

New Jersey BPU Guidance: Projected May 2020 Closure of the SREC Program and COVID-19 Implications

On March 27, 2020, the New Jersey Board of Public Utilities (BPU) issued a Closure Order providing direction to participants in the Solar Renewable Energy Certificate (SREC) program related to the upcoming closure of the SREC Registration Program (SRP), along with requirements for maintaining SREC eligibility following the program's closure.

The Closure Order also acknowledges that the COVID-19 crisis will result in delays of the completion of solar projects and that it will be necessary for project developers to seek extensions from the BPU of project completion deadlines.

Solar project developers and customers involved in ongoing solar projects should review the BPU's Closure Order to ensure compliance with the relevant deadlines and requirements.

Closure of the SREC Program

The New Jersey SREC program provides valuable subsidies for solar projects through the provision of renewable energy certificates for each MW of solar electricity produced by a solar generation facility. Suppliers of electricity in New Jersey are required to purchase SRECs to satisfy the State's renewable energy portfolio standards.

The New Jersey Clean Energy Act of 2018 requires the BPU to close the current SREC program upon the earlier of June 2021 or the date on which the BPU determines that 5.1% of the kWhs sold in New Jersey are generated from solar electric power facilities. The BPU Staff estimates that the 5.1% milestone will be achieved in **May 2020**.

The BPU has been working diligently to prepare for the closure of the SREC program and to ensure a smooth changeover from the SREC program to an interim "transition program" and, ultimately, a long-term successor program. In December 2018, the BPU adopted regulations to close the SREC program and clarify that projects that had submitted SREC registration applications after October 29, 2018 would be eligible for SRECs with a ten-year qualification life, provided the projects achieve commercial operation before the attainment of the 5.1% milestone.

SREC Transition Incentive Program

In December 2019, the BPU announced the approval of a Transition Incentive (TI) Program "intended 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." In January 2020, the Board clarified that the TI Program would be open for registrations until the establishment of the yet-to-be-determined long-term successor program.

Under the TI Program, eligible projects will be issued Transition Renewable Energy Certificates (TRECs) for fifteen years at a fixed dollar amount of \$152 per TREC. The BPU Staff estimates that at the time the 5.1% milestone is achieved, approximately 9,000 projects will need to be transferred from the SRP registration pipeline to the TI Program.

Maintaining SREC Eligibility for Projects Under Development

The Closure Order recognizes that the COVID-19 crisis is likely to impact the pace of solar projects under development and that it may be necessary for project developers to seek extensions of SRP project completion deadlines. As a result, the BPU announced that despite its regulations which restrict the issuance of extensions, the BPU will exercise its discretion to allow additional flexibility for projects seeking an SRP extension.

More specifically, the BPU adopted BPU Staff's recommendation that the BPU grant a first or second extension to projects with registrations expected to expire prior to the achievement of the 5.1% milestone. The Board noted however, that projects receiving extensions would still be required to achieve commercial operations prior to the 5.1% milestone in order to remain SREC eligible.

Whether an SREC registered project that does not achieve commercial operation prior to the 5.1% milestone remains eligible for SRECs is dependent upon when the project submitted a completed SRP registration application. In prior BPU Orders, the BPU has made clear that projects that submitted a complete SRP registration application *before* October 29, 2018 may be eligible for 15 year SREC qualification life (subject to maintaining all other eligibility requirements) and may maintain that eligibility even though commercial operation is not realized before the 5.1% threshold is achieved.

The Closure Order, however, could be read to suggest that net-metered projects that filed for SRP registration *prior* to October 29, 2018 but do not achieve commercial operations prior to the 5.1% milestone, will be rolled into the TI Program.

The Closure Order provides that "[a]side 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." This would be inconsistent with prior BPU Orders stating that projects that have met the October 29, 2018 deadline and satisfy "all other applicable requirements shall continue to be eligible to create SRECs after the State's attainment of the 5.1% milestone." (BPU Feb. 27, 2019, Order).

Although we think it is unlikely, it is unclear from the Closure Order whether the Board intends to require projects with SRP registration prior to October 29, 2018 to achieve commercial operation prior to the 5.1% attainment in order to maintain SREC eligibility.

Program Extensions and Post-Construction Certification Submissions

With respect to SRP program registration extensions, developers that seek SREC eligibility based upon initial registrations and Subsection t applications filed *before* October 29, 2018, must submit extension requests to the BPU via a formal petition. Only those projects where the commencement of commercial operation is imminent will be granted extensions. Developers for these projects will be required to submit post-construction certification packages within the earlier of 90 days of the receipt of the permission to operate (PTO) or within 90 days of the Board's determination that the 5.1% has been achieved.

Thus, while it is not entirely clear from the Closure Order, it appears that these projects will be able to achieve commercial operation after the 5.1% date and retain their SREC eligibility provided that their completed SREC post-construction certification packages are filed within 90 days of the attainment of the 5.1% milestone.

For developers seeking SREC eligibility based upon SRP registration applications submitted *after* October 29, 2018, SRP post-construction certification documents must be submitted by the earlier of 90 days after the receipt of the PTO or 90 days after the BPU's determination that the 5.1% has been achieved. If post construction document deficiencies have not been cured in a timely manner, these projects will be ineligible for

SRECs regardless of the date the PTO was received. Such projects will be transferred to the TI program. Even if extensions are granted for these projects, the projects must receive their PTO prior to the 5.1% attainment in order to remain eligible for SRECs.

New "Section r" Grid Supply Projects Are Not Eligible for SRECs or TRECs

The Closure Order also announced that the Board will not be accepting any applications for grid-supply projects under "Section r" of the Solar Act for either the SREC or TREC program. The BPU advised that developers that would rely upon Section r applications for SREC approvals "should instead pursue eligibility through the successor solar incentive program." Because the successor program is still under development, it remains unclear whether the program will provide sufficient economic incentives to support grid supply projects that would have been filed under Section r.

With the exception of the issue of whether net-metered projects that submitted SRP registration applications prior to October 29, 2018 need to achieve commercial operation prior to the 5.1% in order to remain SREC eligible, the Closure Order provides clear guidance regarding the requirements SRP registrants must meet to maintain SREC eligibility during the closure of the SREC program.

Project developers interested in making certain their projects remain SREC eligible throughout the program closure process should review the Closure Order and consult counsel with any questions. For guidance in that regard, please contact the author of this Alert, **Barbara J. Koonz** bkoonz@greenbaumlaw.com | 973.577.1894. Ms. Koonz is Chair of the firm's **Energy, Renewable Resources & Sustainable Development Practice Group**.

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