



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE COMMUNITY SOLAR ENERGY PILOT PROGRAM)	ORDER
)	
SOLAR LANDSCAPE LLC - REQUEST EMERGENT AND EXPEDITED RELIEF FOR MODIFICATION OF THE COMMUNITY SOLAR YEAR 1 ENROLLMENT AREAS FOR TWO PERTH AMBOY SOLAR PROJECTS)	DOCKET NO. QO18060646
)	
COMMUNITY SOLAR ENERGY PILOT PROGRAM APPLICATION FORM - SOLAR LANDSCAPE, BLOCK: 425, LOT: 1.02, BLOCK 426, LOT: 3:04)	DOCKET NO. QO21040700
)	
COMMUNITY SOLAR ENERGY PILOT PROGRAM APPLICATION FORM - SOLAR LANDSCAPE, BLOCK: 428, LOT: 1.01)	DOCKET NO. QO19091258
)	
)	DOCKET NO. QO19091261

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Howard O. Thompson, Esq., Russo Tumulty Nester Thompson & Kelly, LLP, for Solar Landscape, LLC

BY THE BOARD:

In this Order, the Board addresses a Petition filed by Russo Tumulty Nester Thompson & Kelly, LLP on behalf of Solar Landscape, LLC (“Solar Landscape”) seeking a waiver of the Board’s rules to allow the expansion of two Perth Amboy community solar projects’ enrollment areas from “municipality and adjacent municipalities” to “county and adjacent counties.”

BACKGROUND

On May 23, 2018, the Clean Energy Act, L. 2018, c. 17 (“the Act” or “CEA”), was signed into law. Among other mandates, the CEA directed the Board of Public Utilities (“Board” or “BPU”) to adopt rules and regulations within 210 days establishing a Community Solar Energy Pilot Program (“Pilot Program”). The Pilot Program enables New Jersey electric utility customers to participate in a solar energy project that may be remotely located from their properties and receive a credit on their utility bills. Community solar therefore enables access to clean energy generation for utility customers currently unable to place solar generation directly on their own properties. The

BPU is particularly interested in ensuring that low- and moderate-income ("LMI") customers are able to access community solar, and that community solar development is pursued without materially compromising the preservation of open space or protected lands in New Jersey. The Pilot Program is designed to provide the necessary experience and lay the groundwork for the development and implementation of a full-scale Community Solar Energy Program.

The Board adopted the Pilot Program rules on January 17, 2019 following stakeholder engagement. The rules were filed with the Office of Administrative Law and published in the New Jersey Register on February 19, 2019.¹ The rules provide the framework necessary for the development and implementation of community solar in New Jersey during each of the Pilot Program's three Program Years.

On March 29, 2019, the Board approved and released the Program Year 1 ("PY1") Application Form, and the Board conditionally approved 45 community solar projects, representing almost 78 MWdc, on December 20, 2019 ("December Order").² Eight of the projects granted conditional approval were submitted by Solar Landscape, two of which are the subject of this petition. The two projects in question are located on rooftops in Perth Amboy: one not to exceed 2.68 MW located at 960 High Street (Docket No. QO19091258, referred to in the petition as Project 36), and the other not to exceed 4.33 MW located at 1000 High Street (Docket No. QO19091261, referred to in the petition as Project 38). The two projects are owned by CSDR 960 High LLC and CSDR 1000 High LLC, respectively; both companies are affiliates of Solar Landscape.

SUMMARY OF PETITION

On March 31, 2021, Russo Tumulty Nester Thompson & Kelly, LLP filed a petition on behalf of Solar Landscape, seeking to modify the commitments made in the original project applications with respect to subscriber enrollment areas. A certification containing supplemental information in support of the Petition was filed with the Board on May 18, 2021.

The December Order's approval of the two projects was conditional upon the projects being constructed and operated in compliance with the original Applications, the Board's December Order, and applicable rules and regulations. The December Order found that, "if a Conditionally Approved project fails to comply with the requirements of this Order, the rules at N.J.A.C. 14:8-9, or to be built and operated as it was proposed in its original Application, this failure may be grounds to cancel the Board's conditional approval of a project Program Year 1 Application Form."

One of the questions in the PY1 Application Form related to projects' geographic limit, i.e. the area within which a project proposed to enroll customers. Projects could select one of three possible enrollment areas: municipality and adjacent municipalities; county and adjacent counties; and no limit (i.e. the project could enroll subscribers located anywhere in the project's electric distribution company service territory). The geographic limit was one of the categories evaluated in the review of applications, out of a maximum of 5 points: projects that selected the "municipality and adjacent municipalities" enrollment area received higher preference; projects that selected the "county and adjacent counties" enrollment area received medium preference; and projects that selected to apply no geographic limit received no points. Both Project 36 and Project 38 selected the "municipality or adjacent municipalities" enrollment area, and were scored accordingly.

¹ 51 N.J.R. 232(a).

² *In re the Community Solar Energy Pilot Program*, BPU Docket No. QO18060646 et al., Order dated December 20, 2019. Staff notes that the petition states that Solar Landscape was awarded conditional approval for their projects on December 19, 2020. This date is incorrect.

In its petition, Solar Landscape alleges that it has encountered significant issues enrolling customers for Project 36 and Project 38. In the supplemental information filed on May 18, 2021, Solar Landscape states that, as of May 14, 2021, Project 36 and Project 38 combined are only 42.8% subscribed. In comparison, Solar Landscape's six other PY1 projects are at a combined 82.6% subscribed. The Perth Amboy projects' subscription rates are not reflective of the amount of effort or money that Solar Landscape has put into customer acquisition: the company states that the cost of subscribing a customer for Project 36 or Project 38 is more than twice the cost of subscribing a customer for Solar Landscape's other six PY1 projects. Solar Landscape notes that it has made efforts to specifically tailor the customer acquisition process to the Perth Amboy community, including the development of Spanish-language marketing materials and hiring Spanish-speaking customer-outreach professionals.

In both the original petition and the supplemental information, Solar Landscape points to several potential factors which help explain why customer acquisition has proven more challenging for the two Perth Amboy projects than the six other projects. One is simply a factor of the projects' geography: the two projects are only able enroll customers from Perth Amboy and Woodbridge. The town of South Amboy is also adjacent to Perth Amboy, but is in JCP&L service territory, and is therefore not included in the projects' enrollment area. Solar Landscape notes that the non-LMI portion of the projects (not to exceed 49% of project capacity) has not filled as quickly in the case of the two Perth Amboy projects compared to its other six projects. The company states that this can be attributed to the very high percentage of LMI residents in Perth Amboy, coupled with existing Pilot Program LMI verification rules. Finally, Solar Landscape states that anticipated endorsements from town leaders were not realized due to a change in municipal executives.

Solar Landscape requests that the Board allow the expansion of the two Perth Amboy projects' enrollment areas from "municipality and adjacent municipalities" to "county and adjacent counties." In support of this request, Solar Landscape makes three observations. First, with respect to project scores: both of the Perth Amboy projects received a score of 90 points, and the lowest score for a project selected in PSE&G service territory was 83.8 points. The geographic limitation point category had a maximum of 5 points; therefore, even had the Perth Amboy projects received 0 points in this category, the projects would have scored 85 points and would most likely have been recommended to the Board for approval. Therefore, no other project having applied to PY1 would be prejudiced if the Board were to grant the petition. Second, Solar Landscape notes that the Pilot Program rules explicitly contemplate the possibility of expanding a projects enrollment area.

Community solar projects may have subscribers anywhere in the EDC service territory in which they are located, unless they have indicated otherwise in their application to participate in the Pilot Program. Projects that have elected, in their application, to place a geographic restriction on the subscribers to the project must maintain that restriction for the lifetime of the Pilot Project. The Board may consider waiving this restriction during the project's operational period upon special request.

N.J.A.C. 14:8-9.5(a). [emphasis added].

Third, Solar Landscape states that granting the requested relief would be in the best interest of the Pilot Program as it would enable the company to more easily sign up LMI customers, albeit on a broader territorial basis than was originally intended in the projects' applications.

STAFF RECOMMENDATIONS

Staff believes that Solar Landscape has demonstrated that it is not petitioning the Board frivolously, and that it has made significant efforts to enroll customers within the existing enrollment area of “municipality and adjacent municipalities.” The Petition makes apparent that those efforts were effective for six other Solar Landscape projects, but not for the two Perth Amboy projects. Staff agrees with Solar Landscape’s assertion that the requested relief presents no harm to any of the other applications submitted to PY1 of the Pilot Program, or to the prospective community solar subscribers. Based upon the representations certified to in the petition, Staff believes that strict enforcement of the rules would be counter to the intent of the program, namely increasing solar accessibility to New Jersey electric utility customers. Staff therefore recommends that the Board grant the requested relief, and allow Solar Landscape to change the geographic limit for Project 36 and Project 38 to “county and adjacent counties.”

FINDINGS AND DISCUSSION


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 considering whether to grant a request for a waiver, the Board looks to the standards provided in this rule. 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 it adversely affects ratepayers, hinders safe, adequate and proper service, or is in the interest of the general public. N.J.A.C. 14:1-1.2(b)(1).

Community solar is an important new program to increase access to solar energy for all ratepayers in the State, particularly low- and moderate-income residents. The Board remains committed to assessing and refining the Pilot Program to better reflect real world implementation and to ensuring LMI access to community solar. Solar Landscape demonstrated here extensive efforts to subscribe LMI customers to its two Perth Amboy projects. Despite these efforts, the Perth Amboy projects remain undersubscribed by a rate of approximately 50% as compared to Petitioners’ six other community solar projects. The Board **FINDS** that Petitioner’s Perth Amboy projects face subscription headwinds including geographic restrictions, a change in administration in the City of Perth Amboy, and the percentage of LMI residents in Perth Amboy that justify an expansion of subscriber territory. The Board takes notice that N.J.A.C. 14:8-9.5(a) specifically references the Board’s ability to waive the rule’s geographic subscriber limitation upon petition. Having reviewed the petition and Staff’s recommendations, the Board finds good cause to grant the petition and **HEREBY WAIVES** N.J.A.C. 14:8-9.5(a) in order to grant the requested relief. The Board therefore **FINDS** that Project 36 and Project 38 may expand their enrollment areas to the projects’ county and adjacent counties.

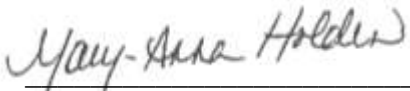
The effective date of this Order is June 16, 2021.

DATED: June 9, 2021

BOARD OF PUBLIC UTILITIES
BY:



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PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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DOCKET NO. QO21040700 – SOLAR LANDSCAPE LLC – REQUEST EMERGENT AND EXPEDITED RELIEF;

FOR MODIFICATION OF THE COMMUNITY SOLAR YEAR 1 ENROLLMENT AREAS FOR TWO PERTH AMBOY SOLAR PROJECTS;

DOCKET NO. QO19091258 – COMMUNITY SOLAR ENERGY PILOT PROGRAM APPLICATION FORM – SOLAR LANDSCAPE, BLOCK: 425, LOT: 1.02, BLOCK 426, LOT: 3:04; AND

DOCKET NO. QO19091261 – COMMUNITY SOLAR ENERGY PILOT PROGRAM APPLICATION FORM – SOLAR LANDSCAPE, BLOCK: 428, LOT: 1.01

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