



Agenda Date: 5/21/25

Agenda Item: 8H

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)	ORDER
BERKELEY EAGLES SOLAR I, LLC AND BERKELEY)	
EAGLES SOLAR II, LLC FOR AN EXPANSION OF THE)	
GEOGRAPHIC LIMITATIONS IMPOSED ON)	
CUSTOMER SUBSCRIPTIONS BY PETITIONER'S)	DOCKET NO. QO24060379
COMMUNITY SOLAR PILOT PROGRAM AWARD)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Adam Garcia, Esq., Giordano, Halleran & Ciesla PC for Berkeley Eagles Solar I, LLC and Berkeley Eagles Solar II, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "BPU") addresses a petition filed by Berkeley Eagles Solar I, LLC and Berkeley Eagles Solar II, LLC (collectively, "Berkeley Eagles Solar" 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 geographic subscriber limitation imposed on the Petitioner's Pilot Program Year 2 ("PY2") awards for the Berkeley Eagles Solar I and Berkeley Eagles Solar II projects (collectively, "Projects"). Both Projects were awarded with the condition of that subscriber enrollment would be limited to the "municipality and adjacent municipalities" they are located in. Petitioner seeks to enroll subscribers from the entire Jersey Central Power & Light Company ("JCP&L") service territory to which the Projects are interconnected.

BACKGROUND

On May 23, 2018, Governor Murphy signed the Clean Energy Act, L. 2018, c. 17 ("Act" or "CEA"), into law. Among other mandates, the CEA directed the Board to, within 210 days, adopt rules and regulations establishing the Pilot Program, thereby enabling access to clean energy generation for utility customers currently unable to place solar generation facilities directly on their own properties, with emphases on facilitating access for low- to moderate-income ("LMI") customers and on developing community solar projects without materially compromising the preservation of open space or protected lands in New Jersey.

The Board adopted the Pilot Rules on January 17, 2019, following stakeholder engagement. The Pilot Rules were published in the New Jersey Register on February 19, 2019.¹ The annual program capacity was divided among the State's electric distribution companies' ("EDCs") areas based on their 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 Pilot Program Year 1 Application Form. The Board conditionally approved forty-five (45) community solar projects, representing almost seventy-eight (78) MWdc, on December 20, 2019.³ On October 2, 2020, the Board released the PY2 Application Form. The Board conditionally approved 105 community solar projects, representing almost 165 MWdc, on October 28, 2021.⁴ The Projects, originally awarded as Hathaway Solar, LLC, were both granted conditional approval as two (2) co-located projects totaling ten (10) MWs in JCP&L territory (Docket Nos. QO21020437 QO21020439). The Projects are located at the Berkeley Township Landfill identified as Block 23, Lot 2 on the Berkeley Township tax map.

The PY2 Order conditioned its approval of the project upon it being constructed and operated in compliance with the original application, the Board's PY2 Order, and applicable rules and regulations. "[I]f a Conditionally Approved project fails to comply with the requirements of this Order, the Pilot Program rules at N.J.A.C. 14:8-9 et seq., or to be built and operated proposed in its original application, this failure may be grounds to cancel the Board's conditional approval of a project." PY2 Order at page 9.

The Pilot Program evaluated projects with a scoring rubric and awarded capacity until the capacity block for each EDC segment was filled or just exceeded by the last project selected. One (1) scoring criterion 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 (5) points out of five (5) 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. No points were given to projects that did not specify any geographic location in which it would enroll customers. Both Berkeley Eagles Solar Projects selected the option for "same municipality and adjacent municipalities" enrollment area and were scored accordingly.

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 In re the Community Solar Energy Pilot Program, BPU No. QO18060646 et al., Order dated October 28, 2021 ("PY2 Order").

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.⁵ The amendments took effect upon publication in the New Jersey Register on December 6, 2021.⁶

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 Pilot Program.⁷ At the same agenda meeting, the Board issued an Order to govern the Permanent Program pending adoption of the rules ("August 2023 Order").⁸ The August 2023 Order divided annual program capacity among the State's EDCs and permitted all new projects to subscribe customers throughout the EDC territory to which they interconnect.

PETITION

On June 3, 2024, Berkeley Eagles Solar filed the petition seeking to modify the commitments made in the original project application with respect to subscriber enrollment areas. In its application, Petitioner committed to serving customers in the same and/or adjacent municipalities and received the full five (5) points on this criterion.

Petitioner attached the Certification of Stephen Condon in support of its factual allegations and pointed to the Board's rules allowing the Board to consider waiving the geographic restriction on a pilot project upon special request.⁹ N.J.A.C. 14:8-9.6(a). Berkeley Eagles Solar alleged that it experienced hardships in enrolling customers to the Projects despite what it characterizes as "good faith attempts" to subscribe customers by undertaking "extensive measures to attain all required community solar subscribers... as required by the Pilot Program rules".¹⁰ The Petitioner stated that it had contracted a subscription management company in December 2022 that was already registered with the BPU and had years of experience in community solar. However, by the petition, Berkeley Eagles Solar alleged that in ten (10) months, the subscription management company failed to obtain a single subscriber for the Projects within the geographic limits Petitioner had selected. The Petitioner then engaged a new subscription management company for its Projects, Energywell Community Solar, LLC ("Energywell"), to replace the original company. With Petitioner's consent, Energywell increased its sales force to over 300 individuals. The Petitioner also permitted Energywell to broaden its marketing efforts to all of the JCP&L service territory and waitlist potential customers in addition to targeting zip codes within the same and adjacent municipalities of the Projects. The Petitioner reports that as of the date of filing, Energywell had been able to enroll only 25.4% of the non-LMI and only 5.1% of the LMI customers needed for

⁵ 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 eighty percent (80%) or more of the households earn less than eighty percent (80%) of the area median income, as determined by data from the U.S. Department of Housing and Urban Development. An individual customer meeting either of the new criteria would qualify to be a LMI subscriber for a community solar project.

⁶ 53 N.J.R. 2053(a).

⁷ 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.

⁸ In re the Community Solar Energy Program: Order Launching the Community Solar Energy Program, BPU Docket No. QO22030153, Order dated August 16, 2023.

⁹ Petition at paragraph 17 and Exhibit A.

¹⁰ Petition at paragraph 36.

the Projects, within the same and adjacent municipalities. On the other hand, through marketing across JCP&L's service territory, Energywell was able to waitlist customers to fulfill 100% of Petitioner's non-LMI quota and 77.7% of its LMI quota.¹¹

The petition referenced the Board's past ruling on Linden Hawk Rise Solar's ("LHRS") petition, which granted a waiver to the geographic limitation imposed on that project's subscriber enrollment area.¹² The LHRS project was awarded in the first year of the Pilot Program. The petitioner in that matter also requested expansion of its subscription area to the entire service territory of its EDC. The Board denied the requested relief and instead granted partial relief, waiving the geographic limitation to allow LHRS to expand its subscriber enrollment area from same and adjacent municipalities to same and adjacent counties.

According to Berkeley Eagles Solar, its situation differs from that of LHRS such that it should receive the full relief requested and be allowed to subscribe customers across JCP&L's service territory. Petitioner notes that although its Projects have twice the capacity of the five (5) MW LHRS project, the Projects are located in a less populated part of the State. The LHRS project is located in Union County; the Projects are located in Ocean County. Petitioner cited data from the 2022 United States Census Bureau to demonstrate that the population in Union and adjacent counties is about 2.8 million, while the population in Ocean County and those portions of adjacent counties served by JCP&L is approximately 1.2 million.¹³ Petitioner also noted that large portions of the counties adjacent to the Projects are served by EDCs other than JCP&L.¹⁴ Petitioner stated that giving it the same remedy as was granted to LHRS would thus not grant the same relief, since the Projects amount to twice the capacity of LHRS and the Projects would only gain access to less than half as many potential subscribers.

Berkeley Eagles Solar requested that the Board grant it permission to extend the Projects' enrollment area to all of JCP&L service territory to enable the Projects to reach more customers in both its LMI and non-LMI subscription obligations.

¹¹ Petition at paragraphs 53-62; Exhibit A at paragraphs 13-27.

¹² 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, BPU Docket No. QO23060338, Order dated December 20, 2023.

¹³ Petition at paragraphs 65-68.

¹⁴ Petition at paragraphs 67.

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). With respect to the matter under review, the Pilot Rules also include an express authorization for the Board to waive the geographic subscriber limitation upon petition. N.J.A.C. 14:8-9.6(a).

Community solar is an important program designed to increase access to solar energy for ratepayers across the State, particularly LMI 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 this context, the Board considers Petitioner's request.

As summarized above, Petitioner has employed two (2) different subscription management companies and hundreds of sales representatives in an attempt to meet its subscription requirements. Berkeley Eagles Solar credibly reported that notwithstanding these efforts, it has achieved enrollment of only a quarter of the necessary non-LMI subscribers and only five percent (5%) of the required LMI subscribers within the Projects' existing geographic limits. The Board **FINDS** that Petitioner has demonstrated significant efforts to enroll customers within its approved enrollment area of "same municipality and adjacent municipalities."

As discussed in the petition regarding the LHRS matter, the Board denied the same request made by LHRS in favor of granting it an expansion only to the same and adjacent counties. However, Berkeley Eagles Solar has noted that only one of the counties bordering Ocean County, where the Projects are located, is served primarily by JCP&L. The Board also notes that JCP&L does not serve all of Ocean County. In addition, the 2022 United States Census Bureau data supports Petitioner's claim that granting it the same relief as was granted to LHRS would allow it access to less than half as many potential subscribers. Moreover, the Projects' capacity is twice that of the LHRS project. The Board **FINDS** that based on the record, expanding the Berkeley Eagles Solar subscription area only to the same and adjacent counties would be insufficient.

According to the petition, since the employment of the second subscription management company, Berkeley Eagles Solar has marketed across JCP&L's service territory and has been able to waitlist customers to fulfill 100% of Petitioner's non-LMI quota and 77.7% of its LMI quota. The Board **FINDS** that Petitioner has demonstrated that expanding its subscriber enrollment area to the full JCP&L service territory will provide the best possibility to fully subscribe the Projects.

The Board is cognizant of the fact that Staff evaluated the Projects against all projects that were evaluated and awarded in PY2 based in part on the scores they received for "Geographic Limit within EDC Service Territory". Had it not received those five (5) points, however, the Projects would still meet the score threshold for conditional approval in respect to all other projects submitted in JCP&L's service territory. The Board **FINDS** that the points Petitioner received for the geographic limit in its application did not have an effect on its receipt of conditional approval.

Based upon the representations certified in the petition and supported by the certification at Exhibit A, the Board **FINDS** 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.

Having reviewed the petition and Staff's recommendation, the Board **FINDS** good cause to provide relief to Petitioner. The Board **GRANTS** the petition and **HEREBY WAIVES** N.J.A.C. 14:8-9.6(a) in order to permit the expansion of Petitioner's enrollment area to the entire JCP&L service territory.

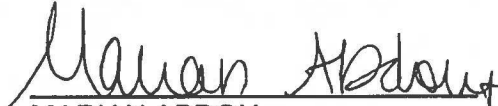
The effective date of this Order is May 28, 2025.

DATED: May 21, 2025

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BY:


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PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDU
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 BERKELEY EAGLES SOLAR I, LLC AND BERKELEY EAGLES SOLAR II, LLC FOR AN EXPANSION OF THE GEOGRAPHIC LIMITATIONS IMPOSED ON CUSTOMER SUBSCRIPTIONS BY PETITIONER'S COMMUNITY SOLAR PILOT PROGRAM AWARD

DOCKET NO. QO24060379

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