Agenda Date: 11/20/26
Agenda Item: 8B

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 FENWICK CREEK SOLAR, LLC FOR A DETERMINATION CONCERNING THE MANNINGTON PHOTOVOLTAIC SOLAR ENERGY FACILITY PURSUANT TO N.J.S.A. 40:55D-19	)))))	ORDER DOCKET NO. QO26060340

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
James H. Laskey, Norris McLaughlin, P.A., on behalf of Fenwick Creek Solar, LLC
Justin R. White, Testa Heck Testa & White, P.A., on behalf of Mannington Township and Mannington Township Planning Board

BY THE BOARD:

This Order concerns a petition filed on May 22, 2026, by Fenwick Creek Solar, LLC ("Fenwick" or "Petitioner"), appealing to the New Jersey Board of Public Utilities ("Board") from a decision of the Mannington Township Planning Board ("Mannington") or ("Respondent") denying Fenwick's application for a use variance needed for the construction of a proposed large-scale photovoltaic solar energy facility, pursuant to N.J.S.A. 40:55D-19 (the "Petition"). On June 26, 2026, Fenwick filed a motion for partial summary decision with the Board seeking a determination that it is an electric power generator, subject to the jurisdiction of the Board pursuant to N.J.S.A. 40:55D-19. On July 15, 2026, Mannington filed a cross-motion for dismissal of the Petition for failure to proffer essential elements of proof under N.J.S.A. 40:55D-19. By this Order, the Board considers Fenwick's motion for partial summary decision and Mannington's cross-motion for dismissal.

BACKGROUND

The Solar Act of 2021,[1] enacted June 9, 2021, directed the Board to create two (2) solar incentive programs, one of which is a competitive solicitation process for large-scale solar generation facilities. By Order dated December 7, 2022, the Board approved the establishment of the Competitive Solar Incentive ("CSI") Program to incentivize qualifying grid supply solar projects (i.e., those selling into the wholesale markets), grid supply projects in combination with energy

[1] P.L. 2021, c.169

storage, and net metered non-residential projects above five (5) MWdc in size.[2] In a solicitation, projects compete for Solar Renewable Energy Certificate-II ("SREC-II") awards; SREC-IIs represent the value of the environmental attributes of electricity produced by the solar electric power generation facility.

The CSI Program aims to award incentives for 300 MW of new solar generation annually. The CSI Program awards SREC-IIs through a competitive solicitation, with separate competitive tranches, distinguished by siting location:

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 greater than 5 MW
Tranche 5: Energy Storage Paired with Grid Supply Solar

For each solicitation, the Board sets the solicitation window during which projects must prequalify by providing evidence that they meet interconnection maturity requirements and tranche-specific eligibility criteria; applications are administratively reviewed by the solicitation manager. Prequalified CSI projects submit a bid for an SREC-II award in their tranche, specified in dollars per MWh of solar electricity production. Bids are selected based on lowest SREC-II price until capacity of the solicitation is met or bid prices exceed a confidential price cap.

Since the CSI Program opened in December 2022, the Board has held four (4) solicitations. The first solicitation produced no awards, as all SREC-II bids exceeded the price caps set for the solicitation.[3] The second solicitation resulted in the award of 310.2 MW of solar generation[4] and 80 MWh of paired energy storage.[5] By Order dated March 4, 2026, the Board awarded 24.1179

[2] 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").

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

[4] 294.83 MW in Tranche 1: Basic Grid Supply and 15.388 MW in Tranche 3: Contaminated Sites and Landfills.

[5] In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169, Order on the Outcome of the Second Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated April 17, 2024 ("April 17, 2024 Order").

MW of solar generation in the third CSI Program solicitation.[6,7] By Order dated June 30, 2026, the Board awarded 238.025 MW of solar generation in the fourth CSI Program solicitation.[8,9]

FENWICK CREEK SOLAR PROJECT

By Order dated November 17, 2023, the Board opened the second solicitation of the CSI Program to prequalification applications on November 27, 2023, and set a date to close bids on February 29, 2024, at 11:59:59 PM EST.[10] On February 2, 2024, Fenwick submitted a prequalification application for a 50.54 MWdc solar electric generation facility[11] to be located on Block 39, Lot 33, Block 40, Lot 21, Block 45, Lots 1, 11, 11.02, 11.03 and 15, Block 46, Lots 5 and 6, and Block 47, Lots 10, 12 and 16 on Welchville Road in Mannington Township, Salem County, New Jersey ("Project"). The Project was proposed to be sited on approximately 300 acres of land, of which 271 acres is covered agricultural land, defined at N.J.A.C. 14:8-12.2 as "all land containing prime agricultural soils or soils of Statewide importance, as identified by the U.S. Department of Agriculture's Natural Resources Conservation Service, located within an individual county's designated agricultural development area, as determined by the Committee." Prequalification review confirmed that the acreage for the Project would not qualify as prohibited land use pursuant to N.J.A.C. 14:8-12.3 and 12.4. Specifically, the Project was not sited on preserved farmland, nor did the acreage exceed either five percent (5%) of the total covered agricultural land in Salem County, or two- and one-half percent (2.5%) of the total covered agricultural land in the State.[12] The prequalification review also confirmed that the Project met the CSI Program interconnection requirements, with a position in the "Fast Track" segment of the queue at PJM Interconnection LLC ("PJM").

By Order dated April 17, 2024, the Board awarded the Project an SREC-II incentive of $82.67/MWh in Tranche 1 as a Basic Grid Supply project and directed the Project to register with

[6] 4.13 MW in Tranche 2: Grid Supply on the Built Environment; 9.9999 MW in Tranche 3: Contaminated Sites and Landfills; 9.988 MW in Tranche 4: Net Metered Non-Residential above 5 MW.

[7] In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169, Order on the Outcome of the Third Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated March 4, 2026 ("March 4, 2026 Award Order").

[8] 160.852 MW in Tranche 1: Basic Grid Supply; 46.98 MW in Tranche 2: Grid Supply on the Built Environment; 30.193 MW in Tranche 3: Contaminated Sites and Landfills.

[9] In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169, Order on the Outcome of the Fourth Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated June 30, 2026.

[10] In re the Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, C. 169, BPU Docket No. QO21101186, Order dated November 17, 2023.

[11] The Board documents the project capacity as 50.54 MW measured in direct current (dc); this corresponds to the project capacity of 38 MW measured in alternating current (ac) referenced in the Petition.

[12] Pursuant to N.J.A.C. 14:8-12.5, the calculated 2.5% Statewide limit for solar development on covered agricultural land was 8,085 acres; the 5% county limit for Salem County was 1,319 acres.

the solar program administrator within 30 days of the Board award.[13] On June 5, 2024, the Project was issued a letter confirming registration in the CSI Program and providing an expiration date of June 5, 2027, by which date the Project must commence commercial operation. In addition to meeting the commercial operation deadline, the Project must comply with the Board's rules regarding registration requirements at N.J.A.C. 14:8-11.5 and construction requirements for CSI-eligible facilities at N.J.A.C. 14:8-12.8.

By Order dated August 13, 2025, the Board waived its rules at N.J.A.C. 14:8-11.5(g)(3) and granted all projects registered in the CSI and Community Solar Energy Programs a nine (9) month extension, based on substantial unforeseen delays outside of the projects' control, including lengthy interconnection review and upgrade timelines from the State's electric distribution companies ("EDCs").[14] The expiration date for the Project was updated to March 5, 2028. Additional administrative extensions remain available to the Project.

On June 24, 2025, Fenwick filed an application with Mannington Township Planning Board seeking an interpretation of the zoning ordinance pursuant to N.J.S.A. 40:55D-70(b) or in the alternative a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) and Chapter 70 of the Township Code; supplemental submissions were filed July 17, 2025, July 25, 2025, August 13, 2025, October 1, 2025, and December 23, 2025. Mannington held four public hearings on the application at which Fenwick presented, on November 13, 2025, December 11, 2025, January 8, 2026, and March 12, 2026. On April 9, 2026, Mannington denied the application for a use variance.

PETITION BEFORE THE BOARD

On May 22, 2026, Fenwick filed the Petition with the Board, pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:2-23, seeking a determination from the Board that the construction of the Project is: (a) necessary to maintain the integrity and reliability of the electric grid that is used to provide electric service throughout the relevant geographic area; and (b) necessary for the service, convenience or welfare of the public, and that no alternative site or sites are reasonably available to achieve an equivalent public benefit. The Petition ultimately seeks an order from the Board concluding that the zoning, site plan review requirements, and all other ordinances or regulations promulgated under the authority 40:55D-1, et seq., shall not apply to the Project and that Fenwick may proceed with construction of the Project.

FENWICK MOTION FOR PARTIAL SUMMARY DECISION

On June 26, 2026, Fenwick filed a motion for partial summary decision, seeking the issuance of an order from the Board declaring that Fenwick is an electric power generator, as defined at N.J.S.A. 48:3-51.3, and a finding that the Board has jurisdiction to rule upon the petition for relief pursuant to N.J.S.A. 40:55D-19.

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[13] In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169, Order on the Outcome of the Second Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated April 17, 2024 ("April 17, 2024 Order").

[14] IMO the Community Solar Energy Program; IMO the Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169; IMO Modernizing New Jersey's Interconnection Rules, Processes and Metrics, BPU Docket Nos. QO22030153, QO21101186, QO21010085. Order dated August 13, 2025.

Fenwick's Petition raises a cause of action pursuant to N.J.S.A. 40:55D-19, which provides, in pertinent part, as follows: "[i]f an […] electric power generator [as defined at N.J.S.A. 48:3-51], is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the […] electric power generator has an interest, an appeal to the [Board] may be taken within 35 days after such action without appeal to the municipal governing body[.]" Fenwick asserts that an electric power generator is defined at N.J.S.A. 48:3-51.3 as "an entity that proposes to construct, own, lease, or operate, or currently owns, leases, or operates, an electric power production facility that will sell or does sell at least 90 percent of its output, either directly or through a marketer, to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located."

Fenwick contends that it meets the definition of an electric power generator based on the plain reading of the statute, as it is proposing to construct and operate an electric power production facility having a capacity of approximately thirty-eight (38) megawatts. Fenwick further asserts that more than 90% of its output is proposed to be delivered to the wholesale grid, for final delivery to and use by all of the residents and businesses in the area that rely on the grid for electricity. Fenwick further notes that these customers are scattered throughout the Atlantic City Electric footprint as opposed to being on or contiguous to the site on which the facility will be located. Fenwick accordingly argues that the Board's jurisdiction over this matter cannot be reasonably questioned, because it fits the definition of an electric supply generator in accordance with N.J.S.A. 48:3-51 which is authorized to petition the Board pursuant to N.J.S.A. 40:55D-19.

Fenwick further argues that the Board should retain jurisdiction and hear this appeal directly, rather than transmitting the matter to the New Jersey Office of Administrative Law ("OAL"). Fenwick contends that, pursuant to N.J.S.A. 52:14F-8(b), no administrative judge shall be assigned by the director of the OAL to hear a contested case with respect to "[a]ny matter where the head of the agency, a commissioner or several commissioners … determine to conduct the hearing directly and individually." Fenwick asserts that allowing the OAL to handle this matter could result in rulings that would be inconsistent with the Board's expertise and subject matter jurisdiction over electric power generators. Fenwick further argues that it is imperative that the Board handle the instant Petition given the substantial public policy and important issues regarding the energy and climate policies of the State of New Jersey, including emissions reduction, energy efficiency, and renewables.

Fenwick accordingly contends that, for the foregoing reasons, the Board should issue an order declaring that Fenwick is an electric power generator as the term is used at N.J.S.A. 40:55D-19 and N.J.S.A. 48:3-51 and is therefore entitled to determination by the Board that Mannington's denial of its variance application was unreasonable, arbitrary, and capricious.

MANNINGTON CROSS-MOTION FOR DISMISSAL

On July 15, 2026, Mannington filed a brief in opposition to Fenwick's motion for partial summary decision, as well as a cross-motion to dismiss the petition or, in the alternative, refer the matter to the OAL.

Mannington seeks dismissal of the Petition on three grounds: (1) the verification of Ms. Laura Kellogg accompanying the Petition is legally insufficient; (2) the Petition exhibits have not been authenticated; and (3) the Petition fails to provide essential proof for a cause of action required under N.J.S.A. 40:55D-19.

First, Mannington argues that Fenwick's Petition is improperly verified by Ms. Laura Kellogg, who

is described as a "development manager" for AES, an energy development company that is the apparent parent of Fenwick. Mannington asserts that Fenwick is described as a Delaware Limited Liability Company ("LLC") with its principal place of business in Utah. Mannington asserts that, pursuant to N.J.S.A. 42:2B-27 it is a characteristic of LLCs that only members or designated managers of the LLC may legally bind the company. Mannington contends that, as Fenwick has not furnished any proof that Ms. Kellogg has the authority to bind the LLC, and because the sole evidentiary basis for its claim that it is an electric power generator is the Petition verified by Ms. Kellogg and her testimony before the planning board, the claims regarding the sale of power from the facility can be ignored at any time and are not legally enforceable – warranting dismissal of the Petition.

Second, Mannington argues that the Petition must be dismissed as the exhibits are not authenticated. Mannington asserts that there is no authentication of any of the documents submitted from the Planning Board proceedings, resulting in a failure to meet fundamental due process requirements at Court Rule 1:6-6.

Third, Mannington further contends that the Petition must be dismissed because many critical elements of proof for a cause of action pursuant to N.J.S.A. 40:55D-19 are missing from the Petition. Mannington asserts that N.J.S.A. 40:55D-19 requires the Board to decide if a petition presents adequate proof that the proposed project is "reasonably necessary for the service, convenience or welfare of the public," but more specifically, in the case of an "electric power generator," if the proposed project is both "necessary to maintain reliable electric … service" and that "no alternative site or sites are reasonably available to achieve an equivalent public benefit."

With respect to the required element of necessity to maintain reliable electric service, Mannington argues that Fenwick's proof essentially consists of the singular fact that Fenwick's Project received approval under the Board's Competitive Solar Incentive Program ("CSI"). Mannington asserts that, while the CSI Program and Solar Act of 2021 (N.J.S.A. 48:3-113, et seq.) are intended to increase the use of solar power throughout New Jersey, approval under the CSI Program does not mean that this facility in and of itself is "necessary to maintain reliable electrical service" in this area and that no alternative can confer an equal benefit. Mannington contends that Fenwick has offered no proof about a necessity for reliable electric service in this area, in part because the sole witness who testified on this issue is Ms. Kellogg, who expressly disavowed any expertise or involvement in what she referred to as the "commercial" part of project planning, or electric supply matters. Mannington contends that a bare unsupported claim that other customers will receive the benefit of the power generated proves nothing at all about the project's necessity.

Next, Mannington argues that Fenwick offers no admissible proof concerning the requirement at N.J.S.A. 40:55D-19 that the Board consider alternatives to the proposal, including doing nothing. Mannington contends that the sole element of Fenwick's proof with respect to this element is an unsupported assertion that solar projects of this scale need large tracts of land, cooperation by landowners and proximity of transmission infrastructure. Mannington asserts that the Petition cites to testimony by Ms. Kellogg, who offered no substantiation for this claim, and expressly stated that she had not been involved in looking for alternative sites and, so, has no personal knowledge of efforts to consider alternatives to the proposal.

Mannington further argues that the lack of alternatives is at the very least suspect, if not demonstrably incorrect. Mannington contends that, according to the Salem County government, thirty-eight (38%) of the land in the County is agricultural. Mannington contends that Fenwick's witness, Ms. Morrissey, testified that this property could be developed "by right" into a development of more than 200 single-family homes, and that the proposed solar development is

less intense in use by comparison. Mannington argues that, furthermore, Ms. Morrissey claimed that once housing has been developed, the land will not revert back to farm and, in ignoring the possibility of rooftop solar, that homes do not contribute renewable energy for the benefit of the community. Mannington contends that New Jersey courts have condemned such illusory comparisons to nonexistent development.[15]

With respect to the final element, Mannington argues that Fenwick offered no proof of the impact of its proposal on the locality other than to claim that some residents would receive the benefit of the electricity generated, claims of tax revenues, and construction jobs. Mannington contends that, when asked at the Planning Board why this proposal is to be located in Mannington, the vague answer was that "a group of landowners" looking to improve their farm income asked to be part of a project. Mannington asserts that this alleged fact does nothing to meet the test of the impact on the locality. Mannington notes that the Planning Board Resolution contains a detailed discussion of Mannington's long-standing and consistent dedication to preserving the agricultural and farmland character of the township. Mannington contends that Fenwick's proposed solar facility is comprised of 300 acres – encompassing 1.3% of the Township's total land and 1.6% of the Township's total farmland. Mannington asserts that the Project would accordingly be in clear conflict with these goals and, on balance, substantially impair the intend and purpose of Mannington's zone plan and zoning ordinances.

Finally, Mannington argues that, if the Board declines to dismiss the Petition, it must as a matter of law refer the Petition to the OAL. Mannington contends that Fenwick in its underlying motion misquotes N.J.S.A. 52:14F-8(b), which provides that referral to the OAL is not permitted for "[a]ny matter where the agency, head of the agency, a commissioner or several commissioners are required to conduct, or determine to conduct a hearing directly or individually." Mannington asserts that Fenwick cites no law suggesting that N.J.S.A. 40:55D-19 petitions (or any other Board cases) are to be heard by the Board or Commissioners. Mannington argues that, to the contrary, the Board's own procedural rules at N.J.A.C. 14:1-1.3 allow for an individual Commissioner to hear a matter only if it is uncontested. Mannington contends that the Board's rules for contested cases at N.J.A.C. 14:1-8.1-8.7 plainly contemplate that all contested cases shall be transmitted to the OAL, shall be tried at the OAL, and are subject to appeal to the Board on exceptions and such.

On July 27, 2026, Fenwick filed a brief in response to the cross-motion filed by Mannington. Fenwick argues in its response that the verification submitted in support of the Petition is in compliance with N.J.A.C. 14:1-4.6. Fenwick asserts that N.J.A.C. 14:1-4.6 provides that "[a]ll pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Board's own motion or the motion of the Attorney General of the State of New Jersey." Fenwick contends that the rule says nothing more, although it is generally understood by the standard text of the verification that the person providing the verification must have personal knowledge regarding the matters to be verified. Fenwick argues that Mannington asserts, without citation to any administrative procedure or Board rules, that Ms. Kellogg's verification was ineffective because as a development manager, she could not legally bind the Petitioner. Fenwick similarly argues that the Board's rules do not require exhibits to be authenticated, as no such requirement exists at N.J.A.C. 14:1-5.1(a) (requirements for a Petition) and N.J.A.C. 14:1-4.3 (requirements for attachments to pleadings).

[15] Citing, Funeral Home Mgmt. v. Basralian, 319 N.J. Super. 200, 212 (App. Div. 1999).

Fenwick further argues that Mannington's cross-motion for summary disposition on the merits is premature. Fenwick contends that cross-motions for summary disposition may be an appropriate procedural step at a later phase of the proceeding, but for now the only question beyond the threshold jurisdiction issue is whether the Petitioner has complied with the requirements of N.J.A.C. 14:1-5.1(a), which simply requires that the Petition: (1) clearly and concisely state the facts and relief sought; (2) reference the relevant statutory provision; and (3) contain information or statements as required by statute. Fenwick accordingly argues that the Petition as submitted meets the Board and OAL administrative rule requirements and should not be dismissed.

Finally, Fenwick argues that the Board should retain the Petition as opposed to transmitting the matter to the OAL. Fenwick asserts that the Board has always had the discretion to retain jurisdiction on contested matters, as the Board's rules contemplate for such matters and outlines the contested case procedures pursuant to N.J.A.C. 14:1-8.1.

DISCUSSION AND FINDINGS

Fenwick Motion for Partial Summary Decision

By its motion for partial summary decision, Fenwick seeks an Order from the Board declaring that it is an electric power generator, as defined at N.J.S.A. 48:3-51.3.

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision is granted if "there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law."

Pursuant to N.J.S.A. 40:55D-19, if a public utility, as defined at N.J.S.A. 48:2-13, or an electric power generator, as defined at N.J.S.A. 48:3-51, is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility or electric power generator has an interest, an appeal to the Board may be taken within thirty-five (35) days after such action without appeal to the municipal governing body unless such public utility or electric power generator so chooses.

Accordingly, in order to utilize N.J.S.A. 40:55D-19 to appeal the action of a municipal agency to the Board, an entity must be either a public utility, as defined at N.J.S.A. 48:2-13, or an electric power generator, as defined at N.J.S.A. 48:3-51.

Pursuant to N.J.S.A. 48:3-51, an electric power generator is defined as an entity that proposes to construct, own, lease, or operate, or currently owns, leases, or operates, an electric power production facility that will sell or does sell at least ninety (90) percent of its output, either directly or through a marketer, to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located.

Pursuant to N.J.S.A. 52:14B-8, the Board, upon the request of any interested person, may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. Both the statute defining an electric power generator, N.J.S.A. 48:3-51, and the statute which Fenwick utilized to appeal the decision of the municipal planning board, N.J.S.A. 40:55D-19, are statutes enforced or administered by the Board. As such, the Board is authorized by N.J.S.A. 52:14B-8 to issue a ruling opining on whether Fenwick is an electric power generator for purposes of a cause of action filed pursuant to N.J.S.A. 40:55D-19.

To determine whether Fenwick is an electric power generator for purposes of N.J.S.A. 48:3-51, and N.J.S.A. 40:55D-19, the Board must analyze the characteristics of the proposed solar project. To do so the Board must determine: (1) whether the proposed project is an electric power production facility; (2) that the proposed project will sell at least ninety (90) percent of its output (either directly or through a marketer); and (3) that any output sold is to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located.

Fenwick proposes to construct a large-scale photovoltaic solar energy facility encompassing several lots in Mannington Township, New Jersey with a capacity of 38 megawatts. *See* Fenwick Motion at 2. According to paragraph 9 of the Petition, the Project will occupy approximately 300 acres of fenced property which will contain solar modules, racking and piles, inverters, and the Point of Interconnection ("POI") where the Facility's voltage will be increased for injection into the local 69 kV line owned by Atlantic City Electric. Additionally, a medium voltage electric line will connect the Project from the solar generation region of the Property to the POI. Based on these characteristics the proposed project constitutes an electric power production facility.

Fenwick further represents that more than ninety (90) percent of its output is proposed to be delivered to the wholesale grid, for final delivery to and use by all residents and businesses in the area that rely on the grid for electricity. Fenwick states that those customers are scattered throughout the Atlantic City Electric footprint and are not on nor contiguous to the site on which the facility will be located. *See* Fenwick Motion at 2. Because the Project will interconnect with PJM, the electricity generated by the Project may not only be utilized by customers within the ACE but within the greater PJM transmission system.

In response, Mannington does not dispute these facts and merely argues that the Board should ignore and should not consider the facts represented by Fenwick. Mannington opposition at 3-5. Accordingly, based on the Petition and record in this case, the Board **HEREBY FINDS** that, with respect to Fenwick's status as an "electric power generator," there is no dispute as to any material fact, that Fenwick is an electric power generator as defined at N.J.S.A. 48:3-51 for purposes of an appeal with the Board filed pursuant to N.J.S.A. 40:55D-19, and **HEREBY GRANTS** Fenwick's motion for partial summary decision.

Furthermore, the Board **HEREBY FINDS** that, in accordance with the plain language of N.J.S.A. 40:55D-19, the Board has jurisdiction to consider appeals filed by electric power generators aggrieved by the action of a municipal agency through said agency's exercise of its powers under the Municipal Land Use Law of New Jersey within thirty-five (35) days after such action.

Mannington Cross-Motion for Dismissal

Pursuant to N.J.A.C. 14:1-5.1(a), all petitions filed with the Board must: (a) comply with the provisions of N.J.A.C. 14:1-4, to the extent applicable; (b) shall clearly and concisely state the facts and relief sought; (c) shall cite by appropriate reference the statutory provision or other authority under which the Board's action is sought; and (d) shall contain such information or statements as are required by provision of the statute and applicable provision of these rules, or such other rules or orders adopted by the Board pertaining to certain petitions, or as may be required by the Board in a particular proceeding.

N.J.A.C. 14:1-4.4 mandates that pleadings be liberally construed with a view to effect justice. The Board may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading result in prejudice to a substantial right of any

party the Board may, on notice, strike the pleading or take such other action as it deems appropriate.

Based on these standards, Fenwick's Petition satisfies the requirements of N.J.A.C. 14:1-5.1(a).

Fenwick's Petition identifies the action being appealed—the Mannington Planning Board's denial of Fenwick's application for a use variance to construct a large-scale photovoltaic solar facility—and seeks an order pursuant to N.J.S.A. 40:55D-19 exempting the proposed facility from otherwise applicable municipal zoning, site-plan, and related land-use requirements. *See* Petition at para. 1. Additionally, the Petition both cites the appropriate statutory provision under which the Board's action is sought and contains such information or statements as required by provision of the applicable statute.

Fenwick clearly expressed in its Petition that it is seeking Board action pursuant to N.J.S.A. 40:55D-19 and the statute does not impose additional filing requirements for such an appeal, nor has the Board adopted additional pleading requirements specific to petitions filed under the statute. Rather, once an electric power generator appeals an adverse municipal agency action and provides the required notice, the statute provides for the opportunity for a hearing at which the municipality and other primarily concerned parties may be heard.

The statute provides that, following such hearing, the Board shall make a final determination whether: (1) the project is necessary to maintain reliable electric service throughout the relevant geographic area; (2) the project is necessary for the service, convenience, or welfare of the public; and (3) no alternative site or sites are reasonably available to achieve an equivalent public benefit. The focus of the Board's analysis of the Petition at this pre-hearing stage is to assess whether the Petition satisfies the Board's pleading requirements set forth at N.J.A.C. 14:1-5.1 and N.J.A.C. 14:1-4,4 and nothing more. At the hearing stage, the Board will evaluate the evidence presented by the parties and determine whether the three (3) statutory criteria are satisfied or not.

Accordingly, the Board **HEREBY FINDS** that the Petition satisfies the Board's pleading requirements set forth at N.J.A.C. 14:1-5.1 and N.J.A.C. 14:1-4.4, as the Petition clearly and concisely state the facts and relief sought, references the relevant statutory provision, and contain information or statements as required by statute. As such, Mannington's motion for dismissal is **HEREBY DENIED**.

To provide further clarity on the Board's right to retain or transmit contested cases to the OAL, the Board is expressly authorized to transmit any contested case proceeding to the New Jersey OAL pursuant to N.J.A.C. 14:1-8, which provides that "the hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedure Act, N.J.S.A. 52:14B-1 and N.J.S.A. 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1, and the [Board's] Rules of Special Applicability, N.J.A.C. 1:14. The Board can also decide to retain a contested case and designate a commissioner to preside over the proceeding and establish a procedural schedule which would include an evidentiary hearing conducted in compliance with all the applicable procedural rules.[16]

Pursuant to N.J.S.A. 52:14B-2, a contested case is "a proceeding […] in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency

[16] See N.J.S.A. 48:2-32

hearing[.]" N.J.S.A. 52:14F-7 provides that the head of any agency has the authority to determine whether a case is contested or to adopt, reject or modify the findings of fact and conclusions of law of any administrative law judge consistent with the standards for the scope of review to be applied by the head of the agency as set forth in that section and applicable case law. N.J.A.C. 1:1-3.2(a) provides that the OAL shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the OAL or as otherwise authorized by law.

The only limitations for an agency head to transmit a contested case proceeding to the OAL are outlined at N.J.S.A. 52:14F-8, which provides in relevant part that "[u]nless a specific request is made by the agency, no administrative law judge shall be assigned […] to hear contested cases with respect to: […] any matter where the head of the agency, a commissioner or several commissioners are required to conduct or determine to conduct the hearing directly and individually."

Accordingly, the Fenwick Petition meets the definition of a contested case that can either be retained by the Board or transmitted to the OAL because the relevant statute does not require the Board or its Commissioners to conduct or determine to conduct the hearing directly and individually.

Therefore, the Board **HEREBY DETERMINES** that this matter should be retained for hearing. Accordingly, as authorized by N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** Commissioner Emma Rebhorn as the presiding officer with authority to rule on all non-dispositive motions that arise during the pendency of this proceeding, and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Any dispositive motions shall be decided by the Board.

Further, the Board **HEREBY DIRECTS** that any entities seeking leave to intervene or participate in this matter file the appropriate application with the Board on or before December 14, 2026. Any party wishing to file a motion for admission of counsel, *pro hac vice*, should do so concurrently with any motion to intervene or participate.

In addition, in compliance with the Board's Orders in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically.[17] No hard copies shall be filed until the Board lifts the restrictions imposed by the Orders. The Board **FURTHER DIRECTS** Staff to post this Order to the Board's website.

[17] In re the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, Orders dated March 19, 2020 and June 10, 2020.

The effective date of this Order is November 27, 2026.

DATED: November 20, 2026

BOARD OF PUBLIC UTILITIES
BY:

BEN HERTZ-SHARGEL
PRESIDENT

CHRISTINE GUHL-SADOVY
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

EMMA REBHORN
COMMISSIONER

JOSEPH COVIELLO
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 FENWICK CREEK SOLAR, LLC FOR A DETERMINATION CONCERNING THE MANNINGTON PHOTOVOLTAIC SOLAR ENERGY FACILITY PURSUANT TO N.J.S.A. 40:55D-19

DOCKET NO. QO26060340

SERVICE LIST

Fenwick Creek Solar, LLC

Norris McLaughlin, P.A.
400 Crossing Boulevard, 8th Floor
P.O. Box 5933
Bridgewater, NJ 08807

James H. Laskey
jlaskey@norris-law.com

Monica Schroeck
mpschroeck@norris-law.com

Township of Mannington

Justin R. White
Testa Heck Testa & White, P.A.
424 Landis Avenue
Vineland, NJ 08360
jwhite@testalawyers.com

Patti L. Davis, Deputy Clerk
Township of Mannington
deputyclerk@manningtontwp.com

Rebecca Ferguson, Planning Board Secretary
Township of Mannington
planningboard@manningtontwp.com

William L. Horner, Esq., Solicitor
Township of Mannington
wlh@hornerlaw.net

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

New Jersey Division of Law

Deputy Attorney General
Department of Law and Public Safety
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625-0112

Terel Klein, Section Chief, DAG
terel.klein@law.njoag.gov

New Jersey Division of Law (Cont'd)

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Steven Chaplar, DAG
steven.chaplar@law.njoag.gov

Jordan Mitchell, DAG
Jordan.Mitchell@law.njoag.gov

Rachel Reckeweg
Rachel.Reckeweg@law.njoag.gov

Tanya Lloyd-Samuel
Tanya.Lloyd-Samuel@law.njoag.gov

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

Sherri L. Lewis, Board Secretary
board.secretary@bpu.nj.gov

Lloyd Kass, Executive Director
lloyd.kass@bpu.nj.gov
mailto:
Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Justin Kohley, Deputy Executive Director
justin.kohley@bpu.nj.gov

Ben Giovine, Chief of Staff
ben.giovine@bpu.nj.gov

General Counsel's Office

Ava-Marie Madeam, General Counsel
avamarie.madeam@bpu.nj.gov

Elspeth Hans, Deputy General Counsel
elspeth.hans@bpu.nj.gov

Steven Athanassopoulos, Senior Counsel
steven.athanassopoulos@bpu.nj.gov

Charles Gurkas
Charles.Gurkas@nj.bpu.gov

New Jersey Dept. of Environmental Protection
P.O. Box 420
Trenton, NJ 08625

Henry Gajda, Chief of Staff
henry.gajda@dep.nj.gov

David Pepe, Director, Office of Permitting and Project Navigation
david.pepe@dep.nj.gov

Helaine Barr, Bureau Chief, Bureau of Climate and Clean Energy
helaine.barr@dep.nj.gov

Katie Nolan, Environmental Specialist
katherine.nolan@dep.nj.gov

Stephen Myers, Supervisor, Clean Energy Section
stephen.myers@dep.nj.gov

Division of Clean Energy

Veronique Oomen, Director
veronique.oomen@bpu.nj.gov

Katharine Perry, Director
katharine.perry@bpu.nj.gov

Diane Watson, Research Scientist
diane.watson@bpu.nj.gov

Laura Scatena, Research Scientist
laura.scatena@bpu.nj.gov

Sawyer Morgan, Research Scientist
sawyer.morgan@bpu.nj.gov

Florence Dou, BPU Project Fellow
florence.dou@bpu.nj.gov

Earl Pierce, Administrative Analyst
earl.pierce@bpu.nj.gov