



Agenda Date: 6/30/26  
Agenda Item: 8J

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF )  
SOUTH BRANCH SOLAR PROJECT, LLC FOR A )  
WAIVER OF THE CSI SITING PROHIBITIONS AT )  
N.J.A.C. 14:8-12.3 TO ALLOW FOR PARTICIPATION IN )  
THE COMPETITIVE SOLAR INCENTIVE PROGRAM )  
) DOCKET NO. QW26040167

**Parties of Record:**

**Steven P. Gouin, Esq.**, on behalf of South Branch Solar Project, LLC

BY THE BOARD:

This Order concerns a petition filed on April 24, 2026, by the South Branch Solar Project, LLC (“South Branch” or “Petitioner”). Petitioner seeks a prohibited land use eligibility waiver under the Competitive Solar Incentive (“CSI”) Program pursuant to N.J.S.A. 48:3-119(f) for a solar facility sited within a freshwater wetland, as defined pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.

**BACKGROUND**

The Solar Act of 2021 (“Solar Act” or “Act”) directed the Board to create two (2) solar incentive programs, one of which is a competitive solicitation process for grid supply solar facilities and net metered facilities greater than five (5) MW. The Act also directed the Board, in consultation with the New Jersey Department of Environmental Protection (“NJDEP”) and the Secretary of the New Jersey Department of Agriculture (“Secretary of Agriculture”), to establish solar siting rules that will apply to all grid supply solar facilities and net metered solar facilities greater than five (5) MW in size.<sup>1</sup>

In connection with the establishment of siting criteria, the Act lists a series of land uses that are not authorized for solar project siting unless the applicant, in accordance with the waiver provisions specified in the Act,<sup>2</sup> files a waiver petition with the Board and receives approval from

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<sup>1</sup> N.J.S.A. 48:3-119(b).

<sup>2</sup> N.J.S.A. 48:3-119(f).

it to proceed.<sup>3</sup> Among the land use areas that requires a waiver before a solar project siting is permitted is wetlands.<sup>4</sup> The Act requires that the “petition shall set out the unique factors that make the project consistent with the character of the specific parcel.”<sup>5</sup> In such cases, the Board is required to consult with the NJDEP or Secretary of Agriculture, as appropriate, and “may [...] grant a waiver if it determines that a project is in the public interest.”<sup>6</sup>

By Board Order dated December 7, 2022, the Board approved the establishment of the CSI Program.<sup>7</sup> The CSI Program is open to qualifying grid supply solar projects (i.e., those selling into the wholesale markets), grid supply solar projects in combination with energy storage, and net metered non-residential projects greater than five (5) MW in size.

On September 18, 2023, the proposed rules for siting grid supply and large net metered solar facilities (“CSI Siting Rules”) were adopted with non-substantial changes and published in the New Jersey Register at 55 N.J.R. 2015(a). The CSI Siting Rules include a mechanism to allow siting of CSI-eligible facilities on otherwise restricted land uses if the developer seeks and receives a waiver of the siting prohibition. The CSI Siting Rules also provide for an administrative waiver in appropriate circumstances.

In compliance with the Act, the CSI Siting Rules at N.J.A.C. 14:8-12.6(a) require any petitioner to include documentation of “sufficient facts and circumstances” to demonstrate why siting a CSI-eligible project on a prohibited land use is in the public interest. In such cases, the Board requires consultation with other State agencies, as appropriate, to determine if a project is in the public interest.<sup>8</sup> The Board, or its designee, may request additional evidence prior to approving or denying a request for any waiver requested, pursuant to this section.<sup>9</sup>

On January 20, 2026, Governor Mikie Sherill signed Executive Order (“EO”) 2,<sup>10</sup> directing the BPU to initiate a solicitation for qualifying solar facilities or solar facilities in combination with storage under the CSI Program within forty-five (45) days. By Order dated March 4, 2026, the Board set the pre-qualification window for the fourth CSI Program solicitation to open on March 11, 2026, and close to bids on April 24, 2026, at 11:59:59 PM EST, with Board awards anticipated in June 2026.<sup>11</sup>

South Branch submitted a prequalification application in the fourth solicitation of the CSI Program on April 3, 2026, in Tranche 1. On April 13, 2026, Board Staff sent counsel for Petitioner a letter

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<sup>3</sup> N.J.S.A. 48:3-119(c).

<sup>4</sup> Id.

<sup>5</sup> N.J.S.A. 48:3-119(f).

<sup>6</sup> Id.

<sup>7</sup> In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022. (“CSI Program Order”).

<sup>8</sup> N.J.A.C. 14:8-12.6(a)(1).

<sup>9</sup> N.J.A.C. 14:8-12.6(c).

<sup>10</sup> Exec. Order No. 2 (Jan. 20, 2026), 58 NJR 1041(a), available at <https://nj.gov/infobank/eo/057sherrill/pdf/EO-2.pdf>.

<sup>11</sup> In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Establishing the Fourth Solicitation of the CSI Program, BPU Docket No. QO21101186, Order dated March 4, 2026 (“March 4, 2026 Solicitation Order”).

advising that the facility would require a waiver from the CSI Siting Rules at N.J.A.C. 14:8-12.3(a)(4) because the facility is located on land classified as freshwater wetlands. On April 22, 2026, Board Staff notified all prospective applicants that pre-qualification includes an evaluation of all proposed project sites to confirm whether any projects were located on land uses prohibited in the Act; those projects seeking to site on prohibited land use types require a waiver issued by the Board pursuant to the CSI Siting Rules for Grid Supply and Large Net Metered Solar Facilities at N.J.A.C. 14:8-12. Furthermore, prospective applicants were notified that in order to be considered in the fourth CSI Program solicitation, applicants in need of a land use waiver must submit a petition to the Board prior to the close of the solicitation on April 24, 2026.

### **Petition**

On April 24, 2026, counsel for South Branch filed a petition with the Board seeking: (1) confirmation that the proposed solar facility complies with the CSI siting restrictions at N.J.A.C. 14:8-12.3(a)(4) and therefore does not require a waiver, or in the alternative, (2) a waiver of the CSI siting prohibitions pursuant to N.J.A.C. 14:8-12.6 based on the record presented, as well as any other relief as the Board deems proper. The petition concerns an approximately five (5) megawatt alternating current (“MWac”) solar facility (“Project”) proposed to be located on Block 73, Lot 17 in Readington Township, Hunterdon County, New Jersey (“Property”).<sup>12</sup>

Petitioner argued that the Project is not located on freshwater wetlands and is therefore in compliance with the siting restrictions at N.J.A.C. 14:8-12.3(a)(4) and does not require a waiver. Petitioner stated that the final design and layout of the solar facility will “avoid all jurisdictional wetlands and associated transition areas and will comply with all applicable NJDEP rules and permitting requirements.” Further, the Petitioner asserted that even though the NJDEP Geographic Information System (“GIS”) mapping indicates the presence of freshwater wetlands on the Property, such mapping is preliminary in nature and not determinative of actual site conditions.

To that end, the Petitioner retained Langan Engineering and Environmental Services LLC (“Langan”) to perform a field verification at the Property to identify, delineate, and map freshwater wetlands onsite; Petitioner contends that this mapping was done in accordance with the NJDEP’s acceptable methodology and the New Jersey Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. Langan prepared and provided a report of the site (“Langan Report”) on April 23, 2026. According to the Langan Report, the field investigation identified that “regulated wetlands are limited to discrete areas of the site, generally associated with drainage features and lower-lying areas; significant portions of the site, including upland agricultural areas, are not wetlands.” The Langan Report concluded that the proposed solar facility was “being designed to avoid jurisdictional wetlands; and accordingly, the Project is consistent with the siting requirements set forth in N.J.A.C. 14:8-12.3.”

In the alternative, Petitioner argued that even if a waiver were required, good cause exists to grant such relief because the Project would avoid jurisdictional wetlands and will not result in any loss of environmental resources. The Petitioner also maintained that granting relief would enable the development of approximately five MWac of renewable solar generation, which is in the public interest.

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<sup>12</sup> Measured in MWdc, the Project has a capacity of 7.507 MWdc.

### **Consultation with State Agencies**

Pursuant to the Act and the Board's waiver provisions for siting on prohibited land uses at N.J.A.C. 14:8-12.6, Board Staff consulted with the NJDEP. On June 16, 2026, NJDEP provided a memorandum<sup>13</sup> to the Board detailing its review of the petition. Based on its review, NJDEP found that the proposed solar array may be within a flood hazard area, for which a Flood Hazard Area General Permit No. 11 and Verification should be submitted. NJDEP also noted that while a private environmental consulting company has delineated the wetlands onsite, application for a Letter of Interpretation – Verification ("LOI") to receive an official wetlands delineation to confirm the absence of wetlands is recommended.

NJDEP noted the presence of habitat for State Threatened Species and Vernal Habitat adjacent to and on the site, and recommended coordination with the Division of Watershed Protection and Restoration's Threatened & Endangered Species unit prior to permitting to determine if a timing restriction would be required for the solar panel installation.

NJDEP further noted that the area is assessed with high sensitivity for both pre-contact and historic-period archaeological resources. If a significant degree of new ground disturbance is proposed, a Phase I archaeological survey may be required given the high archaeological sensitivity of the area.

NJDEP recommended that the Project not be granted a waiver to site on the prohibited land use type because a wetlands delineation is needed to determine the extent of the prohibited land type on the site. However, NJDEP stated that if the Petitioner confirm the absence of the wetlands delineation through an LOI, NJDEP would support the Project's participation in the CSI Program. Additionally, if the Project proceeds, NJDEP noted that all permits must be obtained from the Division of Land Resource Protection for any work that may impact regulated flood hazard areas.

### **DISCUSSION AND FINDINGS**

The Board recognizes the significant benefits associated with the expansion of local, distributed, renewable, non-polluting sources of energy. The Board's design for the CSI Program implements the directive of the Solar Act to target grid supply solar "toward marginal land and the built environment and away from open space, flood zones, and other areas especially vulnerable to climate change" and to promote a land use policy for grid supply siting "to affordably expand New Jersey's commitment to renewable energy while not compromising the State's commitment to preserving and protecting open space and farmland."<sup>14</sup>

The Board has effectuated siting policy priority through the creation of siting rules for CSI-eligible facilities in cooperation with the NJDEP, the Department of Agriculture, and the State Agriculture Development Committee. In addition to implementing the statutory protections on prohibited land-use types, the rules at N.J.A.C. 14:8-12.6 require that when the Board considers a petition seeking to waive the prohibitions for good cause shown, the Board may make a positive finding with regard to any such petition only upon completing three steps: consultation with other state agencies, as appropriate; a determination that the petitioner has documented sufficient facts and circumstances establishing the public's specific interest in siting the CSI-eligible facility on or within a specific prohibited land use; and finding that the waiver is in the public interest, wherein

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<sup>13</sup> NJDEP June 16, 2026, memo at Appendix A.

<sup>14</sup> N.J.S.A. 38:3-114(c).

the specific project at issue provides a benefit that outweighs the public interest in preserving the land. The waiver framework established by the Board contemplates a site-specific review that places the onus on the petitioner to demonstrate the unique circumstances that would support a Board finding that a proposed project is in the public interest and remains consistent with the character of the parcel.

The Board **FINDS** that the process for considering a siting waiver request was properly followed with respect to the Project. The Board **FINDS** that, as required by the Act and codified at N.J.A.C. 14:8-12.6(a), Board Staff consulted with the NJDEP as the State agency with regulatory authority over the site.

NJDEP advised that based on a review of the petition and the site, there is an area of wetlands on the Property and recommended that the Project should not impact the wetlands onsite. NJDEP recommended that the Petitioner apply for an LOI to obtain an official delineation. The Board **FINDS** that the NJDEP recommended certain conditions that must be met for the Project to participate in the CSI Program. Specifically, NJDEP recommended that the Petitioner apply for an official wetlands delineation through an LOI.

Based on the information contained in the petition and the recommendation of the NJDEP, the Board **FINDS** that in the absence of an LOI, there is not sufficient information on whether the Project would impact the wetlands onsite. The Board **FINDS** that granting the waiver of the Board's CSI Siting Rules pursuant to N.J.S.A. 48:3-119(f) and N.J.A.C. 14:8-12.3 is not in the public interest and **DECLINES** to waive the applicability of N.J.S.A. 48:3-119(f) and N.J.A.C. 14:8-12.3(a)(4) in the matter of the petition.

However, in considering the Petition and documentation received from the NJDEP, the Board also **FINDS** that the Project has positive support to move forward in the CSI Program if certain conditions are met. Specifically, the Board **FINDS** that the Petitioner must apply to the NJDEP for an LOI. The Board **FURTHER FINDS** that upon receipt of the LOI, the Petitioner must submit the LOI and a site plan certified by a licensed engineer either confirming that the Project is not sited on wetlands areas or has been revised to avoid wetlands to the Board, to be administratively reviewed and approved by Board Staff in consultation with the NJDEP.

After careful consideration of the materials submitted to the CSI Program as a part of the prequalification application for the fourth solicitation, the Board **FINDS** that, with the exception of a wetlands delineation and any site plan revisions to avoid wetlands areas, the Petitioner has provided sufficient evidence of meeting CSI Program prequalification requirements set forth in the Board's rules at N.J.A.C. 14:8-11.10(d). The Board **FINDS** that upon receipt of the wetlands delineation via an LOI and approval of the site plan, the Petitioner will satisfy all prequalification requirements. The Board therefore **WAIVES** its requirement for a site plan certified by a licensed engineer pursuant to N.J.A.C. 14:8-11.10(d)(3) to allow the project to conditionally prequalify to participate in the fourth CSI Program solicitation, and **DIRECTS** that the Petitioner's bid shall be considered for an SREC-II award in Tranche 1 in the fourth CSI Program solicitation, with an award conditioned on meeting the above requirements. The Board **FINDS** that, if the Project receives an award in the fourth CSI Program solicitation, the Petitioner must submit documentation to Board Staff demonstrating that the above conditions have been met, within six (6) months of the effective date of this order. The Board further **DIRECTS** that Board Staff may administratively approve an extension of the timeline for the submission and approval of these


documents by up to three (3) months. Failure to meet the conditions within the timeframe will result in a cancellation of Project registration in the CSI Program.

The Board **FURTHER FINDS** that the Project must follow all permitting and approval requirements established by the NJDEP under their permitting and/or approval authorities; the conditions set by the Board do not waive any of these requirements. More specifically, the Petitioner must receive all approvals and permitting determined necessary by NJDEP, which may include but are not limited to the Flood Hazard Area General Permit No. 11, a Phase I archaeological survey, and coordination with the Division of Watershed Protection and Restoration's Threatened & Endangered Species unit prior to permitting.

The effective date of this Order is June 30, 2026, effective immediately.

DATED: June 30, 2026

BOARD OF PUBLIC UTILITIES  
BY:

  
CHRISTINE GUHL-SADOVY  
PRESIDENT

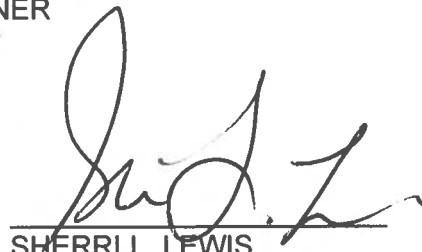
ABSTAINED

  
DR. ZENON CHRISTODOLOU  
COMMISSIONER

  
MICHAEL BANGE  
COMMISSIONER

  
EMMA REBHORN  
COMMISSIONER

  
JOSEPH COVIELLO  
COMMISSIONER

ATTEST:   
SHERRI L. LEWIS  
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.

IN THE MATTER OF THE VERIFIED PETITION OF SOUTH BRANCH SOLAR PROJECT, LLC FOR A WAIVER OF THE CSI SITING PROHIBITIONS AT N.J.A.C. 14:8-12.3 TO ALLOW FOR PARTICIPATION IN THE COMPETITIVE SOLAR INCENTIVE PROGRAM

DOCKET NO. QW26040167

SERVICE LIST

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# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION OFFICE OF PERMITTING AND PROJECT NAVIGATION

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**Ed Potosnak**  
*Acting Commissioner*

**Mikie Sherrill**  
*Governor*

**Dr. Dale G. Caldwell**  
*Lt. Governor*

June 16, 2026

Sherri L. Golden, Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
Trenton, NJ 08625

**Subject: South Branch Solar Project, LLC  
Waiver of the CSI Siting Prohibitions  
Block: 73, Lot 17  
Readington Township, Hunterdon County, New Jersey**

Dear Ms. Golden

The New Jersey Department of Environmental Protection's (NJDEP) Office of Permitting and Project Navigation (OPPN) has reviewed a request for a waiver to the siting requirements under the New Jersey Board of Public Utilities (Board) Competitive Solar Incentive Program (CSI) for the South Branch Solar Project. According to the Solar Act of 2021 (P.L. 2021, c. 169), grid-supply solar generation facilities that are eligible for the CSI program are prohibited from siting on Freshwater Wetlands without a waiver granted by the Board (N.J.A.C. 14:8-12.3). The applicant proposes to develop a 5 MW ac solar facility on an active farm field in Readington Township, Hunterdon County, New Jersey.

Based on the information reviewed, the proposed solar array may be within a flood hazard area. A Flood Hazard Area General Permit No. 11 and Verification should be submitted. In addition, a private environmental consulting company has delineated the wetlands onsite, however, NJDEP would recommend the submission of a Letter of Interpretation – Verification for an official delineation.

According to Landscapes Project Mapping (v3.4), the majority of Block 73 Lot 17 contains rank 3 habitat for State Threatened Species. Additionally, Block 73 Lot 17 contains Vernal Habitat. According to New Jersey Surface Water Quality Standards (SWQC), Block 73 Lot 17 is adjacent to the South Branch of the Raritan (FW2-NT). This section of the river contains the Brook Floater (*Alasmidonta varicosa*). Due to the presence of rank 3 habitat and vernal habitat onsite, and freshwater mussel habitat adjacent to the site, NJDEP would recommend coordination with Division of Watershed Protection and Restoration's Threatened & Endangered Species unit at ([etsu@dep.nj.gov](mailto:etsu@dep.nj.gov)) prior to permitting to determine if a timing restriction will be required for the solar panel installation.

Lastly, the proposed site fits into currently accepted models for locations that are likely to have been utilized in the pre-contact period, and various Native American sites have been identified on similar landforms throughout the South Branch Raritan River drainage within 1 mile of the project area. Additionally, the project area is adjacent to the Raritan-Readington-South Branch Historic District, which is listed on the New Jersey and National Registers of Historic Places (NR: 1/26/1990; SR: 12/7/1989). For these reasons, the area is assessed with high sensitivity for both pre-contact and historic-period archaeological resources.

If a significant degree of new ground disturbance is proposed, a Phase I archaeological survey may be required given the high archaeological sensitivity of the area.

The NJDEP does not recommend that South Branch Solar Project, LLC be granted a waiver to site on wetlands which are a prohibited site type. Provided the applicant could confirm the absence of wetlands as determined through a Letter of Interpretation from the Division of Land Resource Protection, the NJDEP would support participation in the CSI Program. Should the project move forward, all permits should be obtained from Watershed and Land Management for any necessary work that may impact regulated flood hazard areas. This letter is not indicative that the NJDEP has made any decisions on whether the proposed project will be permitted.

Should circumstances or conditions become other than as set forth in the information that was provided to the NJDEP, the regulatory requirements and recommendations are subject to change and may no longer hold true. Thank you for providing the New Jersey Department of Environmental Protection the opportunity to review the proposed South Branch Solar project. Should you have any questions or need additional information, please contact Taylor Groskorth-Flynn with the Office of Permitting and Project Navigation at [Taylor.Groskorth-Flynn@dep.nj.gov](mailto:Taylor.Groskorth-Flynn@dep.nj.gov).

Sincerely,



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David Pepe, Director  
Office of Permitting and Project Navigation

