

Published Articles

New Jersey BPU Grants Transition Incentive Program Deadline Extension for Registered Solar Projects Under Narrow Circumstances

Barbara J. Koonz

Greenbaum, Rowe, Smith & Davis LLP Client Alert

June 10, 2022

What You Need to Know

- The New Jersey BPU has created a narrow opportunity for granting conditional six-month extensions of time to complete certain mature solar projects registered in the Transition Incentive (TI) Program.
- To be eligible for the extension, the BPU has set forward three specific conditions that fully developed projects must meet with supporting documentation.
- Developers that have projects that satisfy the TI Program extension requirements should contact the BPU to initiate the extension process.

On June 8, 2022, the New Jersey Board of Public Utilities (BPU) issued an Order clarifying its intention to only grant extensions of time to complete solar projects registered in the Transition Incentive (TI) Program under limited circumstances. While the BPU's decision provides welcome relief to a limited number of project developers, overall, the decision sends a clear signal that requests for TI Program deadline extensions are difficult to obtain even where the developer has diligently pursued project completion and project delays have been beyond the developer's control.

The BPU's Order creates a narrow window for six-month TI Program extensions to be issued by Board Staff based upon standardized criteria where a project is prevented from receiving permission to operate (PTO) because of unforeseeable delays in the electric utility's completion of interconnection upgrades – provided the delays occurred post-execution of an interconnection agreement.

Attorneys

Barbara J. Koonz

Published Articles (Cont.)

Subject to the satisfaction of the criteria set forth in the Order, the Order grants a six-month, conditional, TI Program deadline extension for a 1.38 MW net-metered, carport project in Gibbstown, New Jersey. In its petition for an extension, the Gibbstown project's solar developer explained that it had completed the construction of the solar facility prior to the TI Program deadline, but the local electric utility was unable to issue PTO because the utility had not completed certain interconnection-related upgrades. Significantly, when the utility and developer entered into the interconnection agreement requiring the upgrades, the utility agreed that it would complete the upgrades prior to the TREC expiration deadline. Because the Gibbstown project was essentially fully constructed prior to the TREC deadline – and the only reason that PTO was not issued was due to the failure of the utility to complete its upgrades in the agreed upon time frame – the BPU found that a six-month extension was reasonable, concluding that a solar developer who reasonably relied on the utility post-interconnection agreement schedule, and proceeded with the project, should be provided relief from the deadline.

In analyzing the Gibbstown project developer's request for the TI Program deadline extension, the BPU concluded that the following factors constitute good cause for an extension:

1. The project can demonstrate that it was electrically and mechanically complete prior to its TI Program expiration date, which the BPU interprets as a project that could be energized, but for the lack of a necessary permission to operate from the electric distribution utility (EDC) due to factors that are the sole responsibility of the EDC;
2. The project can demonstrate that it had received and satisfied all necessary permits from all authorities having jurisdiction over the project prior to its TI Program expiration date, including required final inspections; and
3. Project construction was proceeding based on a representation from the EDC that any necessary interconnection upgrades would be completed prior to the project's TI Program expiration date, that the upgrades were fully funded by the project developer, but that despite the developer's best efforts, the estimated upgrade completion date was unilaterally extended by the EDC.

To be eligible for the extension, the BPU required that petitioners meet the above three conditions and produce the following documentation:

1. Copies of the certificate of completion from the authority having jurisdiction, representing satisfaction of all required permits (e.g., building, electrical, fire);
2. Date-stamped pictures of the array, inverter, and balance of system, as described in the TI Program Final As-Built checklist;
3. If the project is waiting for the completion of necessary interconnection upgrades by the EDC, evidence that project construction was proceeding based on an estimate from the relevant EDC that the interconnection upgrades would be completed by the project's TI Program deadline, evidence demonstrating upgrades were fully funded by the project developer, and evidence of communication from EDC advising that the interconnection upgrades were subsequently delayed

Published Articles (Cont.)

past the timeline identified at the time or after the interconnection agreement was agreed to

4. A copy of the Part II/Part B Interconnection Agreement submitted to the relevant EDC, or comparable communication to the EDC that the solar electric generation facility has been completed and is ready for EDC inspection;
5. A completed and signed TI Final As-Built Technical Worksheet; and
6. Any additional information as may be requested by Board Staff and/or the TI Program administrator for purposes of determining a project's eligibility for a TI extension.

The BPU determined that if a project can satisfy the above requirements, it may request that the Board Staff or the TI Program administrator grant an extension. "Similarly situated" projects that provide satisfactory documentation would receive a six-month extension, during which time they would be required to return to the project's TI Program portal and upload the missing documents (e.g., EDC notification of PTO) in order to finalize eligibility to produce TRECs. The BPU described a "similarly situated" entity as a project that is "fully ready to energize, but for the lack of permission to operate from the EDC, due to factors that are the sole responsibility of the EDC, and that the initial expiration date was consistent with the EDC's construction schedule at the time the parties entered into the interconnection agreement or in a subsequent communication from the EDC."

Developers that have projects that satisfy the TI Program extension process should contact the Board Staff to initiate the extension process.

Please contact the author of this Alert with questions or to learn more about New Jersey's solar energy program and related incentives.

Barbara J. Koonz
Chair, Energy, Renewable Resources & Sustainable Development Practice Group
bkoonz@greenbaumlaw.com | 973.577.1894