the opportunity for a conditional extension of the TI deadline to Subsection (t) projects registered in the TI Program or with applications pending review with NJDEP.<sup>23</sup> The Board waived its rules and modified prior orders to allow up to a 12-month extension to all Subsection (t) solar projects with current registrations as well as those that receive conditional certification by the Board in the future, provided these projects can meet specified criteria.<sup>24</sup> In addition, the Board granted the same relief to Subsection (t) applicants with applications pending review at the Board or NJDEP that received conditional certification. Such applicants thus received an automatic additional six (6) months to the registration expiration date that would otherwise be set in the Board order granting the project’s conditional certification pursuant to N.J.A.C. 14:8-10.4(e) or (f).

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 five (5) MW, as well as to eligible grid supply solar installations in combination with energy storage. Among its five (5) tranches 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.

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI rules; the statutory language exempts such projects from the need for further Board designation as “connected to the distribution system” but does not remove any of the Board’s oversight authority. For example, projects seeking TREC eligibility must comply with the TI Rules at N.J.A.C. 14:8-10 and applicable Board orders concerning registration with the TI Program.<sup>25</sup> The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

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<sup>22</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>23</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 (“TI Extension Order”).

<sup>24</sup> As Aero Haven’s registration expired several months previously, it did not receive this extension.

<sup>25</sup> December 2019 Order at 33.

## **PETITION**

By Order dated November 19, 2018, the Board provided conditional certification to the 3.38 MWdc Aero Haven Landfill project (“Project”).<sup>26</sup> The Board directed the applicant, Aero Haven Solar LLC (“AHS”), to submit an initial SREC registration package within 14 days of the effective date of the Order and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-2.4(c)(i). The Project acceptance letter issued on February 18, 2019 provided 24 months to complete construction and submit a Final As-Built Packet. The applicant was advised to complete construction and submit a Final As-Built Packet on or before the Project expiration date. The applicant was further advised that in the event that these conditions could not be met an opportunity existed to submit an extension request before the Project expiration date.

By Order dated July 15, 2020, the Board approved the transfer of the Aero Haven project from SRP to the TI Program and granted an extension of time to achieve commercial operations to October 18, 2021. Subsequently, the Project benefitted from the blanket six-month extension granted on June 24, 2021 to receive a new expiration date of April 18, 2022.

Following issuance of the June 2021 Order discussed above, Petitioner purchased and acquired all rights and assets associated with the Project from AHS and retained CS Energy, LLC (“CS Energy”) as the engineering, procurement, and construction contractor for the Project. In the course of its work on the Project, Petitioner and CS Energy determined that portions of the Project would need to be redesigned and reengineered.

On April 29, 2022, NJRCEV filed a petition for a third extension in the TI Program, seeking an extension until three (3) months after all agency approvals had been received but no later than November 30, 2022.<sup>27</sup> Petitioner asserted that the extension was warranted because construction of the Project was substantially complete. On March 24, 2023, during the pendency of the petition, the project received PTO. According to Petitioner, completion was delayed by the need to seek amended governmental authorizations after the Project was reconfigured “largely in response to supply chain disruptions.” Petition at Par. 2.

## **STAFF RECOMMENDATIONS**

Staff has thoroughly reviewed the Petition and the history of this Project through the Subsection (t) process, registration in the SRP, its transfer to the TI Program and its latest request for extension. Staff notes that the interim nature of the TI Program has been consistently communicated since the TI Program was first proposed in 2019. The requirement for projects to complete construction, commence commercial operations, and submit post-construction certification materials within one year is also embodied in the TI Rules. These rules do not provide for extensions, and that omission was intentional. The Board has denied requests for extensions in the TI Program that were premised on supply chain disruptions. Staff does not support the Petitioner’s request for extension of the Project completion requirements for this project to be eligible for the TI program.

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<sup>26</sup> <https://nj.gov/bpu/bpu/pdf/boardorders/2018/20181120/11-19-18-8B.pdf>

<sup>27</sup> Petitioner ultimately received PTO on March 24, 2023 and submitted its post-construction certification package on April 19, 2023.

Petitioner transferred into the TI Program with the knowledge that this program provided one (1) year to achieve commercial operation and did not provide for any automatic extensions. The Board did grant blanket extensions specifically related to COVID and supply chain delays while the SuSI Program was under development. The last such extension occurred two (2) years ago. In this context, Staff views this request for extension of the TI Program deadlines as unjustified. The Board chose to create an opportunity for a conditional extension in the TI Program where certain specific criteria are met.<sup>28</sup> The Board expressed its concern that in the unique circumstances occasioned by the end of the TI Program, solar developers that enter into interconnection agreements with the explicit understanding that interconnection upgrades would be complete prior to a project's TI Program expiration not be penalized for delays in the electric distribution company's ("EDC's") construction of upgrades that were funded in good faith by the project developer.. To qualify for the Gibbstown Waiver, a project must demonstrate that it is electrically and mechanically complete, have all necessary permits and inspections from all authorities having jurisdiction over the project, and project construction was proceeding based on a representation from the EDC that any necessary interconnection upgrades would be completed prior to the project's TI Program expiration date but that despite the developer's best efforts, the estimated upgrade completion date was unilaterally extended by the EDC. Additionally petitioners must substantiate if the project is waiting for the completion of necessary interconnection upgrades by the EDC, evidence that project construction was proceeding based on an estimate from the relevant EDC that the interconnection upgrades would be completed by the project's TI Program deadline, evidence demonstrating upgrades were fully funded by the project developer, and evidence of communication from EDC advising that the interconnection upgrades were subsequently delayed past the timeline identified at the time or after the interconnection agreement was agreed to. None of those criteria are met here. Petitioner's project was not electrically and mechanically complete at the time its most recent expiration date passed, nor had it received all necessary permits and inspections. Neither was Petitioner confronted with a change in the completion schedule due to interconnection requirements imposed by the EDC. As Petitioner acknowledges, its inability to meet the April 18, 2022 deadline for Project completion was a result of its own decision to redesign and reengineer the project. Petitioner attributed this choice to supply chain disruptions. However, Petitioner made a subsequent choice to seek additional time from the Board rather than to meet its existing expiration date with a smaller project. Petitioner advised that after being informed by ACE that all generating equipment, including all equipment associated with the reconfigured portion of the Project, must be installed in order for the Project to receive PTO, Petitioner made the decision to seek additional time rather than withdraw capacity. Petition at Par. 19.

Petitioner asserted that its redesign decisions were necessitated by supply chain delays for solar modules. Petition at Par. 13. Staff remains reluctant to recommend the Board provide extensions because of supply chain issues, particularly when the Project has already received two (2) extensions to account for such delays. It received an initial extension equal to that granted in the first blanket extension and it has also benefitted from the second blanket extension. Conditionally certified in November 2018, its most recent extension ended on April 18, 2022, meaning that the Board allowed it approximately three and a half years to achieve commercial operations and qualify for the TI incentive. Petitioner asserted that it has consistent efforts to hasten delivery of

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<sup>28</sup> In re a New Jersey Solar Transition Pursuant to P.L. 2018, C.17 – Order Addressing 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 Nos. QO19010068 & QO22030156, Order dated June 8, 2022 ("June 2022 Order").

the needed materials. However, the persistent inability of the Project to meet a twice-extended deadline indicates that its timeline was not appropriate for the TI Program.

Staff recommends that the Board deny the Petitioner's request for an extension of the deadlines in the TI Program. Staff recommends that the Petitioner's Project be authorized to participate in the CSI program. Staff further recommends that if Petitioner is awarded a bid in the CSI program, all energy generated since the date of its PTO be eligible as the basis for creation of Solar Renewable Energy Certificate – IIs ("SREC-IIs").

## **DISCUSSION AND FINDINGS**

The Board has long supported New Jersey's solar industry. It endeavors at all times to further the industry's continued growth while at the same time minimizing the costs to ratepayers to the greatest extent possible. In implementing the orderly closure of the SRP and the establishment of a permanent successor solar program, the Board has been mindful of developers' need to have uninterrupted access to solar incentives in order both to ensure the health of the industry and to achieve the State's vital clean energy goals. Thus, the TI Program opened on the day the SRP was closed, and remained open to new registrations while the Board considered the development of the Successor Program. Similarly, when the Board closed the TI Program to new registrants on August 27, 2021, it immediately opened registration to the ADI Program on August 28, 2021, again ensuring that uninterrupted access to solar incentives.

The Board is also cognizant of the Legislature's directives to the Board in both the Clean Energy Act and the Solar Act of 2021. In the Clean Energy Act, at the same time that the Legislature directed the Board to provide an orderly transition from the SREC program to a new program, it also instructed the Board to continually reduce the cost of achieving the State's solar energy goals. N.J.S.A. 48:3-87(d). The Board pursued a public and iterative process for over a year to implement these directives. Substantial stakeholder input was obtained, through a variety of in-person meetings and written comments before the Board implemented these goals, in part, through the creation of the TI Program on December 6, 2019 and the adoption of the TI Rules. Similarly, in the Solar Act of 2021, the Legislature again declared it critical that the State promote investment in new solar electric power generation facilities "with the least cost and the greatest benefit to consumers . . . ." N.J.S.A. 48:3-114. The Board continues to find the policies enumerated in the Clean Energy Act and the Solar Act of 2021 to be instructive.

As a part of pursuing these goals, the TI Rules and the timelines contained therein were designed to provide a smooth transition to the Successor Program for a limited time. The TI Program functioned as a bridge between the SRP and the now-open SuSI Program. N.J.A.C. 14:8-10.1. While the Board granted an extension of up to twelve months to Subsection (t) projects with an active registration, Petitioner is not eligible for that extension since its registration had expired prior to the effective date of the TI Extension Order. Petitioner's request to extend the TI Program deadlines for their Project necessitates a waiver of these rules and their clear and unambiguous deadlines.

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 Board's rules go on to explain that "[t]he Board shall, in accordance with the general purpose and intent of its rules, waive section(s) of its rules 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. The Board must balance Petitioner’s interests as a solar developer with the public’s interest in timely completion of projects, the ratepayers’ interest in controlling the cost of solar subsidies, and the State’s interest in ensuring that incentive levels appropriately reflect the time period during which a project reaches commercial operation.

Petitioner asserts that while its redesign decisions were the proximate cause of its failure to meet the TI Program timeline, those decisions were the result of supply chain delays for solar modules. While regrettable, such delays do not demonstrate specific obstacles both unforeseeable at the time of entrance in the TI Program and wholly beyond the control of the Petitioner. The Board acknowledges that supply chain delays have been a real barrier for solar installers since the onset of the global pandemic in 2020, but such delays were well known at the time Petitioner purchased the project in mid-2021. Indeed, Petitioner links its decision to purchase the Project to the issuance of the June 2021 Order, which granted a six-month extension due in part to the lingering impact of the global pandemic. Petition at Par. 13.

The Board has elsewhere explained that the specific rationale and context of the extension granted in the June 2021 Order do not obtain to extensions sought since that time.<sup>29</sup> In granting the previous extensions, as summarized above, the Board looked to the specific circumstances faced by the TI Program registrants at the time of those orders, in particular the solar industry’s ongoing adjustment to changes brought about by the Clean Energy Act and the COVID-19 crisis.<sup>30</sup> The Board also took into account the uncertainty that still surrounded the establishment of a successor program at that time. However, the ADI Program opened in August 2021 and the CSI Program in December 2022; the first solicitation in that program recently concluded. With the availability of the SuSI Program, designed to lower the burden on ratepayers, the Board declines to make the higher TI Program incentive available to the Project.

The Board acknowledges Petitioner’s assertions that it has made sustained efforts to overcome the delays in receipt of its materials. While commendable, the Board **FINDS** these efforts do not warrant a further extension to the TI Program timelines and **DENIES** the petition. The CSI Program opened to new registrations on December 7, 2022. The CSI Program includes a tranche for projects located on contaminated sites – that is, it includes a tranche intended specifically for projects like the one at issue here. The Board encourages Petitioner to participate in the CSI Program and **ORDERS** that if Petitioner is awarded a bid, energy generated by the Project from the date of its PTO shall be eligible to be the basis for the creation of SREC-IIs.

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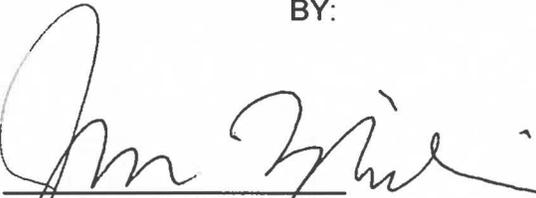
<sup>29</sup> In re A New Jersey Solar Transition Pursuant To P.L. 2018, C.17, BPU Dkt. No. QO19010068, Order dated November 9, 2022 at 24, 44.

<sup>30</sup> See generally June 2021 Order.

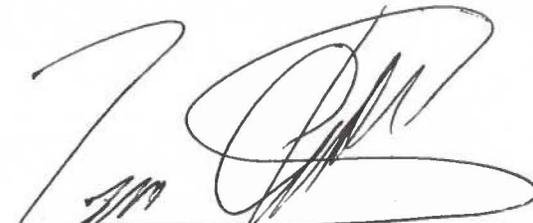
This Order shall be effective on July 6, 2023.

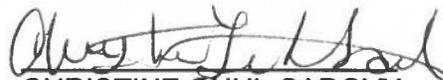
DATED: June 29, 2023

BOARD OF PUBLIC UTILITIES  
BY:

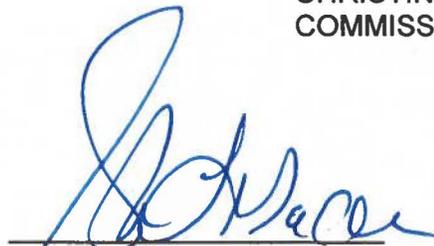
  
JOSEPH L. FIORDALISO  
PRESIDENT

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DR. ZENON CHRISTODOULOU  
COMMISSIONER

  
CHRISTINE GUHL-SADOVY  
COMMISSIONER

ATTEST:

  
SHERRIL L. GOLDEN  
SECRETARY

I HEREBY CERTIFY that the within  
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IN THE MATTER OF THE PETITION OF NJR CLEAN ENERGY VENTURES III CORPORATION FOR AN ORDER FOR AN ADDITIONAL EXTENSION OF THE EXPIRATION DATE OF THE CONDITIONAL APPROVAL IN THE TRANSITION INCENTIVE PROGRAM FOR TREC REGISTRATION NO. NJSTRE1545322666 - Aero Haven Landfill

DOCKET QO22040322

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