



Agenda Date: 3/3/2021  
Agenda Item: 8D

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>TH</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF DEEPAK )  
KUMAR - REQUEST FOR TRANSFER OF SOLAR ) ORDER  
PHOTOVOLTAIC PROJECT NJSTRE1545384653 )  
FROM TI PROGRAM TO SREC REGISTRATION )  
PROGRAM PROJECT ) DOCKET NO. QO20100659

**Parties of Record:**

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

BY THE BOARD:

In this Order the Board considers the request of Mr. Deepak Kumar (“Mr. Kumar” or “Petitioner”) to deem his solar facility eligible for the legacy Solar Renewable Energy Certificate (“SREC”) Registration Program (“SRP”).

**BACKGROUND AND PROCEDURAL HISTORY**

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law (“Clean Energy Act” or “CEA” or “Act”), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the SREC program upon the attainment of the 5.1% Milestone, 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, in relevant part, that the Board close the SREC market to new entrants once it determines that the 5.1% Milestone has been met. The Board implemented this directive through a series of interconnected Orders and rulemaking proceedings, as detailed in previous Orders.<sup>1</sup>

After determining that the State would generate 5.1% of its retail electricity sales from solar before May 1, 2020, the Board ordered that this determination and the closure of the SRP would be effective on April 30, 2020. April 6, 2020 Order at 5. Projects in the SRP pipeline that had not

<sup>1</sup> In re Closure of The SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated March 27, 2020; In re Closure of The SREC Registration Program Pursuant To P.L. 2018, c. 17, BPU Docket. No. QO18070698, Order dated April 6, 2020 (“April 6, 2020 Order”).

received a Permission to Operate authorization letter (“PTO”) dated prior to April 30, 2020, or failed to submit their post-construction certification package in a timely manner, would be not be eligible for the SRP and would instead become eligible for the Transition Incentive Program. Id.

Contemporaneously with the closure of the SRP and the Board’s actions in that regard, the COVID-19 outbreak produced a national state of emergency.<sup>2</sup> Travel both within and beyond the State was severely restricted as a result. On March 16, 2020, Governor Murphy signed Executive Order No. 104 (“EO 104”),<sup>3</sup> implementing aggressive social distancing measures to mitigate further spread of COVID-19 in New Jersey. On March 21, 2020, he issued Executive Order 107 (“EO 107”),<sup>4</sup> expressly superseding the operative paragraphs of EO 104 with yet more stringent measures. And on April 8, 2020, the Governor ordered all “non-essential” construction to halt as of April 10, 2020.<sup>5</sup>

In recognition of the extraordinary circumstances, the Board waived certain of its rules to allow Board Staff and the SREC Registration Program administrator (“SRP Administrator”) flexibility in determining when projects commence commercial operations. Specifically, in order to accommodate projects that would have achieved commercial operations by the April 30, 2020 deadline but for delay in obtaining a local code inspection and authorization to energize the project by the local Electric Distribution Company, the Board approved a narrow and time-limited waiver of the need to have the PTO for purposes of determining SREC eligibility for those projects that awaited only final inspections and final permission to operate the interconnected solar project prior to the April 30, 2020 closure of the SRP program.<sup>6</sup>

To obtain this relief (“PTO Waiver”), the April 27, 2020 Order required registrants to submit the following to TRC, the Board’s SRP Administrator:

1. An affidavit<sup>7</sup> from the project owner that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the EDC issuance of PTO;
2. An affidavit signed by a person with direct personal knowledge stating that the project was complete but for final inspections or final permission to interconnect to the grid prior to April 30, 2020;
3. Date-stamped pictures of the array, inverter and balance of system;
4. Date-stamped evidence that project representatives attempted to communicate with local code officials (e.g. emails with the local code officials requesting an inspection); or, if the

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<sup>2</sup> Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (March 13, 2020).

<sup>3</sup> Exec. Order No. 104 (March 16, 2020), 52 N.J.R. 550(a) (April 6, 2020).

<sup>4</sup> Exec. Order No. 107 (March 21, 2020), 52 N.J.R. 554(a) (April 6, 2020).

<sup>5</sup> Exec. Order No. 122 (April 8, 2020), 52 N.J.R. 959(a) (May 4, 2020).

<sup>6</sup> In re Closure Of The SREC Registration Program Pursuant To P.L. 2018, C. 17 – Procedure for Requesting Extended Time to Obtain Final Inspections and Permission to Operate, BPU Docket. No. QO18070698, Order dated April 27, 2020 (“April 27, 2020 Order”).

<sup>7</sup> The Board notes that on April 14, 2020, Governor Murphy signed into law bill A-3903/S-2336 (2020), effective immediately, allowing remote notarial acts during the Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020. L. 2020, c. 26; [https://www.njleg.state.nj.us/2020/Bills/AL20/26\\_.PDF](https://www.njleg.state.nj.us/2020/Bills/AL20/26_.PDF)

project has already passed local code inspections, evidence that the application to energize (Part II of the interconnection application) was submitted to the EDC;

5. An executed milestone report form that reflects the status of the project, including the date the request for inspection was filed with the municipal officials, date of receipt of inspection approval, and date of submission of application to energize (Part II of the interconnection application) with the EDC<sup>8</sup>; and
6. Such other evidence as the Board's Staff and/or SRP Administrator may request.

### **PETITION**

By correspondence dated October 9, 2020, Mr. Kumar advises that he contracted with Momentum Solar for a 26.5 kilowatt system ("the System") on January 30, 2020 and that "[t]he SREC registration was made" on January 31, 2020. Petitioner's EDC did not approve the project at its original size, and on February 28, 2020 Petitioner signed a contract for a 16.8 kilowatt system. According to Petitioner, his installer had just applied for municipal building and electrical permits when the EO 107 was issued and New Jersey "shut down."

Following the stage one partial reopening effected on May 2, 2020, the Petitioner states that the system was installed on June 11, 2020. After the stage two reopening that began on June 15, 2020, the system was inspected on July 7, 2020, and received its PTO on July 21, 2020.

Petitioner states that he can provide documentation for these dates and pleads the stringent measures imposed by EO 107 and the phased nature of the State's re-opening as mitigating circumstances. He asks that the Board take into consideration the impact of the COVID-19 crisis upon his project and allow it into the SRP.

### **STAFF RECOMMENDATION**

Petitioner presents a coherent explanation of the failure to obtain a PTO for the System prior to the cutoff date of April 30, 2020. However, Petitioner offers no explanation for the failure to make use of the PTO Waiver process established by the Board. In fact, Petitioner makes no mention of the PTO Waiver process itself, and TRC's records indicate that no PTO Waiver or post-construction certification package was submitted prior to August 1, 2020, the deadline for submitting these items if a project was to remain in the SRP. Petitioner may have relied upon his installer; if so, his installer did not serve him well. In either case, the necessary documentation was not provided.

Given the failure to follow the clear direction and timelines provided by the Board for projects whose final inspections and PTO were delayed by COVID-19 and the State of Emergency, Staff recommends that the Board deny this petition.

### **DISCUSSION AND FINDINGS**

The Board has reviewed the record and Staff's recommendation. While the Board realizes that Petitioner may not have been well served by his installer in this matter, the Board does not find that inadequacies on the part of Momentum Solar serve as a basis to waive the requirements of

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<sup>8</sup> The "Milestone Report Form" is a specific form used by TRC to track the progress of projects accepted into the SRP.

the April 27, 2020 Order. Based on the clear requirements established for the PTO Waiver and the failure to provide any of the necessary documentation by the stated deadline, the Board **DENIES** the petition.

In the April 27, 2020 Order, the Board noted that the COVID-19 crisis has affected solar installations in various stages of development. While noting its sympathy for the plight of such projects, the Board stressed the need to balance prompt closure of the SREC program with the desire to prevent manifest unfairness to projects that are otherwise complete. Then, as now, the Transition Incentive program ensures that significant financial incentives remain available for projects that did not attain completion in time to be eligible for SRECs.

This Order will take effect on March 13, 2021.

DATED: March 3, 2021

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

**REQUEST FOR TRANSFER OF SOLAR PHOTOVOLTAIC PROJECT (NJSTRE1545384653)  
FROM TI PROGRAM TO SREC REGISTRATION PROGRAM (DEEPAK KUMAR)**

**BPU DOCKET NO. QO20100659**

**SERVICE LIST**

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