

In the Nick of Time, NJBPU Extends SREC Eligibility for Solar Projects Delayed Due to COVID-19

Client Alert

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On April 27, 2020, three days before the closure of the current solar renewable energy certificate (SREC) program, the New Jersey Board of Public Utilities (the Board) issued an order extending the deadline for SREC eligibility for solar PV projects provided they can demonstrate that commercial operation would have been achieved by April 30, 2020 if final inspections had not been delayed by the COVID-19 emergency.

The April 30 closure date is the date the Board has determined that 5.1% of the electricity sold in New Jersey will be produced by solar generation systems. Under New Jersey's Clean Energy Act of 2018, the current SREC program, which has been credited with the widespread deployment of solar electric generation in New Jersey, is required to close upon the achievement of the 5.1% milestone.

Yesterday's order waives the Board's regulations that require a project to obtain permission to operate (PTO) from the local utility prior to April 30, 2020 to remain eligible for SRECs, and as such is welcomed by solar project developers that have been pressuring local municipalities and electric utilities to complete final system inspections during the COVID-19 crisis. The order is a sharp pivot from the Board's March 27, 2020 Order warning that, despite complications caused by COVID-19, Board "Staff does not believe that the Board should or can waive the requirement that projects reach permission to operate (PTO) by April 30."

The Board's willingness to waive certain requirements concerning the 5.1% milestone was based, in part, upon Staff's recognition that as a direct result of the COVID-19 emergency, a number of solar projects that are fully constructed have been prevented from obtaining PTO because they cannot access municipal or public utility personnel to complete the required final inspections. The Board observed that, but for the COVID-19 crisis and the measures implemented to obstruct its spread, these projects would likely have been issued PTO, thus cementing their entitlement to SRECs. The Board stated that it would be manifestly unfair to prevent projects from receiving SRECs where the project can show that it was mechanically complete prior to April 30, 2020 and

that the sole reason it did not obtain PTO was the inability to arrange for final inspections due to COVID-19.

The Board's extension of the 5.1% milestone is narrowly tailored and will be applicable only to a limited set of projects that can demonstrate that the exclusive reason for their inability to attain PTO prior to April 30 is either the municipality's or local electric utility's failure to inspect an otherwise completely finished project.

In order to obtain the extension, a solar project developer must submit the following to the Board:

- An affidavit from the project owner that the failure to obtain PTO was attributable to (1) COVID-related closures of critical local government offices, or (2) delays by the local utility to issue PTO;
- An affidavit signed by a person with direct personal knowledge stating that the project was complete before April 30, 2020 but for final inspections;
- Date-stamped photographs of the array, inverter and balance of the system;
- 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, evidence that a complete application to energize was submitted to the local utility; and
- 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.

The Board's order requires developers seeking an extension to make an application to the Board and to otherwise satisfy all SREC program requirements. An entity that can demonstrate its entitlement to an extension must file evidence of its final inspections with the SREC Registration Program (SRP) administrator no later than ninety (90) days following the formal end of New Jersey's public health emergency established by Executive Order 103.

The order also notes that projects that have submitted SRP registration applications and are not eligible for an SREC deadline extension will automatically be enrolled in the Board's solar Transition Incentive (TI) program and will be eligible for the financial incentives available under that program.

The April 27, 2020 order can be found [here](#).

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