



Agenda Date: 12/20/23
Agenda Item: 8C

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)
LINDEN HAWK RISE SOLAR, LLC TO PERMIT THEIR)
SOLAR PROJECT TO EXTEND THE GEOGRAPHIC)
RESTRICTION FOR OBTAINING LOW- AND)
MODERATE- INCOME CUSTOMERS FROM THE CITY)
OF LINDEN TO THE ENTIRE PUBLIC SERVICE)
ELECTRIC AND GAS COMPANY SERVICE TERRITORY)

ORDER

DOCKET NO. QO23060338

Parties of Record:

Brian O. Lipman, Esq., Acting Director, New Jersey Division of Rate Counsel
John G. Valeri, Jr., Esq., Chiesa Shahinian & Giantomasi PC for Linden Hawk Rise Solar, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) addresses a petition filed by Linden Hawk Rise Solar, LLC (“Linden Hawk Rise” or “Petitioner”) seeking a waiver of the Board’s Community Solar Energy Pilot Program (“Pilot Program”) rules (“Pilot Rules”) to allow the expansion of the Linden Hawk Rise community solar project enrollment area (“Petition”). The Pilot Rules limit the project’s enrollment area to “municipality and adjacent municipalities,” and Petitioner seeks to enroll subscribers from the entire Public Service Electric and Gas Company (“PSE&G”) service territory.

BACKGROUND

On May 23, 2018 the Clean Energy Act, L. 2018, c. 17 (“Act” or “CEA”), was signed into law. Among other mandates, the CEA directed the Board to adopt rules and regulations within 210 days establishing the 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 was designed to provide the necessary experience and to 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 published in the New Jersey Register on February 19, 2019.¹ A key provision in the Pilot Rules was to divide the annual program capacity among each of the State's four (4) electric distribution companies ("EDCs") areas based on their average respective percentages of in-State retail electricity sales.² This provision guides the development of community solar projects to proportionally match the demand of residential electricity sales across New Jersey. Therefore, all projects were evaluated against projects that would interconnect to the same EDC territory.

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, 2019.³ Linden Hawk Rise, originally awarded as Hathaway Solar LLC, was one of the projects granted conditional approval for its five (5) MW project in PSE&G territory (Docket No. QO19091148). Petitioner is a wholly owned subsidiary of Navisun, LLC and is located on a closed landfill site at 1451 Lower Road Linden, Union County 07036.

On October 29, 2021, the Board adopted amendments to the Pilot Rules which, among other changes, expanded the LMI eligibility criteria for community solar subscribers.⁴ The amendments took effect upon publication in the New Jersey Register on December 6, 2021.⁵

On August 16, 2023, the Board amended the Pilot Rules to establish the permanent Community Solar Energy Program ("Permanent Program") which incorporated many of the lessons learned from the two (2) Pilot Program years.⁶ At the same agenda meeting, the Board issued an Order to govern the Permanent Program pending adoption of the rules ("August 2023 Order").⁷ By the August 2023 Order, the Board included the division of annual program capacity among the State's four (4) EDCs that existed in the Pilot Rules and permitted all projects to subscribe customers throughout the EDC territory to which they interconnect.

PETITION

On June 2, 2023, Linden Hawk Rise filed the Petition seeking to modify the commitments made in the original project application with respect to subscriber enrollment areas.

¹ 51 N.J.R. 232(a).

² N.J.A.C. 14:8-9.4(d)

³ In re the Community Solar Energy Pilot Program, BPU No. QO18060646 et al., Order dated December 20, 2019 ("PY1 Order").

⁴ The amendments added as eligibility criteria proof of participation in one or more listed local, State, or Federal programs listed in N.J.A.C. 14:8-9.8(d) or proof that a residential customer resides in a census block group in which 80 percent or more of the households earn less than 80 percent of the area median income, as determined by data from the U.S. Department of Housing and Urban Development, would qualify and individual resident to be a LMI subscriber for a community solar project.

⁵ 53 N.J.R. 2053(a).

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.

The PY1 Order conditioned its approval of the project upon it being constructed and operated in compliance with the original application, the Board's PY1 Order, and applicable rules and regulations. "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." PY1 Order at 8.

Projects in the Pilot Program were evaluated using a scoring rubric and awarded until the capacity block for each EDC segment was filled or just exceeded by the last project selected. One (1) scoring criteria was the project's "Geographic Limit within EDC Service Territory", i.e. the area within which a project proposed to enroll customers. Projects received a score of five points out of five in this category for enrolling customers within the same and/or adjacent municipalities of the project. Only two (2) points were received for enrolling customers in the same and/or adjacent counties, and no points were received if projects did not specify any geographic location in which it would enroll customers. The Linden Hawk Rise project selected the option for "same municipality and adjacent municipalities" enrollment area and was scored accordingly.

In the Petition, Linden Hawk Rise alleged that it experienced hardships in enrolling and retaining customers to the project despite what it characterizes as extensive efforts to engage with local government officials, community organizations, and residents in Linden and neighboring municipalities. The project was complete and operating by December 2021; however, Petitioner claimed that it had been experiencing customer acquisition issues since the project was granted conditional approval in the PY1 Order. According to the Petition, the project had already enrolled 824 customers when it went into service, of which 405 were LMI customers. However, Petitioner stated that it has "lost approximately 38% of [its 824] subscribers" for the following reasons: 1) customers being ineligible or disqualified for moving out of the project's geographic area; 2) customer dissatisfaction with the receipt of two (2) invoices associated with the project's billing practices (i.e., one from PSE&G and one from Linden Hawk Rise/Navisun); and 3) "payments over 120 days due."

Linden Hawk Rise claimed that in response to the shortfall, it utilized multiple outreach tactics to promote its project and acquire more LMI subscribers. According to the Petition, Petitioner partnered with the Mayor of Linden and select community groups to send subscription mailing letters which included cash incentives for enrollment. Roughly 422,000 pieces of direct mail were sent by either Linden Hawk Rise or the Mayor of Linden to the residents of Linden and adjacent municipalities between June 2021 and March 2022. Petition at Exhibits B and C. Petitioner also represented that it engaged a team of door-to-door salespeople to meet with the residents of Linden and adjacent municipalities to answer any questions or concerns they may have had.

Linden Hawk Rise requested that the Board grant it permission to extend its project enrollment area to all PSE&G service territory to enable it to reach more LMI customers. In support of this request, Petitioner noted that it received the third highest score among the projects conditionally approved for PY1. Referencing the Community Solar Year One Average Scoresheet Public Version Final, Petitioner noted that had it not received the additional five (5) points allocated for enrolling all customers from the same and adjacent municipalities, it would have scored 89.4 points and still rank among the 45 projects that received conditional approvals. Second, Petitioner noted that its PY1 project is not speculative but fully operational and does not require any further construction or inspections. Third, Petitioner pointed to the Board's rules allowing the Board to consider waiving the geographic restriction on a pilot project upon special request. "The Board may consider waiving [the geographic] restriction during the project's operational period upon special request." N.J.A.C. 14:8-9.5(a). Fourth, Petitioner made the case that even with the

expanded eligibility requirements the Board approved in October 2021, Linden Hawk Rise's subscribed LMI population to date is below 46% of the total subscription of the project.

On October 24, 2022, the Mayor of Linden provided a letter of support to the Linden Hawk Rise petition to the Board to extend the geographic restriction on the project. Petition at Exhibit E.

STAFF RECOMMENDATIONS

Petitioner has demonstrated significant efforts to enroll customers within its approved enrollment area of "same municipality and adjacent municipalities." Staff agrees with Petitioner's assertion that the five (5) points its application received for "Geographic Limit within EDC Service Territory" would not have affected its receipt of conditional approval. In the published scoresheet of the PY1 projects, the Linden Hawk Rise project received the highest score of all community solar applications in PSE&G's service territory. Had it not received those five (5) points, the Linden Hawk Rise project's final score would still meet the score threshold for conditional approval and remain the highest scored in respect to all other projects submitted in PSE&G's service territory. Thus, Petitioner's project did not receive conditional approval on the basis of the limitation that it now seeks to waive, and it did not receive an unfair advantage relative to other PY1 applicants.

However, Staff believes that the Linden Hawk Rise project will be able to enroll enough subscribers, in particular LMI subscribers, to satisfy the conditions of its approval, if it is afforded a more limited relief than the one it seeks; it does not need to expand its enrollment area to the entire PSE&G territory to have more access to potential subscribers. Staff recommends that the Board grant partial relief to the Linden Hawk Rise project by allowing it to extend its geographic limitation from "same municipality and adjacent municipalities". The change to "same county and adjacent counties" is consistent with past relief granted by the Board to projects in a similar situation.⁸ The counties adjacent to Union County that are served by PSE&G are Essex, Hudson, Middlesex, and Somerset. Expanding the Linden Hawk Rise geographic limitation to include these counties would increase the pool of potential subscribers more than sevenfold based on the total population across all five (5) counties. Staff believes Linden Hawk Rise will be able to reach the 51% LMI subscription requirement from this increase in potential subscribers.

Based upon the representations certified in the petition, Staff believes that strict enforcement of the Pilot Rules would be counter to the intent of the program, namely increasing solar accessibility for New Jersey electric utility customers. Staff therefore recommends that the Board grant partial relief and allow Linden Hawk Rise to change the geographic limit for its project to "same county and adjacent counties".

⁸ In re Solar Landscape LLC – Request Emergent and Expedited Relief from Modification of the Community Solar Year 1 Enrollment Areas for Two Perth Amboy Solar Projects, BPU Docket No. QO21040700, Order dated June 9, 2021.

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 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).

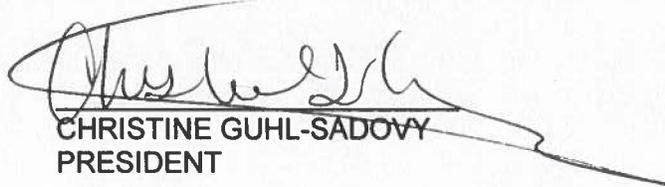
Community solar is an important program designed to increase access to solar energy for ratepayers across the State, particularly low- to moderate-income residents. The Board remains committed to ensuring that the Community Solar Energy Program furthers that goal and to responding to issues that arise in implementation. In addition, 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. The Board **FINDS** that Linden Hawk Rise Solar demonstrated extensive efforts to subscribe LMI customers within its approved enrollment area to its five (5) MW closed landfill project. The Board **FINDS** that Petitioner's Linden project faces subscription difficulties due to geographic restrictions. The Board **FURTHER FINDS** that the points Petitioner received for the geographic limit in its application did not have an effect on its receipt of conditional approval. However, the Board also finds persuasive Staff's observation regarding the extent of the relief needed. The Board therefore **FINDS** that allowing Petitioner to expand the project's enrollment area to the project's county and adjacent counties will serve the interest of the general public and better permit the Board to carry out the statutory directive of N.J.S.A. 48: 3-87.11.

Having reviewed the petition and Staff's recommendations, the Board **FINDS** good cause to provide relief to Petitioner. The Board **GRANTS** the Petition, in part, and **HEREBY WAIVES** N.J.A.C. 14:8-9.5(a) in order to permit the expansion of Petitioner's enrollment area to county and adjacent counties.

The effective date of this Order is December 27, 2023.

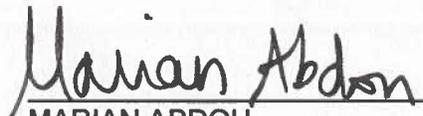
DATED: December 20, 2023

BOARD OF PUBLIC UTILITIES
BY:

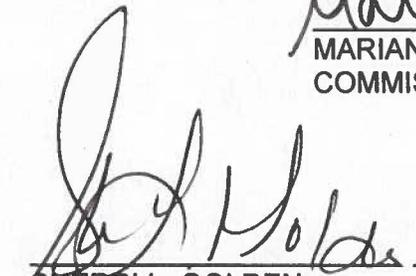

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SHERRI L. GOLDEN
SECRETARY

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 LINDEN HAWK RISE SOLAR, LLC TO PERMIT THEIR SOLAR PROJECT TO EXTEND THE GEOGRAPHIC RESTRICTION FOR OBTAINING LOW- AND MODERATE- INCOME CUSTOMERS FROM THE CITY OF LINDEN TO THE ENTIRE PUBLIC SERVICE ELECTRIC AND GAS COMPANY SERVICE TERRITORY

DOCKET NO. QO23060338

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