



Agenda Date: 9/9/2026
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

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

IN THE MATTER OF THE VERIFIED PETITION OF
ESNJ-PLD-CLIFTON1, LLC FOR ACCEPTANCE OF
THE POST-CONSTRUCTION CERTIFICATION
PACKAGE FOR TRANSITION INCENTIVE NUMBER
NJSTRE1547187150

ORDER

DOCKET NO. QO19010068

DOCKET NO. QO23010049

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Matthew A. Karmel, Esq., **Offit Kurman, P.A.**, on behalf of PowerFlex, LLC

BY THE BOARD:

This matter is before the New Jersey Board of Public Utilities (“Board” or “BPU”) following remand from the Appellate Division. By Order dated March 9, 2026, the Appellate Division of the Superior Court reversed the Board’s September 18, 2023, Order denying ESNJ-PLD-Clifton1, LLC (“ESNJ”)’s petition seeking acceptance of its post-construction certification package as if filed within time.¹ The Appellate Division found that the Board’s denial of ESNJ’s petition for a short extension of time to submit administrative paperwork was arbitrary and capricious and remanded the matter to the Board for entry of an order permitting ESNJ to file its post-construction certification package for processing as if submitted prior to the deadline.²

BACKGROUND

Pursuant to the Solar Act of 2012³, the Board developed the Solar Renewable Energy Certificate (“SREC”) Registration Program (“SRP”) to incentivize the development of solar energy projects

¹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17. In re the Verified Petition of ESNJ-PLD-Clifton1, LLC for Acceptance of the Post-Construction Certification Package for Transition Incentive Number NJSTRE1547187150, A-0675-23, 2026 N.J. Super. Unpub. LEXIS 412 (App. Div. Mar. 9, 2026).

² Id. at *25.

³ L. 2012, c. 24.

in the state. Registration in the program entitled solar facilities to receive payments in the form of SRECs for each kilowatt-hour of electricity generated. The Clean Energy Act of 2018⁴ directed the Board to close the 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 ("5.1% milestone"). The Clean Energy Act also directed the Board to complete a study to evaluate how to modify or replace the SRP to encourage the continued efficient and orderly development of solar energy facilities in the State and reduce the cost of achieving the State's solar energy goals.

On December 6, 2019, the Board established the Transition Incentive ("TI") Program to provide a bridge between the SRP and a to-be-developed successor program.⁵ The TI Program, subsequently codified in rules, provides eligible projects with Transition Renewable Energy Certificates ("TRECs") for each megawatt ("MW") hour of electricity produced. The TI Program registration portal opened to new applications on May 1, 2020.⁶ Pursuant to the TI Program's regulations, a solar developer had one year from conditional registration in the program to complete construction of the solar project (also known as achieving commercial operation or receiving permission to operate or PTO) and submit a post-construction certification package.⁷ The one-year deadline was known as the "expiration date." On June 24, 2021, the Board found good cause to grant projects registered in the TI Program on or before the effective date of the order a six-month extension to their existing deadline established at N.J.A.C. 14:8-10.4.⁸

On July 9, 2021, Governor Murphy signed L. 2021, c. 169 into law, directing the Board to develop and launch a successor solar program, among other requirements. The Board closed the TI Program on August 27, 2021, and opened the Successor Solar Incentive ("SuSI") Program on August 28, 2021.⁹

ESNJ Project & Petition

On June 24, 2021, ESNJ, a wholly-owned subsidiary of PowerFlex Solar LLC, submitted a TI Program registration package for a 962.80 kilowatt rooftop solar facility located at 203 Kuller Road in Clifton, NJ ("Project"). The Project received a notice of conditional registration on June 29, 2021, which gave the project an expiration date of December 29, 2022, and provided that the Project "must submit a complete Final As-Built Package (Post Construction Certification) . . . on or before the project's expiration date."

⁴ L. 2018, c. 17.

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019.

⁶ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020.

⁷ N.J.A.C. 14:8-10.4(f)(4)(ii)(2).

⁸ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c.17 – Order Addressing Requests for Extension for Projects in the Solar Transition Incentive Program, BPU Docket Nos. QO19010068 & QO21060883, Order dated June 24, 2021.

⁹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c.17, BPU Docket Nos. QO19010068 et al., Order dated August 17, 2022.

On or about December 9, 2022, the Project completed construction and received PTO from the electric distribution company. On December 15, 2022, ESNJ prepared the post-construction certification package but neglected to file it with the Board. On December 30, 2022, the TI Program Administrator notified ESNJ that the conditional registration had expired. On December 31, 2022, ESNJ requested that the Project's conditional registration be reactivated so that ESNJ could submit the post-construction certification package. The Program Administrator told ESNJ that this was not possible.

ESNJ filed a petition with the Board on January 24, 2023 requesting that the Board either accept the post-construction certification package or order the Program Administrator to reactivate the Project's registration in order to allow ESNJ to submit the post-construction certification package. ESNJ argued that good cause existed to grant the requested relief because the project received PTO by the deadline and failure to submit the package was a routine administrative step which it had failed to complete due to the administrative burden of managing over 50 projects, and because ESNJ had expended significant resources to complete the Project and the property owner would suffer a significant financial loss without the expected TREC payments. ESNJ argued that a waiver of the Board's rules was not needed because the rules only stated that the post-construction certification package must be submitted "when construction of the solar electric generating facility is complete" and do not require submission before the expiration date. In the alternative, ESNJ argued that good cause existed for the Board to waive its rules pursuant to N.J.A.C. 13:1-1.2.

Board Order

On September 18, 2023, the Board issued an Order ("September 2023 Order") denying petitions from eighteen (18) projects, including ESNJ, seeking extensions of time for registration in the TI Program.¹⁰ With respect to ESNJ, Board Staff ("Staff") recommended that the Board deny the petition because the administrative burden of managing multiple projects was not an acceptable rationale for failure to comply with Board rules or good cause to waive them. The Board adopted Staff's recommendations and denied the petitions, finding that ESNJ and the other petitioners were on notice of the time limitations applicable to their projects in the TI Program. The Board instead allowed projects that had begun construction in the TI Program to register in the SuSI Program.

Appellate Division Decision

ESNJ appealed the September 2023 Board Order. On review, the Appellate Division found that the Board acted arbitrarily and capriciously in denying ESNJ's petition.¹¹ The court pointed in particular to the fact that ESNJ had completed the Project, received PTO, and compiled the post-construction certification package by the deadline and noted that the Board had not explained why ESNJ's prompt attempt to correct an administrative oversight was not good cause to permit a two-day extension of the deadline for the submission of paperwork to memorialize timely completion of the Project, or why submission of a post-construction certification package is not a routine administrative step as in the Pennsville matter where the Board had allowed an

¹⁰ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, et al., BPU Docket Nos. QO19010068 et al., Order dated September 18, 2023.

¹¹ In re a Solar Transition, 2026 N.J. Super. Unpub. LEXIS 412 at *21.

extension.¹² The court further noted that the Board's justification of ensuring that incentive levels appropriately reflect the time the Project reaches commercial operation did not support denying ESNJ's petition because the Project had reached commercial operation by the deadline.¹³ Accordingly, the court reversed the Board's denial of the petition and remanded the matter to the Board "for entry of an order permitting ESNJ to file its post-construction certification package, which shall be processed as if it had been submitted on or before December 29, 2022."¹⁴

DISCUSSION AND FINDINGS

In accordance with the Appellate Division's direction, the Board **HEREBY WAIVES** the requirement at N.J.A.C. 14:8-10.4 that a facility must "submit a post-construction certification package prior to the expiration of the conditional registration" and **ORDERS** that, if ESNJ's submits the post-construction certification package for the Project within thirty (30) days after the effective date of this Order, such submission shall be treated as having occurred prior to December 29, 2022 for the purpose of determining the Project's eligibility to receive TRECs.

If ESNJ submits the post-construction certification package within thirty (30) days, the Board **DIRECTS** the Program Administrator and Staff to review and process the post-construction certification package as if it had been submitted prior to December 29, 2022. If the Program Administrator or Staff identify deficiencies in the post-construction certification package, the Board **DIRECTS** the Program Administrator to send a letter to ESNJ notifying it of the deficiencies and **ORDERS** ESNJ must correct any deficiencies within thirty (30) days of the receipt of any such notice in order to maintain the eligibility of the Project pursuant this Order.

If ESNJ submits a complete post-construction certification package as required in this Order, the Board **ORDERS** that the Project shall be eligible to receive TRECs for each megawatt of electricity generated at the value applicable to the Project, as a net-metered non-residential and canopy project, pursuant to Board Rules¹⁵ for a 15-year term beginning on the date the project commenced commercial operation.

In recognition of the fact that the delay in receiving eligibility is due to no fault of ESNJ, the Board **HEREBY WAIVES** its rules at N.J.A.C. 14:8-2.8(a)4 specifying that TRECs may only be used for compliance with the renewable portfolio standard ("RPS") in the year that the energy was generated and in the following year. In order to effectuate the intent of the Appellate Division and to allow the Project to receive the value of the TRECs that it would have earned had the Board granted ESNJ's petition, the Board **ORDERS** that any TRECs associated with energy generated in energy years 2023, 2024, and 2025 may be used for RPS Compliance in energy year 2027 and energy year 2028.

¹² Id. at *22-24.

¹³ Id. at *24-25.

¹⁴ Id. at *25.

¹⁵ N.J.A.C. 14:8-10.5.

The effective date of this Order is September 10, 2026.

DATED: September 9, 2026

BOARD OF PUBLIC UTILITIES
BY:



BEN HERTZ-SHARGEL
PRESIDENT



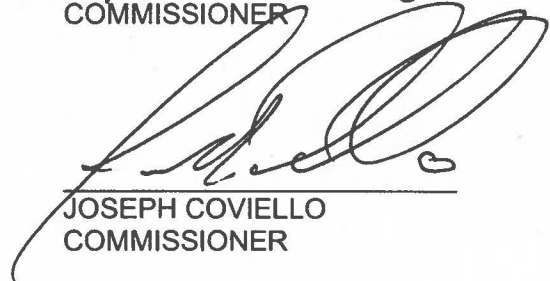
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COMMISSIONER



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JOSEPH COVIELLO
COMMISSIONER

ATTEST:



SHERRI L. LEWIS
BOARD SECRETARY

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

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