



Agenda Date: 10/11/23
Agenda Item: 8D

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

CLEAN ENERGY

IN THE MATTER OF A NEW JERSEY SOLAR)	ORDER ON MOTION FOR
TRANSITION PURSUANT TO P.L. 2018, C.17)	RECONSIDERATION
)	
IN THE MATTER OF THE VERIFIED PETITION OF)	DOCKET NO. QO19010068
ESNJ-PF-LOGAN, LLC FOR A ONE-YEAR)	
EXTENSION OF THE EXPIRATION DATE OF THE)	
CONDITIONAL ACCEPTANCE IN THE SOLAR)	
TRANSITION INCENTIVE PROGRAM)	
NJSTRE1547451208)	DOCKET NO. QO22010024
)	
IN THE MATTER OF THE VERIFIED PETITION OF)	
POWERFLEX SOLAR, LLC FOR A ONE-YEAR)	
EXTENSION OF THE EXPIRATION DATE OF THE)	
CONDITIONAL ACCEPTANCE IN THE SOLAR)	
TRANSITION INCENTIVE PROGRAM)	
NJSTRE1547408589)	DOCKET NO. QO22010025

Parties of Record:

Matthew Karmel, Esq., Offit Kurman, on behalf of PowerFlex Solar and ESNJ-PF-LOGAN

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “NJBP”) considers the separate motions for reconsideration filed on November 22, 2022 by PowerFlex Solar, LLC, (“PowerFlex”) and its subsidiary ESNJ-PF-LOGAN, LLC (“ESNJ-PF-LOGAN”) (collectively, “Movants”) of the Board’s Order dated November 9, 2022 (collectively, “Motions”), in response to the Movants’ petitions for an extension of time to complete projects within the Transition Incentive (“TI”) Program (collectively, “Petitions”).¹ The Board herein addresses the Motions together because the Movants are affiliated; the projects, as proposed, share the same substation; and the Motions utilize the same arguments to justify the Board’s reconsideration.

¹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket Nos. QO19010068, *et al.*, Order dated November 9, 2022 (“November 2022 Order”).

BACKGROUND

On May 23, 2018, Governor Murphy signed the Clean Energy Act of 2018 (“CEA” or “Act”), L. 2018, c. 17 (N.J.S.A. 48:3-87.8 *et al.*), into law. In pertinent part, the Act directed the Board to adopt rules and regulations closing the Solar Renewable Energy Certificate Registration Program (“SRP”) to new applications once the Board determines that 5.1 percent of the kilowatt-hours of electricity sold in the State of New Jersey (“State”) by third-party suppliers and basic generation service providers is generated by solar electric power generators connected to the distribution system (“5.1% Milestone”). N.J.S.A. 48:3-87(d)(3).

On December 6, 2019, the Board established the TI Program as a bridge between the legacy SRP and the to-be-developed Successor Solar Incentive (“SuSI”) program.² The TI Program Rules, N.J.A.C. 14:8-10.1 *et seq.*, permit eligible projects to receive Transition Renewable Energy Certificates for each megawatt-hour of electricity produced through solar generation. The TI Program portal opened to new applications on May 1, 2020, and, pursuant to Board Order dated January 8, 2020, remained open to new registrations until the establishment of the SuSI Program.³ The TI Program rules do not provide for automatic or administrative extensions to the projects’ conditional registration expiration dates.⁴

By Order dated July 29, 2020, the Board granted projects registered in the TI Program on or before October 30, 2020 a one-year extension of time in which to reach commercial operation, extending the deadline through October 30, 2021.⁵ By the July 2020 Order, the Board found that the solar industry was, at that time, adjusting to significant changes from both the COVID-19 pandemic and changes in solar incentive programs and, 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 ratepayers.

By Order dated June 24, 2021, the Board found that the solar industry required further time to adjust to the requirements of the CEA and the impacts of the COVID-19 pandemic, granting projects registered in the TI Program on or before the effective date of the June 2021 Order a six (6)-month extension to the deadline established by N.J.A.C. 14:8-10.4.⁶

On July 9, 2021, Governor Murphy signed L. 2021, c. 169 into law, directing the Board to immediately initiate a proceeding to develop and launch the TI successor program, among other requirements. By Order dated July 28, 2021, the Board announced the closure of the TI Program

² In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019.

³ 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”).

⁴ The conditional registration “expiration dates” are also referred to as the “registration deadline.”

⁵ 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”).

⁶ 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 and QO21060883, Order dated June 24, 2021 (“June 2021 Order”).

in anticipation of the SuSI Program launch.⁷ By Order dated July 28, 2021, the Board opened the SuSI Program.⁸

By Order dated January 26, 2022, the Board waived N.J.A.C. 14:8-11.4(b), which requires receipt of conditional registration in the Administratively Determined Incentive (“ADI”) Program prior to beginning construction on a solar facility, regarding projects with a valid TI Program registration that already commenced construction and allowing them to apply for registration in the ADI Program.⁹

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.¹⁰ By the Gibbstown Order, the Board found good cause to grant a conditional extension to the petitioner’s project because the project was electrically and mechanically complete, secured all necessary permits, and was prevented from meeting its TI Program deadline by a unilateral agreement change made by the electric distribution company (“EDC”) to the interconnection requirements. By the Gibbstown 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.

The Movants received conditional acceptance into the TI Program for a 600 kilowatt (“kW”) net-metered rooftop solar facility on a retail distribution center for Target Corporation (“Target”) and a 1,400 kW net-metered rooftop solar facility on a distribution center owned by Lineage Logistics PFS, LLC (“Lineage”), both in Logan Township (collectively, “Projects”), on August 12, 2021, and August 24, 2021, respectively. The post-construction certification deadlines for the Projects are August 12, 2022, and August 24, 2022, respectively.

On January 25, 2022, PowerFlex filed a petition (“PowerFlex Petition”), and ESNJ-PF-LOGAN filed a separate petition (“Logan Petition”), each seeking extensions of time to participate in the TI Program. The Petitions requested that the Board grant a one-year extension to the expiration date of the Projects’ respective registrations in the TI Program, until August 12, 2023, and August 24, 2023, respectively.

In the PowerFlex Petition, PowerFlex that it agreed to the costs for an interconnection study for the Target project with the EDC, Atlantic City Electric Company (“ACE”), on May 19, 2021. The PowerFlex Petition noted that the project interconnection costs were negotiated together with those of ESNJ-PF-LOGAN until October 5, 2021. On the same date, ACE reissued a proposed interconnection agreement stating that the upgrades necessary to issue Permission to Operate (“PTO”) would be completed by April 30, 2023.

⁷ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated July 28, 2021.

⁸ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO20020184, Order dated July 28, 2021.

⁹ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO20020184, Order dated January 26, 2022.

¹⁰ 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 and QO22030156, Order dated June 8, 2022 (“Gibbstown Order”).

By the Logan Petition, ESNJ-PF-LOGAN stated that it agreed to the costs for an interconnection study of the Lineage project with ACE on September 2, 2020. ACE issued a proposed interconnection agreement on November 16, 2020, stating that upgrades necessary to issue PTO would be completed by April 30, 2022. According to Logan Petition, ESNJ-PF-LOGAN negotiated the interconnection costs of the Projects until October 5, 2021, when ACE reissued an interconnection agreement that indicated that the necessary upgrades would be completed by April 30, 2023, at a lower cost.

According to the Petitions, ACE's 2021 proposed interconnection agreements noted that both Projects required upgrades to the same substation. The Movants negotiated cost-sharing agreements between the two Projects and proposed use of leased fiber optic cable for remote monitoring rather than installing new cable. The Movants noted that these changes resulted in a lower total upgrade cost and that the financial viability of both Projects is dependent on their coincident progress of the arrangement for shared interconnection upgrades.

By the Petitions, the Movants asserted that extensions are warranted because ACE is unlikely to issue PTO until after the expiration of the conditional acceptance due to factors "outside the [Movants'] control." The Movants noted that they relied on Transition Renewable Energy Certificates provided in the conditional acceptance to keep the Projects commercially viable, and the Projects faced, and will continue to face, difficulties as a result of the COVID-19 pandemic.

The Movants filed supplements to the Petitions on July 8, 2022, following the Board's issuance of the Gibbstown Order and its Order dated February 23, 2022, with regard to Centrica Business Solutions, Inc.'s request for an extension of time to complete its project within the TI Program.¹¹ The Movants argued that, while they were "not in a position to meet the Gibbstown Order's submission requirements and avail itself of the extension authorized therein," the "rationale and policies" the Board considered in granting the extension in the Gibbstown Order similarly support the Board granting the Movants' extensions. The Movants argued that, at the time they received their conditional acceptances into the TI Program, the Projects were mature enough to register in the TI Program and attain PTO within one year, and the Movants believed ACE would be able to complete the necessary upgrades to achieve interconnection before the expiration of the Movants' conditional acceptances.

The Movants cited five factors the Board considered in the Centrica Order to deny Centrica's extension request and sought to distinguish the facts underlying the Movants' requests from those factors. Specifically, the Movants argued that the Board should grant their extension requests because their Projects were mature at the time they were conditionally accepted into the TI Program, the delay resulted from a change in the EDC's proposed construction schedule, the Projects would not be financially viable without the TI Program incentives, the Movants had not received prior extensions of the TI Program deadline, and granting the extension requests is in the public interest of reducing interconnection costs for New Jersey solar projects.

By the November 2022 Order, the Board denied the Petitions, noting that the Movants' almost year-long negotiations with ACE attempting to reduce upgrade costs and develop a "creative engineering solution" were ongoing when the Movants applied to the TI Program in August 2021, just prior to the close of the TI Program to new registrants. The Movants registered in the TI

¹¹ In re Request for Waiver and Extension of Time to Complete NJSTRE1547537829 in Transition Incentive Program – Centrica Business Solutions, Inc. for the Groupe SEB Project, BPU Docket Nos. QO19010068 & QO21111207, Order dated February 23, 2022 ("Centrica Order").

Program with the knowledge that this program provided twelve months to achieve commercial operation and did not provide for any automatic extensions, and the Movants registered in the TI Program knowing negotiations over the ACE interconnection agreement and interconnection upgrades remained underway. The Board found that the Projects were not mature enough to meet TI deadlines, and the Movants knew or should have known that the Projects, due to their anticipated timeline, were not appropriate for registration in the TI Program and would better fit in the ADI Program, which opened days after the Movants filed their TI registration and which does provide an opportunity for automatic extension.

MOTIONS FOR RECONSIDERATION¹²

The Movants disagree with the November 2022 Order's characterization that "[i]f Petitioner knew that it could not comply with program requirements and complete the project within one year, without extension, then Petitioner knew or should have known that the project was not appropriate for registration in the TI Program." The Movants argued that they reasonably believed that they could achieve commercial operation within twelve months based on representations from ACE, so the Board's decision to deny the requested extensions was "arbitrary, capricious, and unreasonable" because it was based on the "mistaken assertion" that the Movants knew they could not achieve commercial operation within the one year provided by the TI Program.

In response to the Board's position that the Movants "knew that the program provided twelve months to achieve commercial operation and did not provide for any automatic extensions," the Movants argued that they had reason to believe the Board would grant "reasonable and appropriate extensions" because the Board "granted two blanket extensions as a result of the impact of the pandemic on the solar industry."

The Movants further disagreed with the Board's characterization of the Projects as "not mature" due to the ongoing negotiations between the Movants and ACE because the Movants "reached an agreement in principle [with ACE] on the upgrades at the time [the Movants] applied to the TI Program in August 2021." The Movants noted that the Board's establishment of a "bright-line test for the maturity of a project . . . rather than considering the facts at issue, would be arbitrary, capricious, and unreasonable."

¹² Although filed separately, the Movants each made the same arguments in their respective motions.

The Movants argued that, while they did not meet the requirements for an extension under the factors considered in the Gibbstown Order, it would be “arbitrary, capricious, and unreasonable for the Board to provide extensions only to those projects meeting the requirements of the Gibbstown order, without regard to whether the circumstances at issue demonstrate good cause in accordance with N.J.A.C. 14:1-1.2(b).” The Movants posited that “the extension provided by the Gibbstown Order is just one example of circumstances demonstrating good cause for a waiver of the Board’s rules,” and that they “demonstrated good cause for a waiver of the Board’s rules in accordance with N.J.A.C. 14:1-1.2(b).” The Movants argued it would be “arbitrary, capricious, unreasonable, inequitable, discriminatory and otherwise unlawful” for the Board to grant extensions in past orders while denying the Movants’ extension requests despite the Projects facing “analogous circumstances and delays” to the projects considered in those orders.¹³

The Movants lastly identified a potential discrepancy between the Board’s November 17, 2022 Notice regarding review of the ADI Program, which noted that costs have risen for solar projects in the ADI Program, and the Board’s suggestion in the November 2022 Order that solar costs have decreased over the past several years, arguing that the November 2022 Order is therefore erroneous.

The Movants, therefore, requested reconsideration of the Board’s denial and a grant of their extensions.

DISCUSSION AND FINDINGS

The Board has long supported New Jersey’s solar industry. It endeavors, at all times, to support the industry’s continued growth while at the same time minimizing the 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 SuSI Program. As such, the TI Program was designed to be a limited bridge between the SRP and the SuSI Program. N.J.A.C. 14:8-10.1.

Following extensive review of the Motions, the underlying Petitions, and Staff’s prior recommendations, the Board **HEREBY FINDS** that nothing in the Motions requires the Board to modify or otherwise reconsider its decision to deny the Movants’ request for an extension of time to complete their projects within the TI Program. A motion for reconsideration requires the moving party to 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). Generally, a party should not seek reconsideration based upon mere dissatisfaction with a decision. D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis”; or (2) 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). The moving party must show that the action was arbitrary, capricious, or unreasonable. D’Atria, 242 N.J. Super. at 401. However, the Board will not modify an Order 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. In re

¹³ See 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; and In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Order Granting Extensions to Public Entities Seeking an Incentive Pursuant to the Solar Transition Incentive Program, BPU Docket No. QO19010068, Order dated August 17, 2022.

the Petition of Public Service Electric & Gas Company for Approval of its Clean Energy Future – Energy Efficiency (“CEF-EE”) Program on a Regulated Basis, BPU Docket Nos. GO18101112 & EO18101113, Order dated November 13, 2019; In re Michael Manis and Manis Lighting, LLC—New Jersey Clean Energy Program Renewable Energy Incentive Program, BPU Docket No. QS14040316, Order dated April 15, 2015.

Absent a legislative restriction, administrative agencies have the inherent power to reopen or to modify and rehear prior decisions, e.g., In re Trantino Parole Application, 89 N.J. 347, 364 (1982). As to the Board, N.J.S.A. 48:2-40 provides that the Board may, at any time, revoke or modify its orders. See Twp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 425 (1969); see also N.J.A.C. 14:1-8.6(b). Further, an administrative agency may invoke its inherent power to rehear a matter “to serve the ends of essential justice and the policy of the law.” Handlon v. Town of Belleville, 4 N.J. 99, 106-107 (1950). In addition, administrative agencies may invoke the power to reappraise and modify their prior determinations “to protect the public interest and thereby to serve the ends of essential justice.” Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App Div. 1975).

As explained in the November 2022 Order, the Board is mindful that its decisions have a public policy impact. It is in the nature of the evolving energy policy that situations change and require reevaluation. Under these circumstances, the Board considered the Movants’ positions and, in so ruling, the Board emphasizes that it is not legally compelled to reconsider mere re-arguments, but it has exercised its discretion to consider all arguments on their merits.

Pursuant to N.J.A.C. 14:8-10.4, the Movants must have commenced commercial operations on the Projects and submitted a post-construction certification package prior to the expiration of its conditional registrations. Pursuant to N.J.A.C. 14:8-10.4(f), the Projects contain a 12-month registration expiration, with no provision for automatic or administrative extensions to the deadlines.¹⁴

While development of a solar energy project involves overcoming significant hurdles and planning milestones before construction may start, the Movants’ delays resulted from the Movants’ actions and were not the result of unforeseen issues with upgrades to be performed by the EDC or other unknowable concerns.

The Movants first argued that the Board erroneously denied the Petitions on the premise that the Movants knew or should have known that the Projects would not be completed within their TI Program deadlines. The Movants registered in the TI Program with the knowledge that the TI Program provided twelve months to achieve commercial operation and did not provide for any automatic extensions. The Movants noted in the Petitions that the Projects’ primary difficulty was “the inability of ACE to issue [PTO] prior to the expiration of the Conditional Acceptance.” The Logan Petition states that ACE’s revised completion of upgrades would be “a year later than initially set forth in the 2020 Lineage IA” (emphasis in original). However, the Movants knew ACE’s timeline that project upgrades would take at least seventeen months from date of issuance to complete, once ESNJ-PF-LOGAN received the first proposed interconnection agreement in November 2020, wherein the EDC indicated the required interconnection upgrades would require over one year and five months to complete, with a projected completion date of April 2022.

¹⁴ The conditional registration expiration dates vary based on the type of project, with Community Solar and Subsection (t) projects having different timelines, as well as when the project registered in the TI Program relative to the 5.1% Milestone. See N.J.A.C. 14:8-10.4.

The Movants then negotiated the interconnection agreement with the EDC until October 2021, despite knowing that the interconnection would take at least 17 months and that the Projects both had completion deadlines in August 2022. As such, the Movants should have known at the time of the renegotiated agreement that, due to their extended renegotiations, the interconnection could not have completed in time to allow the Projects to meet their TI Program deadlines. As such, the Board **FINDS** the Movants' argument that the Board erroneously based denial of the Petitions on the reasoning that the Movants knew or should have known they would not meet the project deadlines fails.

The Movants argued that they had reason to believe, based on prior blanket extensions, that the Board would grant "reasonable and appropriate extensions" to the Projects because the Board "had not yet embraced its current, stricter standard" for granting extensions as of the time the Movants applied to the TI Program. The Board recognizes that it previously provided extensions to projects registered in the TI Program. The Board provided a blanket extension to conditionally registered projects on July 29, 2020, in recognition of the challenges encountered due to the COVID-19 pandemic.¹⁵ The Board provided a second blanket extension to conditionally registered projects on June 24, 2021, in recognition of global supply chain delays and other widespread unanticipated delays.¹⁶ In both Orders, the Board directed that newly registered projects shall receive expiration dates consistent with the rules. The interim nature of the TI Program has been consistently communicated since its inception, and the requirement that projects complete construction, commence commercial operations, and submit post-construction certification materials within one year is also clearly enumerated in the TI Program rules. Those rules do not provide for extensions, and the absence of an extension policy was intentional.

In this case, the Movants correctly identified that the TI Program does not allow for automatic extensions. However, the Movants incorrectly asserted that they had reason to believe the Board would grant "reasonable and appropriate extensions." The TI Program rules do not provide for such extensions; to do so, the Board must waive those rules only in special cases for good cause shown. N.J.A.C. 14:1-1.2. The existence of prior waiver of the rules in other, exceptional, circumstances does not constitute a showing of "good cause" to justify waiving the TI Program rules. As such, the Board **FINDS** that the Movants' argument that they had reason to believe the Board would grant "reasonable and appropriate extensions" fails.

The Movants argued that the Board erroneously used a bright-line test to determine that the Projects were not mature enough for an extension. The Movants further explained that their negotiations were no longer ongoing as of their TI Program application; thus, according to the Movants, the Projects were mature. The Board considered the factors presented by the Movants and found them insufficient to waive its rules. The Board did not set a single bright-line test for project maturity and evaluates each petition on a case-by-case basis to determine if they are sufficiently mature at the time of registration. Here, the Movants noted they "reached agreement in principle" with the EDC regarding necessary interconnection upgrades. However, this agreement regarded the plan to interconnect both Projects together and did not include an upgrade timeline that would allow the Projects to achieve commercial operation before the TI Program deadline. A more mature project would have set firm dates for completion of upgrades

¹⁵ 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.

¹⁶ 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 Program, BPU Docket Nos. QO19010068 et al., Order dated June 24, 2021.

consistent with the Program deadlines. As such, the Board **FINDS** the Projects were not sufficiently mature to justify waiving the TI Program rules. The Board **FURTHER FINDS** that the Movants' argument that the Board erroneously used a bright-line test to determine project maturity fails.

Next, the Movants argued that the Board erroneously denied the Petitions in reliance upon the Movants' concession that they did not meet the requirements for extension as set forth in the Gibbstown Order, noting that it would be arbitrary and capricious for the Board to only grant extensions to projects "meeting the requirements of the Gibbstown Order." The Board fully examined the individual circumstances of the Movants' TI extension request and fully considered the delays resulting from additional requirements imposed by the EDC. As the Movants noted, the TI Program rules, by design, contain no provision for extensions; the Board must waive its rules to grant an extension. As explained in the November 2022 Order, the Board based prior extensions upon specific circumstances faced by the TI Program registrants at the time, coupled with uncertainty that still surrounded the establishment of a successor program. With the establishment of the ADI and SuSI Programs, that uncertainty was eliminated and, as such, the need for the Board to waive its rules to allow registrants to receive project incentives no longer exists.

Further, the Gibbstown Order was an individual adjudication finding good cause to waive portions of the Board's TI rule pursuant to N.J.A.C. 14:1-1.2. Where the Board permitted applicants with the exact factual prerequisites to administratively apply for an extension, it did so on a non-discriminatory basis as a means of administrative efficiency with the understanding that it likely applied to a very narrow subset of projects: those that were registered in the TI Program, were electrically and mechanically complete, had secured all necessary permits, and were prevented from meeting the TI Program deadline only by a unilateral EDC change to the interconnection agreement, specifically the time in which EDC interconnection upgrades would be completed following the developer's reliance on the original terms. If a developer could demonstrate the underlying facts supporting the Board's decision to grant a conditional waiver to the Gibbstown project, the Board also found good cause for the petitioner.

Here, after the Movants applied for a waiver of the TI deadlines, the Board applied the "good cause" standard set forth at N.J.A.C. 14:1-1.2. The Gibbstown Order did not establish a new standard of "good cause" that the Board applied to the Movants' request for an extension of the TI Program deadline. The Board **FINDS** that the Gibbstown Order did not alter, modify, or replace the standard enumerated by N.J.A.C. 14:1-1.2 and clarifies that all projects that sought waivers of the TI Program rules were individually evaluated by the Board pursuant to N.J.A.C. 14:1-1.2. As such, the Board **FURTHER FINDS** that the argument that the Board erroneously held the Movants to the criteria used in the Gibbstown Order, rather than the "good cause" standard, fails.

The Movants lastly argued that, as recognized by Board notice dated November 17, 2022, solar development costs have risen significantly, but the Board's denials have been based upon the position that costs have decreased. However, in recognition of the increased costs certain solar projects may encounter in the future, the Board increased the incentive levels in the ADI Program by Order dated March 6, 2023.¹⁷ The November 2022 Order denied extensions based upon their showing of "good cause," not whether solar costs for these Projects have decreased. Further, a

¹⁷ In re a Solar Successor Incentive Program Pursuant to P.L. 2021, c. 169 – Order Regarding the One Year Review of the Administratively Determined Incentive Program, BPU Docket No. QO20020184, Order dated March 6, 2023.

showing of increased project costs does not constitute “good cause” under the Board’s rules. Appropriateness of incentive levels, therefore, is not a justification for which the Board should modify its prior orders or waive its rules. As such, the Board **FINDS** that the Movants’ argument that the Board should reconsider its denial of the Projects due to increased project costs fails. Additionally, the Board notes that adjustments made by the Board following the one-year review of the ADI Program should ease the transition for projects registered in the TI Program that were unable to reach commercial operation by their expiration date.

The Movants’ motions for reconsideration on the denial of an extension of the TI Program deadlines for their Projects necessitates a waiver of the TI Program rules, which establish clear and unambiguous deadlines. Board’s rules note that “[i]n special cases and for good cause shown, the Board may . . . relax or permit deviations from this chapter.” N.J.A.C. 14:1-1.2(b). Additionally, the rules allow the Board to “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 the Movants’ interests as solar developers 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. The TI Program was designed to be a limited bridge between the SRP and the now-open SuSI Program. N.J.A.C. 14:8-10.1.


Following careful review of the Motions and the record, the Board **FURTHER FINDS** that the Movants have not established sufficient good cause to warrant a waiver of the Board’s rules and grant an extension of their TI Program deadlines. In this case, the Movants experienced significant project delays so the Projects are not nearing commercial operation, and the Movants requested additional time for completion that would be more suitable for entry in a new program rather than an extension in the TI Program.

The Movants further failed to demonstrate any palpable error of law or fact with regard to the denial of their extension requests. The Movants’ disagreements with the Board’s decision do not constitute grounds for reconsideration. For these reasons, the Board **FINDS** that PowerFlex and ESNJ-PF-LOGAN failed to adequately demonstrate good cause to justify a waiver of the TI Program rules. The Board **FURTHER FINDS** that the delays encountered during the project development process do not, based upon the record before the Board, constitute sufficient grounds to waive TI Program requirements for the Project. The Board, therefore, **HEREBY DENIES** the Motions.

The effective date of this Order is October 18, 2023.

DATED: October 11, 2023


BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
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 A NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C.17
DOCKET NO. QO19010068

IN THE MATTER THE VERIFIED PETITION OF ESNJ-PF-LOGAN, LLC FOR A ONE-YEAR EXTENSION OF THE
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SERVICE LIST

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