



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF	)	ORDER
ACTIVE SOLAR DEVELOPMENT, LLC FOR A WAIVER	)	
PURSUANT TO N.J.A.C. 14:8-11.4(F) TO ALLOW THE	)	
CONSTRUCTION OF A 2.601 MW DC COMMUNITY	)	
SOLAR FACILITY AT THE PHILLPSBURG LANDFILL	)	DOCKET NO. QW25110589

**Parties of Record:**

**Adam Garcia, Esq.**, on behalf of Active Solar Development, LLC

BY THE BOARD:

By this decision and Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers the petition of Active Solar Development, LLC ("Active Solar" or "Petitioner") requesting a waiver of the restrictions on co-location for solar facilities in the State's Administratively Determined Incentive ("ADI") Program.

**BACKGROUND**

On July 9, 2021, Governor Murphy signed the Solar Act of 2021, L. 2021, c. 169 ("Solar Act"), into law.<sup>1</sup> The Solar Act directed the Board to establish an incentive program for the development of at least 3,750 megawatts ("MW") direct current ("MWdc") of new solar by 2026 through programs for small solar facilities and for grid-supply and large solar facilities.<sup>2</sup> The resultant Successor Solar Incentive ("SuSI") Program is designed to implement this mandate and increase the supply of electricity that New Jersey consumers receive from solar energy, while simultaneously lowering the cost of solar generation in the State.

Pursuant to the Solar Act, on July 28, 2021, the Board established the SuSI Program, comprised of two (2) subprograms: 1) the ADI Program for net-metered residential facilities, net-metered non-residential facilities of five (5) MW or less, and community solar facilities; and 2) the Competitive Solar Incentive ("CSI") Program for grid-supply solar projects and net-metered non-

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<sup>1</sup> L. 2021, c. 169; N.J.S.A. 48:3-114 *et seq.*

<sup>2</sup> All references to solar capacity in megawatts are measured in direct current

residential projects above five (5) MWdc.<sup>3</sup> The ADI Program opened to new registrations on August 28, 2021, and the first solicitation of the CSI Program opened for prequalification on February 1, 2023.

By Order dated August 16, 2023, the Board established the Community Solar Energy Program (“CSEP”).<sup>4</sup> Also on August 16, 2023, the Board proposed CSEP program rules that set forth the methodology by which it would be governed.<sup>5</sup> The CSEP provides incentives to qualifying projects up to five (5) MW in capacity as part of the ADI Program.

Since the ADI Program and CSEP provide a fixed Solar Renewable Energy Certificate II (“SREC-II”) incentive and greater certainty than the competitive structure of the CSI Program, the Board recognized that developers might choose to divide an otherwise-CSI-eligible project that would be over five (5) MW into smaller, ADI-eligible projects. Likewise, the ADI Program provides a larger incentive for projects under one (1) MW than for those larger than one (1) MW, which risks incentivizing developers to separate projects that would otherwise have been a single larger project. To deter such artificial division and encourage participation in the CSI Program or in the large net metered ADI market segment, the Board placed restrictions on the location of multiple projects on the same property, or on contiguous properties, defined by the ADI rules as “co-location”.

#### Subsection (t) certification

By Order dated August 18, 2021, the Board certified the 4.32 MW Ingersoll Rand Old Landfill project (“Phase I Facility”) submitted by Active Solar as located on a “properly closed sanitary landfill facility” and eligible for Transition Renewable Energy Certificates (“TRECs”) pursuant to subsection (t) of L. 2012, c. 24 (“Solar Act of 2012”).<sup>6</sup>

By Order dated September 14, 2021, the Board certified the 2.974 MW Phillipsburg Associates III Landfill project (“Phase II Facility”) submitted by Active Solar as located on a “properly closed sanitary landfill facility” and a “brownfield” and eligible for TRECs pursuant to subsection (t) of the Solar Act of 2012.<sup>7</sup> Active Solar registered both the Phase I Facility and Phase II Facility projects (collectively, “Projects”) in the Transition Incentive (“TI”) Program and received notices of conditional registration on October 1, 2021. The projects’ registrations expired on October 1, 2023.

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<sup>3</sup> In re a Solar Successor Incentive Program Pursuant to P.L. 2018, C. 17, BPU Docket No. QO20020184, Order dated July 28, 2021.

<sup>4</sup> In re the Community Solar Energy Program - Order Launching the Community Solar Energy Program, BPU Docket No. QO22030153, Order dated August 16, 2023, Revised October 11, 2023 (“CSEP Order”).

<sup>5</sup> 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.

<sup>6</sup> In re the Implementation of L. 2012, c. 24, the Solar Act of 2012, BPU Docket Nos. EO12090832V *et al.*, Order dated August 18, 2021.

<sup>7</sup> In re the Implementation of L. 2012, c. 24, the Solar Act of 2012, BPU Docket Nos. EO12090832V *et al.*, Order dated September 14, 2021.

## **PETITION**

On July 18, 2025, Active Solar filed a petition requesting a waiver of the Board's rule at N.J.A.C. 14:8-11.4(f), which prohibits co-location of projects registered in the ADI Program, with respect to the Projects ("Petition"). The Petitioner identified that, on June 14, 2024, it received a notice of conditional registration in the CSEP for the Phase I Facility to be located on a landfill site in Phillipsburg, New Jersey with capacity of 4.992 MW. According to the Petition, the Petitioner seeks to construct the Phase II Facility on the same landfill site with a capacity of 2.601 MW. The Petitioner indicated that the Projects will be separately interconnected with Jersey Central Power & Light Company ("JCP&L") with distinct points of interconnection and that they will be owned by separate entities. The Petitioner further noted that the Phase II facility has received interconnection approval, is ready to begin construction, and would serve additional community solar subscribers.

By the Petition, Active Solar further noted that the CSEP Order restricted co-location of community solar projects to prevent circumvention of the five (5) MW statutory size limit and that the rules permit co-located projects to sum to more than five (5) MW if located on rooftops of separate buildings on separate properties or on a landfill that is not properly closed and is owned by a public entity.

The Petitioner identified that the Board previously conditionally certified the Projects under subsection (t) of the Solar Act of 2012 but that this approval expired due to delays caused by the queue reform process implemented by PJM Interconnection, LLC. The Petitioner thereafter sought to develop both phases in the CSEP with adjusted configurations. According to the Petition, the Projects are to be located on separately leased parcels and separately owned.

On December 13, 2023, following receipt of the Petitioner's Phase II Facility CSEP application, the program registration manager rejected the Phase II Facility's inclusion because the project was co-located with the Phase I Facility with a total capacity of greater than five (5) MW. The Petitioner subsequently sought to develop the Phase II Facility on the rooftop of either of two (2) warehouse buildings adjacent to the landfill site property but was unable to enter a commercial arrangement with the building owners. The Petitioner, therefore, seeks a waiver to construct the Phase II Facility on the undeveloped property adjacent to the Phase I Facility.

The Petitioner asserted that a waiver is appropriate because the Projects are "distinctly developed, installed, and interconnected." According to the Petition, JCP&L issued separate conditional approvals to interconnect the Projects with their own points of interconnection, and the Projects are located on separately leased tracts to be owned by different entities. The Petitioner also noted that development of the Projects in the CSEP will result in a lower incentive value than they would have received in the TI Program. The Petitioner further identified that the Phase II Facility would serve hundreds of community solar subscribers in JCP&L territory and that it must be able to begin construction while still eligible for the federal investment tax credit.

## **DISCUSSION AND FINDINGS**

The Board is authorized to relax or waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. In special cases, upon a showing of good cause, the Board may relax or permit deviations from the rule. N.J.A.C. 14:1-1.2(b). Additionally, the Board shall waive sections of the rule if full compliance would adversely affect ratepayers or hinder safe, adequate, and proper service; or if the waiver is in the interest of the general public. N.J.A.C. 14:1-1.2(b)(1). In considering a waiver

request related to solar programs, the Board weighs the interest of the developers and the customers to be served; the State's renewable energy development goals; its interest in controlling the cost of solar subsidies to ratepayers; and the benefits of facilitating a smooth transition for solar projects and developers.

New Jersey has a strong and diverse landscape of solar development and the Board has a long history of facilitating its continued health and expansion to meet the State's clean energy goals and offer economic opportunities to a variety of commercial players. Thus, the Board developed the ADI and CSI Programs with the goal of providing the necessary incentives required for solar development of both large and small facilities at the lowest cost to ratepayers. As noted above, the ADI Program provides fixed SREC-II incentive values to provide certainty regarding available incentives for net metered projects smaller than five (5) MW, while the CSI Program uses an annual competitive solicitation to award SREC-IIs to grid-supply projects and net-metered projects larger than five (5) MW.

The Petitioner requested a waiver of the ADI co-location rule at N.J.A.C 14:8-11.4(f) regarding its community solar projects. The Board's rules define "co-location" as "siting two or more SuSI-eligible solar facilities on the same property or on contiguous properties"<sup>8</sup> and set the following restrictions on co-location in the ADI Program:<sup>9</sup>

1. Co-located net metered facilities that serve the same net metering customer as defined at N.J.A.C. 14:8-4 may sum to a capacity of no more than five (5) MW in the ADI Program;
2. Co-located community solar and/or remote net metered facilities may sum to a capacity of no more than five (5) MW unless sited on:
  - i. Rooftops of separate buildings on different properties; or
  - ii. A landfill that is owned by a public entity and is not properly closed at the time of registration, in which case, the total capacity of all the co-located community solar and/or remote net metered facilities may sum to no more than ten (10) MW; and
3. Co-located net metered facilities shall receive the lowest incentive value available to any of the facilities as if registered either individually or aggregated. The registration packages of such co-located facilities shall include an affidavit accepting the lowest incentive.

The Projects were developed in the TI Program, which had no eligibility restrictions on co-location or project capacity. Additionally, Active Solar has already completed installation of the racking system and solar panels for the Phase I Facility, which is expected to receive permission to operate from JCP&L soon. While both the Phase I Facility and Phase II Facility were initially developed simultaneously, they were still developed as separate projects, have separate interconnections to the electric grid, and are located on different, albeit adjacent, properties.

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<sup>8</sup> N.J.A.C. 14:8-11.2.

<sup>9</sup> N.J.A.C. 14:8-11.4(f).

Because the Phase II Facility project will provide a measurable benefit to the Petitioner and community solar subscribers, who will receive bill credit discounts on their utility bills, as well as the State, through increased community solar capacity, the Board **HEREBY FINDS** that its completion without further delay would be best conducted in the ADI Program and CSEP. Further, the combined capacity of these co-located projects would be 7.593 MW, which, while exceeding the ADI Program limit, does not unreasonably exceed the limit for installations such as the Projects when compared to similar, municipally-owned uncapped landfill installations which have a ten (10) MW capacity limit. Additionally, requiring this co-located project to compete in the next solicitation of the CSI Program would not substantially further the interests of the State or the ratepayers and would only serve to delay approved generating capacity.

After review of the record in this matter, the Board **FURTHER FINDS** the Petitioner originally developed and registered the Projects separately in the TI Program, which permitted co-location, and, due to extraneous circumstances, was later required to develop the Projects in the ADI program. The Board **FURTHER FINDS** that, because the Projects' combined capacity is not substantially above the co-location capacity limit, the Projects would add materially to the State's clean energy goals, and the Petitioner has already built the Phase I Facility, there exists good cause to approve the Petitioner's request for eligibility in the ADI Program and CSEP.

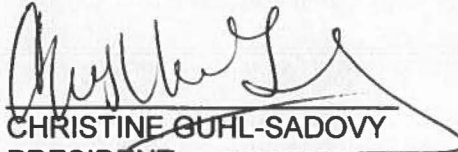
Because there exists good cause to approve the Petitioner's request for eligibility in the ADI Program and CSEP, the Board **HEREBY WAIVES** its rules at N.J.A.C. 14:8-11.4(f)(2) to permit co-location of the Petitioner's community solar projects. As such, the Board **FURTHER FINDS** that the record on this matter supports the Projects combined capacity exceeding five (5) MW in the ADI Program and **HEREBY ORDERS** that the Projects may participate in the ADI and CSEP programs accordingly.

Additionally, the Board does not believe that the registration of the Phase II Facility should affect the incentive awarded to the Phase I Facility, which has already completed construction and is near the start of its incentive term. Imposing a lower incentive upon the Phase I Facility due to its co-location with the Phase II Facility would unduly prejudice the Phase I Facility because it was financed and constructed under the expectation that it would receive the incentive conditionally awarded upon its registration in 2024. As such, the Board **FURTHER FINDS** that, because retroactively imposing a lower incentive rate on the already constructed Phase I Facility would be unduly prejudicial, there is good cause to waive N.J.A.C. 14:8-11.4(f)(3), which is intended to apply to projects with differing incentives due to size or market segment eligibility rather than timing of registration. As such, the Board **HEREBY WAIVES** its rules at N.J.A.C. 14:8-11.4(f)(3), thereby permitting the Projects to receive the SREC-II incentive level available at the time of each phase's registration.

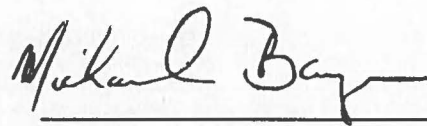
The effective date of this Order is December 24, 2025.

DATED: December 17, 2025

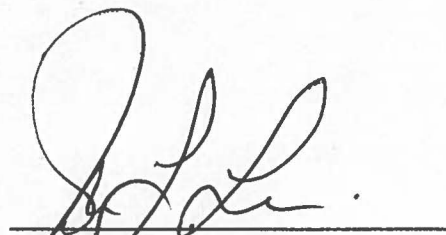
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BOARD SECRETARY

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

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PURSUANT TO N.J.A.C. 14:8-11.4(F) TO ALLOW THE CONSTRUCTION OF A 2.601 MW DC COMMUNITY SOLAR  
FACILITY AT THE PHILLPSBURG LANDFILL

DOCKET NO. QW25110589

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