



Agenda Date: 9/25/24
Agenda Item: 8G

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE PETITION OF ALTUS POWER)	ORDER ON MOTION FOR
FOR EXTENSION OF THE SOLAR TRANSITION)	RECONSIDERATION
INCENTIVE PROGRAM COMMERCIAL OPERATION)	
DEADLINE FOR MECHANICALLY COMPLETE)	DOCKET NO. QW23100746
COMMUNITY SOLAR PY2 PROJECTS)	
)	
IN THE MATTER OF THE PETITION OF ALTUS POWER)	
FOR EXTENSION OF THE SOLAR TRANSITION)	
INCENTIVE PROGRAM COMMERCIAL OPERATION)	
DEADLINE FOR CERTAIN MECHANICALLY COMPLETE)	
COMMUNITY SOLAR PY2 PROJECTS)	DOCKET NO. QW23110858

Parties of Record:

Howard Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, LLP, on behalf of Altus Power, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "NJBPU") considers the motions for reconsideration filed on March 4 and March 5, 2024 by Altus Power, LLC, ("Altus Power" or "Movant") of the Board's Order dated February 14, 2024, denying an extension of time within the Transition Incentive ("TI") Program.¹

BACKGROUND

On May 23, 2018, the Clean Energy Act of 2018 (L. 2018, c. 17) ("CEA") was signed into law and became effective immediately.² The CEA directed the Board to adopt rules and regulations to close the Solar Renewable Energy Certificate ("SREC") Registration Program ("SREC Program") 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 ("5.1% Milestone"). The SREC Program was replaced in two (2) stages. First, on December 6, 2019, the Board established the

¹ In re a Community Solar Energy Pilot Program, BPU Docket No. QO18060646 et al., Order dated February 14, 2024.

² L. 2018, c. 17.

TI Program to provide a bridge between the legacy SREC Program and a to-be-developed Successor Incentive program. TI Program incentives are delivered based on megawatt hours ("MWh") of electricity produced and are tailored to specific project types through the use of factors. Community solar projects receive a factor of 0.85 and thus \$129.20/MWh. The 5.1% Milestone was found to have occurred on April 30, 2020. The TI Program portal opened to new project registrations on May 1, 2020, and remained open to new registrations until the establishment of a registration program for the new Successor Program.³ In the second phase, the Board developed and launched the Successor Solar Incentive ("SuSI") Program, based on extensive stakeholder engagement conducted by Board Staff ("Staff") and the Solar Act of 2021 (L. 2021, c.169), signed by Governor Murphy on July 9, 2021. On July 28, 2021, the Board announced the closure of the TI Program and the opening of the SuSI Program. The TI Program closed on August 27, 2021, and the SuSI Program opened on August 28, 2021. The SuSI Program is comprised of two (2) sub-programs: 1) the Administratively Determined Incentive ("ADI") Program for net metered residential facilities, net metered non-residential facilities of five (5) MW or less, and community solar facilities; and 2) the Competitive Solar Incentive ("CSI") Program for grid supply solar projects (i.e., those selling into the wholesale markets) and net metered non-residential projects above five (5) MWdc.

The CEA also directed the Board to adopt rules and regulations establishing a Pilot Program for Community Solar in New Jersey. The Board established the Community Solar Energy Pilot Program ("Pilot Program") through rules published in the New Jersey Register on February 19, 2019 ("Pilot Program Rules").⁴ The Pilot Program enables New Jersey electric utility customers to participate in a solar energy project that may be remotely located from their properties and receive a credit on their utility bills. Community solar therefore enables access to clean energy generation for utility customers unable to place solar generation directly on their own properties. The Board particularly emphasized its interest in ensuring that low- to moderate income ("LMI") customers are able to access community solar and that the Pilot Program did not compromise the preservation of open space or protected lands in New Jersey. The Pilot Program was designed to provide the necessary experience and to lay the groundwork for the development and implementation of a full-scale community solar energy program.

Community solar projects were selected by the Board for participation in the Pilot Program via a competitive solicitation process, as directed by N.J.A.C. 14:8-9.3(c). The Pilot Program ran for two years, Program Year One ("PY1") and Program Year Two ("PY2"). During the second solicitation, the Board received 412 applications and selected 105 applications on October 28, 2021, representing approximately 165 megawatts ("MW").⁵ These projects initially had a deadline to become fully operational within eighteen (18) months (i.e., May 4, 2023), with the possibility of extensions for projects that demonstrated substantial progress towards completion. On August 17, 2022, the Board issued an Order extending the project completion deadlines for the PY2 projects to November 4, 2023.⁶

In the same order making the PY2 awards, the Board also waived its rules authorizing capacity for a third program year and directed Staff to conduct stakeholder proceedings and recommend

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

⁴ 51 N.J.R. 232(a).

⁵ In re the Community Solar Energy Pilot Program Year 2 Application Form and Process – Application Awards, BPU Docket No. QO20080556, Order dated October 28, 2021.

⁶ In re the Community Solar Energy Program, BPU Docket No. QO18060646 et al., Order dated August 17, 2022.

establishment of rules for a permanent program. On August 16, 2023, the Board established the permanent Community Solar Energy Program (“CSEP”).⁷ The CSEP permits projects that were conditionally approved to participate in the Pilot Program, but did not reach operation in the allotted time, to be allowed to submit a new application for the CSEP without counting against, or being subject to, otherwise applicable capacity limits. Projects conditionally approved in the Pilot Program seeking to roll over into the CSEP were required to meet all applicable requirements of participation in the CSEP, other than the capacity limits. Such projects must also commit to a guaranteed bill credit discount consistent with that indicated in their Pilot Program application in order to be exempt from capacity limits.

By Order dated June 8, 2022, the Board granted a conditional extension in the TI Program to ESNJ-KEY-GIBBSTOWN, LLC, subject to a showing that certain specified conditions applied.⁸ In the Gibbstown Order, the Board found good cause to grant a conditional extension to the petitioner’s project because the evidence provided proved the project was electrically and mechanically complete, secured all necessary permits, and was prevented from meeting its TI Program deadline by a unilateral change to the timeline for interconnection upgrades, made by the electric distribution company (“EDC”) and outside of the control of the TI Program registrant. In the same Order, the Board further established a process by which petitioners similarly situated may apply for extensions to their TI Program registration, subject to their making a similar showing.

On August 17, 2022, the Board addressed multiple petitions for extension in PY1, denying six (6) of those petitions and granting three (3). The Board found that the projects that received extensions had shown significant progress toward construction and completion and were requesting an extension of six (6) months or less. The Board denied extensions to those projects that were not near commercial operation and were requesting an extension of a year or longer. In the same Order, the Board granted a blanket six (6)-month extension to the TI Program deadline for all PY2 projects.⁹

On October 25, 2023, the Board granted extensions to three (3) PY2 projects.¹⁰ Noting that each petitioner had demonstrated that the sole cause of the delay encountered was an interconnection issue that was wholly outside the petitioner’s control, the Board found that the months-long delays described constituted good cause to waive its rules.

On October 26, 2023, Altus Power filed two (2) petitions seeking extensions in the TI Program for

⁷ In re the Community Solar Energy Program: Order Launching the Community Solar Energy Program, BPU Docket No. QO22030153, Order dated August 16, 2023.

⁸ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – In re 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 (“Gibbstown Order”).

⁹ In re the Community Solar Energy Program, BPU Docket No. QO18060646 et al., Order dated August 17, 2022 (“August 2022 Order”).

¹⁰ In re the Community Solar Energy Program, BPU Docket No. QO18060646 et al., Order dated October 25, 2023 (“October 2023 Order”).

twenty-seven (27) projects whose registrations expired on November 4, 2023.¹¹ The petitions requested that the Board grant an extension to the conditional acceptance expiration date of the projects' registration in the TI Program for the amount of time needed to receive Permission to Operate ("PTO") and submit the associated documents for each project.¹² Altus Power filed a supplement to the petitions on January 5, 2024.

In its petitions, Altus Power stated that the EDC's alleged delay in processing the PTOs for Petitioner's projects was completely outside Altus Power's control and thus analogous to the interconnection upgrades that the Board found to justify an extension to the TI Program deadlines in the Gibbstown Order. Altus Power emphasized that it had sent follow-up communications regarding the status of their PTO but had no control over when it might expect to receive it. Altus Power contended that because only the EDC may issue PTO, the delay of this issuance beyond the November 4, 2023 deadline was the fault of the EDC, and therefore it would be fair and reasonable for the Board to provide an extension.

Altus Power filed public and confidential versions of supplemental exhibits to its petitions on January 5, 2024 ("Supplemental Exhibits"). The Supplemental Exhibits consisted of charts with columns for items such as "Photos" and "Site Map" and for steps in the installation process such as "PTO Received" and "Final As-Built Complete," for docket number QW23110858 and Final As-Built Materials Uploaded in Portal for docket number QW23100746. In the public versions, only the address and program number for each facility were revealed; in the confidential versions, checkmarks indicated which items or milestones had been reached, with the exception of the columns headed "PTO Received," in which a date was provided for those projects that had reached that milestone.

On February 14, 2024, the Board denied Altus Power's petitions.¹³ The Board did not agree with the rationale offered by Altus Power and was unconvinced by the attempts to analogize this matter to the facts discussed in the Gibbstown Order. The Board noted that Altus Power did not provide the date on which construction was completed for any projects within their petitions or supplemental filings, only providing a check mark to indicate completion of a step within the process. Thus, the Board found that Altus Power had not supported its claim of a delay in receipt of PTO.

MOTIONS FOR RECONSIDERATION

On March 4, 2024, Altus Power submitted a motion for reconsideration for two of the projects in Docket QW23100746 ("March 4 Motion").¹⁴ On March 5, 2024, the Movant submitted a second

¹¹ Nine (9) projects developed by Altus were docketed at QW23100746; 19 projects accepted in November 2021 and developed by Brightcore Energy were docketed at QW23110858.

¹² For the Board's incentive programs, project documents are submitted by uploading them to the web portal for the relevant program. Thus "submitting" documents is used interchangeably with "uploading to the program portal."

¹³ In re a Community Solar Energy Pilot Program, BPU Docket No. QO18060646 et al., Order dated February 14, 2024 ("February 14 Order").

¹⁴ 100 Middlesex Boulevard, NJSTRE1548042140 ("Middlesex Project"); 560 Jefferson Avenue, NJSTRE1547990289 ("Jefferson Project").

motion for reconsideration for eight more projects in Docket QW23110858 ("March 5 Motion").¹⁵ On March 6, 2024, an amendment to each motion was filed, adding three (3) projects to each motion for a total of sixteen (16) projects ("Subject Projects").^{16,17} In each of its filings, Movant alleged errors in law and fact, failure to consider probative evidence, and a ruling unjust to the Subject Projects.

March 4 Motion and March 5 Motion

Altus Power stated that the Subject Projects covered in these motions were mechanically complete, were fully operational, and had received PTO prior to the November 4, 2023 TI Program deadline.¹⁸ Noting that the February 14 Order had stated that Movants' Subject Projects did not qualify for an extension pursuant to the criteria of the Gibbstown Order, Movant argued that the Board should instead have evaluated its extension request under the August 2022 Order. According to Altus Power, these two (2) projects needed additional time only to submit their post-construction certification packages; thus, argued Movant, they are similarly situated to one (1) of the projects that was granted an extension in the August 17 Order. Movant argues that denying the same relief to its Subject Projects would be arbitrary and capricious. Altus Power also claimed that the TI Program portal had not permitted Altus Power to submit any documentation because its petition was pending before the Board. Although it acknowledged the availability of the ADI Program, Movant claimed that the significant reduction in incentives available through that program would constitute a "penalty" for its projects. Altus Power therefore alleged good cause to waive the Board's TI rules and requested reconsideration of the Board's denial and a grant of their extensions.

March 6 Amendment to March 4 Motion and March 6 Amendment to March 5 Motion

¹⁵ 2 Executive Drive, NJSTRE15480461461

2 Commerce Drive, NJSTRE1548036249

2 Twosome Drive, Application No. NJSTRE1548061478

40 Twosome Drive, Application No. NJSTRE1548061583

41 Twosome Drive, Application No. NJSTRE1548061594

201 Commerce Drive, NJSTRE1548061022

202 Commerce Drive, NJSTRE1548061045

1247 N. Church Street, NJSTRE1548061070

¹⁶ 1400 Imperial Way, NJSTRE1547975373

283 Prospect Plains Road, NJSTRE1547974373

100 Performance Drive, NJSTRE154797990386

¹⁷ 101 Commerce Drive, NJSTRE1548060360

102 Commerce Drive, NJSTRE1548060387

225 Executive Drive, NJSTRE1548061469

¹⁸ With respect to the Middlesex Project, the Board notes that Movant's claim is inaccurate. The PTO is dated November 6, 2023. Movant's claim that it had received PTO by November 4, 2023 appears to arise from a statement in the PTO that it was based on documents "submitted to" the EDC on November 4, 2023. O'Neill Certification at Exhibit 5. This statement, however, does not operate to change the actual date of the PTO, which issued two (2) days later after the program deadline.

The Movant stated that the six (6) projects included by the two (2) March 6 amendments were mechanically complete by the November 4, 2023 deadline and were fully operational as of the date of the amendments. According to Movant's documentation in the amendment to the March 4 Motion, two (2) of the Subject Projects¹⁹ received PTO prior to the February 14 Order and one (1)²⁰ two (2) weeks after that Order.²¹ The Movant argued that the Board had erred in applying the Gibbstown standard to these three (3) projects. These three (3) projects²² had not received PTO prior to the November 4, 2023 deadline, but Movant argued that since two (2) of the three (3)²³ had PTO by the time of the February 14 Order, they should receive the same extensions the Board had granted to PY1 projects that were very close to completion in the August 2022 Order.

Movant filed six (6) supporting certifications for the above motions: a supporting certification for the March 4 Motion ("O'Neill Certification"), two (2) supporting certifications for the March 5 Motion ("Second O'Neill Certification" and "Brightcore Certification"), a supporting certification for the Amendment to the March 4 Motion ("Supplemental O'Neill Certification"), and two (2) supporting certifications for the Amendment to the March 5 Motion ("Second Brightcore Certification" and "Second Supplemental O'Neill Certification").

¹⁹ 1400 Imperial Way, NJSTRE1547975373

283 Prospect Plains Road, NJSTRE1547974373

²⁰ 100 Performance Drive, NJSTRE154797990386

²¹ PTO for 1400 Imperial Project issued on 12/6/23; PTO for 283 Prospect Plains Project issued on 12/28/23; and PTO for the 100 Performance Project issued on 2/27/24. Second O'Neill Certification at pars. 7, 12, 15.

²² 1400 Imperial Way, NJSTRE1547975373

283 Prospect Plains Road, NJSTRE1547974373

100 Performance Drive, NJSTRE154797990386

²³ 1400 Imperial Way, NJSTRE1547975373

283 Prospect Plains Road, NJSTRE1547974373

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 fifteen (15) days after the effective date of any final decision or order by the Board. The moving party must allege “errors of law or fact” that were relied upon by the Board in rendering its decision. N.J.A.C. 14:1-8.6(a)(1). Reconsideration should 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). Rather, it 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. Ibid. 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.²⁴

The Board has long supported New Jersey’s solar industry. It always endeavors to support that industry’s continued growth while at the same time minimizing costs to ratepayers to the greatest extent possible. As a part of pursuing these twin goals, the TI Program Rules and the timelines contained therein were designed to provide a smooth transition to the Successor Program for a limited time. Similarly, the Pilot Program was intended to be a trial of the community solar approach to renewable energy equity in New Jersey. Thus, when faced with a petition seeking a waiver of the timelines in the TI Program Rules and the Pilot Program Rules, the Board carefully reviews the facts and circumstances of each such petition to determine whether such an extension is in the public interest.

In implementing the orderly closure of the SREC program and the establishment of a permanent Successor Solar Program, the Board has been mindful of the need to maintain clear line-of-sight for developers to access solar incentives in order to ensure the ongoing health of the solar industry and the achievement of the State’s vital clean energy goals. Thus, the TI Program opened on the day the SREC Program 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 developers continue to have uninterrupted access to solar incentives.

Movant has renewed its request that the Board waive the TI Program rules to provide Movant with additional time to meet the TI Program completion deadlines. As noted in the February 14 Order, the Board may waive its rules in special cases when good cause is shown, and shall do so if such a waiver would be in accordance with the general purpose and intent of the rules, and if full compliance of the rules would adversely affect the ratepayers or the interests of the general public. N.J.A.C. 14:1-1.2(b). The Board must balance Movant’s interests as solar developers with the public’s interest in timely completion and interconnection 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.

²⁴ In re Pub. Serv. Elec. & Gas Co. for Approval of its Clean Energy Future-Energy Efficiency (“CEF-EE”) Program on a Regulated Basis, BPU Docket Nos. GO18101112 & EO18101113, Order dated Nov. 13, 2019; In re Michael Manis and Manis Lighting, LLC, New Jersey Clean Energy Program Commercial and Industrial Retrofit Program, BPU Docket No. QS14040316, Order dated April 15, 2015.

Altus Power seeks waiver of the TI Rule requirement that to qualify for the incentive, a registrant must have achieved commercial operation, demonstrated by receipt of a PTO from the EDC, and must have submitted its post-construction certification package by the deadline identified in the letter accepting the registration. N.J.A.C. 14:8-11.5(j). In its principal legal argument, Movant claimed that the Board should have considered the Subject Projects in the context of the August 2022 Order rather than the Gibbstown Order. In the August 2022 Order, the Board granted extensions to three (3) PY1 projects that had received PTO or were near to doing so; Movant contended that the Subject Projects were similarly situated and that it would be arbitrary and capricious for the Board to deny the Subject Projects the relief granted to those petitioners.²⁵

Movant is mistaken. Movant neglects to note that the August 2022 Order has already provided the Subject Projects with the same relief as the three PY1 projects. All PY2 projects, including the Subject Projects, received a six (6)-month extension to both their Pilot Program and TI Program deadlines. August 2022 Order at 13. Thus, in seeking further extensions, Movant is not asking for the same relief granted to the three (3) PY1 projects – it is asking for additional extensions that those projects did not receive. Therefore, the Board’s denial is consistent with its treatment of the PY1 projects and is not arbitrary or capricious.

Movant also erred in asserting that the Board’s analysis of the petition under Gibbstown rather than under the August 22 Order was “unjust.”²⁶ Movant attempted to argue that since the Board did not expressly discuss the August 2022 Order in the February 14 Order, the Board must be applying Gibbstown retroactively.²⁷ First, as discussed above, an explicit discussion of the August 2022 Order would have bolstered rather than altered the Board’s determination to deny as the August 2022 Order had already granted the Subject Projects an additional six (6) month extension. In addition, while the February 14 Order focused upon the Gibbstown analysis, it did so because the petition focused on that argument.²⁸ Although the petitions mentioned the August 2022 Order, the Movants’ arguments centered on analogizing the alleged delays in receipt of PTO to the facts in Gibbstown.²⁹ In the Gibbstown Order the Board established a process by which petitioners similarly situated may apply for extensions to their TI Program registration, subject to their making a similar showing. This was one (1) path a petitioner could utilize to seek an extension, in a program that does not otherwise permit extensions. Thus Movant is poorly placed to object to the fact that the February 14 Order only focused on the Gibbstown rationale. While the Board did not expressly address the secondary claim made regarding the August 2022 Order, the failure to address that claim did not constitute an improper application of Gibbstown.

Although Movant critiques the Board’s analysis of its petitions pursuant to Gibbstown, Movant also argues “significant delays by their local utilities,” (i.e. EDCs), for the three (3) projects covered by the Amendment to the March 4 Motion, pointing to design revisions and installation delays.³⁰ These arguments have no more validity than the arguments in the petitions regarding delays in

²⁵ March 4 Motion at 9-10; March 5 Motion at 10-12; March 6 Amendment to March 4 Motion at 6-7; March 6 Amendment to March 5 Motion at 6-7.

²⁶ March 4 Motion at 7-8; March 5 Motion at 8; Amendment to March 4 Order at 4-6; Amendment to March 5 Motion at 4-6.

²⁷ March 4 Motion at footnote 7; March 5 Motion at footnote 7; Amendment to March 4 Order at footnote 5; Amendment to March 5 Order at footnote 5.

²⁸ Petition at pars. 20-24.

²⁹ Petition at 15-17.

³⁰ Amendment to March 4 Motion at 8. Supplemental O’Neill Certification, paragraphs 5- 6, 10-11, and 15.

PTO issuance by the EDC. Movant speaks of “several weeks of delay” in determining equipment specifications, of paperwork delays, and of storm-related delays, but each of these falls within the parameters of routine interconnection processes. In addition, Movant again alleges delay in receipt of PTO for the project located at 1400 Imperial Way but the Board rejected this argument in the February 14 Order. Unlike the projects granted extensions in the October 2023 Order, no specific, months- or years-long delays in interconnection upgrades have been identified. Moreover, as noted above, these projects have already benefitted from a six (6) month extension.

In support of its legal arguments, Movant also alleged that the Board “misunderstood” the facts of the Subject Projects. Movant appeared to assert that the Board had not understood that ten projects had received PTO prior to the expiration date and six (6) projects were mechanically complete prior to that date.³¹

As a threshold matter, the Board notes that the factual evidence adduced in the Motions was available to Movant at the time it filed its petitions and the supplements to those petitions. These statements pertain to events in October and November of 2023, six months before the underlying petition was filed. Movant is thus precluded from arguing this evidence for the first time now.³² In his supporting certifications, Mr. O'Neill states that he was unaware of the importance the Board attached to “the weight the BPU staff would place” on certain documentary evidence, but that assertion does not justify the attempt to enter this evidence now.³³

More importantly, the evidence now produced does not support reconsideration of the Board's denial. For nine (9) of the Subject Projects, Movant provides mechanical completion certificates, municipal certificates of approval, and PTOs that, while dated after the November 4 deadline, give effective dates prior to or on that deadline.^{34,35} For the remaining seven Subject Projects, Movant provides mechanical completion certificates and municipal certificates of approval dated prior to the expiration date.³⁶ However, the TI Program specifies the documents that must be included in the post-construction certification package and the certificates of mechanical completion and municipal certificates of approval that Movant has provided are not the documents required for a

³¹ March 4 Motion at 7-8; March 5 Motion at 8; March 6 Amendment to March 4 Motion at 4; March 6 Amendment to March 5 Motion at 5.

³² *Morey v. Wildwood Crest*, 18 N.J. Tax 335, 340-41 (App. Div. 1999) (holding that plaintiff is not entitled to reconsideration on the basis of evidence it had available and overlooked in its initial argument), *certif. denied*, 163 N.J. 80 (2000); *see also Fusco v. Bd. of Educ. of City of Newark*, 349 N.J. Super. 455, 461-62, (App. Div.), *certif. denied* 174 N.J. 544 (2002) (litigants may not use a motion for reconsideration to raise arguments which were available at the time of the initial proceeding but which through oversight or a tactical decision were not raised at that time).

³³ O'Neill Certification at pars. 11 and 14; Second O'Neill Certification at 5; Supplemental O'Neill Certification at 5 and 16; Second Supplemental O'Neill Certification at 5.

³⁴ O'Neill Certification at 8 and 12 and Exhibits 2,3,5, 6,9 and 10; Brightcore Certification at 9-29 and Exhibits 1-25.

³⁵ As previously noted, Movant's claim that a 10th project, the Middlesex project, received PTO prior to the deadline is inaccurate.

³⁶ Supplemental O'Neill Certification at 4, 9, and 14 and Exhibits 1,2,7,8, 13 and 14; Brightcore Certification at 4,6, and 9 and Exhibits 1,2,4,5 7,8.

complete post-construction certification package.³⁷ Furthermore, completion of these steps does not satisfy the regulatory requirement that a registrant both obtain PTO and submit a post-construction certification package by the deadline. In short, even had this documentary evidence been timely submitted with the petition, it does not materially support the relief sought for the Subject Projects.

Movant also asserted that it sought to submit documentation for two (2) of the Subject Projects, the Middlesex Project and the Jefferson Project, “on or around November 4, 2023” but that the TI Program portal blocked further uploads once the Movant had confirmed that it had pending petitions.³⁸ However, these allegations lack merit. The rule requires that the PTO be submitted by the deadline. N.J.A.C. 14:8-5(g)(4). The PTOs that Movant itself has provided as attachments to its supporting certifications demonstrate that Altus Power did not possess the PTOs for the Subject Projects on the November 4, 2023 deadline.³⁹ Thus, regardless of any issues with uploading other documentation, Movant did not possess all the documentation required by the rule and could not comply with it.

In addition, Movant’s complaints about its inability to upload more documentation after filing a petition appear to be based on Movant’s misapprehension. The SuSI Program Manager has advised that upon reviewing its records for these two (2) projects, it discovered that on November 3, 2024, an authorized contact for these registrations changed their status within the portal. The status to which these registrations were changed prevented any additional uploads. Thus, any difficulties encountered were the result of the actions of Movant’s agent.

Altus Power has also objected to the reduced incentives that would be available to the Subject Projects through the ADI Program, characterizing the reduction as a “stiff penalty.”⁴⁰ The Board notes, however, that both the TI and the ADI incentives are funded by New Jersey ratepayers, and the Board is charged with providing these incentives at the lowest possible cost to these ratepayers. See, e.g., the legislative directive in the Solar Act of 2021 to 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. While the reduction is substantial when aggregated over the fifteen (15) year qualification life of the Subject Projects, the Board must balance petitioners’ interests as solar developers with the ratepayers’ interest in controlling the cost of solar subsidies, as well as the public’s interest in timely completion of projects and the State’s interest in ensuring that incentive levels appropriately reflect the time period during which a project reaches commercial operation. In that balance, the State’s goals outweighs any single project developer’s reliance on the TI Program as the sole means to develop and finance a project, particularly in light of the availability of the ADI Program. Furthermore, the incentive values in the TI Program were

³⁷ Required documentation for a complete post-construction certification package can be found at the Board’s website at <https://www.njcleanenergy.com/renewable-energy/programs/transition-incentive-program>, under “Final As-Built (Post Construction Certification) Packet”

³⁸ March 4 Motion at page 3; O’Neill Certification at 10, 14.

³⁹ O’Neill Certification at Exhibits 5 and 9; Brightcore Certification at Exhibits 4,7,10,13, 16,19,22, 25; Second Brightcore certification at Exhibits 3,6, and 9; Second Supplemental O’Neill Certification at Exhibits 6, 12, and 19.

⁴⁰ Movant calculates that over the 15 year qualification life of a solar project, the incentive reduction would range from approximately \$149,000 to \$2,056,014. O’Neill Certification at 16-18; Second O’Neill Certification at 7-14; Supplemental O’Neill Certification at 7-9; Second Supplemental O’Neill Certification at 18-20.

designed for projects that had registered in the SREC Program and expected to construct in 2019 and 2020.

Lastly, Movant contends that if the Board were to grant the motions for reconsideration, there would be an immediate economic benefit to LMI customers, stating that if Movant must “go through [the CSEP] application process,” these benefits will be postponed.⁴¹ This argument rings hollow. While there is a real and important benefit at stake, that benefit will still accrue to the customers if the projects are incentivized through the ADI Program. Altus Power can apply to the CSEP at any time and already has the necessary documents; no great delay would be experienced. Moreover, had Movant opted to register the Subject Projects in the ADI Program as soon as they failed to meet the TI Program deadline, these LMI customers would already be receiving the economic benefit of these projects. It is Altus Power’s desire for the larger TI Program incentive, rather than the Board’s enforcement of that program’s timelines, that is delaying the delivery of these benefits. In addition, while the Board’s commitment to clean energy equity is demonstrated by the whole history of the Pilot Program and of the CSEP, the Board is also charged with supporting clean energy at the lowest cost possible to New Jersey ratepayers. The TI Rules and the timelines contained therein function as one part of that cost containment. In this matter, as Movant has stressed, the cost to ratepayers would be millions of dollars higher were these projects to remain in the Pilot Program and the TI Program.

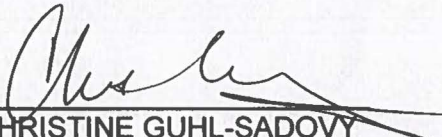
Following thorough review of the motions for reconsideration and the record, the Board **FINDS** that the Movant has failed to demonstrate any palpable error of law or fact with regard to the denial of their extension requests. The Movant’s disagreement with the Board’s decision do not constitute grounds for reconsideration. These projects registered in the TI Program two (2) to three (3) years ago and have benefitted from the prior extension provided by the August 2022 Order but have nevertheless been unable to comply with TI Program deadlines. The Board **FINDS** that the delays encountered during the project development process do not, based on the record before the Board, constitute sufficient grounds to waive TI Program requirements for the Subject Projects. Thus, the Board **FINDS** that Altus Power has not established good cause to warrant a waiver of the Board’s rules. For these reasons, as well as those detailed above, the Board therefore **HEREBY DENIES** the March 4 and March 5 motions for reconsideration brought by Altus Power. The Subject Projects shall not be ineligible for the ADI Program by reason of having received PTO prior to ADI registration.

⁴¹ March 4 Motion at 10; March 5 Motion at 11; March 6 Amendment to March 4 Motion at 5; March 6 Amendment to March 5 Motion at 5.

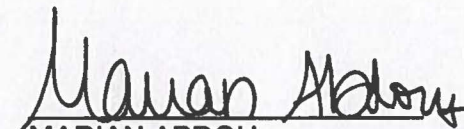
The effective date of this Order is October 2, 2024.

DATED: September 25, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRI L. GOLDEN
SECRETARY

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

IN THE MATTER OF THE PETITION OF ALTUS POWER FOR EXTENSION OF THE SOLAR TRANSITION
INCENTIVE PROGRAM COMMERCIAL OPERATION DEADLINE FOR MECHANICALLY COMPLETE COMMUNITY
SOLAR PY2 PROJECTS
DOCKET NO. QW23100746

IN THE MATTER OF THE PETITION OF ALTUS POWER FOR EXTENSION OF THE SOLAR TRANSITION
INCENTIVE PROGRAM COMMERCIAL OPERATION DEADLINE FOR CERTAIN MECHANICALLY COMPLETE
COMMUNITY SOLAR PY2 PROJECTS
DOCKET NO. QW23110858

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