



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE CLOSURE OF THE SREC)
REGISTRATION PROGRAM PURSUANT TO P.L. 2018,)
c. 17.)
ORDER
Docket No. QO18070698

Party of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this Order the Board provides additional direction to participants in the Solar Renewable Energy Certificate (“SREC”) market on the procedures to be followed during the closure of the SREC Registration Program (“SRP”) and on the requirements for maintaining SREC eligibility following program closure.

BACKGROUND AND PROCEDURAL HISTORY

On May 23, 2018, Governor Murphy signed P.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 SREC program 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 mandates that the Board close the SRP to new applications once it determines that 5.1% of the kilowatt-hours sold in the State have 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, 2019.¹ On February 27, 2019, the Board clarified that the Legislature intended to limit access to the SREC market upon the attainment of the 5.1% milestone. Thus, “projects in the SRP pipeline that have not commenced commercial operations at the time the State reaches this milestone

¹ 51 N.J.R. 138(e).

may not be eligible to participate in the SREC market.” The Board also authorized Staff’s use of the date on the Permission to Operate (“PTO”) letter issued by the Electric Distribution Companies as a proxy for the commencement of commercial operations. In addition, the Board directed Staff to commence a rulemaking proceeding to incorporate this authorization into the Board’s rules.²

At its January 8, 2020 agenda meeting, the Board voted to approve additional rule amendments addressing the calculation of the 5.1% Milestone and several issues relevant to the SREC Program closure. The rules provide that a solar electric generation facility’s commencement of commercial operations shall be determined by the date on which the electric distribution company grants the facility permission to operate. The rules further provide that the mere act of registering a project in the SRP does not automatically grant SREC eligibility or the right to an extension of the initial registration.³

The rule amendments which became effective upon publication in the New Jersey Register on February 3, 2020, require Staff to provide forecasts on the attainment of the 5.1% Milestone on a monthly basis.⁴ Staff currently anticipates that the 5.1% Milestone will be attained around May/June 2020; the public was notified of this forecast in a Notice issued on February 28, 2020. This forecast is subject to change based on variables such as monthly retail sales and the monthly rate of solar installations.⁵

Closure of the SRP is necessarily linked with the creation of an incentive program to follow it. As Staff began working with stakeholders to develop such a program, it became apparent that a short-term program for projects already in development at the time of the 5.1% Milestone would be necessary in addition to a longer term successor program. On December 6, 2019, the Board approved a Transition Incentive Program to accommodate projects which have registered in the SRP after October 29, 2018 but have yet to commence commercial operations at the time the Board determines that the 5.1% Milestone has been attained.⁶ The Board has since clarified that the Transition Incentive program will remain open to new registrations until the establishment of a registration program for the to-be-determined Successor Program.⁷

The Board also directed the SRP Administrator to maintain the registration process of the Legacy SRP to accommodate TI registrations until the establishment of a Successor Program registration process. Staff is working with the SREC Registration processing team to develop procedures for transferring active SRP registrations to the Transition Incentive Program after attainment of the 5.1% Milestone. These procedures will constitute a dedicated registration process devoted to the

² I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates For Solar Facilities, BPU Docket No. QO18070698, Order dated October 29, 2018 (“October 29 Order”) and I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates For Solar Facilities, BPU Docket No. QO18070698, Order dated February 27, 2019 (“February 27 Order”). Order Implementing P.L. 2018, c. 17.

³ N.J.A.C. 14:8-2.4(b)(7)(iii); 14:8-2.4(h)(4).

⁴ 52 N.J.R. 146(b).

⁵ I/M/O a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Calculation of 5.1% Milestone for SREC Program Closure, BPU Docket No. QO19010068, Order dated February 19, 2020.

⁶ I/M/O A New Jersey Solar Transition Pursuant to P.L. 2018, C.17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“Transition Incentive Order”).

⁷ I/M/O A New Jersey Solar Transition Pursuant to P.L. 2018, C.17, BPU Docket No. QO19010068, Order dated January 8, 2020 (“TREC Clarification Order”).

Transition Incentive Program should the Successor program and its associated registration process not be finalized when the state attains the 5.1% Milestone.

The monthly public SRP pipeline report issued by the SRP processing team on March 18, 2020 shows that the pipeline contained over 10,290 projects, for a total of 420 MWdc, as of February 29, 2020. In a typical month prior to the Federal Investment Tax Credit reduction on December 31, 2019, approximately 2,000 projects left the SRP pipeline due to project cancellation, expiration, or commencement of commercial operations. A roughly equivalent number of new projects registered in the SRP during the same period, such that the average number of projects remained at approximately 11,500. The number of new SRP registrations per month has trended lower since peaking at 2,600 in October 2019. Assuming that the majority of projects will neither accelerate their construction schedule to meet the 5.1% Milestone nor slow their progress to join the Transition Incentive Program, Staff anticipates the need to transfer approximately 9,000 projects from the SRP registration pipeline to a Transition Incentive pipeline after the attainment of the 5.1% Milestone.

As a result of the developments described above, several procedural but important issues have arisen regarding the approaching closure of the SRP.

Staff notes that the recommendations made below recognize the current state of emergency related to the COVID-19 outbreak,⁸ and the potential impacts of this outbreak on solar development in the State. Staff recommends that the Board continue to monitor the situation, and continue to make adjustments if and when they are needed.

STAFF RECOMMENDATIONS ON SRP CLOSURE PROCEDURES AND PRACTICES

Transition from the SRP to the Transition Incentive program

Upon the Board's closure of the SRP, an opportunity to register for the Transition Incentive Program may be necessary should the ability to register for a Successor Incentive not yet exist. Staff seeks to enable market participants to readily understand the eligibility status of individual projects and to facilitate a seamless transfer of registrations not eligible for the SRP to the Transition Incentive program. An individual project's SREC eligibility depends upon meeting registration criteria delineated in the SRP rule amendments referenced above. For example, projects that applied to the Board for SREC eligibility pursuant to Subsection t on or before October 29, 2018 and were approved for conditional certification, which provides a two-year registration length, maintain their eligibility for SRECs regardless of when the state attains the 5.1% milestone. Projects that applied for conditional certification pursuant to Subsection t after October 29, 2018 will be eligible for SRECs only if they receive permission to operate prior to the Board's determination that the 5.1% Milestone has been attained.

Both to ease administration of the eligibility confirmation process for all parties and to reduce the potential for confusion among market participants, projects should be registered for eligibility in only one program at a given time. A market participant may register their project in either the SRP, the Transition Incentive program, or the Successor Incentive program, but may only

⁸ Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. Available at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (March 13, 2020; accessed March 19, 2020).

maintain one registration at one time. Market participants may, however, wait until they have received confirmation that they have been accepted into the program before cancelling a prior registration.

Extensions and SREC Registration Length

As the 5.1% Milestone approaches, Staff continues to receive requests for extension of the SREC Registration term, some from developers of projects that will be unable to complete construction and commence commercial operations prior to registration expiration. Pursuant to the Board's rules at N.J.A.C. 14:8-2.4(i), Staff reviews extension requests on a case-by-case basis, taking into consideration the project type, the date of conditional registration, status of project development, and the likelihood of timely and successful completion.

Consistent with the rules and with the above-referenced Board Orders addressing issues regarding the closure of the SRP, developers of net metered projects that submitted a complete SRP registration on or before October 29, 2018 and were granted conditional registration for one year may request a six-month extension prior to the expiration of its initial registration. Likewise, projects that submitted complete applications for conditional certification pursuant to Subsection t on or before October 29, 2018 and received a conditional registration for two years will retain their SREC eligibility through terms defined in the RPS rules adopted on February 3, 2020 regardless of when the 5.1% milestone is attained. See N.J.A.C. 14:8-2.4(b)(7). Pursuant to these Orders and the recently adopted rules, projects with registrations or applications for conditional certification that were deemed complete after October 29, 2018 had to commence commercial operations prior to the 5.1% Milestone in order to be eligible for SRECs.

In light of the COVID-19 state of emergency, Staff recommends that the Board exercise its discretion to allow some additional flexibility for projects seeking extensions. Specifically, Staff recommends that the Board grant a first or second extension to projects with a registration set to expire prior to the date of attainment of the 5.1% Milestone. There are currently around 100 projects with extensions that are anticipated to expire prior to the 5.1% Milestone. These projects would still be required to commence commercial operations prior to the 5.1% Milestone in order to be eligible for SRECs; any projects that did not receive a PTO dated prior to the 5.1% Milestone would be eligible for the Transition Incentive Program and subject to the regulatory requirements of that program. Staff recommends that all projects be granted first extensions (if registered after October 29, 2018) or second extensions (if registered on or before October 29, 2018).

There are also a small number of projects with second extensions granted by the Board. Staff recommends that should the registration extension expire for any of these projects prior to the 5.1% Milestone, the Board direct the developers to file a request for a new registration along with an updated milestone reporting form prior to the 5.1% Milestone and direct the SRP team to issue a new SRP acceptance letter for these projects granting a 10 year QL.

Staff further recommends that the term of any extension for a net metered project expire upon the Board's determination that the 5.1% milestone has been attained. Projects that have not commenced commercial operations before this milestone will not be eligible for SRECs, regardless of whether they received an extension, unless they obtained conditional certification pursuant to Subsection t prior to October 29, 2018. All other projects will be given the opportunity to register in the Transition Incentive registration program.

Submission of Post-Construction Certification Packages After the 5.1% Milestone

To facilitate a smooth transition between the SRP and the Transition Incentive program after attainment of the 5.1% Milestone, Staff recommends that the Board provide direction on the submittal of post-construction documents. Staff occasionally receives incomplete SRP post-construction certification packages or post-construction certification packages for projects for which the registration or extension term has expired. In the past, Staff has allowed developers to submit such missing paperwork late. However, given the imminent closure of the SREC market to new entrants, Staff recommends that the Board require strict compliance with the requirements for maintaining SREC eligibility and in particular impose clear timelines on post-construction paperwork submission. Here also, however, the exigent circumstances of the COVID-19 health emergency call for longer timelines than would otherwise be appropriate.

Specifically, Staff recommends that the Board mandate that access to the SRP portal be closed on the ninety first (91st) day following the Board's determination that the 5.1% Milestone was attained for all projects including those that applied for conditional certification pursuant to Subsection t or Subsection r or that registered in the SRP after October 29, 2018. Staff further recommends that the Board direct Staff to require developers of such projects to complete SRP post-construction certification packages within 90 days of receipt of Permission to Operate or the Board's determination that the 5.1% milestone has been attained, whichever is earlier. Projects that fail to comply will be given the opportunity to register in the Transition Incentive registration program. Staff believes that a 90-day deadline strikes a balance between the need to close the SRP portal in an efficient manner, and a recognition of the potential market disruption caused by COVID-19. Staff proposes to develop a communications plan for market participants about the eligibility requirements and the processes for transferring a registration from the SRP to the Transition Incentive program. Staff anticipates that this communications plan will include webinar trainings for developers and strategic correspondence to registrants, owners and developers.

The only projects remaining in the SRP portal following the ninety-day period should therefore be those Subsection t projects that applied for SREC eligibility prior to October 29, 2018; these Subsection t projects will remain eligible for SRECs until their initial registration or extensions expire.

Subsection r

Staff has also received inquiries from developers seeking to submit applications for SREC registration eligibility pursuant to N.J.S.A. 48:3-87(r) ("Subsection r"), as implemented in the Board's SRP rules at N.J.A.C. 14:8-2.4(g). Projects that apply under Subsection r are typically grid supply projects not expressly qualified as eligible for SRECs within the statutory definition of "connected to the distribution system". N.J.S.A. 48:3-51. Subsection r requires developers to submit applications to the Board for designation as eligible for SRECs. Subsection r applicants must demonstrate that approval of their application will have no adverse impact on the SREC market, as well as satisfy other criteria established in the statute. N.J.A.C. 14:8-2.4(g) requires Subsection r applicants to submit expressions of interest between January 1 and April 1 of a given calendar year if they seek designation in the coming energy year; energy years begin on June 1.

The Transition Incentive Order included Transition Renewable Energy Certificates (“TREC”) factor categories for Subsection r grid supply rooftop projects and for Subsection r grid supply ground mounted projects. These two TREC factor categories apply to the five grid supply projects approved by the Board for SREC eligibility under Subsection r in March 2019.⁹ The SREC market is anticipated to close to new market entrants prior to June 1, 2020. Since facilitating a new round of grid supply applications to join the TREC market would significantly increase the likelihood of exceedance of the CEA statutory cost cap, Staff recommends that the Board direct developers that might otherwise submit an expression of interest pursuant to Subsection r to instead pursue eligibility through the successor solar incentive program. The successor solar incentive program is currently under development.¹⁰

Conclusion

To summarize, Staff recommends that the Board clarify that the Legacy SRP registration process will close upon the Board’s determination that the State has attained or will imminently attain the 5.1% Milestone for SRP closure. Staff further recommends that the Board’s implementation of this closure reflect its awareness of the existing state of emergency. Aside from the small number of Subsection t projects that applied for conditional certification prior to October 29, 2018, all registered projects that have not obtained a PTO on or before the Board’s determination will be transferred to the Transition Incentive program registration. Staff recommends that the Board direct Staff to establish a Transition Registration Program to register projects should the Successor Incentive Program not be ready to accept registrations when the State attains the 5.1% Milestone. Staff further recommends the Board clarify the process for cessation of SRP registration extensions; establish requirements for timely (i.e. within 90 days of the date of attainment of the 5.1% Milestone) submission by developers of their post-construction certification packages including PTO documentation to establish SREC eligibility; and direct developers interested in developing grid supply projects not located on landfills, brownfields or areas of historic fill to pursue solar incentive eligibility under the successor program currently being developed.

DISCUSSION AND FINDINGS

The Board **FINDS** that current forecasts for attainment of the 5.1% Milestone and the obligatory SRP closure will occur proximate to May 2020. Given the imminent SRP closure and the need for a smooth transfer of projects that have not commenced commercial operations to the Transition Incentive program or the Successor Incentive Program, the Board **FINDS** that the timelines and administrative practices in the SRP must be strictly enforced. The Board **FURTHER FINDS** that the COVID-19 health emergency constitutes an emergent circumstance that warrants the Board’s use of its discretion in this enforcement. The Board **DIRECTS** developers and owners that seek SREC eligibility via initial registrations and Subsection t applications that were submitted on or before October 29, 2018 to submit all extension requests directly to the Board via a petition as described in the instructions posted on the New Jersey Clean Energy Program. The Board **ADVISES** that only the projects in this group that can document substantial progress toward

⁹ I/M/O Of The Implementation Of N.J.S.A. 48:3-87(R), Designating Grid-Supply Projects As Connected To The Distribution System - Order Conditionally Approving Applications Pursuant To N.J.A.C. 14:8-2.4(g), BPU Docket No. EO12090880V, Order dated March 29, 2019.

¹⁰ In other words, this directive would apply to all grid supply projects that are not proposed on landfills, brownfields or areas of historic fill pursuant to N.J.S.A. 48:3-87(t) or subject to the specific requirements of the Community Solar Energy Pilot Program.

completion and the imminent commencement of commercial operations will be considered for an extension of SREC eligibility. These developers and owners must also complete and submit SRP post-construction certification packages within 90 days of the receipt of Permission to Operate from their EDC or within 90 days of the Board's determination that the 5.1% milestone has been attained, whichever is earlier, in order to be eligible to receive SRECs. The SRP portal will be closed on the 91st day after the 5.1% Milestone.

The Board **DIRECTS** developers and owners seeking SREC eligibility via initial registrations or Subsection t applications that were submitted after October 29, 2018 to fulfill the following requirements. These developers and owners must complete SRP post-construction certification packages within 90 days of receipt of Permission to Operate or the Board's determination that the 5.1% milestone has been attained, whichever is earlier. The Board **DIRECTS** that these projects which have not cured the deficiencies in their post-construction certification package in a timely manner are ineligible for SRECs regardless of the date of their Permission to Operate and must register for the Transition Incentive program. The existence of an extension shall have no effect upon this requirement. In light of the COVID-19 state of emergency, the Board **HEREBY DIRECTS** Staff to grant a first or second extension to projects with a registration set to expire prior to the date of attainment of the 5.1% Milestone; these projects are still required to commence commercial operations prior to the 5.1% Milestone in order to be eligible for SRECs. The Board **DIRECTS** developers of projects with second extensions with registrations scheduled to expire to file a request for a new registration along with an updated milestone reporting form prior to the 5.1% Milestone. The Board **DIRECTS** the SRP team to issue a new SRP acceptance letter for these projects, granting a 10 year QL. No project submitting a request for a new registration after the 5.1% Milestone shall be eligible for consideration for a new SRP registration. The Board **ORDERS** that the developers and owners of these projects that do not commence commercial operations prior to the 5.1% Milestone may seek eligibility for the Transition Incentive or Successor Incentive program.

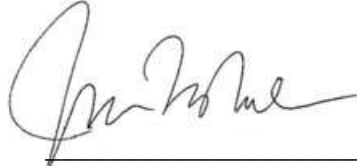
Finally, the Board **FINDS** that in light of the SRP closure, any expressions of interest for Energy Year 2021 that may be submitted pursuant to Subsection r (N.J.A.C. 14:8-2.4(g)) shall not be considered for the Transition Incentive program. Thus, the Board **ORDERS** that grid supply projects that are not proposed on landfills, brownfields or areas of historic fill and that have not previously been approved by the Board as "connected to the distribution system" pursuant to Subsection r shall not be eligible for SRECs or for the Transition Incentive program. Likewise, the Board **FINDS** that SRECs will not be available for projects proposed pursuant to Subsection t if complete applications for those projects were not submitted prior to October 29, 2018 unless said projects received Permission to Operate prior to the date of the 5.1% Milestone. The Board **ORDERS** that developers that did not submit a complete application for conditional certification pursuant to Subsection t by the 5.1% Milestone may seek eligibility for the Transition Incentive program.

The Board **DIRECTS** Staff to work with the SRP processing team to develop and implement a communications plan for market participants that includes webinar trainings for developers and strategic correspondence to registrants, owners and developers about the eligibility requirements and the processes for transferring a registration from the SRP to the Transition Incentive program.

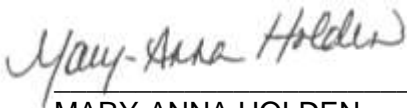
This Order shall be effective on March 27, 2020.

DATED: March 27, 2020

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BY:



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PRESIDENT



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COMMISSIONER



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COMMISSIONER



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ROBERT M. GORDON
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ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE MODIFICATION OF THE CLOSURE OF THE SREC
REGISTRATION PROGRAM PURSUANT TO P.L. 2018, c. 17.**

BPU DOCKET NO. QO18070698

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