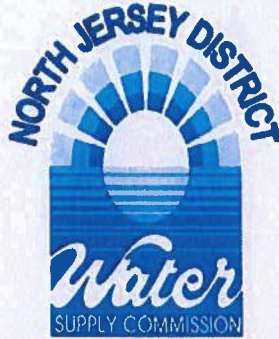


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March 30, 2023

VIA OVERNIGHT DELIVERY AND EMAIL

Sherri L. Golden, Secretary
New Jersey State
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

RE: In the Matter of the Application of the North Jersey District Water Supply Commission for Eligibility Under the Competitive Solar Incentive Program (P.L. 2021, c. 169)
Project I.D. 23CSIHDB3WU
EMERGENT Application for an Administrative Staff Waiver Under CSI Program Order, or, in the Alternative, for a CONDITIONAL Administrative Staff Waiver Under CSI Program Order Pending a N.J.S.A. 48:3-119(f) Petition to the BPU Board (Made Pursuant to Board Order Launching the CSI Program Under Docket Q021101186)

Dear Ms. Golden:

On behalf of the North Jersey District Water Supply Commission (the "Commission"), please accept this emergent application for an administrative BPU Staff waiver pursuant to the Board Order Launching the Competitive Solar Incentive Program (the "CSI Program"), Docket Q021101186, and dated December 7, 2022 (the "CSI Order"), or in the alternative, for a conditional administrative BPU Staff Waiver thereunder pending a N.J.S.A. 48:3-119(f) waiver petition to the full BPU Board. This emergent, Built Environment Administrative waiver application is again submitted to BPU Staff pursuant to the expedited waiver provisions of the CSI Order appearing on pages

39-40 and critically, submitted in the spirit of facilitating prompt deployment of renewable energy resources given the State's clean energy goals, the ongoing climate crisis and the Governor's commitment to addressing the same.

As you know from our Monday, March 27, 2023 Expedited Application for a BPU Staff administrative waiver submitted pursuant to the CSI Order (the "**Initial Application**"), the Commission had applied for CSI Program prequalification for its floating solar project on the Wanaque Reservoir (the "**Project**") on March 7, 2023. Following that submission however, the Commission was subsequently advised that:

We have begun preliminary review of the applications and **your application indicates that this project is partially or entirely on prohibited land**. Please return to the application via the edit button in this email to upload the **land use waiver or Board correspondence relating to your project at your earliest convenience so we may review.**

Prequalification Application Response, dated March 9 2023, and re-sent on March 24, 2023 (Emphasis added).

The prequalification denial occurred because the Project is within the Highlands Preservation Area. Consistent with the Built Environment Administrative Waiver provisions of the CSI Order - which again at pages 39 and 40 expressly permit expedited BPU Staff review of such applications - the Commission made the Initial Application on Monday, March 27, 2023. The Initial Application, which is already on file with the BPU and BPU Staff, is incorporated herein by reference as if set forth at length.

The Initial Application set forth sufficient unique facts making clear that the Project is consistent with the character of the Wanaque Reservoir (as well as the development of floating solar thereon), warranting a grant of a CSI Program waiver under the CSI Order in connection with a Built Environment site. The Initial Application was precisely the type of application envisioned by the waiver provisions of the CSI Order to be handled by BPU Staff without the need for full Board review. Indeed, given the Highland Council's own grant of an administrative waiver for this Project with respect to its own land use requirements on April 23, 2021 (the "**HAD Waiver**"), the Initial Application was expected to be either deemed unnecessary

by BPU Staff, or, if deemed necessary, to be granted consistent with the HAD Waiver, since a Highlands Preservation Area presence was the basis for the prequalification denial here. The Commission expected the application to be routine.

Unfortunately, however, on Tuesday, March 28, 2023, legal counsel for the Commission was advised by legal counsel for BPU Staff that while receipt of the Initial Application was acknowledged, the Initial Application would not be processed. Counsel advised that since the Project was on prohibited land (e.g., within the Highlands Preservation Area), BPU Staff could not render a determination on the Initial Application. Instead, counsel advised that a waiver application to the full Board of the BPU would be required pursuant to N.J.S.A. 48:3-119(f) seeking the waiver relief sought. This position is contrary to the express terms of the CSI Order, which at pages 39 and 40 clearly authorizes BPU Staff to grant such waivers on an expedited basis given the tight timeframes in which to apply under the CSI Program (the deadline for the current tranche is this Friday, March 31, 2023). Also, beyond asserting his position, counsel provided no basis for the determination that a BPU Board level review and authorization is required in these circumstances.

Given the time constraints here, the Commission is now in a very difficult position. The CSI Program deadline is, as noted, this Friday, March 31, 2023. Assuming *arguendo* that a Board petition under statute is ultimately deemed required, there is no way to get before the full Board in time to meet the CSI Program deadline. Notably, the Board's March 22, 2023 meeting was cancelled - thereby depriving the Commission, as a CSI Program applicant, of the opportunity to seek timely Board relief before the current CSI Program deadline passes. In consequence, not granting a BPU Staff waiver under the CSI Order - particularly where such a grant should be ministerial given the Highland Council's grant of the HAD Waiver - irreparably harms the Commission, compelling it to wait another year before being eligible to apply for the next tranche of the CSI Program solicitation. Under these circumstances and given the highly discrete nature of the issue at hand, that result would be both unreasonable and highly inequitable.

Thus, the submission of this current emergent application pursuant to the CSI Order, in order to permit the Commission to meet Friday's CSI Program deadline. The Commission submits that

BPU Staff, under the terms of the CSI Order, are expressly authorized to grant an administrative waiver with respect to any Highlands Preservation Area concerns where a Built Environment site is involved. BPU Staff can either deem the HAD Waiver sufficient for that purpose, or they can grant an administrative, Built Environment Waiver to address the Highlands concern noted in the prequalification denial. There is nothing in the CSI Order prohibiting that and indeed, this is a quintessential case for a waiver application.

If however, BPU Staff continue to opine that full BPU Board review is necessary pursuant to N.J.S.A. 48:3-119(f) in order to grant a waiver here, then the Commission submits that in the alternative to an outright grant of the relief sought under the CSI Order, BPU Staff may instead grant a *conditional* waiver under the CSI Order, *before* this Friday's CSI Program deadline, conditioning that grant on a timely application by the Commission to the full BPU Board pursuant to N.J.S.A. 48:3-119(f), to be heard at the Board's next scheduled meeting. That course would permit the Commission to make a timely CSI Program application by this Friday's deadline, without depriving the BPU Board of the right or jurisdiction to consider a waiver application to the full Board under the statute.

That is also fair to the Commission, since we understand that it will be approximately two months between the March 31, 2023 close of CSI Program bidding, and the actual making of CSI Program awards. This course would allow the Commission to participate in this process pending formal, full Board action. Naturally, if the full Board were to ultimately deny any N.J.S.A. 48:3-119(f) waiver petition, then the Commission's CSI Program bid would be removed from further consideration of the current tranche. This alternative provides an option which is fair to both the Commission as an applicant, and the BPU as the agency with jurisdiction over this Project.

It bears again noting that the CSI Order deems solar installations of the kind proposed here to be "presumptively in the public interest, despite being sited on an otherwise prohibited land use, provided that the [Built Environment] structure or surface has existed for at least three (3) years prior to the date that the waiver application is filed." CSI Order, page 40¹ (Emphasis added). A project on such a Built

1 The CSI Order on that same page notes that BPU Staff generally "view these projects as highly desirable, since they do not impinge upon open space or

Environment site is squarely within the intendment of the CSI Order's administrative waiver provisions. The Wanaque Reservoir has existed for nearly a century upon a rock foundation and base. There will be no impact upon open space, farmland or any other raw and open land in the Highlands Preservation Area, as the Project is proposed as a floating solar system upon a very small (1%) area of the Reservoir's surface (20 acres out of a 2,310 acre surface area). The CSI Order's waiver provisions without question encompass this Project as one to be developed upon a "Built Environment" without detrimental impact to the Highlands region.

The Initial Application described the laudable benefits of this Project, as well as the grant of the HAD Waiver:

North Jersey District Water Supply Commission (NJDWSC) is developing a 10MWdc/8MWac floating solar project for the supply of renewable energy to its operations at 1 F.A. Orechio Drive, Wanaque, NJ 07465. **This project is expected to deliver approximately 90% of NJDWSC's annual energy requirements and is consistent with our long-term goals of reducing our environmental impact while providing budget certainty for our operations.** Final design and specifications remain subject to change, however, our current design is consistent with JCP&L's conditional interconnection approval of up to 10MWdc / 9MWac. The proposed **floating solar array** currently consists of two islands, each approximately 10 acres in size, with 17,075 Heliene 585W PV modules for a total rated capacity of 9.988MWdc. Conductors will bring DC power to shore **near existing roadways and NJDWSC filtration plant operations to an equipment pad where 32 Selectria XGI 1500 (250kW) inverters will convert the energy to AC power.** Four 2MVA dry-type transformers will elevate output voltage to 34.5KV and pole mounted wires will deliver energy to the point of interconnection approximately 100 feet behind the existing JCP&L service meter. All work will be on property owned, managed, and used continuously by NJDWSC for water management operations. **Environmental disturbance is expected to be minimal including less than 1% of surface area of the reservoir, no effect on**

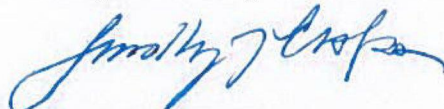
farmland, being situated on previously existing impervious surfaces."
(Emphasis added)

storm water, and land-based disturbance will be inside the facility operations envelope along existing roadways and using infrastructure already on site. Existing poles will be replaced with taller poles to carry power from the equipment pad to the point of interconnection. Importantly, on April 23, 2021, the Highlands Council issued a Highlands Applicability Determination (HAD) indicating Highlands Preservation Area Exemption Determination based on the applicability of exemption #11 for this project. March 7, 2023 Project Prequalification Application submitted through Daymark Energy Advisors (Emphasis added).

In sum, this Project, and the discrete issue of its Highlands presence, is precisely why the CSI Order contemplates expedited BPU Staff review, treatment and grant of administrative waivers. That should still occur here on an emergent basis for the forgoing reasons, so that the Commission can meet Friday's CSI submission deadline. However if BPU Staff is still not inclined to grant this application before this Friday, then we submit it should, in the alternative, grant the Commission a conditional waiver on this issue, pending full BPU Board review of a timely waiver petition brought pursuant to N.J.S.A. 48:3-119(f).

We thank you again for your continued attention to this urgent matter, and await BPU Staff's decision on our emergent request.

Respectfully submitted,



Timothy Eustace,
Executive Director
North Jersey District
Water Supply Commission

cc: George Helmy, Governor's Office, Chief of Staff
Timothy Hillmann, Governor's Office, Deputy Chief of
Staff for Government Affairs
Eric Brophy, Governor's Office, Deputy Chief of
Staff for Economic Growth
Brandon Simmons, Deputy Attorney General

Joseph L. Fiordaliso, President, BPU
Mary-Anna Holden, Commissioner, BPU
Dianne Solomon, Commissioner, BPU
Bob Gordon, Commissioner, BPU
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Governor's Representative to NJDWSC