



Agenda Date: 11/17/21  
Agenda Item: 8D

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</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 FOR ELIGIBILITY ) ORDER  
OF SOLAR PHOTOVOLTAIC PROJECT )  
(NJSTRE1547234718) IN THE TRANSITION )  
INCENTIVE PROGRAM (VISHAL PATEL) ) DOCKET NO. QO21081080

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Vishal Patel**, Petitioner

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities (“Board”) considers the request of Mr. Vishal Patel (“Mr. Patel” or “Petitioner”) to override the removal of his solar project from the Transition Incentive (“TI”) Program and allow it to be accepted into that program.

**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”), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certification (“SREC”) Registration Program (“SRP”) once the Board determined that 5.1% of the retail kilowatt-hours sold in the state were generated from solar facilities connected to New Jersey’s distribution system (“5.1% Milestone”). The CEA also reduced the SREC term or “qualification life” to 10 years and imposed a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated, in relevant part, that the Board close the SRP to new applications once it determined that the 5.1% Milestone was met. The Board implemented this directive through a series of interconnected Orders and rulemaking proceedings.<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

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<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”).

effective on April 30, 2020, on which date the SRP would be closed to new registrations. April 6, 2020 Order at 5. Projects in the SRP pipeline that had not received permission to operate (“PTO”) from the relevant electric distribution company (“EDC”) by April 30, 2020, or failed to submit a post-construction certification package in a timely manner, would not be eligible and would instead become eligible for the TI Program. Id.

On October 5, 2020, TI Program rules became effective, commensurate with their publication in the New Jersey Register.<sup>2</sup> The text of the TI rules does not contemplate the inclusion of projects that had achieved commercial operations prior to the start of the TI Program; indeed, the rule expressly limits eligibility to projects which had active registrations in the SRP and which had not commenced commercial operations prior to the opening of the TI registration process. N.J.A.C. 14:8-10.1. However, in recognition that strict adherence to the rules would strand a number of projects that had commenced commercial operations prior to the launch of the TI Program without recourse to any incentive, the Board waived the applicable rules for such projects. This waiver was conditioned upon submittal of a complete post construction registration package to the TI Portal prior to December 31, 2020.<sup>3</sup> Projects in this class that did not submit a complete post construction registration package by December 31, 2020 would not be eligible for the TI Program.

In April 2021, the Board provided notice of a Staff Straw Proposal with regard to the development of the Solar Succession program. A series of five (5) stakeholder workshops on the Solar Successor program followed, as well as the submittal of written comments and other stakeholder processes. On July 28, 2021, the Board approved a successor program to the SRP, consisting of an Administratively Determined Incentive (“ADI”) and a Competitive Solicitation Incentive (“CSI”).<sup>4</sup> The ADI launched on August 28, 2021 and is available to all residential projects, net metered non-residential projects equal to or less than five kilowatts, and community solar projects. The Board expressly limited ADI eligibility to projects that had not yet commenced commercial operations by receiving their PTO unless granted special dispensation by the Board.

On September 23, 2019, the SRP accepted the application for Petitioner’s 8.04 kW system, submitted by IGS Solar (Project SREC Owner). The acceptance letter provided an expiration date of September 23, 2020 or the date of attainment of the 5.1% Milestone, whichever occurred first. Based on the contacts that appear in the records of the Board’s program administrator, TRC Environmental Corporation (“TRC”), ProCustom d/b/a/ Momentum Solar (“ProCustom”) was identified as the project installer for the accepted registration. The Petitioner submitted another SRP Registration, indicating Morgan Associates as the installer for this system, in December 2019. TRC identified the second registration as a duplicate and issued a cancellation letter to Petitioner on February 28, 2020. Morgan then installed the project without an active SRP registration. Municipal approvals and PTO were issued in April 2020, prior to the closure of the SRP to new registrations.

No final paperwork was submitted to the SRP, and on July 31, 2020, TRC notified IGS Solar, with a copy to Mr. Patel, that it had cancelled the registration in SRP and transferred the project to the TI program. On November 16, 2020, ProCustom/Momentum sent an email to TRC cancelling 649 TI registrations that had been transferred from the SRP to the TI Program. Mr. Patel’s

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<sup>2</sup> 52. N.J.R. 1850(a) (“TI Rules”).

<sup>3</sup> In re A New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Order Addressing TREC Eligibility For Projects Commencing Commercial Operations Before Program Establishment, BPU Docket Nos. QO19010068 and QX20030253, Order dated November 18, 2020 (“November 2020 Order”).

<sup>4</sup> In re A Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No QO20020184, Order dated July 28, 2021.

registration was included on this list.<sup>5</sup> On November 20, 2020, a cancellation letter was issued for the registration submitted by IGS Solar, and a copy was sent to Mr. Patel.

In the petition, Mr. Patel makes no mention of IGS Solar or ProCustom/Momentum. He states that he made several attempts to contact Morgan Associates, which had installed his system. Petitioner does not provide the dates on which he made these attempts but states that Morgan Associates did not return his calls until December 20, 2020, at which time they told him that the completed paperwork had been submitted and no further action was required. Mr. Patel states that he decided to follow-up with the New Jersey Clean Energy Program ("NJCEP") himself and only then learned that the final paperwork was never submitted and that his registration had expired.

On July 12, 2021, Petitioner submitted a new TI registration for his system. The second registration was for a larger, 10.72 kW system. TRC initially issued a TI acceptance letter, and final documents were submitted on August 2, 2021. After review, however, TRC found that the project had been granted a PTO on April 8, 2020 and issued a rejection letter for the new TI registration. Since the PTO was received prior to the launch of the TI Program, final paperwork would have had to be submitted by the December 30, 2020 deadline set in the November 2020 Order.

On or around August 19, 2021, Mr. Patel submitted the instant petition to the Board. The petition asks that the Board deem the project eligible for the TI Program because the failure to submit paperwork timely was due to the negligence of his installer, Morgan Associates.

### **STAFF RECOMMENDATION**

Petitioner asserts that his installer, Morgan Associates, did not submit the needed SRP or TI final paperwork by several deadlines. Staff notes, however, that since the SRP application identifying Morgan Associates as the installer was rejected as a duplicate of the IGS Solar application previously submitted, Morgan Associates had no means of submitting any further paperwork to that program or of receiving the SRP cancellation or TI Program transfer information. On the other hand, since IGS Solar had the valid registration until November 20, 2020, IGS Solar, along with Petitioner, received all of the SRP and TI Program cancellation and transfer notifications sent by TRC.

Petitioner also asserts that he tried to reach Morgan Associates several times and that when he did reach them, in December 2020, he was told that his paperwork had been submitted. The record demonstrates that this statement was not accurate. Mr. Patel may have been poorly served by Morgan, but the installer's negligence or incompetence, whether or not compounded by confusion between and among multiple installers, does not constitute a basis to waive the requirements of the several Board Orders that established applicable program deadlines. Moreover, Staff notes that TRC advised that the Petitioner was copied on its communications with both Morgan Associates and ProCustom. Thus, Petitioner knew or should have known that Morgan Associates' application was rejected as a duplicate; that ProCustom did not submit final paperwork; and that ProCustom ultimately withdrew the application for Petitioner's system. Given Petitioner's failure to timely act and ensure that the system had a valid registration with the entity that installed it, Staff recommends that the Board deny this petition.

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<sup>5</sup> Staff approved this method of cancelling applications in bulk due to the large volume of applications and the restrictions caused by COVID-19.

However, Staff believes the Petitioner should be given the opportunity to demonstrate that, despite the solar generation facility's PTO issuance prior to the opening of the ADI, all other terms and conditions can be met. If the Petitioner submits an ADI registration and post-construction certification package that shows that the solar electric generation facility would be eligible for ADI but for the premature commencement of commercial operations, Staff recommends that the Board grant special dispensation to the solar facility and deem it eligible to participate in the ADI program with a qualification life to start on the date the ADI program opened, August 28, 2021.

### **DISCUSSION AND FINDINGS**


The Board has reviewed the record and Staff's recommendation. While the Board does not believe that Petitioner was well served by his installers in this matter, the Board does not find those inadequacies as a basis to waive the requirements of the TI rules. Further, the Board **FINDS** that Petitioner was copied on the Program Administrator's communications with IGS, ProCustom, and Morgan Associates and, as a result, knew or should have known that the proper paperwork had not been submitted for either the SRP or for the TI Program. Based on the clear requirements established for applications in both the SRP and in the TI Program, and the failure to adhere to either program's timelines, the Board **DENIES** the petition.

As noted above, Petitioner was not well served by his installer. His solar system has been installed and received all necessary municipal and EDC approvals. The Board **FINDS** that Petitioner's project will be stranded without an incentive if the Board does not permit Petitioner to register in the ADI program. The Board thus **WAIVES** the requirement that Petitioner's system has not commenced commercial operation prior to the opening of the ADI Program and **ORDERS** that, if Petitioner resubmits his registration, it shall not be cancelled on that basis. The Board **DIRECTS** that, should Petitioner's ADI registration and post-construction certification package comply with the terms of the program, the qualification life for Petitioner's solar electric generation facility shall begin on August 28, 2021.

The effective date of this Order is November 24, 2021.

DATED: November 17, 2021

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AIDA CAMACHO-WELCH  
SECRETARY

IN THE MATTER OF THE PETITION FOR ELIGIBILITY OF SOLAR PHOTOVOLTAIC  
PROJECT (NJSTRE1547234718) IN THE TRANSITION INCENTIVE PROGRAM  
(VISHAL PATEL)

DOCKET NO. QO21081080

SERVICE LIST

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