



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF AB)	ORDER
NEWARK (FUND IV) OPERATING, LLC FOR)	
APPROVAL OF A WAIVER OF THE CO-LOCATION)	
RESTRICTIONS FOR THE ADMINISTRATIVELY)	
DETERMINED INCENTIVE PROGRAM FOR THE)	
ANHEUSER-BUSCH NEWARK BREWERY ROOFTOP)	
AND CANOPY SOLAR PROJECT)	DOCKET NO. QW23120927
)	
IN THE MATTER OF THE VERIFIED PETITION OF NJ)	
TERMINAL SOLAR, LLC FOR WAIVERS OF CERTAIN)	
ADMINISTRATIVELY DETERMINED INCENTIVE)	
PROGRAM REQUIREMENTS, AND RELATED RELIEF)	DOCKET NO. QW24050361
)	
IN THE MATTER OF THE VERIFIED PETITION OF)	
TUCKAHOE ROAD SOLAR PROJECT 2020, LLC AND)	
CLAYTON ROAD SOLAR PROJECT 2020, LLC FOR)	
APPROVAL OF A WAIVER OF THE CO-LOCATION)	
RESTRICTIONS FOR THE ADMINISTRATIVELY)	
DETERMINED INCENTIVE PROGRAM FOR THE)	
WILLIAMSTOWN HIGH SCHOOL AND WILLIAMSTOWN)	
MIDDLE SCHOOL SOLAR PROJECTS)	DOCKET NO. QW25030179

Parties of Record:

Kenneth J. Sheehan, Esq., on behalf of AB Newark (Fund IV) Operating, LLC, Tuckahoe Road Solar Project, LLC, and Clayton Road Solar Project 2020, LLC
Steven S. Goldenberg, Esq., on behalf of NJ Terminal Solar LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers the petitions of AB Newark (Fund IV) Operating, LLC ("AB Newark"), NJ Terminal Solar LLC ("NJ Terminal"), and Tuckahoe Road Solar Project, LLC ("Tuckahoe") and Clayton Road Solar Project 2020, LLC ("Clayton") for a waiver of the restrictions on co-location in the Administratively Determined Incentive ("ADI") Program.

BACKGROUND

On May 23, 2018, the Clean Energy Act, L. 2018, c. 17 (“CEA”) was signed into law. Among other mandates, the CEA directed a fundamental reshaping of New Jersey’s solar incentive programs. The Board was directed to close the Solar Renewable Energy Certificate (“SREC”) Registration Program (“SRP”) to new registrations once 5.1% of the kilowatt-hours sold in the State were generated by solar electric power connected to the distribution system (“5.1% Milestone”). The CEA also directed the Board to complete a study that evaluates how to modify or replace the SRP to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State. On July 9, 2021, Governor Murphy signed into law the Solar Act of 2021 (“Solar Act”),¹ which directed the Board to establish a program to incent the development of at least 3,750 MW² of new solar by 2026.

Pursuant to the CEA, the SRP closed on April 30, 2020, following the Board’s determination that the 5.1% Milestone had been attained. The SRP was replaced by the interim Transition Incentive (“TI”) Program, which was created to provide a bridge between the SREC Program and the successor incentive program. The TI Program, subsequently codified in rules, provides eligible projects with Transition Renewable Energy Certificates (“TREC”) with fixed incentive values for each megawatt hour (“MWh”) of electricity produced.³ The TI Program portal opened to new applications on May 1, 2020; pursuant to Board Order and the TI Rules, the TI Program remained open to new registrations until the establishment of a registration program for the Successor Program.⁴

The Solar Act provided that the small solar facilities program would incentivize “net metered solar facilities less than five megawatts in size, as measured in direct current, or another size specified by the board.” N.J.S.A. 48:3-116(a). On July 28, 2021, following a stakeholder process, the Board established the Successor Solar Incentive (“SuSI”) Program, comprised of two subprograms: 1) the ADI Program for net metered residential facilities, net metered non-residential facilities of 5 MW or less, and community solar facilities; and 2) the Competitive Solar Incentive (“CSI”) Program for grid-supply solar projects and net metered non-residential projects above 5 MWdc.⁵ These program distinctions were subsequently codified in rules. N.J.A.C. 14:8-11. The TI Program closed to new registrations on August 27, 2021, and the ADI Program opened to new registrations on August 28, 2021. On December 7, 2022, the Board established the CSI Program, furthering the implementation of the SuSI Program. The first solicitation of the CSI Program opened for prequalification on February 1, 2023 and closed on March 31, 2023.

Since the ADI Program provides a fixed incentive and greater certainty than the competitive structure of the CSI Program, the Board recognized that developers might be incentivized to divide a net metered project that would otherwise be over 5 MW and CSI-eligible into smaller, ADI-eligible projects. Likewise, the ADI Program provides a larger incentive for projects under 1

¹ L. 2021, c. 169; N.J.S.A. 48:3-114 et al.

² All references to solar capacity in megawatts are measured in direct current.

³ 52. N.J.R. 1850(a) (“TI Rules”).

⁴ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020.

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated July 28, 2021.

MW in size than for those larger and could create the same perverse incentive to separate projects that would otherwise have been a single larger project. In order to deter such artificial division and encourage participation in the CSI Program or in the large net metered ADI market segment, the Board placed restrictions on the location of multiple projects on the same property or on contiguous properties. The Board's rules define "co-location" as "siting two or more SuSI-eligible solar facilities on the same property or on contiguous properties"⁶ and set the following restrictions co-location in the ADI Program:

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

N.J.A.C. 14:8-11.4(f).⁷

Prior Petitions

AB Newark filed a petition on April 7, 2022, seeking a one-year extension in the TI Program for three projects totaling 6.87 MW at the Anheuser Busch brewery in Newark, New Jersey. The projects were registered as net-metered rooftop and canopy solar facilities on August 19, 2021, and they had postconstruction certification deadlines of August 24, 2022. AB Newark cited delays in permitting and delivery of roofing material as reasons for the extension request. On August 17, 2022, the Board denied the petition and encouraged AB Newark to register in ADI, waiving the ADI Program's rule that prohibits projects from commencing construction without first obtaining a notice of conditional registration.⁸

NJ Terminal filed a petition on December 8, 2022, seeking six-month extensions in the TI Program for three projects at the Port Newark Container Terminal in Newark, New Jersey. The projects were registered as net-metered rooftop and canopy solar facilities on June 8, 2021, and they had postconstruction certification deadlines of December 8, 2022. NJ Terminal cited delays in delivery of transformers and design changes as reasons for the extension request. On September 18, 2023, the Board denied the petition, encouraged NJ Terminal to register its projects in ADI, and

⁶ N.J.A.C. 14:8-11.2

⁷ Amended rules took effect on March 17, 2025.

⁸ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068 et al., Order dated August 17, 2022 ("August 2022 Order").

waived the ADI Program's rule that prohibit projects from commencing construction without first obtaining a notice of conditional registration.⁹

PETITIONS

AB Newark

On December 29, 2023, AB Newark filed a petition requesting a waiver of the Board's rule at N.J.A.C. 14:8-11.4(f), which prohibits co-location in the ADI Program. AB Newark sought to construct a 2.8 MW canopy solar facility along with a 4.34 MW rooftop and canopy solar facility at the Anheuser-Busch brewery in Newark, New Jersey. AB Newark stated that it signed a power purchase agreement for the projects' generation with Anheuser-Busch in 2020 and subsequently registered the projects in the TI Program on August 19, 2021. As noted above, the Board denied AB Newark's request for an extension in the TI Program by the August 2022 Order.

AB Newark stated that the projects were designed during the TI Program, which did not have any co-location restrictions, and that it is now faced with co-location restrictions in the ADI Program. AB Newark also asserted that the proposed projects would generate about 25–30% of the brewery's electricity consumption and that reducing this cost with net-metered solar power would make the brewery more efficient and competitive. Noting that the August 2022 Order directed affected projects to apply for the ADI Program and that its projects are not financially tenable without the ADI incentive, AB Newark argued that the Board should grant a waiver of the co-location restrictions.

NJ Terminal

On May 31, 2024, NJ Terminal filed a petition requesting a waiver of the Board's rule at N.J.A.C. 14:8-11.4(f), which prohibits co-location in the ADI Program. NJ Terminal has constructed or seeks to construct six rooftop and canopy solar facilities totaling about 7.1 MW at the Port Newark Container Terminal in Newark, New Jersey. According to NJ Terminal, projects 1 and 2 were completed in December 2022, project 5 was completed in 2023, and projects 3, 4, and 6 are planned for completion by January 2025.

Petitioner described each of the projects subject to its petition as follows:

Projects 1 and 2 are rooftop solar projects totaling 1032.8 kW. They reached commercial operation in December 2022. These projects were denied an extension in the TI Program September 2023 but have not yet registered in the ADI Program. An appeal of this denial is currently pending in the Appellate Division.¹⁰

Project 3 is a 3288.6 kW canopy solar project. At the time of filing, it was expected to reach commercial operation in January 2025.

Project 4 is a 338 kW canopy solar project. At the time of filing, it was expected to reach commercial operation in January 2025.

⁹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068 et al., Order dated September 18, 2023 ("September 2023 Order").

¹⁰ NJSTRE1547086443 and NJSTRE1547093209

Project 5 is a 2340.9 kW canopy solar project. It received permission to operate (“PTO”) from the utility on July 19, 2023. The project received a conditional acceptance in the ADI Program on August 22, 2023, but the registration was placed on hold because it had received PTO prior to acceptance.

Project 6 is a 121.5 kW canopy solar project. At the time of filing, it was expected to reach commercial operation in January 2025.

NJ Terminal stated that the projects were designed during the TI Program, which did not have any capacity or co-location restrictions, whereas the ADI Program to which it now applies includes co-location and capacity restrictions. As a result, NJ Terminal stated that the program transition may strand the projects without an incentive. The projects are projected to offset half of the customer’s electricity use, with a cost savings of up to fifty percent. NJ Terminal stated that another developer registered the projects in the TI Program on June 8, 2021, and NJ Terminal subsequently acquired the rights to the projects in March 2022. NJ Terminal stated that it has invested about \$20 million in the projects and requests a waiver of the ADI Program rules in order to receive SREC-IIs because the applicable rules have changed since the projects’ initial acceptance. NJ Terminal noted that the changes made in the solar incentive programs occurred after the multi-part project was developed and began construction and stated that the project was not designed to evade any SuSI Program rules.

NJ Terminal also requested a waiver of N.J.A.C. 14:8-11.4(b), which requires that projects receive a notice of conditional registration prior to beginning construction.¹¹

Tuckahoe and Clayton

On April 1, 2025, Tuckahoe and Clayton filed a petition requesting a waiver of the Board’s rule at N.J.A.C. 14:8-11.4(f), which prohibits co-location in the ADI Program. Tuckahoe and Clayton have constructed a 0.735 MW rooftop solar facility and a 2.14 MW canopy solar facility at Williamstown Middle School (“Middle School Projects”) and a 1.308 MW rooftop solar facility and a 2.12 MW canopy solar facility at Williamstown High School (“High School Projects”) in Monroe Township, Middlesex County, New Jersey. Tuckahoe and Clayton registered the projects in the TI Program on July 22 and 26, 2021, respectively. Tuckahoe and Clayton stated that construction was completed on the solar facilities in 2022 and that the electric distribution company (“EDC”) provided PTO in May 2024 following interconnection upgrades. Tuckahoe and Clayton petitioned the Board for an extension to the construction deadline in the TI Program in July 2023, withdrew their petition in July 2024, and subsequently registered the projects in the ADI Program. The SuSI Program registration manager informed Tuckahoe and Clayton on November 6, 2024, that the projects were co-located and that their combined capacity of 6.3 MW exceeded the 5 MW permitted in the ADI Program.

Tuckahoe and Clayton acknowledged that the two Middle School Projects are co-located and that the two High School Projects are co-located but asserted that the Middle School Projects and the High School Projects are not co-located with respect to each other. Tuckahoe and Clayton stated

¹¹ With respect to NJ Terminal’s request for a waiver of N.J.A.C. 14:8-11.4(b), the Board notes that amendments to this provision adopted in December 2023 only require projects that were not previously registered in the TI Program to receive a notice of conditional registration prior to beginning construction on the facility. Because all projects had been registered in the TI Program, a waiver of this provision is not necessary for them to be registered in the ADI Program.

that its projects were designed during the TI Program, which did not have any capacity or co-location restrictions, such that there was no intent to avoid co-location because it did not exist when the projects were being designed and constructed. Tuckahoe and Clayton also argued that the projects at each school should not be considered co-located because they are owned by separate legal entities; serve separate net metering customers as the term is defined in the Board's net metering regulations; are located on separate buildings on separate properties; and were developed and financed separately, with separate meters and EDC accounts. Noting that the August 2022 Order directed affected projects to apply for the ADI Program, Tuckahoe and Clayton argued that such direction would be arbitrary were the Board to declare its projects ineligible for that program. Tuckahoe and Clayton maintained that the 5 MW cap on ADI projects is not at issue since its projects are not co-located. Tuckahoe and Clayton asked that the Board find that these projects are not co-located or, in the alternative, grant a waiver of the co-location restriction.

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

New Jersey has a strong and diverse landscape of solar development, and the Board has a long history of facilitating its continued health and expansion to meet Governor Murphy's Clean Energy goals and offer economic opportunities to a variety of commercial players. Through its array of solar programs, the Board intends to provide opportunities to many different types of consumers seeking to take advantage of the benefits of solar, and to many different types of companies providing the materials and services needed to deliver these benefits. The diversification of solar has increasingly led to a diversification of needs, both in terms of incentives and in terms of rules governing development. Thus, the Board developed the ADI and CSI Programs with the goal of providing the necessary incentives required for solar development of both large and small facilities at the lowest cost to ratepayers. As noted above, the ADI Program provides fixed SREC-II incentive values in order to provide certainty in available incentives for net metered projects smaller than 5 MW, while the CSI Program uses an annual competitive solicitation to award SREC-IIs to net metered projects larger than 5 MW.

As a threshold matter, the Board rejects petitioners Tuckahoe and Clayton's argument that the Middle School Projects and High School Projects should not be considered co-located. The same board of education pays the electric bills for both entities, and the two schools are located on adjacent properties, thus falling within the Board's definition of co-location, "siting two or more SuSI-eligible solar facilities on the same property or on contiguous properties." However, the Board will consider the Petitioners' alternative request for a waiver together with the waiver requests of the other petitioners.

The Board is cognizant of the fact that each of these projects exceeds 5 MW. The TI Program has now been closed for several years; the Solar Act of 2021 indicates that going forward, projects larger than 5 MW would be best served in the CSI Program. However, the Legislature left the determination of the appropriate size at which to require participation in the CSI Program to the discretion of the Board.¹² In making that determination for individual projects, the Board looks to the specific circumstances of those projects.

The projects under review were developed in the TI Program, which had no eligibility restrictions on co-location or project capacity. In denying the prior requests of petitioners AB Newark and NJ Terminal that the Board extend their deadlines to reach commercial operation under the TI Program, the Board indicated its desire for a smooth transition from the TI Program to the ADI Program. The Board has underlined its commitment to facilitating this transition by amending its rules to waive, for projects formerly registered in the TI Program, the ADI Program requirement that projects obtain a notice of conditional registration prior to beginning construction. In both the August 2022 Order and the September 2023 Order, the Board noted that the ADI Program was open and accessible to the covered projects, contingent on remaining market segment capacity allocations and satisfaction of other eligibility requirements. Co-location and capacity are such requirements.

These projects will provide a benefit to their customers as well as the State, and the Board believes that their completion without further delay will be best conducted in the ADI Program. The combined capacity of each set of co-located projects does not significantly exceed the 5 MW limit of the ADI Program and requiring these co-located projects to compete in the CSI Program, either in their entirety or only with the capacity that exceeds 5 MW, would not substantially further the interests of the State or the ratepayers. As of May 2, 2025, the net metered non-residential market segment of the ADI Program has 32 MW available, indicating that allowing these projects into the ADI Program is unlikely to result in closure of the capacity block prior to the end of the energy year on May 31. The Board also notes that all Petitioners submitted requests for waivers promptly upon being notified of non-compliance, which is indicative of commitment to continue development of their projects.

After review of the petitions and the record in these matters, the Board **FINDS** all petitioners developed their projects in the TI Program, which permitted co-location and did not include a capacity cap. The Board **FURTHER FINDS** that the record shows good cause to support all of the Petitioners' requests for eligibility in the ADI Program.

As noted above, Petitioner NJ Terminal's Projects 1 and 2, NJSTRE1547086443 and NJSTRE1547093209, are the subject of an appeal in the Appellate Division.¹³ These registrations remain on hold in the TI Program, and projects are not permitted in the TI and ADI Programs simultaneously. Therefore, for these projects, the Board grants the waivers but requires resolution of the pending appeal before these projects may register in the ADI Program. If the appeal is withdrawn or is denied, the projects may register in the ADI Program subject to any changes to the ADI Program that occur subsequent to the issuance of this Order.

Having carefully considered the record in these matters, and having found good cause, the Board therefore **WAIVES** its rules at N.J.A.C. 14:8-11.4(f) to permit co-location of all the petitioners'

¹² The small solar facilities incentive program is available to "net metered solar facilities less than five megawatts in size . . . or another size specified by the board." N.J.S.A. 48:3-116(a).

¹³ Docket Number A-644-23.

projects, but for petitioner NJ Terminal registration for its projects NJSTRE1547086443 and NJSTRE1547093209 in the ADI Program shall not be permitted unless and until the pending appeal for those projects has been withdrawn or denied. The Board also **FINDS** that the records on these matters support permitting the projects under review to have a combined capacity greater than 5 MW in the ADI Program.

With respect to NJ Terminal's request for a waiver of N.J.A.C. 14:8-11.4(b), the Board **DENIES** this waiver request as moot.

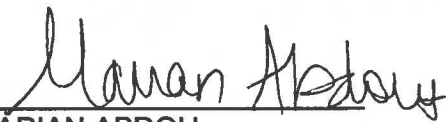
The effective date of this Order is May 28, 2025.

DATED: May 21, 2025

BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
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 AB NEWARK (FUND IV) OPERATING, LLC FOR APPROVAL OF A WAIVER OF THE CO-LOCATION RESTRICTIONS FOR THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM FOR THE ANHEUSER-BUSCH NEWARK BREWERY ROOFTOP AND CANOPY SOLAR PROJECT
DOCKET NO. QW23120927

IN THE MATTER OF THE VERIFIED PETITION OF NJ TERMINAL SOLAR, LLC FOR WAIVERS OF CERTAIN ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM REQUIREMENTS, AND RELATED RELIEF
DOCKET NO. QW24050361

IN THE MATTER OF THE VERIFIED PETITION OF TUCKAHOE ROAD SOLAR PROJECT 2020, LLC AND CLAYTON ROAD SOLAR PROJECT 2020, LLC FOR APPROVAL OF A WAIVER OF THE CO-LOCATION RESTRICTIONS FOR THE ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM FOR THE WILLIAMSTOWN HIGH SCHOOL AND WILLIAMSTOWN MIDDLE SCHOOL SOLAR PROJECTS
DOCKET NO. QW25030179

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