



Agenda Date: 9/4/24
Agenda Item: 8B

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) ORDER
HATHAWAY SOLAR, LLC FOR AN ORDER WAIVING)
THE PROHIBITION ON CO-LOCATION IN THE)
COMMUNITY SOLAR ENERGY PROGRAM TO ALLOW)
THE CO-LOCATION OF TWO 5MW SOLAR FACILITIES)
ON THE SOMERVILLE LANDFILL AND EXTENDING)
THE BOARD’S ORDER LIFTING THE MEGAWATT)
CAPACITY LIMITS FOR CERTAIN PROJECTS IN THE) DOCKET NO. QW23110860
PROGRAM)

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
John G. Valeri, Jr., Esq., Chiesa Shahinian & Giantomasi, PC on behalf of Hathaway Solar, LLC

BY THE BOARD:¹

By this Decision and Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers a petition filed on November 21, 2023 by Hathaway Solar, LLC (“Hathaway Solar” or “Petitioner”), a commercial photovoltaic solar power project developer with its principal place of business located at 2045 Lincoln Highway, Edison, New Jersey, seeking Board waiver of N.J.A.C 14:8-11.4(f), thereby granting the Petitioner eligibility to construct and operate two (2) co-located five (5)-megawatt (“MW”) landfill projects, “Somerville Pioneer I & II”, located in Somerville, New Jersey, at Block 124, Lots 1 and 21 (“Projects”) (“Petition”).² The Petitioner further sought a determination that the Petitioner’s application is eligible for entry into the permanent Community Solar Energy Program (“CSEP” or “Program”) and requested that the Board lift the annual MW capacity limit in the CSEP to all legacy co-located projects sited on contaminated or landfill sites that applied to the Community Solar Energy Pilot Program (“Pilot Program”) Year 2 (“PY2”) but were not awarded entry into PY2.

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.

² See BPU Docket Nos. QO21020440 & QO21020441.

BACKGROUND

On May 23, 2018, Governor Murphy signed the Clean Energy Act, L. 2018, c. 17 (“Act” or “CEA”), into law. Among other mandates, the CEA directed the Board to, within 210 days, adopt rules and regulations establishing the Pilot Program, thereby enabling access to clean energy generation for utility customers currently unable to place solar generation facilities directly on their own properties, with emphases on facilitating access for low- to moderate-income (“LMI”) customers and on developing community solar projects without materially compromising the preservation of open space or protected lands in New Jersey.

On January 17, 2019, the Board adopted the Pilot Program rules (“Pilot Rules”), N.J.A.C. 14:8-9.1 *et seq.*, thereby enabling New Jersey electric utility customers to participate in a solar energy project that may be remotely located from their properties and receive a utility bill credit.³ The Board designed the Pilot Program and Pilot Rules to provide necessary experience, and lay the groundwork, for the development and implementation of a full-scale CSEP.

The Pilot Rules define co-location as “two or more independent community solar facilities providing subscriptions to two (2) separate and distinct subscriber groups that are sited on the same parcel or contiguous parcels.”⁴ The Pilot Rules permitted co-located projects to apply for entry in the Pilot Program and receive the same incentive level as all other conditionally approved projects.⁵

On March 29, 2019, the Board approved, and released, the Community Solar Pilot Program Year 1 Application Form. On October 2, 2020, the Board released the PY2 Application Form. Hathaway Solar subsequently submitted applications for the Projects, which were not conditionally approved for construction in PY2.

The Board did not carry out a third Pilot Program year, electing instead to roll out the CSEP.

On August 16, 2023, the Board amended the Pilot Rules to establish the CSEP and set forth the methodology by which it would be governed.⁶ By Order dated August 16, 2023, the Board launched the CSEP, which included modifications and clarifications to co-location and siting restrictions.⁷

On January 24, 2024, Governor Murphy signed L. 2023, c. 200 (“Expansion Act”) into law, thereby directing the Board to open additional energy capacity in the CSEP for Energy Year (“EY”) 2024 and 2025, establish standards to enforce compliance with the CSEP rules, allow low- to moderate-income customers to self-attest to their eligibility in the CSEP, and allow utilities to disclose certain customer information to local government to facilitate automatic enrollment in a community solar project. The Expansion Act further required the Board to increase the CSEP capacity targets by certain prescribed MW amounts depending upon capacity awarded under the CSEP.

³ The Pilot Rules were subsequently published in the New Jersey Register on February 19, 2019.

⁴ N.J.A.C. 14:8-9.2.

⁵ N.J.A.C. 14:8-9.4(j).

⁶ In re a Rulemaking Proceeding to Establish the Community Solar Energy Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QX23070434, Approval dated August 16, 2023.

⁷ In re the Community Solar Energy Program: Order Launching the Community Solar Energy Program, BPU Docket No. QO22030153, Order dated August 16, 2023 (“August 2023 Order”).

By Order dated April 30, 2024, the Board incorporated the directives of the Expansion Act into the CSEP program.⁸ The April 2024 Order also amended the CSEP's list of preferred sites to include former mining sites and the detailed dollar amount per kilowatt capacity a CSEP project developer must post in escrow within a specified timeframe. The expanded EY 2024 capacity block opened on May 15, 2024 and closed on May 29, 2024, with any remaining capacity rolled over into EY 2025.

PETITION

By the Petition, Hathaway Solar sought a waiver of the prohibition on co-location enumerated at N.J.A.C. 14:8-11.4(f) and special dispensation for the Projects to be allowed entry into the CSEP. The Petitioner explained that the Projects' site is a former landfill located in Somerville, New Jersey ("Landfill") owned and under remediation by the municipal corporation of the Borough of Somerville ("Borough"). The Landfill occupies 47.4 acres, discontinued operations in 1984, and remained stagnant for forty (40) years due to failure to achieve final regulatory closure or receive a final remediation document pursuant to the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 *et seq.*

According to the Petition, the total cost associated with closing of the Landfill is estimated to exceed \$13.4 million. Between 2016 and 2018, the Borough received a series of Hazardous Discharge Site Remediation Fund grants from the New Jersey Department of Environmental Protection ("DEP") totaling \$10,274,230. The Petitioner noted that the Borough looked to private entities to contribute the approximately \$3.4 million remaining required to close the Landfill and, in 2020, the Borough invited bids from solar developers to remediate and redevelop the Landfill into a community solar project to shift the cost of remediation and closure to a private company. The Petitioner explained that, on May 26, 2021, Hathaway Solar and the Borough entered into a Redevelopment Agreement to develop a landfill closure plan with the DEP and for the Projects to serve as a capping mechanism to cover the Landfill.

The Petitioner noted that, in conjunction with the Borough, it submitted two (2) applications to PY2 and that the Board did not grant the Projects conditional approval in PY2 because a large number of highly scoring projects applied and the Projects did not meet high evaluation criteria score required to be competitive among such applications. The Petitioner noted that, in anticipation of the implementation of the CSEP, it continued to apply for all permits necessary to construct its Projects under the expectation that co-located projects would be eligible in the CSEP.

By the Petition, Hathaway Solar noted that its only alternative to the CSEP is to apply the Projects for admittance into the Competitive Solar Incentive ("CSI") Program which would require the Projects to receive a higher solar renewable energy credit ("SREC-II") value than offered in the CSEP to remain viable. The Petitioner noted that, if allowed entry into the CSEP, the Projects would provide public benefits that the Board should encourage in an effort to avoid funding the Landfill remediation costs with taxpayer money, promote public health and environmental stewardship, and produce clean energy for the surrounding communities.

The Petitioner identified that the Pilot Program Rules at N.J.A.C.14:8-11.4 and the Board's rules at N.J.A.C. 14:1-1.2(b) allow an entity to file a petition for special dispensation to engage in co-location of facilities. The Petitioner also noted that, pursuant to the Administratively Determined

⁸ In re the Community Solar Energy Program, BPU Docket No. QO22030153, Order dated April 30, 2024 ("April 2024 Order").

Incentive (“ADI”) Program rules at N.J.A.C 14:8-11.4(f), the Board has explicit authority to waive co-location prohibitions.

By the Petition, the Petitioner additionally requested that the Board extend the lift on the CSEP’s annual MW capacity limit to all legacy co-located projects sites on contaminated or landfill sites that applied to PY2, were not awarded in PY2, and still meet CSEP eligibility rules.

On May 8, 2024, the Petitioner submitted a supplemental filing of three (3) letters of support for its Petition: 1) a letter from the Somerset County Board of County Commissioners; 2) a letter from the County of Somerset Planning Board; and 3) a letter from Senator Douglas J. Steinhardt, State Senator of the 23rd Legislative District. The letters all similarly claim that the Projects would reap public benefits that the Board should encourage because they save taxpayers from landfill remediation costs, promote public health and environmental stewardship, and produce clean energy for New Jersey communities.

On May 6, 2024, the Petitioner submitted a confidential supplemental exhibit to its Petition to support its position that the Projects will not be commercially viable in the CSI Program based upon the awarded SREC-II bid prices.

COMMENTS

On April 23, 2024, the Board received a letter of support from Assemblyman John DiMaio (“Letter”) noting that the Borough of Somerville fully supports the Projects, and that the Projects’ installation is an important step in finalizing the remediation of the Landfill. By the Letter, Assemblyman DiMaio further noted that, should the Petition be denied, the Borough and surrounding communities will be denied availability of an additional source of renewable energy and therefore requested that the Board waive its co-location rules with respect to the Projects.

DISCUSSION AND FINDINGS

The CSEP is designed to facilitate greater access to solar energy for ratepayers across the State, particularly low- to moderate-income residents. The Board remains committed to ensuring that the CSEP furthers that goal and to addressing issues that arise in its implementation.

Pursuant to N.J.A.C. 14:1-1.2, the Board’s rules may be liberally construed to permit the Board to carry out its statutory functions. Specifically, “[i]n special cases and for good cause shown, the Board may . . . relax or permit deviations from these [rules].” N.J.A.C. 14:1-1.2(b). Additionally, “[t]he Board shall, in accordance with the general purpose and intent of its rules, waive section(s) of its rule[s] 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). Additionally, N.J.A.C.14:8-11.4(f) specifically forbids co-location of projects in the ADI Program absent Board waiver.

In this instance, the Petitioner requested waiver of the co-location prohibition, N.J.A.C. 14:8-11.4(f), with respect to the Projects and that the Board issue a determination that the Projects are therefore eligible for the CSEP. The Petitioner claimed that the August 2023 Order directed commenters, including the Petitioner, to apply to the Board for a waiver of the co-location prohibition to allow fully mature projects to remain qualified to apply for the CSEP using their existing plans and approvals. The Petitioner explained that such waiver is necessary and proper in this instance to effectuate the intent of the Board’s prior Orders and support the closure of the

Landfill. The Petitioner noted that the Landfill is a “perennially challenged and undeveloped site” that will remain stagnant and contaminated absent remediation and that closure of the Landfill, through the Projects, is the only viable redevelopment option and the Projects are only economically viable if they can be co-located because the Projects’ financiers are unwilling to proceed without admission into the CSEP.

The Petitioner further explained that the Projects seek to take advantage of the space provided by the Landfill, noting that there is “little vacant land” available in the State for such development and that termination of the Projects would ultimately lead to taxpayers shouldering the cost of remediation. The Petitioner identified that, upon the Projects’ inception and until the issuance of the August 2023 Order, it had no reason to believe, based upon the Pilot Program structure and rules, that co-location of the Projects would burden their viability and that, absent a waiver, the Projects will fail and the Landfill will remain “an uncapped blight on the Borough.”

The Petitioner noted that a waiver meets the goals of the August 2023 Order because granting the requested waiver and expanding the CSEP to include the Projects provides maximum benefit to ratepayers at the lowest cost, supports growth of the solar industry, furthers the State’s clean energy goals, and furthers compliance with the CEA.

Through the Projects, the Petitioner seeks to complete remediation of the Landfill and subsequently provide greater access to solar generation throughout the State. Additionally, the Petitioner demonstrated strict compliance with the PY2 rules and procedures in applying for, planning, and executing the Projects, including receiving full support of the Borough via letters of support and acceptance of the Petitioners’ bid to perform final remediation of the Landfill by shifting costs to the Petitioner and away from taxpayers. As such, the Board **HEREBY FINDS** that the Petitioner demonstrated extensive commitment to erect the co-located projects in compliance with the PY2 rules. The Board **FURTHER FINDS** that the Petitioner properly submitted its projects into PY2, which permitted co-location, and experienced unforeseen hardship as a result of the rule change effectuated with the creation of the CSEP.

The Board **FURTHER FINDS** that, because the publicly-owned Landfill would remain pending remediation absent completion of the Projects; the Projects provide a public good in the form of greater access to community solar resources, in the interests of the general public; and the Projects will become commercially unviable and impossible to complete absent a waiver of the co-location rules at N.J.A.C. 14:8-11.4(f), the Petitioner has shown good cause for the Board to waive its co-location rules at N.J.A.C. 14:8-11.4(f) with respect to the Projects.

The Board, having carefully considered the record in this matter, including Petition and public comments, and having found good cause, **HEREBY WAIVES** the prohibition on co-location enumerated at N.J.A.C. 14:8-11.4(f) with respect to the Projects.

The Board **HEREBY NOTES** that the current proposed CSEP rule modification would permit co-location of certain projects, and that the Projects are consistent with the criteria contained therein. As such, the Board **HEREBY DIRECTS** that the Petitioner may submit an application for registration in the CSEP for review and determination of eligibility for the Program.

The Petitioner further requested that the Board extend automatic entry into the CSEP irrespective of MW block capacity limits to legacy co-located landfill and contaminated projects, proffering that the August 2023 Order permits certain PY2 projects automatic entry into the CSEP without applicable MW block capacity limits. The Petitioner further explained that, considering significant additional investment made by developers of legacy co-located landfill and contaminated projects

and the Petitioner's reasonable expectation that a third Pilot Program year would occur prior to the August 2023 Order, allowing entry of such projects outside the MW capacity limitations would "represent the final bridge between the pilot and permanent program that would close the door on co-location to new projects" while still allowing legacy projects to co-locate.

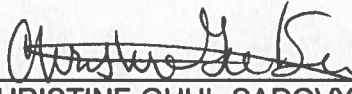
By the August 2023 Order, the Board ordered that "projects which the Board previously approved in the Pilot Program, but which did not reach commercial operation, are permitted to register in the CSEP and ADI Program irrespective of MW block capacity limits, provided that all CSEP and ADI Program Requirements are met. Such projects' capacities will also not count toward the MW block capacity limits." The Petitioner's request for automatic entry for legacy co-located landfill and contaminated projects does not comport with the Board's intent for conditionally approved Pilot Program projects to be able enter the CSEP. While the instant waiver is consistent with the Board's previous allowances for other projects conditionally approved in the Transition Incentive Program to register in the ADI Program, such allowances do not apply to projects that never received a conditional registration, including those not admitted in PY2. As such, the Board **HEREBY DENIES** the Petitioner's request to allow broad automatic entry of PY2 co-located landfill and contaminated projects into the CSEP.

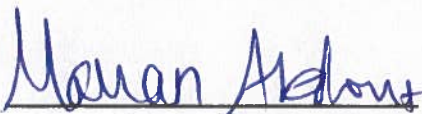
The Board **FURTHER NOTES** the instant waiver only applies to the Petition and does not grant a waiver of N.J.A.C. 14:8-11.4, or any other rule, to any other party or project. The Board **FURTHER FINDS** that automatic entry for any other category of projects does not align with the goals of the CSEP.

The effective date of this Order is September 11, 2024.

DATED: September 4, 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 HATHAWAY SOLAR, LLC FOR AN ORDER WAIVING THE PROHIBITION ON CO-LOCATION IN THE COMMUNITY SOLAR ENERGY PROGRAM TO ALLOW THE CO-LOCATION OF TWO 5MW SOLAR FACILITIES ON THE SOMERVILLE LANDFILL AND EXTENDING THE BOARD'S ORDER LIFTING THE MEGAWATT CAPACITY LIMITS FOR CERTAIN PROJECTS IN THE PROGRAM

DOCKET NO. QW23110860

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