



Agenda Date: 5/22/24
Agenda Item: 8I

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF)
SYNERGY LLC SEEKING A DECLARATORY) ORDER
JUDGMENT PURSUANT TO N.J.S.A. 52:14B-1 ET SEQ.,)
AND/OR A WAIVER PURSUANT TO THE WAIVER)
RULE, N.J.A.C. 14:1-1.2(B) NJADRE1553095046) DOCKET NO. QW23100738

Parties of Record:

Howard O. Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, LLP, on behalf of Synnergy, LLC

BY THE BOARD:¹

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the petition of Synnergy LLC (“Synnergy” or “Petitioner”) seeking a declaratory judgment or a waiver of N.J.A.C. 14:1-1.2(b), which establishes requirements for net energy metering eligibility.

BACKGROUND

New Jersey’s net metering program is designed to incent installation of new solar energy systems. This program allows power exported from an eligible solar system to offset a customer’s retail electric bill on a kilowatt-hour-for-kilowatt-hour basis, *i.e.*, it effectively allows the customer’s meter to “run backwards” when the amount of power produced by a solar system exceeds the host’s consumption, which reduces the host’s electric bill.

¹ Commissioner Zenon Christodoulou recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

The statutory and regulatory authority for net metering is codified at N.J.S.A. 48:3-87(e) and implemented through N.J.A.C. 14:8-4. The statute limits net metering to customers “that generate electricity, on the customer’s side of the meter, using a Class I renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period.”² N.J.S.A. 48:3-87(e)(1). The rules establish the criteria for determining whether a renewable generation facility is on “the customer’s side of the meter” and therefore eligible for net metering.

PETITION

On October 17, 2023, Synnergy filed a petition seeking a declaratory ruling that its proposed 3.635 MWdc net metered non-residential project (“Project”) would be considered “on the customer’s side of the meter” once certain property had been purchased and merged with the lot and block on which the end user is located (“Petition”). In the alternative, Petitioner requested a waiver of the Board’s net metering rules at N.J.A.C. 14:8-4.1.

Synnergy proposed to locate the Project on Lot 27 in Block 1581 in Hamilton Township, New Jersey (“Solar Lot”). The proposed project is intended to provide energy to the Ewing Lawrence Sewerage Authority’s (“ELSA”) treatment plant at 600 Whitehead Road, Lawrenceville, New Jersey (“ELSA Lot”). ELSA would achieve savings on its energy bill through a power purchase agreement. The Project was accepted into the Administratively Determined Incentive (“ADI”) Program on May 31, 2023, and must achieve commercial operation by May 31, 2024. Subsequently, in July 2023, Board Staff (“Staff”) advised the developer that the Project required a waiver of N.J.A.C. 14:8-4.1(b)(1) to be eligible for net metering and for the ADI Program.

The Solar Lot is located on one side of and is adjacent to Sweetbriar Avenue in Hamilton Township. The ELSA Lot is located on the other side of Sweetbriar Avenue in Lawrence Township and is not adjacent to it – between the ELSA Lot and Sweetbriar Avenue lies Lot 1, Block 1501 (“Merger Lot”). Between the ELSA Lot in Lawrenceville and the Merger Lot in Hamilton runs the municipal border.

Petitioner stated that it has a contract to purchase the Merger Lot. According to Petitioner, it intends to merge the Merger Lot with either the Solar Lot or the ELSA Lot by a consolidated deed to meet the contiguity requirements in N.J.A.C. 14:8-4.1(b)(1)(ii).

Petitioner requested that the Board make a declaratory ruling that the requirements of N.J.A.C. 14:8-4.1(b)(1) would be met upon the merger of the Merger Lot with either the Solar Lot or ELSA Lot. In the alternative, if the Board finds the merging of the relevant lots does not satisfy the requirements of N.J.A.C. 14:8-4.1(b)(1) due to the municipal boundary between the ELSA Lot and the Merger Lot, Petitioner requested that that the Board waive the contiguity requirement of N.J.A.C. 14:8-4.1 to allow the facility to be net metered.

² “Class I renewable energy” is defined in the regulations as “electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells powered by renewable fuels, geothermal technologies, wave or tidal action, small scale hydropower facilities with a capacity of three megawatts or less and put into service after July 23, 2012, and/or methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner. Types of Class I renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:8-2.5.” N.J.A.C. 14:8-1.2.

In light of its May 31, 2024 deadline to achieve commercial operation, Petitioner also requested a six (6) month extension for its commercial operation deadline to November 30, 2024.

On November 30, 2023, Petitioner supplemented the record with a letter from ELSA in support of the petition (“ELSA Letter”).

STAFF RECOMMENDATIONS

To be eligible for the ADI Program as a net metered project, projects must comply with the net metering rules. N.J.A.C. 14:8-4. The rules provide that renewable energy must be generated “on the customer’s side of the meter” and specify that to be deemed on the customer’s side of the meter, the following criteria must be met:

1. The renewable energy generation facility is located either:
 - i. Within the legal boundaries of the property, as set forth within the official tax map, on which the energy is consumed; or
 - ii. Within the legal boundaries of a property, as set forth within the official tax map, that is contiguous to the property on which the energy is consumed. The property on which the energy is consumed and the property on which the renewable energy generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an existing easement, public thoroughfare, or transportation or utility-owned right-of-way and, but for that separation, would share a common boundary. The fact that a public thoroughfare may be encumbered by third-party easements does not alter a determination as to whether two properties would be considered contiguous[.]

N.J.A.C. 14:8-4.1(b)(1) (emphasis added).

The above-quoted rule requires that the renewable generation facility be separated from the end use customer by no more than one public thoroughfare or right-of-way. By merging the Merger Lot with either the ELSA Lot or the Solar Lot, Petitioner seeks to remove the Merger Lot as a separation, leaving only Sweetbriar Avenue. Petitioner contended that upon such a merger, the Project would comply with the rule. However, the Merger Lot cannot be merged with the Solar Lot because Sweetbriar Avenue runs between them, and the Merger Lot cannot be merged with the ELSA Lot because the two lots lie in different municipalities. Thus, while Staff acknowledges Synnergy’s efforts to bring the Project into compliance with N.J.A.C. 14:8-4.1(b)(1), a waiver of this rule is still needed.

Staff notes that Petitioner actively engaged with Staff in an effort to bring the Project into compliance with the rules. As stated above, Petitioner has taken the concrete step of entering into a contract for the Merger Lot, a step that would have succeeded had the municipal boundary between the Solar Lot and the ELSA Lot not run on a route different than that of the public thoroughfare between those lots. In addition, the Petition documents that the ability to net meter and the receipt of Solar Renewable Energy Certificate-IIs (“SREC-IIs”) will benefit not only Synnergy but also ELSA, a public entity that serves the public health through the operation of the sewer treatment facility that will be the end user of the energy generated by the Project. According to the ELSA Letter, the savings to its ratepayers over the life of the Project will exceed \$7,000,000. In light of the significant savings to a public entity and its ratepayers, the location of the municipal boundary close to but not along the public thoroughfare, and the ability of the solar developer to

acquire the Merger Lot, Staff recommends that the Board grant Petitioner's request in the alternative for a waiver of the Board's rules, conditioned upon Petitioner's acquisition of the Merger Lot and the commitment of either Petitioner or ELSA to maintain ownership of this lot.

As to Petitioner's request for an extension, Staff recommends that the Board deny it and encourage Petitioner to re-register the Project. Petitioner should not have issues re-registering the project as ample capacity remains in the net metered non-residential market segment for Energy Year 2024.³ By re-registering, Petitioner will obtain an additional year to achieve commercial operation rather than the requested six (6) months and the available incentive level will remain the same.

DISCUSSION AND FINDINGS

Petitioner asks the Board to, pursuant to N.J.S.A. 52:14B-8, make a declaratory ruling that if Synnergy purchases the Merger Lot and consolidates it with either the Solar Lot or the ELSA Lot, the Project will be on property "contiguous to the property on which" the ELSA Treatment Facility is located and on which the energy generated is consumed. N.J.A.C. 14:8-4.1(b)(1)(ii). The Board declines to make such a ruling. The Board's net metering rules specify that in order to be contiguous to the property on which an end user is located, the generation property, whose legal boundaries are described in the official tax map, must be separated from the end user by no more than one easement, public thoroughfare, or transportation or utility-owned right-of-way and would otherwise share a common boundary with the property where the energy is consumed. As Staff has explained above, that cannot happen here. The Board **FINDS** that the existence of the Lawrenceville/Hamilton boundary prevents the Merger Lot from being consolidated with the ELSA Lot, while Sweetbriar Avenue prevents the Merger Lot from being subsumed into the Solar Lot. The Board **DENIES** the request for a declaratory ruling.

The Board turns to Petitioner's request for a waiver of the contiguity requirement of N.J.S.A. 14:8-4.1(b)(1)(ii). The Board's rules state that "[i]n special cases and for good cause shown, the Board may . . . relax or permit deviations from this chapter." N.J.A.C. 14:1-1.2(b). The rules go on to explain that "[t]he Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public." N.J.A.C. 14:1-1.2(b)(1).

The general purpose of the Board's net-metering rules, as set out in a former rule proposal, is to "facilitate investment in distributed renewable energy (renewable energy located close to the source of energy consumption)."⁴ The Board noted that in addition to the reduction in pollution and need for construction of new power plants, positive impacts from all renewable energy has the added benefits of helping alleviate the demand for large electric transmission investments and reducing congestion on existing electric distribution lines, "thus reducing power outages and improving the reliability of electric service to all customers."⁵

³ June 1, 2023 – May 31, 2024

⁴ 44 N.J.R. 2043(a) (August 6, 2012).

⁵ Ibid.

The solar project under review would be approximately 3.6 MWdc. This mid-sized installation would contribute to reducing congestion on local transmission and distribution lines, as well as providing clean, potentially resilient power to ELSA's treatment plant. These goals are consistent with those that the Board's rules seek to further. As the Board noted, "[i]n the long term, the Board's programs for developing renewable energy use and generation can act as a spur to development of renewable energy markets, thus reducing use of environmentally damaging fossil fuels and decreasing U.S. dependence on foreign oil imports. Ultimately, this will have an important beneficial economic impact on the country as a whole."⁶

The Board next considers whether strict adherence to the ADI Rule's requirements would adversely affect the public interest. Here, the Project is intended to provide less costly power to a public wastewater treatment facility. As such, it will tend to reduce both the expense and the emissions associated with the operation of ELSA's sewage treatment facility. The record in this matter includes the ELSA Letter's statement that the Project is anticipated to save ELSA's ratepayers over \$7 million over the Project's useful life. This result comports with New Jersey's Energy Master Plan ("EMP"). The EMP makes specific mention of wastewater treatment plants in the context of energy-saving opportunities, stating that New Jersey should look for such opportunities and that "[e]nergy costs associated with running pumps is one of the top three costs for water utilities in New Jersey. Wastewater treatment facilities could also be critical in driving energy reductions, as could monitoring and replacement of leaking water supply pipelines."⁷ Net metered solar generation would significantly reduce the energy cost of the ELSA facility.

Having reviewed the record and Staff's recommendations in light of the relevant law and policy, the Board **FINDS** that waiving the contiguity requirement at N.J.A.C. 14:8-4.1(b)(1)(ii) is in keeping with the general purpose of the Board's net metering rules. The Board **FINDS** that strict adherence to this rule would adversely impact ratepayers by blocking a reduction in expense and emissions for a public sewage treatment plant. The Board, therefore, **WAIVES** the contiguity requirement of N.J.A.C. 14:8-4.1(b)(1), conditioned on Petitioner's acquisition of the Merger Lot and its continued ownership by Petitioner or by ELSA. The Board **DENIES** Petitioner's request for a declaratory judgment. The Board **DENIES** Petitioner's request for an extension for the reasons set out above and encourages Petitioner to re-register its project in the ADI Program.

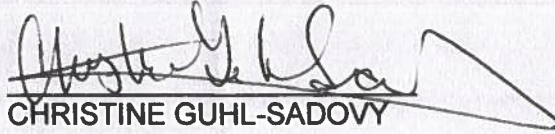
⁶ 44 N.J.R. 2043(a).

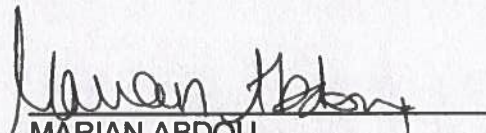
⁷ https://www.nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf at 143.

The effective date of this Order is May 29, 2024.

DATED: May 22, 2024

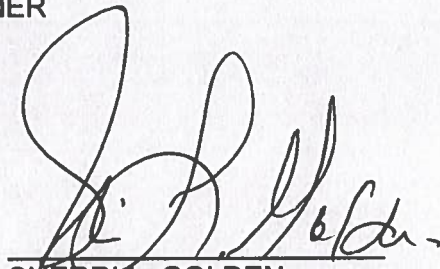
BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRIL L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE VERIFIED PETITION OF SYNNERGY LLC SEEKING A DECLARATORY JUDGMENT
PURSUANT TO N.J.S.A. 52:14B-1 ET SEQ., AND/OR A WAIVER PURSUANT TO THE WAIVER RULE, N.J.A.C.
14:1-1.2(B) NJADRE1553095046

DOCKET NO. QW23100738

SERVICE LIST

Russo Tumulty Nester Thompson & Kelly, LLP

Howard O. Thompson., Esq., Attorney for Petitioner
Russo Tumulty Nester Thompson & Kelly, LLP
1099 Mt. Kemble Avenue
Morristown, NJ 07960
hthompson@russotumulty.com

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

New Jersey Division of Law

R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Matko Ilic, DAG
Matko.ilic@law.njoag.gov

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350

Sherri Golden, Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Henry Gajda, Deputy Chief of Staff
henry.gajda@bpu.nj.gov

General Counsel's Office

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Rachel Boylan, Regulatory Officer
rachel.boylan@bpu.nj.gov

Division of Clean Energy

Veronique Oomen, Director
veronique.oomen@bpu.nj.gov

Stacy Ho Richardson, Deputy Director
stacy.richardson@bpu.nj.gov

Laura Scatena, Research Scientist
laura.scatena@bpu.nj.gov

Sawyer Morgan, Research Scientist
sawyer.morgan@bpu.nj.gov

Zainab Durda, Program Administrator
zainab.durda@bpu.nj.gov

Adam Coleman
adam.coleman@bpu.nj.gov

Earl Thomas Pierce, Administrative Analyst
earl.pierce@bpu.nj.gov