SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1426-21

IN THE MATTER OF THE PETITION FOR ASSIGNMENT OF "PREFERRED" TREC FACTOR FOR TWO PILOT DUAL-USE SOLAR PROJECTS PURSUANT TO THE BOARD'S TRANSITION INCENTIVE ORDER – WASHINGTON SOLAR FARM, LLC AND QUAKERTOWN SOLAR, LLC.

Submitted June 1, 2023 – Decided June 8, 2023

Before Judges Mayer and Fisher.

On appeal from the New Jersey Board of Public Utilities, Docket No. QO21060890.

Genova Burns, LLC, attorneys for appellants Washington Solar Farm, LLC, and Quakertown Solar Farm, LLC (Jennifer Borek, of counsel and on the briefs; Celia S. Bosco and Victor Andreou, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Board of Public Utilities (Sookie Bae-Park, Assistant Attorney General, of

counsel; Steven A. Chaplar, Deputy Attorney General, on the brief).

PER CURIAM

Washington Solar Farm, LLC, and Quakertown Solar Farm, LLC (collectively, "petitioners"), appeal the Board of Public Utilities' denial of their petition to expand their existing solar capacity through a temporary dual use pilot program.

In appealing, petitioners argue that the final agency decision was arbitrary, capricious, and should be reversed because:

> I. THE BPU FAILED TO PROPERLY APPLY ITS OWN APPLICABLE ORDER AND RULES IN CONSIDERING THE PETITION.
>
> II. THE PETITION SATISFIES THE APPLICABLE STANDARDS UNDER THE [TRANSITION INCENTIVE] PROGRAM, JANUARY 2020 ORDER AND REGULATIONS.
>
> III. THE BPU DECISION WAS NOT SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE IN THE RECORD.

We find insufficient merit in these arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm, adding only the following brief comments.

Among other things, the BPU denied relief because a month after the petition was filed, the Legislature enacted the Dual Use Solar Act, N.J.S.A. 48:3-87.13, which directed the BPU to create a dual use pilot program in consultation with the Secretary of the Department of Agriculture. In the BPU's view, that circumstance essentially mooted the petition. In response, and as the central theme of this appeal, petitioners chiefly argue that the BPU's decision was arbitrary and capricious, because – without so labeling its ruling – the BPU applied a "time of decision" rule rather than consider the petition based on the rules, regulations, and circumstances that existed when the petition was filed. In so couching the BPU's ruling, petitioners then forcefully argue that the "time of decision" rule is an element of decision-making that is used in matters only governed by the Municipal Land Use Law.

To be sure, the "time of decision" rule was devised for application in the land use arena. But that doesn't mean that it may not also be sensibly applied elsewhere. Here, as in other conceivable situations, there is nothing inappropriate about recognizing the pointlessness of ruling on an application based on principles that have been supplanted by others. And so, we find nothing arbitrary, capricious or unreasonable about applying the same concept here; what petitioners seek should be considered based on the new legal principles.

By the same token, we agree with petitioners that the "time of decision" rule is not "automatic," Pizzo Mantin Grp. v. Twp. of Randolph, 137 N.J. 216, 235 (1994), but instead "take[s] into account equitable considerations," Eastampton Ctr., LLC v. Planning Bd., Twp. of Eastampton, 354 N.J. Super. 171, 197 (App. Div. 2002). Notwithstanding the recognition of a flexible approach to this concept, there is nothing inequitable about the result reached by the BPU. The BPU expressly held that the denial of the petition was "without prejudice to [p]etitioners' ability to submit applications" under the new program emanating from the Dual Use Solar Act.

In the final analysis, the BPU's decision – based not only the reality created by the adoption of the Dual Use Solar Act a month after the petitioners filed their petitions, but also on the BPU's expertise in such matters – was not arbitrary, capricious, or unreasonable and, therefore, commands our deference.

Affirmed.