



Agenda Date: 3/09/22
Agenda Item: 8D

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 COMMUNITY SOLAR ENERGY PILOT PROGRAM)	ORDER
)	
)	DOCKET NO. QO18060646
PENNSVILLE LANDFILL SOLAR, LLC - FOR APPROVAL OF AN EXTENSION OF THE COMMUNITY SOLAR ENERGY PILOT PROGRAM YEAR 2 DEADLINE FOR PENNSVILLE LANDFILL SOLAR PROJECT (A) AND (C))	
)	
)	DOCKET NO. QO21121248

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Giordano, Halleran & Ciesla, P.C., on behalf of Pennsville Landfill Solar, LLC

BY THE BOARD:

In this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers a petition filed on behalf of Pennsville Landfill Solar, LLC (“Pennsville Solar”), pertaining to the registration of two community solar projects in the Transition Incentive (“TI”) Program (“Petition”).

BACKGROUND

The Community Solar Energy Pilot Program (“Pilot Program”) was established by the Board pursuant to the Clean Energy Act of 2018 (L. 2018, c. 17) (“Act” or “CEA”) through rules adopted on January 17, 2019 and published in the New Jersey Register on February 19, 2019.¹ The Pilot Program enables New Jersey electric utility customers to participate in a solar energy project that may be remotely located from their properties and receive a credit on their utility bills. Community solar therefore enables access to clean energy generation for utility customers currently unable to place solar generation directly on their own properties.

¹ 51 N.J.R. 232(a).

Community solar projects were selected by the Board for participation in the Pilot Program via a competitive solicitation process, as directed by N.J.A.C. 14:8-9.3(c). The second solicitation (“Program Year 2” or “PY2”) was launched on October 2, 2020, when the Board issued the application form for the PY2 solicitation. The application form included application requirements and the PY2 Evaluation Criteria, and set the deadline for submitting applications as February 5, 2021 at 5:00 p.m. EST.² In the October 2020 Order, the Board clarified that, in order to limit regulatory uncertainty for projects applying to PY2 of the Pilot Program, applications selected as part of PY2 would be eligible to register for the TI Program, even if said applications were selected after the establishment of the Successor Solar Incentive (“SuSI”) Program. PY2 projects’ TI eligibility would be subject to maintaining compliance with the rules and regulations of the TI Program and the Pilot Program regulatory deadlines. On July 28, 2021, the Board ordered the close of the TI Program to new registrations on 11:59:59 p.m. on August 27, 2021.³

The Board received 412 applications seeking to participate in PY2, representing approximately 804 MWdc. On October 28, 2021, following review of the applications, the Board issued an Order granting conditional approval to 105 projects representing almost 165 MWdc.⁴ Applicants with a conditionally approved project were directed to submit an initial TI Program registration package within 14 days of the effective date of the October 2021 Order. The effective date of the October 2021 Order was November 4, 2021; applicants were therefore required to submit their initial TI Program registration package on or before November 18, 2021.

Pennsville Solar Petition

Pennsville Landfill Solar Project (A), Docket QO21020146, and Pennsville Landfill Solar Project (C), Docket QO21020147, were conditionally approved to participate in PY2 of the Pilot Program. Both projects are proposed to be installed on the Pennsville landfill, with system sizes of 2.7 MW and 3 MW, respectively. Pennsville Solar filed the initial TI Program registration package for Pennsville Landfill Solar Project (A) on November 23, 2021. The registration package was missing required documents, and was subsequently corrected with the submission of a complete package on November 24, 2021. The registration package for Pennsville Landfill Solar Project (C) was likewise submitted on November 24, 2021. These registration packages were therefore submitted six (6) days after the deadline set forth in the October 2021 Order.⁵ Both registration packages were rejected by the Board’s TI Program administrator as having been filed out of time.

² In re the Community Solar Energy Pilot Program; In re the Community Solar Energy Pilot Program Year 2 Application Form and Process, BPU Docket Nos. QO18060646, QO20080556, Order dated October 2, 2020 (“October 2020 Order”).

³ In re A New Jersey Solar Transition Pursuant to P.L. 2018, C. 17, BPU Docket No. QO19010068, Order dated July 28, 2021 (July 2021 Order”).

⁴ In re the Community Solar Energy Pilot Program Year 2 Application Form and Process – Application Awards, BPU Docket Nos. QO18060646 and QO20080556, Order dated October 28, 2021 (“October 2021 Order”).

⁵ The Petition incorrectly states that Pennsville Solar submitted the initial TI Program registration packages for the two (2) projects on November 22, 2021, four (4) days after the deadline. The correct dates are indicated in this Order.

On December 13, 2021, Pennsville Solar filed the Petition, asking that the Board extend Pennsville Solar's deadline to submit its initial TI Program registration packages. The Petition acknowledged Pennsville Solar's failure to comply with the registration deadline. The Petition explained that the project manager primarily responsible for the two (2) Pennsville Solar projects had been replaced, and that the transition to a new project manager caused Pennsville Solar to "inadvertently overloo[k] the [October 2021 Order's] 14 day submission deadline." (Petition p. 2)

Under the terms of the October 2021 Order, this failure to submit timely registration packages would make the projects ineligible to participate in the TI Program and to receive the associated solar incentives. Pennsville Solar states that the loss of the TI Program incentives would "significantly undermine the economics of the projects and enhance the risk that they will not be completed." (Petition p. 2) The Petition stated that these projects are intended to provide significant benefits to the local community. Pennsville Solar was designated as the redeveloper for the Pennsville landfill in December 2020. Pennsville Solar will provide an annual lease payment to Pennsville Township for the use of the landfill, in addition to providing community solar subscriptions to each of the Township's 68 electric meters. Both community solar projects are proposed to be Low- and Moderate Income ("LMI") projects, meaning that at least 51% of each project's capacity will be allocated to LMI subscribers.⁶ Pennsville Solar therefore believes that "the loss of these projects would have significant energy policy and fiscal ramifications." (Petition, p. 4)

STAFF RECOMMENDATIONS

As acknowledged in the Petition, there is no question that Pennsville Solar is fully responsible for the failure to comply with the registration deadline. Pennsville Solar was notified that the Board had granted the two (2) projects conditional approval to participate in PY2 of the Pilot Program. On November 18, 2021, Staff sent an email to the new Pennsville Solar project manager with a reminder of the imminent deadline to file an initial TI Program registration package.

However, Pennsville Solar has been upfront about this failure to comply, and made a rapid attempt to rectify the failure. The two (2) Pennsville Solar projects were selected by the Board to participate in the Pilot Program based on a detailed and comprehensive evaluation of the applications received. These projects were selected as part of a very competitive process, and scored highly on the evaluation rubric developed by Board for reviewing applications. Staff believes that a denial would very likely mean that these projects would not be constructed under their PY2 conditional award. In light of this, Staff recommends that the Board grant the requested relief, and allow Pennsville to re-submit their TI Program initial registration package. Staff recommends that, if allowed to participate in the TI Program, the Pennsville projects be assigned an expiration date of 18 months from the effective date of the October 2021 Order, which is the same expiration date as that granted to all other conditionally approved PY2 projects. Staff further recommends that the Board clarify that the failure to submit a timely initial registration package and this resultant Petition will not be regarded as a legitimate basis for requesting a future extension to the projects' TI registration expiration dates.

⁶ The Petition states, "Project A would direct 49% of its output and Project C 100% of its output to LMI customers." In their applications, both projects were proposed as be LMI projects, meaning that they must allocate a minimum of 51% of project capacity to LMI subscribers. The 49% allocation suggested in the Petition for Project A would not be sufficient or acceptable.

DISCUSSION AND FINDINGS

The Board believes that strict compliance with the Board's orders and regulations is critical to ensuring that programs are administered in a transparent, fair, and consistent manner. However, the Board must also consider whether the circumstances of the Pennsville Solar projects merit some flexibility. PY2 was only the second community solar solicitation, and the two Pennsville Solar projects were selected via a highly competitive process. The Board has in the past expressed strong support for community solar projects participating in the Pilot Program, which are helping to launch a new segment of New Jersey's solar industry. Additionally, the two (2) projects' TI Program registration was a routine administrative step necessary to register these projects for their solar incentive. This registration did not have any impact on the selection or non-selection of PY2 community solar applications. Granting the requested relief would therefore in no way advantage or disadvantage any other PY2 applicants. The Board notes that these circumstances are unique: with the close of the TI Program to new registrations in August 2021, and the decision to end the Pilot Program after PY2, no future projects in the Pilot Program will need to submit an initial registration package in the TI Program. The Board's decision in this matter is therefore limited to the specific facts and circumstances of this Petition.

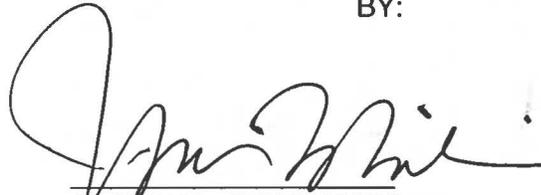
Having reviewed the totality of the circumstances, the Board **HEREBY GRANTS** the Petitioner's request that Pennsville Landfill Solar Project (A) and Pennsville Landfill Solar Project (C) be permitted to register in the TI Program. The Board **DIRECTS** Pennsville Solar to file a new, complete TI Program initial registration package for each project within 14 days of the effective date of this Order. The Board **FURTHER DIRECTS** the TI Program administrator to review the registration package and, if complete, to accept the two (2) projects' TI registrations with an expiration date 18 months from the effective date of the October 2021 Order, i.e. May 4, 2023.

The Board **STRONGLY ADVISES** Pennsville Solar to carefully review all Board Orders, rules, and regulations pertaining to the Pilot Program and the TI Program, and to maintain strict compliance with all requirements going forward. Finally, the Board **ADVISES** Pennsville Solar that the Board does not anticipate looking favorably upon a future extension request that is based upon the time associated with the submission of this Petition, and the Board's review thereof.

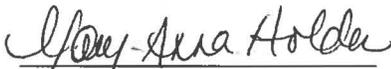
The effective date of this Order is March 16, 2022.

DATED: March 9, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE COMMUNITY SOLAR ENERGY PILOT PROGRAM
DOCKET NO. QO18060646

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COMMUNITY SOLAR ENERGY PILOT PROGRAM YEAR 2 DEADLINE FOR PENNSVILLE
LANDFILL SOLAR PROJECT (A) AND (C)
DOCKET NO. QO21121248

SERVICE LIST

<p><u>Pennsville Landfill Solar, LLC</u></p> <p>Steven S. Goldenberg, Esq. Giordano, Halleran & Ciesla, P.C. 125 Half Mile Road, Suite 300 Red Bank, NJ 07701 sgoldenberg@ghclaw.com</p> <p><u>Division of Rate Counsel</u></p> <p>Brian O. Lipman, Director 140 East Front Street, 4th Floor Trenton, NJ 08625-0003 blipman@rpa.nj.gov</p> <p><u>New Jersey Division of Law</u></p> <p>R.J. Hughes Justice Complex 25 Market Street Post Office Box 112 Trenton, NJ 08625-0112</p> <p>Daren Eppley, Section Chief, DAG daren.eppley@law.njoag.gov</p> <p>Pamela Owen, Assistant Section Chief, DAG pamela.owen@law.njoag.gov</p> <p>Michael Beck, DAG michael.beck@law.njoag.gov</p>	<p><u>Board of Public Utilities</u></p> <p>44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Secretary board.secretary@bpu.nj.gov</p> <p>Taryn Boland, Chief of Staff taryn.boland@bpu.nj.gov</p> <p>Bob Brabston, Esq., Executive Director robert.brabston@bpu.nj.gov</p> <p><u>General Counsel's Office</u></p> <p>Abe Silverman, Esq., General Counsel abe.silverman@bpu.nj.gov</p> <p>Carol Artale, Esq. Deputy General Counsel carol.artale@bpu.nj.gov</p> <p>Suzanne Patnaude, Esq., Senior Counsel suzanne.patnaude@bpu.nj.gov</p> <p>Rachel Boylan, Esq., Legal Specialist rachel.boylan@bpu.nj.gov</p> <p><u>Division of Clean Energy</u></p> <p>Kelly Mooij, Director kelly.mooij@bpu.nj.gov</p> <p>Ariane Benrey, Solar Manager ariane.benrey@bpu.nj.gov</p>
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