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Synnergy LLC

In the Matter of the Verified Petition of
SYNNERGY LLC

Seeking a Declaratory Judgment
Pursuant to N.J.S.A. 52:14B-1 et seq.,
and/or a Waiver Pursuant to the Waiver
Rule, N.J.A.C. 14:1-1.2(b)

Docket No.

PETITION FOR
DECLARATORY RELIEF
AND EXTENSION OF SOLAR
FACILITY'S COMMERCIAL
OPERATION DEADLINE

Synnergy LLC, hereinafter sometimes "Petitioner" or "Synnergy," says in support of the within petition:

I. Preliminary Statement/Executive Summary

Petitioner is the developer of a 3.635 MW (DC) solar photovoltaic electric generating facility (the "**Solar Facility**") to serve the Ewing Lawrence Sewerage Authority ("**ELSA**"). The Solar Facility applied on April 28, 2023 under the Administratively Determined Incentive ("ADI") Program as a large, net-metered ground mount project to serve a public entity. The Solar Facility was accepted by the Office of Clean Energy on May 31, 2023, as NJADRE1553095046, and given a commercial operation deadline of May 31, 2024 (the "**Solar Facility COD**").

The solar facility will be located on Lot 27 in Block 1581 in Hamilton Township (the "**Solar Facility Lot**"). The Solar Facility is intended to provide ELSA's treatment plant at 600 Whitehead Road, Lawrenceville, New Jersey (Block 1202, Lot 2; hereafter, the "**ELSA Lot**"), with electricity through a power purchase agreement (the "**PPA**") by and between Synnergy and ELSA. ELSA is a customer under an account (#4247116509) of the local electric distribution company, Public Service Electric & Gas Company (the "**EDC**").

According to Ewing Township's website, ELSA is a government entity formed

in 1947 pursuant to the provisions of the Sewerage Authorities Law of the State of New Jersey (P.L. 1946, c. 138; N.J.S.A. 40:14A-1 et seq.). It has all the powers and performs all the duties provided for by the Sewerage Authorities Law and by any other statutes heretofore or hereafter enacted and applicable thereto. The mission of the Ewing-Lawrence Sewerage Authority (ELSA) is to protect public health and the environment by the effective treatment and disposal of wastewater while operating in a fiscally responsible manner.¹

¹ See ewingnj.org/boards/utilities

Petitioner has secured a contract to purchase Lot 1 in Block 1501 in Hamilton Township (the “**Merger Lot**”). The Merger Lot shares a long boundary with ELSA’s lot in Lawrence Township. The Merger Lot also shares a 16 foot plus boundary with the Solar Facility Lot, separated by Sweet Briar Avenue. (See **Exhibit A**, NJ Transparency Center Property Tax Map, which shows the ELSA Lot, the Merger Lot and the Solar Facility Lot, as well as Sweet Briar Avenue).

The Solar Facility serving ELSA will be “net-metered.”²³ The Solar Facility will interconnect behind ELSA’s meter with the EDC.

The intent of Petitioner acquiring the Merger Lot is to comply with the New Jersey statute for on-site generation/net-metering (N.J.S.A 48:3-51 and 48:3-87(e)),⁴ and the New Jersey Administrative Code regulations (N.J.A.C. 14:8-4.1(b)(2)), promulgated in connection with the statutes. In July – September 2023, Petitioner interacted with the Board Staff with respect to Petitioner acquiring and merging a lot, such that the Solar Facility would be deemed an “on-site generation facility” for ELSA’s sewage treatment plant without the need for a Petition, but the Board Staff advised that (1) a petition would be required for a waiver of the Board’s regulations and (2) that the Solar Facility would be required to meet its Solar Facility COD of May 31, 2024.

To address the on-site facility and net-metering requirements, Petitioner is acquiring the Merger Lot, with the intent that it will be merged either with the Solar Facility or by a consolidating deed or with the ELSA lot by a consolidating deed. Petitioner asserts that either course results in compliance with the statutes, as cited in this Petition.

Further, given the size of the Solar Facility, which will take months to build, the regulatory uncertainty (i.e. the timeline for consideration of this Petition for relief from the Board), and the fact that a government entity (i.e. ELSA) will benefit for the renewable energy provided by the Solar Facility, Petitioner requests an extension of the Solar Facility COD for six months from the Board’s order granting relief.

² The Solar Facility’s electricity production will not exceed CSRD’s historic annualized usage of electricity at the Master Meter.

³ N.J.A.C. 14:8-1.2 defines “net-metering” as a

system of metering and billing for electricity in which the supplier/provider and/or the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period determined under N.J.A.C.14:8-5.3; and
2. Compensates the customer-generator at the end of the annualized period determined under N.J.A.C. 14:8-5.3 for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

⁴ C.48:3-51 Definitions relative to competition in the electric power, gas, solar energy and offshore wind industries.

3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

"On-site generation facility" means a generation facility, including, but not limited to, a generation facility that produces Class I or Class II renewable energy, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way...

Accordingly, Petitioner requests that the Board: (1) issue a declaratory order confirming that once the Merger Lot is consolidated with either the Solar Facility Lot or the ELSA Lot, the Solar Facility will meet the requirements under N.J.A.C. 14:8-4.1(b)(1) to be net-metered for service to ELSA's treatment facility; and (2) pursuant to N.J.A.C. 14:1-1.2(b), issue an order granting six months from entry of the order for the Solar Facility to reach its commercial operation deadline under the ADI Program. While not anticipated, if the Board finds that either option for consolidating the Merger Lot would not result in the Solar Facility, as a solar generation facility, strictly complying with the aforesaid contiguity regulations due to the municipal boundary between Hamilton and Lawrence Townships, Petitioner requests an order waiving strict compliance such that the Solar Facility meets the requirements to be considered net-metered for service to ELSA's treatment facility under N.J.A.C. 14:8-4.1(b)(1).

II. Parties and Relief Sought.

1. N.J.S.A. 52:14B-8 permits "any interested person" to seek "a declaratory ruling with respect to the applicability . . . of any statute or rule enforced or administered by [the] agency." The Board is the agency charged with enforcement of N.J.S.A. 48:3-49 et seq. which law, when enacted, was referred to as the Electric Discount and Energy Competition Act (the "Act").
2. Petitioner Synnergy is a New Jersey limited liability company that will develop and operate the Solar Facility to serve ELSA with electricity.
3. ELSA is a government entity, as noted above in the Preliminary Statement/Executive Summary, that provides sixteen million gallons of sewage treatment services per day to the residents of Ewing and Lawrence Township from its advanced secondary wastewater treatment facility in Lawrenceville, New Jersey.⁵
4. ELSA is a customer of the EDC, as noted above in the Preliminary Statement/Executive Summary..
5. Petitioner seeks a Declaratory Ruling from the Board that once the Merger Lot is consolidated with either the Solar Facility Lot or the ELSA Lot, the energy generated from the Solar Facility and delivered to ELSA will be considered "generated on the customer's side of the meter" because the Solar Facility will be on property "contiguous to the property on which the energy is consumed" under the Board's regulations as set forth in N.J.A.C. 14:8-4.1(b), such that the Solar Facility will be able to serve ELSA's treatment facility from an immediately adjacent property that will contain the Solar Facility as a net-metered facility.
6. If the Merger Lot is consolidated with the ELSA Lot by a consolidating deed, ELSA would own its property in Lawrence Township and the Merger Lot in Hamilton Township, but due to there being two municipalities, each township would continue to designate its lot separately even though the property was held under one deed. Therefore, if the Board does not believe that such a consolidation strictly complies

⁵ See elsanj.org

with the regulations it promulgated under the broader language of the statute (which speaks in terms of contiguous property and does not mention tax lots or blocks), then Petitioner requests that the Board, under N.J.A.C. 14:1-1.2(b), waive strict compliance with the “contiguous property” requirements in N.J.A.C. 14:8-4.1 to allow the Solar Facility to also serve ELSA’s treatment facility under this consolidation option.

7. If the Merger Lot is consolidated with the Solar Facility Lot by a consolidating deed, Petitioner would own property immediately adjacent to the ELSA Lot and, due to block designation requirements with a street, Petitioner’s consolidated property (all in Hamilton Township) held under one deed, would have two block designations: part of the consolidated property being on one side of Sweet Briar Avenue and the balance on the other side of Sweet Briar Avenue. Therefore, if the Board does not believe that such a consolidation strictly complies with the regulations it promulgated under the broader language of the statute (which speaks in terms of contiguous property and does not mention tax lots or blocks), then Petitioner requests that the Board, under N.J.A.C. 14:1-1.2(b), waive strict compliance with the “contiguous property” requirements in N.J.A.C. 14:8-4.1 to allow the Solar Facility to also serve ELSA’s treatment facility under this consolidation option.

III. New Jersey’s Statutory & Regulatory Framework

8. To qualify to produce SRECs, a solar facility must be “connected to the distribution system.” N.J.S.A. 48:3-87.
9. One way a facility can be considered “connected to the distribution system” is if it is “(1) connected to a net metering customer’s side of a meter, regardless of the voltage at which that customer connects to the electric grid. . .” N.J.S.A. 48:3-51.
10. An alternative way to be “connected to the distribution system” under the Act is for a solar facility to be “an on-site generation facility.” N.J.S.A. 48:3-51; *see also* N.J.A.C. 14:8-1.2. Petitioner submits that following the implementation of the consolidation of the Merger Lot, the Solar Facility qualifies to produce SRECs as both a facility “connected to the customer’s side of the meter” as well as an “on-site generation facility.”
11. The Board’s regulations define what it means for renewable energy “to be generated on the customer’s side of the meter” in N.J.A.C. 14:8-4.1(b), which provides in pertinent part that for a Class I renewable energy, “to be generated on the customer’s side of the meter,” the “renewable energy generation facility” can be located:
 - ii. Within the legal boundaries of a property, as set forth within the official tax map, that is contiguous to the property on which the energy is consumed. The property on which the energy is consumed and the property on which the renewable energy generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an existing easement,

public thoroughfare, or transportation or utility-owned right-of-way and, but for that separation, would share a common boundary. The fact that a public thoroughfare may be encumbered by third-party easements does not alter a determination as to whether two properties would be considered contiguous.

N.J.A.C. 14:8-4.1.⁶

12. Under the consolidation of the Merger Lot, the energy generated by the Solar Facility will meet the definition of energy generated on the customer's side of the meter under the Board regulations. There can be no reasonable dispute that, with the consolidation of the Merger Lot, the Solar Facility is not "geographically located next to" ELSA's treatment facility property, notwithstanding the Hamilton-Lawrence municipal boundary.
13. With the consolidation, the Solar Facility and ELSA's treatment facility will be "contiguous" and an "on-site generation facility" under the statute requirement (N.J.S.A. 48:3-51). The Board's regulation (N.J.A.C. 14:8-4.1) can be waived, but Petitioner submits that said regulation does not refer to tax "lots" or tax "blocks" and, instead, directs the inquiry be made to tax maps to verify that the properties are owned by the customer and the generator with no intervening property ownership. The consolidation of the Merger Lot and the Hamilton Township tax assessor's receipt of the consolidating deed will result in such verification.
14. Petitioner respectfully submits that for it to give ELSA the benefit of reduced rate and solar power, the Petitioner needs the financial benefits from the production of SRECs that come from being designated as "connected to the distribution system" as a facility that is connected on the "customer's side of the meter." Further, for ELSA to realize the savings from the Solar Facility and the PPA, the Solar Facility must be interconnected by the EDC as a net-metered facility.
15. Accordingly, Petitioner, requests that the Board confirm that under the consolidation of the Merger Lot with either the ELSA Lot or the Solar Facility Lot, the Solar Facility will be eligible to receive SRECs as a facility where the energy produced therefrom is generated on the customer's side of the meter.
16. In addition, Petitioner notes that, despite the consolidation of the Merger Lot, the Solar Facility is in a different municipality than ELSA's treatment facility. Petitioner respectfully submits that, while N.J.A.C. 14:8-4.1 includes reference to an "official tax map," it does not specify that the Solar Facility must be in the same town where the electricity is consumed. Furthermore, Exhibit A (i.e. showing the municipal tax blocks and lots) for the subject parcels do show that both properties are next to one another. Should the Board disagree with this interpretation, Petitioner requests that the Board also waive strict compliance with this regulation.

⁶When first promulgated, this regulation read: "Within the legal boundaries of a property, as set forth within the deed for the property . . ." For clarification, the Board changed the rule to "as set forth in the official tax map." 45 N.J.R. 942(a) 2013.

IV. Waiver.

17. Under N.J.A.C. 14:1-1.2(b) allows the Board to “relax or permit deviations” from its rules “in special cases and for good cause shown.” Further, the Board “*shall*, in accordance with the general purpose and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the interests of the general public.” Id. at 1.2(b)(1) (emphasis added).
18. The Board has established a two-part test to evaluate requests for waivers under N.J.A.C. 14:1-1.2(b)(1). Under the first prong of the test, the Board considers whether the request supports the general purpose and intent of the rules; and, under the second prong, the Board considers whether full compliance with the rules would adversely affect the public interest. See, e.g., In the Matter of the Petition for Waiver of N.J.A.C. 14:8-2.9(c)-William R. Warren, Docket No. QW14101269 (April 15, 2015); In the Matter of the Clean Energy Program Authorization of Rebates Exceeding \$300,000 and Request for Extension of Time to Complete Project-Bayshore Regional Sewerage Authority, Docket No. EG1202016V (March 12, 2012).
19. In I/M/O the Application of NJ Land, LLC Seeking a Declaratory Judgment, Docket No. QO16040382 (the “NJ Land Order”), the Board summarized its intent regarding the pertinent regulations as follows:

The general purpose of the Board’s net metering rules, as set out in a former rule proposal, is to ‘facilitate investment in distributed renewable energy (renewable energy located close to the source of energy consumption).’ 44 N.J.R. 2043(a) (August 6, 2012). The Board noted that in addition to the reduction in pollution and need for construction of new power plants, positive impacts from all renewable energy has the added benefits of helping alleviate the demand for large electric transmission and reducing congestion on existing electric distribution lines, ‘thus reducing power outages and improving the reliability of electric service to all customers.’

Id. See also, I/M/O Marina Energy, LLC-Seeking Declaratory Judgment Pursuant to N.J.S.A. 58:14B-1 et seq. and/or Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b), Docket No. QO18030297 (Agenda Item 8C, 11/19/2018).

20. Petitioner’s request(s) for waiver support the general intent of the rules. The general intent of the rules is to facilitate investment in distributed renewable energy close to the source of the energy consumption. In this instance, the Solar Facility will provide clean energy to ELSA via the PPA, reducing ELSA’s need for power provided by large electric transmission lines, and the inherent congestion that can occur with heavy demand for power delivered from transmission lines. This helps reliability of electric service for all customers in the area.
21. Petitioner submits that not only are its request(s) for waiver in accordance with the intent of the net-metering rules, but that full compliance with the regulatory requirements would adversely affect the interest of the public. As noted above,

ELSA is an important provider of advanced sewage treatment services for two municipalities, handling 16 million gallons of treatment needs per day. The Solar Facility presents ELSA with the opportunity to receive less expensive energy from a non-polluting/non-fossil fuel source to serve ELSA's electricity needs, thereby reducing its ongoing operational costs and aiding its ongoing viability. However, if strict application of the regulations bars the interconnection of the Solar Facility as a net-metered facility, the result would be a failure to lower the energy costs for a government entity.

22. Petitioner submits that because its request(s) are in accord with the general purposes and intent of the rules and full compliance with the rule requirements would adversely affect the interest of the public, the Board should relax or permit deviation from the applicable regulations so that the Solar Facility may interconnect and serve ELSA's sewage treatment operations as proposed.
23. The consolidation of the Merger Lot with either the ELSA Lot or the Solar Facility Lot results in the solar property and the customer property abutting each other. No intervening lot owned by a third party would exist. Undertaking a deed consolidation of the ELSA Lot and the Merger Lot will place both parcels in ELSA's ownership, immediately across Sweet Briar Avenue from the Solar Facility. This consolidation path simply leave ELSA with real property in two municipalities. Petitioner submits that Board approval of this path via waiver or relaxation of its regulations is straightforward from a regulatory standpoint. It does, however, necessitate a public entity taking title to property (the Merger Lot) to accommodate a Board regulation, which should not be required. Hence, Petitioner's alternative plan – consolidation of the Merger Lot with the Solar Facility – is less burdensome on ELSA as the customer. In this second scenario, the Petitioner will own properties that tie together in the middle of Sweet Briar Avenue, with the Merger Lot portion abutting ELSA's real property, and the Petitioner's property being required to keep two different block designations due to the existence of Sweet Briar Avenue.⁷ Petitioner submits that this consolidation of the Merger Lot is an appropriate path via waiver or relaxation of the Board's regulations and, hence, Petitioner requests a Board order authorizing Petitioner to proceed under this approach.
24. Finally, Petitioner respectfully notes that the Board Staff will undertake a review of this Petition and that consideration by the Board may not be scheduled for several months. The Solar Facility COD has been set for May 31, 2024 and it will take months to construct the Solar Facility. As a matter of equity, Petitioner submits that a deadline to reach commercial operations should be re-set for the Solar Facility by six (6) months from the Solar Facility COD, i.e. to November 30, 2024.
25. In sum, the Solar Facility's unique scenario of facing a municipal boundary, a roadway, and attendant tax lot and block designations, when the Solar Facility would

⁷ The Handbook for New Jersey Assessors, August 2002, Section 607.02 Block and Lot Numbers, states: "Block and lot numbers are used to identify land where there is an approved tax map, particularly in urban areas. Each block bounded by public roads is assigned a block number. Within the block each individual parcel of land is assigned a lot number. Reference to these two numbers identifies a parcel."

will provide discounted cost, renewable power to ELSA, a government entity, provides the basis for the Board to relax or permit deviations from the rules. Petitioner requests that the Board waive strict compliance with the regulations as they apply to the ELSA Lot, the Merger Lot and the Solar Facility Lot (and with respect to the municipal boundary line if the Board feels that is necessary) such that the Solar Facility the energy produced from the Solar Facility be considered generated on the “customer’s side of the meter,” so it will qualify to produce SRECs as a net-metered facility.

V. Conclusion.

WHEREFORE, for all the reasons set forth herein, Petitioner respectfully requests that the Board approve this Petition and (i) issue a Declaratory Judgment confirming that with the implementation of the consolidation of the Merger Lot with the Solar Facility Lot (or alternatively with the ELSA Lot), the energy produced by the Solar Facility to serve ELSA’s treatment facility will be “generated on the customer’s side of the meter” because the Solar Facility is located on property “contiguous to the property on which the energy is consumed” under N.J.A.C. 14:8-4.1; (ii) pursuant to N.J.A.C. 14:1-1.2(b), waive the strict application of the regulatory requirements in N.J.A.C. 14:8-4.1 to find that the Solar Facility may serve ELSA’s treatment facility and produce SRECS as a net-metered facility; (iii) should the Board determine that under N.J.A.C. 14:8-4.1, despite the implementation of the consolidation of the Merger Lot, the energy that will be produced by the Solar Facility to serve ELSA’s treatment facility does not meet the definition of “generated on the customer’s side of the meter” under N.J.A.C. 14:8-4.1 because of the Hamilton-Lawrence municipal boundary, waive the strict application of the regulatory requirements in N.J.A.C. 14:8-4.1 to find that the Solar Facility may serve ELSA’s treatment facility in Lawrence Township and produce SRECS as a net-metered facility; and (iv) extend the Solar Facility COD to November 30, 2024.

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BY: 

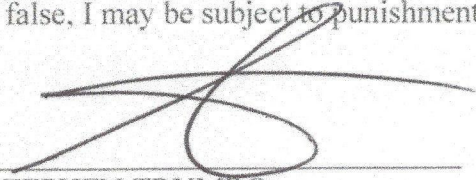
Howard O. Thompson, Esq.

VERIFICATION

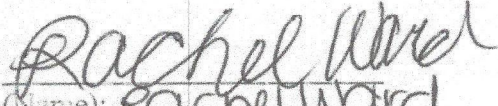
STEPHEN TRUMBO, of full age, being duly sworn according to law, upon his oath deposes and says in support of the within Petition:

1. I am the Managing Member of SYNENERGY LLC, the Petitioner, and I am fully familiar with the facts set forth herein and the relief being sought.
2. The information presented herein with respect to the Petitioner and the Solar Facility is true and the balance of the information in the Petition is true and correct to the best of my knowledge and belief.
3. The relief sought is in the public interest.

I am aware if any statement herein is willfully false, I may be subject to punishment.


STEPHEN TRUMBO

Sworn to and subscribed
before me on this 17
day of October 2023


(Name): Rachel Ward
A Notary Public of the
State of New Jersey

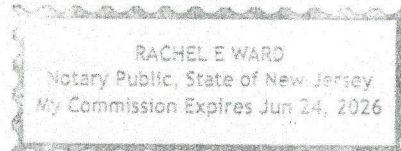


EXHIBIT A
TO
PETITION BY
SYNNERGY LLC

(See attached map)

