

AS/MS

**RUSSO TUMULTY NESTER  
THOMPSON & KELLY, LLP**  
A NEW JERSEY LIMITED LIABILITY PARTNERSHIP

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BOARD OF PUBLIC UTILITIES  
NEWARK, NJ

175 Fairfield Avenue, #1C  
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REPLY TO CEDAR KNOLLS OFFICE

February 22, 2011

Kristi Izzo  
Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center Suite 801  
Newark, NJ 07102

EO11020093V

RE: Application of NJLand, LLC For Declaratory Ruling

Dear Ms. Izzo:

Enclosed you will find the original and 10 copies of a petition filed in behalf of NJLand, LLC for a declaratory ruling pursuant to NJSA 52:14B-8 with respect to the provisions of NJSA 48:3 -51, On-site generation facility. The petitioner seeks a declaration that its proposal is within the definition of the applicable statute.

Please circulate this petition for processing at your earliest opportunity. There are some time sensitive issues involved in this matter and thus it is respectfully requested that the petition be handled expeditiously.

A copy of the within petition is being served on Jersey Central Power and Light Company by way of its counsel Marc Laskey, Esquire. Jersey Central Power and Light Company might be an interested party. Also, a copy is being served on Stefanie Brand, Esq, NJ Rate Counsel.

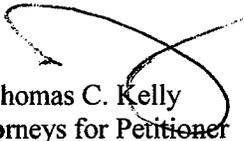
Please contact Howard O. Thompson or the undersigned, at the above phone and or address, in the event you have any questions with respect to this filing.

CMS  
R. BoyLAN  
DAG  
RPA  
CLEAN ENERGY(S) S. Hunter

Thank you for your cooperation and assistance.

Very truly yours

Russo Tumulty Nester  
Thompson & Kelly LLP

By 

Thomas C. Kelly  
Attorneys for Petitioner

c: Marc Laskey, Esquire  
Morgan Lewis & Bockius, LLP  
NJLand, LLC  
Stefanie Brand Esq., NJ Rate Counsel  
Joseph Sullivan, NJ BPU  
Mike Winka, NJ BPU

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Attorneys for Petitioner  
NJLand, LLC

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In The Matter of the Application of NJLAND, LLC : Docket No.  
For Declaratory Relief :  
Pursuant to NJSA 52:14B-8 : PETITION

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

**Parties and Relief Sought.**

- 1 NJL is a limited liability company and the developer for a 156+ acre site located in the Township of Springfield, Burlington County, New Jersey, as further described below, which is directly across a street from the Ft. Dix-McGuire-Lakehurst Super Base ("Ft. Dix-McGuire").
- 2 NJL has redeveloped a former organic compost recycling operation into solar power generation facilities. Initially, NJL is proceeding with a solar facility of approximately 2 MW (DC), with the intent to total in excess of 12 MW (whether one or more facilities, herein sometimes the "NJL Solar Facility"). (See Site Plan attached as Exhibit A).
- 3 An interconnection application with resulting analysis of the NJL Solar Facility's impact on utility equipment has been presented to PJM Interconnection, LLC ("PJM") and the local electric utility, Jersey Central Power & Light Company ("JCP&L"). The first phase of the NJL Solar Facility is to be interconnected with JCP&L distribution lines and PJM and JCP&L -directed equipment upgrades and/or requirements (if any) will be addressed.
- 4 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."

- 5 The New Jersey Board of Public Utilities (herein sometimes the “Board” or the “BPU”) is the agency charged with enforcement of N.J.S.A. 48:3-49 et seq. which statutes, when enacted, were collectively referred to as the Electric Discount and Energy Competition Act.
- 6 NJL seeks a Declaratory Ruling from the Board with respect to application of the definition of “on-site generation facility” as contained in N.J.S.A. 48:3-51 with respect to the NJL Solar Facility. Specifically, NJL seeks the Board’s ruling that the NJL Solar Facility (as further outlined on maps presented with this Application) is an “on-site generation facility” under the statute with respect to -- and thereby its generated electricity would receive behind-the-meter (“BTM”) treatment for electricity service provided to -- intended customers with property abutting, adjacent to, or across a street from property on which a portion of the NJL Solar Facility is located – including, but not limited to, Ft. Dix-McGuire.
- 7 The American Recovery and Reinvestment Act of 2009 was signed by President Obama in February 2009. Section 1603 provides for federal cash grants in lieu of a 30% federal investment tax credit (“ITC”) for renewable energy projects, including solar power projects. To qualify for the Section 1603 cash payment in lieu of the ITC, five (5%) percent of construction must be commenced or costs irrevocably incurred on solar renewable energy projects by December 31, 2011.
- 8 Financing of the NJL Solar Facility and similar solar projects in New Jersey will be affected by the interpretation and application of the definition of “on-site generation facility.” With the December 31, 2011 deadline for this and other solar projects to be underway in order to receive cash in lieu of the federal ITC, the need for the Board’s immediate confirmation that the NJL Solar Facility intended electricity service to certain customers as behind-the-meter power is crucial.

### **Solar Project and Property Background.**

- 9 The NJL Solar Facility will be constructed by an engineering procurement and construction contractor for NJL or its designee/partner on approximately 156 acres of land that has frontage on Saylor’s Pond Road and is near the intersection of Saylor’s Pond Road and Route 68 in Springfield Township, Burlington County, New Jersey. The site had been used by an organic recycling operation, but the operation was wound down. The site is ideal for solar generating facilities, as it can not be used for farming and there is little or no demand for commercial or residential development.
- 10 While the initial phase is expected to be approximately 2 MW (DC) and an application to JCP&L and PJM is pending for possible interconnection onto distribution lines on Saylor’s Pond Road, NJL’s intent is to construct approximately 12 W (DC) of solar in total. The project’s most logical customer is directly across the street: Ft. Dix-McGuire. The property is contiguous, albeit divided by Saylor’s Pond Road, to Ft. Dix-McGuire.

- 11 The site's most beneficial use is as one or more solar facilities. This use would avoid placing burdens on local schools and/or municipal services.
- 12 NJL is providing with this Petition a PDF with an overlay of the NJL Solar Facility layout, as well as a summary PDF with other information to help identify the site. (See Exhibit A).

**Behind-The-Meter/On-Site Generation Facility.**

- 13 The size of the NJL Solar Facility when fully built is anticipated to require costly upgrades to the local distribution lines if all of the electricity generated by the NJL Solar Facility was placed directly on the available distribution lines. Further, to the extent that power is placed on the distribution lines and sold wholesale, the revenue received would be less than if sold directly to a retail customer.
- 14 NJL intends to deliver power on a BTM basis (assuming a power purchase agreement can be finalized) to Ft. Dix-McGuire, which property is contiguous by virtue of abutting the NJL Solar Facility's property or being geographically located next to the NJL Solar Facility but separated by a public thoroughfare.
- 15 In certain stakeholder meetings, some individuals have raised the prospect that a sale across a street may not qualify for BTM treatment. NJL's reading of the applicable statute is that it would be entitled to BTM treatment and NJL submitted a letter to the Board Staff on October 15, 2010, a copy of which is provided with this Petition, as Exhibit C.
- 16 Accordingly, NJL requests confirmation from the NJBPU that the NJL Solar Facility satisfies the statutory definition of an "on-site generation facility" with respect to neighboring, would-be customers. The applicable statutory definition in N.J.S.A. 48:3-51 is as follows: **"On-site generation facility" means a generation facility, 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."**  
(Attached, as a courtesy, as Exhibit B is a copy of an excerpt from the statute).
- 17 A key factor in delivering the best (i.e. lowest price) to a targeted customer is to be able to contract with the customer on a BTM basis. The NJL Solar Facility provides a unique opportunity to serve one or more prospective customers at favorable electricity rates. Simply put, BTM service allows the NJL Solar Facility to provide the power to customers cheaper than if the customers are receiving power from BGS or a third party supplier. Indeed, confirmation from the NJBPU that the proposed NJL Solar Facility qualifies as an "on-site generation facility" is a crucial factor in maximizing the economics of the proposed NJL Solar Facility.

### Local Benefits.

- 18 At this time, the site is all but dormant, with other development choices uncertain, except for the likelihood of other development choices placing greater burdens on municipal services. Conversely, the NJL Solar Facility will result in an inherently beneficial use of the property for 15 years or more, without burdening municipal services.
- 19 Further, the continued operation of a military base versus closure is partly a function of local electricity and other fuel/power costs. Ft. Dix-McGuire is no exception to the pressure of electricity costs; and the base is expected, as a part of the United States Air Force's focus on increasing the use of renewable energy, to develop or procure renewable generation. The NJL Solar Facility is an ideal choice for meeting a substantial portion of Ft. Dix-McGuire's electricity needs with solar power.
- 20 The economics of this project are based on the developer receiving the 30 percent federal cash-in-lieu of ITC cash payment, in addition to projected revenue from SREC sales and energy sales. As noted above, (a) the cash-in-lieu of the ITC payment program requires that the project be five percent under construction by December 31, 2011, and (b) this Section 1603 grant is a critical component to this project being financially feasible. Despite the extension of the start date for construction under Section 1603 grant program, the time is short to address the issues that this and any solar development faces. Uncertainty about BTM treatment of power delivered to Ft. Dix-McGuire is one item that Petitioner respectfully should be favorably resolved on an immediate basis.
- 21 Petitioner respectfully submits that this NJL Solar Facility is consistent with Governor Christie's policy directive to develop solar energy projects on landfills in the State. Petitioner notes that road and site grading were undertaken for its site's former use which make the site unsuitable for farming and residential uses – parallel or akin to the lack of uses available for sites with landfills; yet despite the prior usage, the site is ideal for solar. In other words, whereas installing solar at some sites might be viewed as taking away for possibly arable land, this site does not have that option; and, therefore, solar is a development choice with particular merit.
- 22 In summary, the NJL Solar Facility is a good use of property, provides renewable energy competitively, and serves the municipality by avoiding further burdens on municipal services. Moreover, the NJL Solar Facility will provide electricity during peak times, when it is most needed, in an area of heavy energy consumption, while being distribution-system connected/supportive. In short, this project is consistent with the State's goals of promoting distributive generation projects that produce power, enhance reliability of the distribution grid, and deliver renewable power to users within immediate proximity to the renewable production source.

**Conclusion.**

23 NJL respectfully requests an immediate Declaratory Judgment confirming that the definition of “on-site generation facility” contained in N.J.S.A. 48:3-51 as applied to the NJL Solar Facility results in behind-the-meter treatment for each would-be customer of the NJL Solar Facility whose property is contiguous by virtue of abutting the NJL Solar Facility’s property or being geographically located next to the NJL Solar Facility but separated by a public thoroughfare – including, but not limited to, property immediately across Saylor’s Pond Road – from the land on which a portion of the NJL Solar Facility equipment will be situated in Springfield Township, Burlington County, New Jersey.

**WHEREFORE, Petitioner NJLand, LLC respectfully requests that your Honorable Board of Public Utilities grant Declaratory Judgment confirming that the Solar Project identified in the within Petition constitutes an “on-site generation facility” with respect to -- and thereby entitled to receive behind the meter treatment for electricity supplied to -- on-site and contiguous customers including, but not limited to, customers immediately across Saylor’s Pond Road from land on which a portion of the NJL Solar Facility equipment will be situated in Springfield Township, Burlington County, New Jersey.**

**RUSSO TUMULTY NESTER  
THOMPSON & KELLY, LLP  
Attorneys for Petitioner**

BY: \_\_\_\_\_

**Howard O. Thompson, Esq.**

VERIFICATION

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

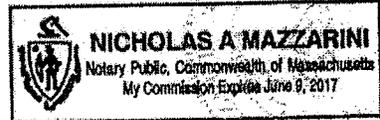
1. I am the Manager of NJLAND, LLC and fully familiar with the facts set forth herein and the relief being sought.
2. The information presented herein is true and correct to the best of my knowledge and belief.
3. The relief sought is in the public interest.

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

Michael Maynard  
MICHAEL MAYNARD

Sworn to and subscribed  
before me on this 19<sup>th</sup>  
day of January 2011

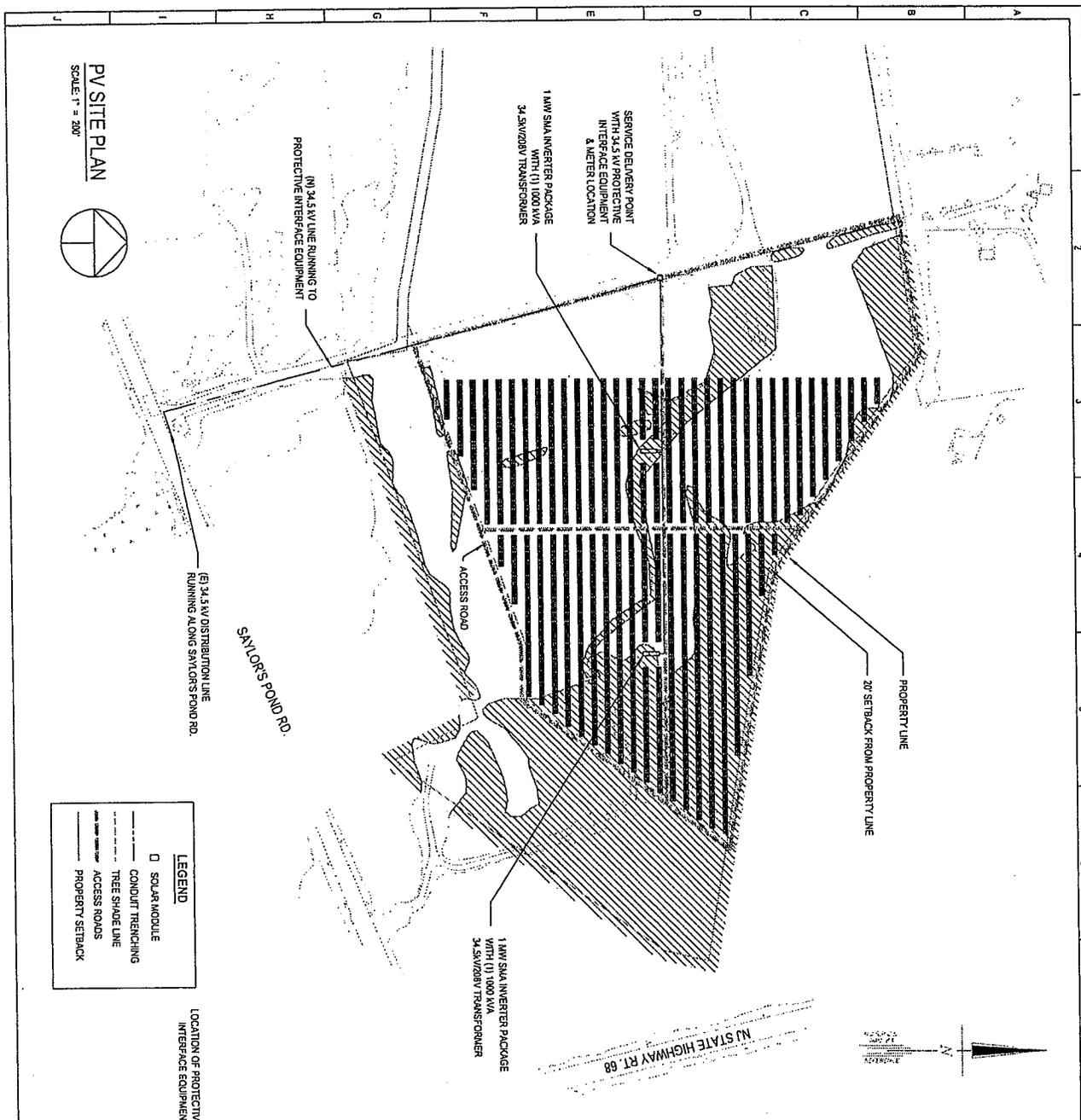
Nicholas A. Mazzarini  
(Name): Nicholas A. Mazzarini  
A Notary Public of the  
State of MA



**EXHIBIT A**

**TO**

**PETITION FOR DECLARATORY JUDGMENT**



**LEGEND**

	SOLAR MODULE
	CONDUIT TRENCHING
	TREE SHADE LINE
	ACCESS ROADS
	PROPERTY SETBACK

LOCATION OF PROTECTIVE INTERFACE EQUIPMENT

**PV SITE PLAN**  
SCALE: 1" = 200'



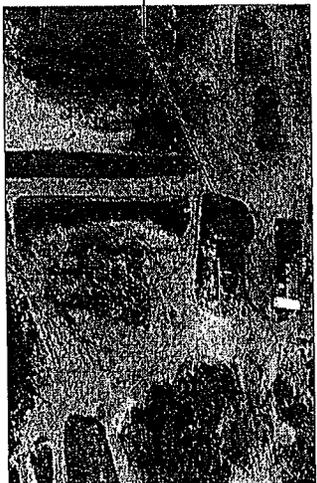
**PROJECT DETAILS**

<b>PROJECT ADDRESS</b> 2469 SAYLORS POND RD WRIGHTSTOWN, NJ 08582	<b>APPLICABLE CODES &amp; STANDARDS</b> 2008 NATIONAL ELECTRICAL CODE 2008 INTERNATIONAL BUILDING CODE UL 1703 - SOLAR MODULES UL 1741 - INVERTERS
<b>PROPERTY OWNER</b> NJLAND LLC 24 CRAFTS RD. CHESTNUT HILL, MA 02167 ☎ (617) 891-6033	

THIS PHOTOVOLTAIC INSTALLATION SHALL BE INSTALLED IN ACCORDANCE WITH THE EDITIONS OF THE INTERNATIONAL BUILDING CODE, THE NATIONAL ELECTRICAL CODE (NEC) AND ANY LOCAL BUILDING CODES CURRENTLY BEING ENFORCED BY THE AUTHORITY HAVING JURISDICTION (A4).

**PROJECT DETAILS**

- SYSTEM SIZE: DC STC: 2.334 MW
- MODULES: (6932) YINGLI TL25P-29B
- INVERTERS: (2) SMA UL SC1000AV-S100S
- RACKING: SCHLETTER
- MODULES TILTED AT 30° TO SOUTH (100°)
- AREA ACRES: 10.5



<p>THIS DOCUMENT IS THE PROPERTY OF BORRERO SOLAR SYSTEMS INC. REPRODUCTION, RESALE OR UTILIZATION IN WHOLE OR IN PART WITHOUT THE WRITTEN CONSENT IS STRICTLY PROHIBITED.</p> <p><b>BORRERO SOLAR</b></p> <p>262 INTERNATIONAL BLVD E 71801 LAS VEGAS, NV 89121 WWW.BORREROSOLAR.COM</p> <p><b>BORRERO SOLAR SYSTEMS INC.</b></p>	<p><b>SITE PLAN</b> <b>SAYLOR'S POND</b> <b>PHOTOVOLTAIC INSTALLATION</b></p> <p>2469 SAYLORS POND RD., WRIGHTSTOWN, NJ 08562</p>								
	<table border="1"> <tr> <th>REV</th> <th>DATE</th> <th>DRN</th> <th>ISSUE DETAIL</th> </tr> <tr> <td>0E</td> <td>07/26/10</td> <td>TAY</td> <td>INTERCONNECTION</td> </tr> </table> <p>DRAWN: T. YATES REVIEWED: T. MORTON</p> <p><b>PV 0.1</b></p>	REV	DATE	DRN	ISSUE DETAIL	0E	07/26/10	TAY	INTERCONNECTION
REV	DATE	DRN	ISSUE DETAIL						
0E	07/26/10	TAY	INTERCONNECTION						



**EXHIBIT B**

**TO**

**PETITION FOR DECLARATORY JUDGMENT**

New Jersey Statutes - Title 48 Public Utilities - 48:3-51 Definitions relative to competition in the electric power, gas, and solar energy industries.

Legal Research Home > New Jersey Lawyer > Public Utilities > New Jersey Statutes - Title 48 Public Utilities - 48:3-51 Definitions relative to competition in the electric power, gas, and solar energy industries.

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

3. As used in this act:

"Assignee" means a person to which an electric public utility or another assignee assigns, sells or transfers, other than as security, all or a portion of its right to or interest in bondable transition property. Except as specifically provided in P.L.1999, c.23 (C.48:3-49 et al.), an assignee shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the board;

"Basic generation service" or "BGS" means electric generation service that is provided, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers for competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the board;

"Basic generation service provider" or "provider" means a provider of basic generation service;

"Basic generation service transition costs" means the amount by which the payments by an electric public utility for the procurement of power for basic generation service and related ancillary and administrative costs exceeds the net revenues from the basic generation service charge established by the board pursuant to section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period, together with interest on the balance at the board-approved rate, that is reflected in a deferred balance account approved by the board in an order addressing the electric public utility's unbundled rates, stranded costs, and restructuring filings pursuant to P.L.1999, c.23 (C.48:3-49 et al.). Basic generation service transition costs shall include, but are not limited to, costs of purchases from the spot

market, bilateral contracts, contracts with non-utility generators, parting contracts with the purchaser of the electric public utility's divested generation assets, short-term advance purchases, and financial instruments such as hedging, forward contracts, and options. Basic generation service transition costs shall also include the payments by an electric public utility pursuant to a competitive procurement process for basic generation service supply during the transition period, and costs of any such process used to procure the basic generation service supply;

"Board" means the New Jersey Board of Public Utilities or any successor agency;

"Bondable stranded costs" means any stranded costs or basic generation service transition costs of an electric public utility approved by the board for recovery pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the board: (1) the cost of retiring existing debt or equity capital of the electric public utility, including accrued interest, premium and other fees, costs and charges relating thereto, with the proceeds of the financing of bondable transition property; (2) if requested by an electric public utility in its application for a bondable stranded costs rate order, federal, State and local tax liabilities associated with stranded costs recovery or basic generation service transition cost recovery or the transfer or financing of such property or both, including taxes, whose recovery period is modified by the effect of a stranded costs recovery order, a bondable stranded costs rate order or both; and (3) the costs incurred to issue, service or refinance transition bonds, including interest, acquisition or redemption premium, and other financing costs, whether paid upon issuance or over the life of the transition bonds, including, but not limited to, credit enhancements, service charges, overcollateralization, interest rate cap, swap or collar, yield maintenance, maturity guarantee or other hedging agreements, equity investments, operating costs and other related fees, costs and charges, or to assign, sell or otherwise transfer bondable transition property;

"Bondable stranded costs rate order" means one or more irrevocable written orders issued by the board pursuant to P.L.1999, c.23 (C.48:3-49 et al.) which determines the amount of bondable stranded costs and the initial amount of transition bond charges authorized to be imposed to recover such bondable stranded costs, including the costs to be financed from the proceeds of the transition bonds, as well as on-going costs associated with servicing and credit enhancing the transition bonds, and provides the electric public utility specific authority to issue or cause to be issued, directly or indirectly, transition bonds through a financing entity and related matters as provided in P.L.1999, c.23, which order shall become effective immediately upon the written consent of the related electric public utility to such order as provided in P.L.1999, c.23;

"Bondable transition property" means the property consisting of the irrevocable right to charge, collect and receive, and be paid from collections of,

transition bond charges in the amount necessary to provide for the full recovery of bondable stranded costs which are determined to be recoverable in a bondable stranded costs rate order, all rights of the related electric public utility under such bondable stranded costs rate order including, without limitation, all rights to obtain periodic adjustments of the related transition bond charges pursuant to subsection b. of section 15 of P.L.1999, c.23 (C.48:3-64), and all revenues, collections, payments, money and proceeds arising under, or with respect to, all of the foregoing;

"British thermal unit" or "Btu" means the amount of heat required to increase the temperature of one pound of water by one degree Fahrenheit;

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas;

"Buydown" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a reduction in the pricing, or the restructuring of other terms to reduce the overall cost of the power contract, for the remaining succeeding period of the purchased power arrangement or arrangements;

"Buyout" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a termination of such power purchase contract;

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner;

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydropower facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities;

"Co-generation" means the sequential production of electricity and steam or other forms of useful energy used for industrial or commercial heating and cooling purposes;

"Combined heat and power facility" or "co-generation facility" means a generation facility which produces electric energy, steam, or other forms of useful energy such as heat, which are used for industrial or commercial heating or cooling purposes. A combined heat and power facility or co-generation facility shall not be considered a public utility;

"Competitive service" means any service offered by an electric public utility or a gas public utility that the board determines to be competitive pursuant to section 8 or section 10 of P.L.1999, c.23 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

"Commercial and industrial energy pricing class customer" or "CIEP class customer" means that group of non-residential customers with high peak demand, as determined by periodic board order, which either is eligible or which would be eligible, as determined by periodic board order, to receive funds from the Retail Margin Fund established pursuant to section 9 of P.L.1999, c.23 (C.48:3-57) and for which basic generation service is hourly-priced;

"Comprehensive resource analysis" means an analysis including, but not limited to, an assessment of existing market barriers to the implementation of energy efficiency and renewable technologies that are not or cannot be delivered to customers through a competitive marketplace;

"Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State;

"Customer account service" means metering, billing, or such other administrative activity associated with maintaining a customer account;

"Demand side management" means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State;

"Electric generation service" means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto;

"Electric power generator" means 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. The designation of an entity as an electric power generator for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in and of itself, affect the entity's status as an exempt wholesale generator under the Public Utility Holding Company Act of 1935, 15 U.S.C.s.79 et seq.;

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of P.L.1999, c.23 (C.48:3-57);

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that transmits and distributes electricity to end users within this State;

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Electronic signature" means an electronic sound, symbol or process, attached to, or logically associated with, a contract or other record, and executed or adopted by a person with the intent to sign the record;

"Energy agent" means a person that is duly registered pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold;

"Energy consumer" means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator;

"Energy efficiency portfolio standard" means a requirement to procure a specified amount of energy efficiency or demand side management resources as a means of managing and reducing energy usage and demand by customers;

"Energy year" or "EY" means the 12-month period from June 1st through May 31st and shall be numbered according to the calendar year in which it ends;

"Financing entity" means an electric public utility, a special purpose entity, or any other assignee of bondable transition property, which issues transition bonds. Except as specifically provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity which is not itself an electric public utility shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Gas public utility" means a public utility, as that term is defined in R.S.48:2-13, that distributes gas to end users within this State;

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Gas supplier" means a person that is duly licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the board pursuant to subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

"Gas supply service" means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service;

"Government aggregator" means any government entity subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written contract with a licensed electric power supplier or a licensed

gas supplier for: (1) the provision of electric generation service, electric related service, gas supply service, or gas related service for its own use or the use of other government aggregators; or (2) if a municipal or county government, the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Government energy aggregation program" means a program and procedure pursuant to which a government aggregator enters into a written contract for the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Governmental entity" means any federal, state, municipal, local or other governmental department, commission, board, agency, court, authority or instrumentality having competent jurisdiction;

"Greenhouse gas emissions portfolio standard" means a requirement that addresses or limits the amount of carbon dioxide emissions indirectly resulting from the use of electricity as applied to any electric power suppliers and basic generation service providers of electricity;

"Leakage" means an increase in greenhouse gas emissions related to generation sources located outside of the State that are not subject to a state, interstate or regional greenhouse gas emissions cap or standard that applies to generation sources located within the State;

"Market transition charge" means a charge imposed pursuant to section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public utility, at a level determined by the board, on the electric public utility customers for a limited duration transition period to recover stranded costs created as a result of the introduction of electric power supply competition pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes the contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers;

"Net proceeds" means proceeds less transaction and other related costs as determined by the board;

"Net revenues" means revenues less related expenses, including applicable taxes, as determined by the board;

"Off-site end use thermal energy services customer" means an end use customer that purchases thermal energy services from an on-site generation facility, combined heat and power facility, or co-generation facility, and that is located on property that is separated from the property on which the on-site generation facility, combined heat and power facility, or co-generation facility is located by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way;

"On-site generation facility" means a generation facility, 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, or if the end use customer is purchasing thermal energy services produced by the on-site generation facility, for use for heating or cooling, or both, regardless of whether the customer is located on property that is separated from the property on which the on-site generation facility is located by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way;

"Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity;

"Private aggregator" means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers;

"Public utility holding company" means: (1) any company that, directly or indirectly, owns, controls, or holds with power to vote, ten percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C.s.79 et seq., or its successor; or (2) any person that the Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public

interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor;

"Regulatory asset" means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled "Accounting for the Effects of Certain Types of Regulation," or any successor standard and as deemed recoverable by the board;

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services;

"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility;

"Renewable energy certificate" or "REC" means a certificate representing the environmental benefits or attributes of one megawatt-hour of generation from a generating facility that produces Class I or Class II renewable energy, but shall not include a solar renewable energy certificate;

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse;

"Restructuring related costs" means reasonably incurred costs directly related to the restructuring of the electric power industry, including the closure, sale, functional separation and divestiture of generation and other competitive utility assets by a public utility, or the provision of competitive services as such costs are determined by the board, and which are not stranded costs as defined in P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited to, investments in management information systems, and which shall include expenses related to employees affected by restructuring which result in efficiencies and which result in benefits to ratepayers, such as training or retraining at the level equivalent to one year's training at a vocational or technical school or county community college, the provision of severance pay of two weeks of base pay for each year of full-time employment, and a maximum of 24 months' continued health care coverage. Except as to expenses related to

employees affected by restructuring, "restructuring related costs" shall not include going forward costs;

"Retail choice" means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service or basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

"Retail margin" means an amount, reflecting differences in prices that electric power suppliers and electric public utilities may charge in providing electric generation service and basic generation service, respectively, to retail customers, excluding residential customers, which the board may authorize to be charged to categories of basic generation service customers of electric public utilities in this State, other than residential customers, under the board's continuing regulation of basic generation service pursuant to sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the purpose of promoting a competitive retail market for the supply of electricity;

"Shopping credit" means an amount deducted from the bill of an electric public utility customer to reflect the fact that such customer has switched to an electric power supplier and no longer takes basic generation service from the electric public utility;

"Social program" means a program implemented with board approval to provide assistance to a group of disadvantaged customers, to provide protection to consumers, or to accomplish a particular societal goal, and includes, but is not limited to, the winter moratorium program, utility practices concerning "bad debt" customers, low income assistance, deferred payment plans, weatherization programs, and late payment and deposit policies, but does not include any demand side management program or any environmental requirements or controls;

"Societal benefits charge" means a charge imposed by an electric public utility, at a level determined by the board, pursuant to, and in accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

"Solar alternative compliance payment" or "SACP" means a payment of a certain dollar amount per megawatt hour (MWh) which an electric power supplier or provider may submit to the board in order to comply with the solar electric generation requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

"Solar renewable energy certificate" or "SREC" means a certificate issued by the board or its designee, representing one megawatt hour (MWh) of solar

energy that is generated by a facility connected to the distribution system in this State and has value based upon, and driven by, the energy market;

"Stranded cost" means the amount by which the net cost of an electric public utility's electric generating assets or electric power purchase commitments, as determined by the board consistent with the provisions of P.L. 1999, c.23 (C.48:3-49 et al.), exceeds the market value of those assets or contractual commitments in a competitive supply marketplace and the costs of buydowns or buyouts of power purchase contracts;

"Stranded costs recovery order" means each order issued by the board in accordance with subsection c. of section 13 of P.L. 1999, c.23 (C.48:3-61) which sets forth the amount of stranded costs, if any, the board has determined an electric public utility is eligible to recover and collect in accordance with the standards set forth in section 13 of P.L. 1999, c.23 (C.48:3-61) and the recovery mechanisms therefor;

"Thermal efficiency" means the useful electric energy output of a facility, plus the useful thermal energy output of the facility, expressed as a percentage of the total energy input to the facility;

"Transition bond charge" means a charge, expressed as an amount per kilowatt hour, that is authorized by and imposed on electric public utility ratepayers pursuant to a bondable stranded costs rate order, as modified at any time pursuant to the provisions of P.L. 1999, c.23 (C.48:3-49 et al.);

"Transition bonds" means bonds, notes, certificates of participation or beneficial interest or other evidences of indebtedness or ownership issued pursuant to an indenture, contract or other agreement of an electric public utility or a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance or refinance bondable stranded costs and which are, directly or indirectly, secured by or payable from bondable transition property. References in P.L. 1999, c.23 (C.48:3-49 et al.) to principal, interest, and acquisition or redemption premium with respect to transition bonds which are issued in the form of certificates of participation or beneficial interest or other evidences of ownership shall refer to the comparable payments on such securities;

"Transition period" means the period from August 1, 1999 through July 31, 2003;

"Transmission and distribution system" means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within this State; and

"Universal service" means any service approved by the board with the purpose of assisting low-income residential customers in obtaining or retaining electric generation or delivery service.

L.1999, c.23, s.3; amended 2001, c.242, s.1; 2002, c.84, s.1; 2009, c.34, s.1; 2009, c.240, s.1; 2009, c.289, s.1.

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Last modified: March 29, 2010

**EXHIBIT C**

**TO**

**PETITION FOR DECLARATORY JUDGMENT**

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October 15, 2010

Mr. B. Scott Hunter  
Renewable Energy Program Administrator  
New Jersey Board of Public Utilities  
Office of Clean Energy  
Suite 801, Two Gateway Center  
Newark, NJ 07102

***Re: Net Metering/Interconnection Stakeholder Process – On-Site Generation***

Dear Mr. Hunter:

An issue was raised at the September 30, 2010 Net Metering/Interconnection Stakeholder Meeting about the ability of solar projects on neighboring parcels of property to serve an end user/customer on a behind-the-meter ("BTM") basis. On behalf of the Office of Clean Energy, you invited comments on this issue. Despite the apparent confusion at the September 30<sup>th</sup> meeting, I respectfully submit that the New Jersey statutes clearly permit solar projects to enjoy BTM status if they are situated and interconnected to meet the statutory criteria.

The Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq. sets out a number of definitions, at N.J.S.A. 48:3-51, that are pertinent to this issue. A group of definitions is attached at the conclusion of this submission; but the key provision is

"On-site generation facility" means a generation facility, 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; (emphasis added).

The statute does not distinguish between types of generation facilities that can be on-site generation facilities. Moreover, the statute does not require that the contiguous property be owned by the end use customer. Further, the statute even permits a road or an easement to come between the site on which the generation facility is located and its otherwise contiguous neighbor that consumes the electricity.

In short, a solar power generating facility can serve the electricity needs on its own property and/or it can serve the electricity needs of its contiguous neighbors located all around (360 degrees) from the facility. Nothing prohibits that facility from separately serving several different neighbors; i.e. if in theory there are four neighbors that in the aggregate need 2 MW of power, the solar power generating facility could be designed to serve all four neighbors. The facility would deliver electricity to the customer side of the four neighbors' meters. Section e of N.J.S.A. 48:3-87 dictates that each neighbor can receive net metering treatment for electricity generated on its side of the meter, but restricts compensation on a retail basis to the neighbor's usage (with annual excess electricity compensated at the avoided wholesale cost of power). The solar power generating facility noted above would split up its 2 MW system into four systems – one for each neighbor, sizing each part of the system not to exceed the neighbor's annual usage, and wiring separately to each neighbor behind its/his/her meter.

Further, Title 54, which sets out New Jersey's taxation statutes, also contemplates arrangements by which the electricity generated by a neighboring solar facility can be exempt from New Jersey Sales & Use Tax. N.J.S.A. 54:32B-8.46 states in pertinent part:

Receipts from the sale, exchange, delivery or use of electricity are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) if the electricity:

...

(2) Was generated by a facility located on the user's property or property purchased or leased from the user by the person owning the generation facility and such property is contiguous to the user's property, and the electricity was consumed by the one on-site end user on the user's property, and was not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcated the user's or generation facility owner's otherwise contiguous property or the electricity was consumed by an affiliated user on the same site, or by a non-affiliated user on the same site with an electric distribution system which is

Mr. B. Scott Hunter, BPU  
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integrated and interconnected with the user on or before March 10, 1997; the director may promulgate rules and regulations and issue guidance with respect to all issues related to affiliated users;

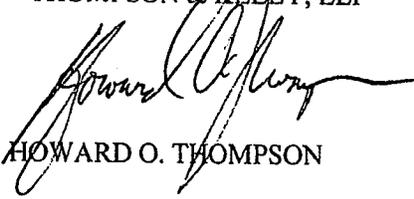
Plainly, then, land ownership, leasing and subleasing arrangements could be established for the theoretical solar generating system noted above – divided into four parts, with four separate generating systems (jointly occupying the contiguous site) separately interconnecting behind the four different end users' meters next door, with four separate leasing/subleasing arrangements with the next-door end users – and the systems' sales would be exempt from the Sales & Use Tax, as well as be considered "On-site generation" delivering electricity on a BTM basis.

In summary, the statutory definition of "On-site generation" and the Sales & Use Tax exemption are sufficiently broad to permit solar generating facilities on contiguous sites to be installed in such a way as to have their electricity delivered to next-door end users considered BTM and exempt for the Sales & Use Tax.

The foregoing is submitted on behalf of Eastern Organic Resources, Inc. and Njland, L.L.C.

Respectfully submitted,

RUSSO TUMULTY NESTER  
THOMPSON & KELLY, LLP



HOWARD O. THOMPSON

Enclosure: Pertinent EDECA Definitions  
c: Eastern Organic Resources & Njland, L.L.C.  
Joseph Sullivan, BPU

### Pertinent EDECA Definitions

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner;

"Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State;

"Electric generation service" means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto;

"Electric power generator" means 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. The designation of an entity as an electric power generator for the purposes of this act shall not, in and of itself, affect the entity's status as an exempt wholesale generator under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq.;

"On-site generation facility" means a generation facility, 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;

N.J.S.A. 48:3-87 Environmental disclosure requirements.

e. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing:

(1) net metering standards for electric power suppliers and basic generation service providers. The standards shall require electric power suppliers and basic generation service providers to offer net metering at non-discriminatory rates to residential and small commercial customers that generate electricity, on the customer's side of the meter, using wind or solar photovoltaic systems for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period. Where the amount of electricity generated by the customer-generator plus any kilowatt hour credits held over from the previous billing periods exceed the electricity supplied by

the electric power supplier or basic generation service provider, the electric power supplier or basic generation service provider, as the case may be, shall credit the customer for the excess kilowatt hours until the end of the annualized period at which point the customer-generator will be compensated for any remaining credits at the electric power supplier's or basic generation service provider's avoided cost of wholesale power. The board may authorize an electric power supplier or basic generation service provider to cease offering net metering whenever the total rated generating capacity owned and operated by net metering customer-generators statewide equals 0.1 percent of the State's peak electricity demand or the annual aggregate financial impact to electric power suppliers and basic generation service providers Statewide, as determined by the board, exceeds \$2,000,000, whichever is less;

and

(2) safety and power quality interconnection standards for wind and solar photovoltaic systems that shall be eligible for net metering.

Such standards shall take into consideration the standards of other states and the Institute of Electrical and Electronic Engineers and shall allow customers to use a single, non-demand, non-time differentiated meter.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

(Emphasis added).