



Agenda Date: 1/10/24
Agenda Item: 8C

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 PETITION OF THE NORTH)
JERSEY DISTRICT WATER SUPPLY COMMISSION, IN)
CONJUNCTION WITH NEXAMP SOLAR, LLC., FOR A)
FLOATING SOLAR PROJECT ELIGIBILITY WAIVER)
UNDER THE COMPETITIVE SOLAR INCENTIVE)
PROGRAM, (P.L. 2021, C. 169))

ORDER

DOCKET NO. QO23060349

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Ted Del Guercio, III, Esq., McManimon, Scotland & Baumann, LLC, on behalf of North Jersey District Water Supply Commission and Nexamp Solar, LLC

BY THE BOARD:¹

This Order concerns a request for a waiver of the New Jersey Board of Public Utilities' ("Board's") siting prohibitions for Competitive Solar Incentive-Eligible Facilities ("CSI-eligible facilities") at N.J.A.C. 14:8-12.3(a)(1). On June 9, 2023, pursuant to N.J.A.C. 14:8-12.6, the North Jersey District Water Supply Commission ("NJDWSC"), in conjunction with Nexamp Solar, LLC ("Nexamp") (collectively, "Petitioners") filed a petition with the Board seeking to waive the prohibition ("Petition"). Petitioners seek to locate a floating solar project on the Wanaque Reservoir at Block 106, Lot 1, 1 F.A. Orechio Drive, Wanaque, Passaic County, New Jersey 07465 ("Project") on land within the Highlands preservation area, as designated in subsection b. of section 7 at L. 2004, c. 120 (N.J.S.A. 13:20-7b).

BACKGROUND

On July 9, 2021, Governor Murphy signed the Solar Act of 2021 (L. 2021, c. 169) into law, effective immediately. Among other requirements, the Solar Act of 2021 ("Act") directed the Board to establish a comprehensive program to provide incentives for the development of at least 3,750 megawatts ("MW") of new solar generation by 2026.² This target was informed by New Jersey's

¹ Commissioner Michael Bange abstained from voting on this matter.

² MW measured in direct current ("dc").

2019 Energy Master Plan (“EMP”) and Governor Murphy’s goal of achieving 100% clean energy by 2050.³ Specifically, the Act directed the Board to create two (2) solar incentive programs: a small facilities incentive program for community solar facilities and net metered facilities up to five (5) MW in size, and 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.⁴

The Act specifically requires that the solar siting criteria must:

1. facilitate the State’s commitment to affordable, clean, and renewable energy, and the carbon dioxide emissions reduction goals established in the Global Warming Response Act (C.26:2C-45);
2. minimize, as much as is practicable, potential adverse environmental impacts; and
3. where appropriate, consider:
 - a. existing and prior land uses of the property;
 - b. whether the property contains a contaminated site or landfill;
 - c. any conservation or agricultural designations associated with the property;
 - d. the amount of soil disturbance, impervious surface, and tree cover on the property;
 - e. other site-specific criteria.⁵

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,⁶ files a waiver petition with, and receives approval from, the Board to proceed.⁷ Among the areas specified is Highlands preservation area. Id. at -119(c)(5).

The Act allows developers to “petition the board for a waiver to site a solar power electric generation facility in an area proscribed by subsection c. of this section” and requires that the “petition shall set out the unique factors that make the project consistent with the character of the specific parcel, including whether the property is a contaminated site or landfill, otherwise marginal land, or whether the project utilizes existing development or existing areas of impervious coverage.”⁸ 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.”⁹

³ 2019 New Jersey Energy Master Plan: Pathway to 2050, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf.

⁴ N.J.S.A. 48:3-119(b).

⁵ Ibid.

⁶ N.J.S.A. 48:3-119(f).

⁷ N.J.S.A. 48:3-119(c).

⁸ N.J.S.A. 48:3-119(f).

⁹ Ibid.

On July 28, 2021, the Board issued an Order establishing the Solar Successor Incentive (“SuSI”) Program and providing notice of the opening of the Administratively Determined Incentive (“ADI”) Program and of the concurrent closing of the Transition Incentive (“TI”) Program on August 28, 2021.¹⁰ The ADI Program provided incentives for residential projects and non-residential net metered projects of five (5) MW or less. In addition, the ADI Program included an interim incentive for projects participating in the Board’s Subsection (t) program, which covers solar projects on brownfields, areas of historic fill, and properly closed sanitary landfills, in order to provide a bridge for these projects until the CSI Program launch.

By Board Order dated December 7, 2022, the Board approved the establishment of the CSI Program.¹¹ The CSI Program is open to qualifying grid supply solar projects (i.e., those selling into the wholesale markets) and net metered non-residential projects greater than five (5) MW in size. The CSI Program provides for solar projects to qualify in one of five tranches:

- Tranche 1: Basic Grid Supply
- Tranche 2: Grid Supply on the Built Environment
- Tranche 3: Grid Supply on Contaminated Sites and Landfills
- Tranche 4: Net Metered Non-residential Projects above 5 MW
- Tranche 5: Storage Paired with Grid Supply Solar¹²

All CSI-eligible solar generation facilities, regardless of whether a project chooses to pursue an incentive or not, are also subject to solar siting restrictions that aim to protect New Jersey’s vulnerable farmland and open spaces from unintended impacts of solar development. On the same date, the Board approved for publication in the New Jersey Register a rule proposal that amended the SuSI Rules to establish the CSI Program and a proposal for siting rules for grid supply and large net metered solar facilities. On September 18, 2023, the proposed CSI Siting Rules were adopted and published, with non-substantial changes, in the New Jersey Register at 55 N.J.R. 2015(a). The new 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 rules also provide for an administrative waiver in appropriate circumstances. Projects that would be constructed on prohibited land but for which the facility would be located exclusively on the built environment, are deemed to be presumptively in the public interest. The Board has designated the approval of such applications to Board Staff (“Staff”) or the program administrator. This expedited process was devised to allow developers a quicker route to participation based on project type but applies only to the specific subset of projects located entirely on the built environment.

In compliance with the Act, the Board’s 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. As indicated in the Summary of the CSI Siting Rule Proposal, the Board and its sister agencies may, at their discretion, consider mitigation measures project proponents suggest in

¹⁰ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO19010068, Order dated July 28, 2021 (“SuSI Program Order”).

¹¹ 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”).

¹² CSI Program Order at 15, 44.

determining whether a particular solar project is in the public interest, such as proposals that include the preservation of other lands (for example, donating substantial desirable land into permanent conservation), or the like. 55 N.J.R. 136.

While the Act only requires that solicitations for the CSI Program be held at least once every 18 months, the Board intends to hold annual solicitations to promote industry growth and competition. The prequalification window for the first solicitation opened February 1, 2023, and the bid submission closed on March 31, 2023, at 11:59:59 PM. On July 12, 2023, the Board announced that no awards were issued for the first solicitation because the responsive bids were in excess of the pre-determined price caps put in the place by the Board to protect ratepayers from excessive costs.¹³ The Board also directed the next solicitation in the CSI Program to open on an expedited timeline, opening to prequalification on October 1, 2023, and closing to bids on December 31, 2023 at 11:59:59 PM. *Id.* at 14. Subsequently, to accommodate further refinements to the CSI Rules, the Board delayed the opening of second solicitation of the CSI Program until November 27, 2023 with the solicitation window to be closed February 29, 2024.¹⁴

Petitioner's Actions in the First Solicitation

On March 7, 2023, Petitioners submitted a prequalification application for the Project, to which they refer to as the “Initial Application,” to participate in Tranche 4 (net-metered, non-residential). Petition at 11 and Exhibit A.

On March 9, 2023, Staff provided a written response to the Initial Application in which Staff communicated the requirement for obtaining a land use waiver since the project was in an area for which the Solar Act of 2021 required such a waiver. Petition at 13 and Exhibit B.

On March 27, 2023, Petitioners submitted what they referred to as an “expedited application” to obtain an administrative waiver from Staff as described in the CSI Program Order. Petition at 15 and Ex. C. Stressing the benefits the Project would deliver to the NJWDSC, Petitioners pointed to an April 23, 2021 letter from the Highlands Council (“Council”) supporting the grant of a Highlands Applicability Determination (“HAD”) (“April 23 Letter”). Petition at 12. The April 23 Letter supported a Highlands Preservation Area Exemption Determination based on the applicability of exemption #11 for the Project.¹⁵ Petitioners argued that the Project should be considered to be located on the built environment because it would be built on the surface of the Wanaque Reservoir, which was constructed in the 1920s, rather than on “land” within the Highlands Preservation Area.

¹³ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Order on the Outcome of the CSI Program Solicitation, BPU Docket No. QO21101186, Order dated July 12, 2023.

¹⁴ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Order Addressing the Timing of the Second CSI Program Solicitation, BPU Docket No. QO21101186, Order dated September 27, 2023.

¹⁵ Exemption number 11 relates to “the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act[.]” N.J.S.A. 13:20-28

On March 28, 2023, the Division of Law advised Counsel for NJWSDC that since the Project was located in one of the areas for which a waiver was statutorily required, the Initial Application could not be processed until a land use waiver had been granted by the Board. Petitioners noted that no written basis for this position was provided at that time, but the basis was provided in writing one week later, as described below. Petition at 24.

On March 30, 2023, Petitioners submitted a subsequent application, which they refer to as the “Second Application.” Petition at 26 and Exhibit E. Petitioners continued to request an administrative waiver, or conditional administrative waiver, given the impending closing of the first solicitation on March 31, 2023. Petition at 27. Petitioners claimed that the Council’s letter dated April 23, 2021 negated the need for a land use waiver, or, alternatively, supported the basis of an administrative waiver. Since a Board meeting previously scheduled for March 22, 2023 had been canceled, Petitioners argued that there was no time for the Board to issue a waiver for the Project. Petition at 32.

On April 3, 2023, Staff responded to the Second Application, reiterating its position that a Board waiver was needed pursuant to the Solar Act of 2021 and that an administrative waiver could not be issued by Staff. Petition at 42, 43, and Exhibit F.¹⁶

Petition

By letter dated June 9, 2023, NJDWSC and Nexamp filed the Petition seeking a waiver of the statutory prohibition on siting a large scale solar project within the Highlands Preservation Area, as designated in subsection b. of section 7 at L. 2004, c. 120 (N.J.S.A. 13:20-7b). Petitioners sought the waiver for a proposed floating solar project on the Wanaque Reservoir at Block 106, Lot 1, 1 F.A. Orechio Drive, Wanaque, Passaic County, New Jersey 07465. The Project is planned to be 10MWdc consisting of two (2) islands, each approximately 10 acres in size, with on-land interconnection components.

Petitioners’ arguments largely reiterate the claims made in their filings during the first solicitation. Petitioners continue to claim that the 2021 HAD issued by the Council obviated the need for a Board waiver and that if a waiver is needed, Staff could and should have granted an administrative waiver. Petitioners add that, if the Board determines that a waiver may only be granted by the Board, the Board should grant the waiver.¹⁷

According to Petitioners, as a floating solar project that will not occupy any open space within the Highlands Reservation Area, the Project is unique and warrants an administrative waiver from Staff. Petition at 16-17. Further, Petitioners contend that the Wanaque Reservoir constitutes a “Built Environment” within the meaning of the CSI Program Order because it is manmade and is over three years old, being built in the 1920s. In support of this point, Petitioners noted that the CSI Program Order favors solar development “situated on previously existing impervious surfaces” and argued that the Wanaque Reservoir provides such a surface because its floor is

¹⁶ See Letter from Michael Beck, Esq. to Timothy Eustace, NJWSDC Executive Director, April 3, 2023 (“April 3 Letter”).

¹⁷ The petition also asked that any waiver granted be made retroactive to March 31 to allow the Project to participate in the first solicitation. However, on August 31, 2023, Petitioners withdrew this request for relief because no awards were issued by the Board for the first solicitation but affirmed their request to be eligible for the second solicitation.

composed of bedrock resistant to filtration. Petition at 19-20. According to Petitioners, such a waiver would be “consistent with the spirit” of the CSI Program. Petition at Par. 23.

STAFF RECOMMENDATIONS

A petitioner for a land use waiver must provide sufficient evidence that a project serves the public interest, and the unique factors that make the project consistent with the character of the specific site, as outlined in the Background above. A petitioner may include evidence of community support; approval(s) from an overseeing agency at the State or Federal level; considerations of alternative siting, compensatory mechanisms for any detrimental effects, and/or resiliency benefits to critical infrastructure, services or communities; a valid letter of interpretation or other determination of resource value classification; and/or considerations for and avoidance of the net loss of environmental resources. For a contaminated site or landfill sited on prohibited land uses, a petitioner may also include maps and/or details on the status of applicable compliance and/or remediation requirements.

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, Staff consulted with other State agencies, namely the Highlands Council (“Council”) and NJDEP. The Council provided a letter to the Board containing information on its review and approval process on November 20, 2023 (“November 20 Letter”). The Council advised that it had received no new information since issuing the April 23 Letter, meaning that Petitioners had not yet provided the documentation specified in that letter: a replanting and monitoring plan for proposed removal of the forested area; a restoration plan for the temporary disturbance to the northern assembly and launch area; and restoration and/or landscaping plans for the proposed disturbed area for the onshore equipment.

Staff transmitted a copy of the petition to NJDEP for review and advice on August 17, 2023. NJDEP’s Office of Permitting and Project Navigation (“OPPN”) provided a memo to the Board on November 28, 2023, containing its feedback (“November 28 Memo”). The NJDEP advised that OPPN had met with Petitioners for the Project on November 5, 2020. During/As a result of that meeting, the NJDEP determined that the Project violated the Flood Hazard Area Control Act Rules, necessitating a hardship waiver and also impacted both threatened and endangered species and the Raymond Dam. The NJDEP requested more information at that time to determine a permitting path forward, but such information was not provided. In the November 28 Memo, the NJDEP concluded that additional information for the Project is needed in order to make a determination for granting a waiver to participate in the CSI Program.

On September 13, 2023, following coordination with the NJDEP, Staff requested further supporting information from Petitioners. Staff specifically advised Petitioners first, to submit an updated permit readiness checklist so that OPPN could schedule a follow-up meeting and second, to provide documentation that the meeting with OPPN was held, including recommendations and/or conclusions about the Project. Not receiving this requested information, Staff contacted Petitioners again on October 25, 2023, requesting the information by November 1, 2023 to allow the Board to make a timely decision for the CSI Program’s second solicitation. Notwithstanding these repeated requests, Petitioners failed to provide any additional information by that date. On January 8, 2024, Petitioners submitted additional information as requested by Staff. In addition to an updated permit readiness checklist and a letter to the NJDEP requesting to meet with OPPN, both dated January 8, 2024, Petitioners provided a letter of support from the Land Conservancy of New Jersey dated January 2, 2024. However, the environmental concerns enumerated in this Order remain unaddressed in their entirety.

Since Petitioners have not been actively engaging with either NJDEP or the Council, and did not receive positive support from the NJDEP, Staff does not believe that the record supports a positive finding that would justify a waiver for the Project. As described, there are environmental issues that remain outstanding, which require additional information from the Petitioners before a waiver can be granted. Petitioners have had the opportunity to provide that information to the NJDEP since at least November 5, 2020 and to the Highlands Council since April 2021, and received a specific request from Staff to provide it for purposes of this waiver request over three months ago, but have failed to respond.

Petitioners contend, however, that the CSI Program Order expressly authorized Staff to grant an administrative waiver with respect to the Project. Petitioners look to the language in that Order providing that “solar facilities located on the built environment but otherwise within an area of prohibited land use, are in the public interest” and . . . “grant[ing] Staff authority to administratively grant a waiver for such projects.” CSI Program Order at 44.¹⁸ In support of this contention, Petitioners point first to the April 23 Letter. Petition at 2(a), 18, and 30. That document itself, however, undermines this claim. In the April 23 Letter, the Council quotes the applicable statute to identify the restrictions from which a HAD exempts a project:

The Highlands Act, at N.J.S.A. 13:20-28, specifies that a project deemed to be exempt is exempt from the Highlands Act as well as from the “the regional master plan, any rules or regulations adopted by the Department of Environmental Protection pursuant to this act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan.

None of these exemptions can be construed to include an exemption from the siting prohibitions established by the Solar Act of 2021. Thus, an approval from the Council does not satisfy the statutory requirement that “[u]nless authorized pursuant to [a waiver from the Board]” . . . a net metered facility greater than 5 MW shall not be sited” in the Highlands preservation area.” N.J.S.A. 48:3-119(c)(5). By the same token, Petitioners’ statements regarding the minimal environmental impacts of the Project, Petition at 12, 17, even if completely accurate, do not negate the statutory directive to get a waiver from the Board.

Petitioners claim that the statute prohibits only solar projects located on “lands located within the Highlands preservation area” and thus does not apply to the Project as a floating solar installation. Petition at 17, quoting N.J.S.A. 48:3-119(c)(5) (emphasis added). They state that no farmland or open space will be impacted by the proposed Project. Petition at 21.

Petitioners err. First, the Project does entail construction on land adjacent to the Reservoir, including the removal of a small amount of forest. April 23 Letter. For that reason, the Council required replanting and restoration plans, as well as noting impacts to critical wildlife habitat. Ibid. In addition, nothing in the relevant statutory language indicates that “land” is to be narrowly construed to exclude waterways. Moreover, as Petitioners themselves note, the NJDWSC manages the Wanaque Reservoir because it is charged by statute with “developing raw water sources, storing water and distributing a reliable supply of potable water to its participating municipalities . . . [including] among other things, the maintenance of various reservoirs.” Petition

¹⁸ The CSI Rules took effect on December 18, 2023 during the pendency of this petition. 55 N.J.R. 2555(a) (Dec. 18, 2023). The rules also delegate Staff the authority to waive the statutory prohibition for installations exclusively on the built environment. N.J.A.C. 14:8-12.6(b)(1).

at 3. The Wanaque Reservoir's character as a body of water is thus integral to the importance of protecting it from over-development, the underlying goal of the siting restrictions in the Solar Act of 2021.

Next, Petitioners argued that the CSI Program Order authorizes Staff to grant an administrative waiver because the Wanaque Reservoir constitutes a "built environment" as defined in the CSI Order. Petition at 19. In Petitioners' opinion, since the CSI Program Order deems solar installations on the built environment to be "presumptively in the public interest" even when sited on an otherwise prohibited land use, the Project's location on the manmade Wanaque Reservoir means that it should be deemed to be in the public interest. Petition at 22, citing CSI Program Order at 40. As the NJWDSC was advised by the Board's General Counsel in April 2023, this argument misconstrues the CSI Program Order. See April 3 Letter. That Order defines "built environment" as "the surface of one (1) or more existing, serviceable structures or a serviceable, improved and impervious roadway(s) built for a purpose other than solely to facilitate solar development" and provides as examples "rooftops, canopies over parking lots or parking decks, and other similar installations on the existing built environment." CSI Program Order at 15-16. A reservoir does not constitute a "similar installation" to a rooftop or a canopy over a parking deck. The fact that the floor of the Wanaque Reservoir is "impervious," Petition at 20, does not suffice to make it similar to a parking lot.

Nor is it apparent that floating solar should be considered "inherently beneficial," as Petitioners contend. Staff notes that NJDEP issued an update to its Solar Siting Analysis ("SSA") with respect to floating solar projects in 2017.¹⁹ Assigning floating solar to the "Indeterminate" permit categorization, NJDEP noted that by its nature, each floating solar installation is unique; each is likely to raise different compliance questions, require different NJDEP permits, and have different environmental impacts. NJDEP stated that placing such large manmade structures on bodies of water, even artificial bodies of water, may raise issues regarding possible negative impacts on wetlands, erosion, water temperature, and endangered species. In addition, the possibility exists of conflicts in usage, flood hazards, navigable waters, and perhaps other unintended consequences.

Moreover, the CSI Program Order specifically considered and rejected the proposal that floating solar qualify for any specialized tranche. CSI Program Order at 20, 44, 52-53. The Order notes that Staff consulted NJDEP on this question and that NJDEP advised that the environmental impacts of floating solar are still being studied and that it is not necessarily beneficial to the environment. CSI Program Order at 20, 52-53. Floating solar is thus ineligible to be considered as constructed on the "built environment" under the CSI Program Order because projects on the built environment are presumed to be in the public interest. CSI Program Order at 20, 40, 44, 52-53. Thus, Petitioners' contention that nothing in the CSI Program Order prohibits Staff from granting an administrative waiver, Petition at 1(c), must fail, as must their claim that the Project was "precisely the type of application envisioned by the waiver provisions." Petition at 30.

Petitioners also asserted that since "built environment" is defined in the context of Tranche 2 ("Grid Supply on the Built Environment"), that definition should not apply to the Project because Petitioners seek to qualify it in Tranche 4 ("Net Metered Non-residential Projects above 5 MW"). In other words, Petitioners claimed that Staff should have ignored the CSI Program Order's definition of "built environment" in considering the Project and accepted the rationale put forward

¹⁹ New Jersey Department of Environmental Protection, Solar Siting Analysis Update 2017, <https://www.nj.gov/dep/ages/SSAFINAL.pdf>.

by Petitioners for deeming the Wanaque Reservoir the “built environment.” Petition at 48-50. This argument refutes itself. The CSI Program Order granted Staff limited authority to grant an expedited waiver only to a project located on the built environment.²⁰ No such authority was delegated to Staff for net metered projects over five (5) MW and thus, Staff had no ability to grant a waiver on that basis.

Petitioners also contended that Staff could have granted them relief by granting a waiver conditioned on a timely application by the Commission to the Board pursuant to *N.J.S.A. 48:3-119(f)*, thus allowing NJDWSC to make a CSI Program application by the March 31, 2023 deadline. Petition at 36-37. In support of this argument, Petitioners pointed out that since NJDWSC first made a prequalification application on March 7, 2023 and the CSI Program deadline was March 31, 2023, there was no way for it to receive a determination from the Board in time to meet the CSI Program March 31, 2023 deadline. Petition at 11, 31-32. However, neither the statute nor the CSI Program Order authorize Staff to grant a waiver conditioned on a future petition to the Board. Nor does the timing of NJDWSC’s pre-qualification application bestow such authority. Rather, the Board’s Order provides that a project needing a waiver must obtain it from the Board prior to entering a solicitation round.²¹

In the alternative, Petitioners argued that the Board should grant the waiver in response to this petition. According to Petitioners, the Project is consistent with the character and nature of the Wanaque Reservoir; will be situated upon “an existing, serviceable structure,” the Wanaque Reservoir; will have no detrimental impact upon the Highlands Preservation Area; is inherently beneficial within the meaning of the CSI Program Order; and will serve the public interest. Petition at 55. Nothing adduced by Petitioners here changes the analysis already set out. Staff does not dispute the Council’s determination that the Project is consistent with the goals and purposes of the Highlands Act, *N.J.S.A. 13:20-28(a)(11)*, nor that the Wanaque Reservoir is an existing item serving a purpose other than solar.

However, as previously discussed, a floating solar project cannot be deemed “inherently beneficial” as that term is defined in the CSI Program Order. The Board deferred to NJDEP’s advice that such installations are not necessarily beneficial to the environment and that study of their impacts is ongoing. CSI Program Order at 20, 52-53. Thus, Staff does not recommend that the Board find that the petitioner has documented sufficient facts and circumstances to establish that waiving the siting restriction would be in the public interest. See CSI Program Order at 39.

Petitioners pointed to various benefits they assert would be provided by the Project, stating that the Project would provide 90 percent of the Wanaque facility’s energy and provide resilient energy to critical infrastructure, reducing its energy footprint and costs to ratepayers. Petition at 56, 58. Petitioners also cited benefits to the communities served by the Wanaque Reservoir such as job creation, job sustainability, and educational and participatory opportunities. Petition at 58. In addition, Petitioners asserted that the Project’s location on the Wanaque Reservoir would preserve open space and provide shading for the reservoir that would translate into a decrease in algal blooms, water evaporation, and chemicals needed. Petition at 57, 60.

Staff acknowledges that the resiliency benefits to critical infrastructure and the economic benefits to the communities impacted by the Project are supported by the State’s and the Board’s clean energy goals. Similarly, the environmental benefits cited by Petitioners have some scientific

²⁰ CSI Program Order at 44.

²¹ CSI Program Order at 23.

support.²² However, Staff notes that over the last two to three years, Petitioners have failed to provide the missing site-specific information requested by the Council and NJDEP regarding the Project. This failure to address the specific concerns of the relevant administrative agencies outweighs general statements about environmental or community benefits. As noted above, NJDEP has advised that floating solar is an emerging technology that necessitates a case-by-case analysis. Given the lack of specific information in the record, Staff does not recommend waiving the protection the Legislature has afforded to the Highlands Preservation Area from solar development. Staff recognizes the importance of innovative technologies such as floating solar to advance the State's clean energy goals but notes that – just as the NJDEP needs more study of this technology's environmental impacts - more research is needed on its role in sustainable energy in New Jersey. As of October 31, 2023, the State had only two (2) operational floating solar facilities with an installed capacity of 12.22 MW.²³

Based on the information contained in the Petition, the conditions set by the Council, and the recommendation of the NJDEP, Staff does not believe that the Board should make a positive finding that the Project as proposed is in the public interest. Staff recommends the Board deny Petitioners' request for a land use waiver and prohibit Petitioners from moving forward in the CSI Program's second solicitation prequalification process. Staff recommends that this denial be without prejudice to Petitioners' ability to provide the additional information and evidence requested by Staff, the Council, and NJDEP to enable further evaluation and potential grant of a waiver to participate in a future solicitation.

DISCUSSION AND FINDINGS

The Board has long supported solar development in New Jersey, designing policies and programs that support the continued growth of the solar industry while carefully balancing the costs and benefits to ratepayers. The CSI Program forms the first incentive structure designed to facilitate large-scale grid supply solar development in the State, a type of solar development which has been shown in other states to provide clean energy at competitive prices. The CSI Program will provide incentives for 300 MW of new solar annually in New Jersey and thus forms a critical element in pursuing the interrelated goals of 5.2 GW of solar by 2025, 12.2 GW by 2030, and 17.2 GW by 2035, all of which form part of New Jersey's least-cost path to 100% clean energy by 2050. As highlighted in the CSI Program Order, the CSI Program uses competitive principles to ensure that the cost of the Solar Renewable Energy Certificate-II awards represent the lowest incentive contribution from New Jersey ratepayers.

The Board also recognizes the significant benefits associated with the expansion of local, distributed, renewable, non-polluting sources of energy. In addition to the reduction of emissions that contribute to global warming, there is the reduction of air pollutants and the associated health benefits; increased resilience in the form of distributed generation; a lessened need to site solar on open space in a State that seeks to preserve open space; and the economic growth fueled by local job creation. Furthermore, as designed by the Board, the CSI Program implements the directive of the Solar Act of 2021 to direct grid supply solar "toward marginal land and the built environment and away from open space, flood zones, and other areas especially vulnerable to

²² Spencer, Robert S., Macknick, Jordan, Aznar, Alexandra, Warren, Adam, & Reese, Matthew O. Floating Photovoltaic Systems: Assessing the Technical Potential of Photovoltaic Systems on Man-Made Water Bodies in the Continental United States. United States. <https://doi.org/10.1021/acs.est.8b04735>.

²³ New Jersey's Clean Energy Program. 2023. October 31, 2023 Solar Activity Reports, <https://www.njcleanenergy.com/renewable-energy/project-activity-reports/project-activity-reports>.

climate change” and to create 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.”²⁴

The Board believes that floating solar represents a potentially positive development in renewable energy technology. The EMP supports and encourages innovative energy programs and technological solutions for meeting the State’s clean energy targets and advancing New Jersey’s clean energy economy, and the Board has included it as a permissible site in the permanent Community Solar program.²⁵ Furthermore, the Board’s policy decisions pertaining to the incentives available for floating solar projects within the ADI Program demonstrate evidence of the Board’s support for advancing New Jersey’s solar potential in this market segment.^{26,27} The Board commends Petitioners for proposing a large, grid-supply floating solar facility in order to help support and achieve the State’s goals; however, as it is a novel technology in New Jersey, the Board must follow the regulatory and procedural requirements for thoroughly evaluating and making such decisions on vulnerable lands.

In providing incentives pursuant to the Solar Act of 2021 and implementing that Act’s directive to prohibit siting CSI-eligible facilities on prohibited land types, the Board furthers the State policy of meeting its clean energy goals at the least cost to ratepayers.²⁸ The CSI siting criteria were developed in cooperation with the NJDEP, the Department of Agriculture, and the State Agriculture Development Committee. To fully effectuate the legislative intent to protect vulnerable lands, the Board made these siting criteria applicable to all CSI-eligible solar generation facilities, regardless of whether a project chooses to pursue an incentive or not. The universal applicability ensures that the State’s interest in preserving open space and agricultural lands will be applied to all solar projects on an equal basis.

Pursuant to the Solar Act of 2021, the Board’s siting criteria provide the opportunity to submit a petition to obtain a waiver for construction of a CSI-eligible facility on certain prohibited lands. The Board will only grant such waiver after consultation with the Department of Agriculture or NJDEP, as appropriate, and upon a determination that the public interest in the specific project being allowed outweighs the presumptive greater public interest in preserving the land. The Board considers projects that would be constructed on prohibited land but which would be located exclusively on the built environment to be presumptively in the public interest. For such projects, the Board has delegated the waiver determination to Staff or the program administrator. This expedited process was devised to allow developers a quicker route to participation based on project type but applies only to a specific subset of projects.

The Board **FINDS** that the Project is proposed to be located on approximately 20 acres of the Wanaque Reservoir within the Highlands Preservation Area, Block 106, Lot 1, at 1 F.A. Orechio

²⁴ N.J.S.A. 38:3-114(c).

²⁵ In re the Community Solar Energy Program – Order Launching the Community Solar Energy Program, BPU Docket No.QO22030153, Order dated August 16, 2023.

²⁶ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO19010068, Order dated July 28, 2021 (“SuSI Program Order”).

²⁷ In re a Solar Successor Incentive Program Pursuant to P.L.2021, c.169, BPU Docket Nos. QO20020184 and QO23040206, Order dated May 10, 2023, redistributed on July 10, 2023, with a typographical correction.

²⁸ N.J.S.A. 38:3-114.

Drive, Wanaque, Passaic County, New Jersey 07465. The Board **FINDS** that, as required by the Solar Act of 2021, Staff consulted with the NJDEP on the Project. The Board **FINDS** that, as required by the Board's CSI Siting Rules for "consulting with other State agencies, as appropriate," Staff consulted with the Council on the Project. Though the Council did not object to the NJDEP issuing an Exemption No. 11 for the Project, as proposed in 2021, the Board **FINDS** that Petitioners have not provided the documentation identified by the Council in the April 23, 2021 Letter: a replanting and monitoring plan for proposed removal of the forest, a restoration plan for the temporary disturbance to the northern assembly and launch area, and restoration and/or landscaping plans for the proposed disturbed area for the onshore equipment. The Board **FURTHER FINDS** that the NJDEP determined that it had not received the information necessary to make permitting decisions regarding a hardship waiver of the Flood Hazard Area Control Act Rules, threatened and endangered species, or the Raymond Dam. Based on NJDEP's conclusion that it needs additional information on these matters, the Board **FINDS** the Project does not have positive support from the NJDEP to move forward. In addition, the Board **FINDS** that Staff twice requested supporting information from Petitioners to be supplied by November 1, 2023, to enable a timely decision on this waiver request and that Petitioners provided a partial response on January 8, 2024.

The Board also **FINDS** that the conditions set by the Council and the information required by the NJDEP must be addressed before the Board can make a make a positive finding with regard to this petition. The Board **FINDS** that the Petitioners have not documented sufficient facts or circumstances establishing the public's specific interest in siting the CSI-eligible facility on or within the Highlands Preservation Area.

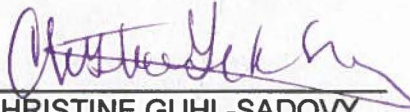
The Board **FINDS** that granting the waiver of the Board's CSI Siting Rules pursuant to N.J.A.C. 14:8-12.3(a)(2) is not warranted and is not in the public interest pursuant to N.J.A.C. 14:8-12.6(a) and **DENIES** the waiver. The Board **FINDS** that the Petitioners are not eligible to participate in the CSI Program's second solicitation. Thus, the Board **DIRECTS** the CSI Program Administrator not to process a prequalification package from Nexamp and/or NJDWSC for the second solicitation, if received. The Board **FINDS** that the Petitioners may be eligible to participate in a future solicitation under the CSI Program if additional information is provided and the specific requirements discussed herein are met. If Petitioners choose to continue pursuing participation in the CSI Program, then the Board encourages Petitioners to submit the following information to the Board Secretary in a timely manner on a schedule or deadline set by Staff: an updated permit readiness checklist so that NJDEP's OPPN can schedule a follow-up meeting, and documentation that the meeting with NJDEP's OPPN was held, including recommendations and/or conclusions about the Project.

This Order is issued in reliance on the information provided by the Petitioners, Council, and NJDEP and does not grant any rights in connection with the registration or construction of the proposed project.

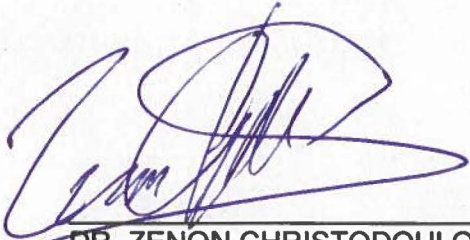
This Order shall be effective on January 17, 2024.

DATED: January 10, 2024

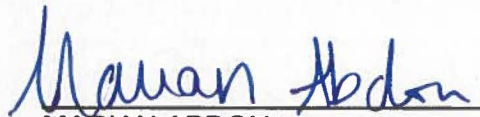
BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL-SADOVY
PRESIDENT

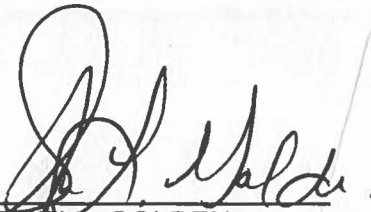


DR. ZENON CHRISTODOULOU
COMMISSIONER



MARIAN ABDOU
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 PETITION OF THE NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION, IN
CONJUNCTION WITH NEXAMP SOLAR, LLC., FOR A FLOATING SOLAR PROJECT ELIGIBILITY WAIVER
UNDER THE COMPETITIVE SOLAR INCENTIVE PROGRAM, (P.L. 2021, C. 169)

DOCKET NO. QO23060349

SERVICE LIST

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