



Agenda Date: 8/21/13
Agenda Item: 8F

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012; AND)	DOCKET NOS. EO12090832V & EO12090880V
IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, <u>N.J.S.A. 48:3-87(Q) (R) AND (S)</u> – PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM – SUBSECTION (Q) APPLICATION DENIALS)	
TrueGreenCapital/Spano Partners Holding, LLC. / North Park Solar, LLC.)	EO13060563V
TrueGreenCapital/Spano Partners Holding, LLC. / North Park Solar LLC.)	EO13060564V
TrueGreenCapital/Spano Partners Holding LLC. / North Park Solar LLC.)	EO13060562V
ITA (Innovative Technologies & Applications), Inc.)	EO13060565V
Syncarpha)	EO13080720V
EAI Investments, LLC.)	EO13060547V
Lumberton Solar, LLC.)	EO13060550V
G&S Wantage Solar, LLC.)	EO13070676V

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Tovi Avnery, ITA, Inc.
Panos Ninios, True Green Capital (North Park Solar, LLC.)
Jim Spano, North Park Solar Energy
Bo Wiegand, True Green Capital (North Park Solar, LLC.)
Carter McCann, Syncarpha
Steven Gouin, EAI Investment, LLC.

Joy Chao, Lumberton Solar, LLC.
David Khasidy, G & S Wantage Solar, LLC.

BY THE BOARD:

On July 23, 2012, L. 2012, c. 24 ("Solar Act") was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities ("Board") to conduct proceedings to establish new standards and to develop new programs to implement its directives. On October 4, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act including those under N.J.S.A. 48:3-87(q) ("Subsection q") (Docket No. EO12090832V) ("October 4 Order").

Subsection q of the Solar Act provides that:

During the energy years of 2014, 2015, and 2016, a solar electric power generation facility project that is not: (a) net metered; (b) an on-site generation facility; (c) qualified for net metering aggregation; or (d) certified as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility, as provided pursuant to subsection t. of this section may file an application with the board for approval of a designation pursuant to this subsection that the facility is connected to the distribution system. An application filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility. The board shall approve the designation if: the facility has filed a notice in writing with the board applying for designation pursuant to this subsection, together with the notice escrow; and the capacity of the facility, when added to the capacity of other facilities that have been previously approved for designation prior to the facility's filing under this subsection, does not exceed 80 megawatts in the aggregate for each year. The capacity of any one solar electric power supply project approved pursuant to this subsection shall not exceed 10 megawatts. No more than 90 days after its receipt of a completed application for designation pursuant to this subsection, the board shall approve, conditionally approve, or disapprove the application. The notice escrow shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection.

(2) If the proposed solar electric power generation facility does not commence commercial operations within two years following the date of the designation by the board pursuant to this subsection, the designation of the facility shall be deemed to be null and void, and the facility shall not be considered connected to the distribution system thereafter.

[N.J.S.A. 48:3-87(q)]

On November 9, 2012, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012. Over one hundred stakeholders representing the electric distribution companies ("EDCs"), solar market participants, landfill developers, environmentalists, municipalities, and

ratepayers participated in the public hearing and submitted comments. Based in part upon the comments received from the public, Staff developed an application and a form of escrow agreement to implement the requirements of Subsection q.

By Order dated May 9, 2013, ("May 9 Order") the Board approved an application process, form of application and form of escrow agreement to be used in connection with the Board's review of projects seeking designation as "connected to the distribution system" under Subsection q. As stated above, Subsection q charges the Board with denying, approving or conditionally approving qualifying applications from certain proposed grid supply solar facilities for designation as "connected to the distribution system" during energy years 2014, 2015 and 2016¹ within 90 days of receipt of a completed application.

Subsection q also provides that "[a]n application filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility," which "shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection." *Ibid.* To implement this provision, the Escrow Agreement adopted by the Board contains the following language:

The Depositor and the Escrow Agent agree that withdrawals from the fund shall not be made without the written approval or directive of the BPU. Written approval will be given only upon submission and approval of a written request identifying the specific provision(s) of N.J.S.A. 48:3-87(q) supporting the withdrawal. Written directive may be issued to the Escrow Agent by BPU upon a written request or in the absence of a written request upon a determination by BPU, in its discretion, that a) the Depositor is entitled to return of the funds because designation of the Solar Facility as connected to the distribution system is denied, b) the Depositor is entitled to return of the funds because the Solar Facility has achieved commercial operation within two (2) years of the date of designation or c) the State is entitled to the funds because the Solar Facility has failed to achieve commercial operation within two (2) years from the date of designation as connected to the distribution system. Upon the issuance and delivery to the Escrow Agent of such written approval or directive by BPU, the Escrow Agent shall immediately disburse the funds called for by said approval or directive, for use solely for the purposes and in the manner specified in said written approval or directive.

Escrow Agreement at para. 10.

As approved by the Board in the May 9 Order, to obtain approval or conditional approval of a Subsection q application, the developer of a proposed facility must file a Subsection q application with the Board for one energy year -- EY 2014, 2015 or 2016 -- with a copy provided to Rate Counsel; the proposed system must be 10 MW or less, be the only facility proposed for interconnection at a distinct interconnection point, the appropriate escrow amount must be noticed as properly secured, and all appropriate SREC registration requirements must be fulfilled. Applications for EY 2014 that fulfilled these procedures would be approved on a first-in-time basis until as much as 80 MW dc capacity was approved for EY 2014.

¹ As defined in N.J.S.A. 48:3-51, an energy year ("EY") is the 12-month period from June 1 through May 31, numbered according to the calendar year in which it ends.

Applicants for EY 2015 and EY 2016 that fulfilled the Board's application procedures would be conditionally approved on a first-in-time basis until as much as 80 MW dc capacity was conditionally approved for the respective energy year. Full approval of a Subsection q application for EY 2015 or EY 2016 would be effective on the first day of the respective energy year subject to the conditions described below.

To obtain final approval as "connected to the distribution system" and eligibility for SRECs for a Subsection q application for EY 2014, EY 2015 or EY 2016, the developer of a proposed facility must have submitted a Subsection q application and received approval or conditional approval from the Board; be the only facility interconnected at a distinct interconnection point, the facility must have completed construction and received authorization to energize; the completed system must be 10 MW or less; and all applicable SREC registration requirements must have been maintained throughout the approval or conditional approval process.

All applicants, including those seeking approval in EY 2015 and EY 2016, must demonstrate that the required amounts are currently held in escrow. Applicants seeking approval for designation in EY 2015 must acknowledge that the two year escrow forfeiture time period will not begin until June 1, 2014 and those seeking approval for designation in EY 2016 must acknowledge that the two year period begins June 1, 2015.

In the May 9 Order, the Board opened the initial application period to begin on May 15, 2013 and extend through May 31, 2013. The Board also stated that "additional application periods may be opened, if necessary."

The May 9 Order was posted on the Board and The New Jersey Clean Energy Program's ("NJCEP") websites and circulated via the renewable energy ("RE") stakeholder email distribution lists on or about that date. The application attached to the May 9 Order provided detailed instructions for applicants seeking to be considered eligible pursuant to Subsection q. On May 13, 2013, Staff distributed a copy of "Frequently Asked Questions regarding Subsection q" via the RE stakeholder email distribution list and posted to the NJCEP.com website. Applicants were advised in these materials that to qualify pursuant to Subsection q, applicants must file Notice according to the instructions to be considered for approval for a specific Energy Year.

Applications will be accepted by Staff...toward making recommendations for approval on a first-in-time basis for each energy year until complete applications for 80 MW dc of total capacity have been received. Time of receipt for purposes of ranking applications will be determined based upon initial receipt of this one-page Notice of Intent to Apply (Notice), provided that the applicant submits the full application as described...

The one-page "Notice" provided by Staff was to be completed by applicants and sent as an attachment to an email to a dedicated email address no earlier than 4 p.m. on May 15, 2013 and no later than 5 p.m. on May 31, 2013. Applicants were told that they had either five days following the submission of a Notice or until May 31, 2013, whichever was earlier, to submit a completed application. Applicants were instructed that an escrow agreement executed on or prior to May 15, 2013 using the form of agreement available on NJBPU and NJCEP websites must be included with the application. Furthermore, applicants were instructed that only one application would be accepted per project with a separate Notice submitted for each project. Unsuccessful applicants under Subsection s were informed of their eligibility to apply under Subsection q.

Staff discussed the Subsection q application process and forms with RE stakeholders at the regularly scheduled stakeholder meeting on May 14, 2013. On May 15, 2013, at 4:00 p.m. per the internal clock of the Board's email servers, the "Qnotice@bpu.state.nj.us" email address was activated by the Board's Information Technology staff. Twenty eight (28) Notices were filed from 15:59:37 (3:59 p.m. on the internal clock of the Board's email server) through 19:50:37 (7:50 p.m.) on Wednesday May 15, 2013. Twenty seven of the twenty eight projects which filed the Notice also submitted an application. Additionally, Staff received one application on July 1, 2013 for which neither a Notice nor an escrow agreement was submitted. Applicants that fulfilled all Board approved application requirements such as filing the Notice, supplying an application within five days of filing the Notice, and executing an escrow agreement and funding the escrow by May 15, 2013, are addressed in a separate Order on this agenda.

During the application period, from May 15, 2013 to May 31, 2013, a question was raised regarding the ability of an applicant/ depositor to seek to withdraw funds prior to designation of a project as "connected to the distribution system." The Escrow Agreement approved by the Board through the May 9 Order did not specifically provide for such a withdrawal.

At its June 21, 2013 agenda meeting the Board found that release of the escrowed funds prior to designation of the proposed solar facility is consistent with the legislative intent as expressed in Subsection q. Therefore, the Board ruled that when an applicant/depositor seeks to withdraw funds because it has withdrawn its application prior to designation by the Board, confirmation in writing of withdrawal of the application by Board Staff is sufficient authorization for withdrawal of the funds from the escrow account. Accordingly, the Board modified paragraph (10) of the Escrow Agreement to reflect this ruling.

STAFF RECOMMENDATION

Staff has thoroughly reviewed the applications described herein. Staff determined that, based on the application materials submitted, each of the applications described above did not fulfill all the requirements established by the Board to satisfy Subsection q. Staff recommends that the Board deny all eight applications.

Rank by Time Notice Recv'd.	Time Notice Received (May 15)	Date Application Received	Notice / Application Submitted by	Applicant / Facility Name	Docket Number	Project/ Designation Address	Project Location	Project County	Date Escrow Funds Deposited in Account	Energy Year Requested	Array Size* (MWdc)
14#	16:00:07	5/20/2013	Dan Porcello / Jim Spano	True Green Capital / Spano Partners Holding, LLC. / North Park Solar, LLC.	EO13060563V	Block 16, Lot 2.01 & 9.05	700 Rike Drive Millstone TWSP, NJ 08535	Monmouth	May 17, 2013	EY14	7.600
21'	16:00:19	5/21/2013	Panos Ninios / Jim Spano	True Green Capital / Spano Partners Holding, LLC. / North Park Solar LLC.	EO13060564V	Block 16, Lot 2.01 & 9.06	700 Rike Drive Millstone TWSP, NJ 08535	Monmouth	None	EY14	5.900
23#	16:00:24	5/20/2013	Bo Wlegand / Jim Spano	True Green Capital / Spano Partners Holding LLC. / North Park Solar LLC.	EO13060562V	Block 74, Lot 13.01	371 Highway 33 East Manalapan, NJ 07726	Monmouth	May 17, 2013	EY14	1.700
6'	15:59:45	5/31/2013	Tovi Avnery	ITA (Innovative Technologies & Applications), Inc.	EO13060565V	Block 26, Lot 6	Meyer Road Frankford, NJ 07826	Sussex	May 31, 2013	EY15	10.000
24'	18:00:24	n/a	Carter McCann / Richard Turnure	Syncarpha	EO13080720V	DID NOT FILE APPLICATION OR EXECUTE ESCROW			None	EY15	7.978
26'	16:01:35	5/20/2013	Steven Gouin	EAI Investments, LLC	EO13060547V	Block 93, Lot 4 & 5	High Street & Carpentersville Rd Pohatcong, NJ 08865	Warren	None	EY15	10.000
28'	19:50:37	5/20/2013	Joy Chao	Lumberton Solar, LLC	EO13060550V	Block 37, Lot 7	Stacy Haines Rd Lumberton, NJ 08048	Burlington	None	EY15	10.000
29'	n/a	7/1/2013	David Khesidy	G&S Wantage Solar LLC	EO13070676V	Block 4, Lots 1.01 & 1.06	Boulder Hills Blvd & Route 23 Wantage, NJ 07461	Sussex	None	EY15	9.389

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62.57

**True Green Capital / Spano Partners Holding, LLC. North Park Solar LLC. / Millstone
EO13060563V (W1-113)**

Notice #14 was filed by Dan Porcello of True Green Capital, and on 5/20/2013 an application was submitted by Jim Spano, Spano Partners Holding, LLC. for North Park Solar, LLC. The application was for an EY14 approval of a 7.6 MWdc grid supply solar facility proposed for Block 16, Lot 2.01 & 9.05 on 700 Rike Drive in Millstone Township, NJ 08535 in Monmouth County. The application indicates that \$304,000.00 in escrow was deposited in an account established at Investors Bank on May 15, 2013. In verifying the establishment of the escrow account, Staff learned from Investors Bank that the applicant established one escrow account on May 15, 2013 with \$372,000 deposited on May 17, 2013, two days after the Board established requirement for escrow deposit by May 15, 2013. An escrow agreement was submitted with the application as required. However, the escrow agreement was not fully completed, and failed to identify the project for which funds were deposited. The instructions for filing an application pursuant to Subsection q attached to the May 9 Board Order clearly state that duplicate applications will be rejected, and to be considered complete, applications must include all required attachments. The standard form escrow agreement, also attached to the May 9 Order, clearly states in Section 3: "The Depositor and the Escrow Agent agree that the escrow account shall be a separate account apart from all other accounts. The escrow account shall be the sole escrow fund maintained by the Depositor pursuant to the Act for the Solar Facility designated above." Staff recommends that the application be denied for lack of escrow funds deposited by May 15, 2013, and for the lack of a properly executed escrow agreement as required under the application procedures.

True Green Capital /Spano Partners Holding
EO13060564V

North Park Solar LLC. / Millstone
(W2-078)

Notice #21 was filed by Panos Ninios of True Green Capital, and on 5/21/2013 an application was submitted by Jim Spano, Spano Partners Holding, LLC., for North Park Solar LLC. The application was for an EY14 approval of a 5.9 MWdc grid supply solar facility proposed for Block 16, Lot 2.01 & 9.06 on 700 Rike Drive in Millstone Township, NJ 08535 in Monmouth County. The application indicated that no funds had been deposited, and no escrow agreement was submitted with the application. Staff recommends that the application be denied for lack of escrow deposited by May 15, 2013, and for lack of a properly executed escrow agreement as required under the application procedures and Subsection q.

True Green Capital / Spano Partners Holding LLC.
EO13060562V

North Park Solar LLC. / Millstone
(W1-032)

Notice #23 was filed by Bo Wiegand of True Green Capital, and on 5/20/2013 an application was submitted by Jim Spano, Spano Partners Holding LLC., for North Park Solar LLC. The application was for an EY14 approval of a 1.7 MWdc grid supply solar facility proposed for Block 74, Lot 13.01 at 371 Highway 33 in East Manalapan, NJ 07726 Monmouth County. The application indicates that \$68,000.00 was deposited in an escrow account established at Investors Bank on May 15, 2013. . In verifying the establishment of the escrow account, Staff learned from Investors Bank that the applicant established one escrow account for \$372,000 on May 15, 2013, with funds deposited on May 17, 2013 two days after the Board requirement for escrow deposit by May 15, 2013. An escrow agreement was submitted with the application as required. However, the escrow agreement was not fully completed, and failed to identify the project for which funds were deposited. The instructions for filing an application pursuant to Subsection q attached to the May 9 Board Order clearly state that duplicate applications will be rejected, and to be considered as complete, applications must include all required attachments. The standard form escrow agreement, also attached to the May 9 Order, clearly states in Section 3: "The Depositor and the Escrow Agent agree that the escrow account shall be a separate account apart from all other accounts. The escrow account shall be the sole escrow fund maintained by the Depositor pursuant to the Act for the Solar Facility designated above." Staff recommends that the application be denied for lack of an escrow deposited by May 15, 2013, and for lack of a properly executed escrow agreement as required under the application procedures and Subsection q.

Innovative Technologies & Applications, Inc.
EO13060565V

ITA, Inc. / Frankford
(X1-012)

Notice #6 was filed by Tovi Avnery on May 15, and on 5/31/2013 an application was submitted by Innovative Technologies & Applications, Inc. for a 10 MW dc grid supply solar facility proposed for Block 26, Lot 6 on Meyer Road in Frankford, NJ 07826, Sussex County. The application indicates that \$400,000.00 in escrow was deposited at Investors Bank on May 31, 2013. The instructions for filing an application pursuant to Subsection q attached to the May 9 Board Order clearly state that an applicant has five (5) calendar days following submission of a Notice or until May 31, 2013, whichever comes first, to submit a complete application with all required attachments. Staff recommends that the application be denied for lack of a timely escrow deposited by May 15, 2013, and the lack of a timely submitted application which was to have included the executed escrow agreement as required under the application procedures and Subsection q.

Syncarpha

EO13080720V

(W1-076)

Notice #24 was filed by Carter McCann and Richard Turnure on behalf of Syncarpha for a 7.98 grid supply solar facility at PJM Queue position W1-076. However, no application was received and no notice of escrow provided. Staff recommends that the request for designation be denied for lack of an application, the lack of an escrow deposited by May 15, 3013, and the lack of a properly executed escrow agreement as required under the application procedures and Subsection q.

EAI Investments, LLC.

EO13060547V

EAI / Pohatcong

(W4-073)

Notice #26 was filed by Steven Gouin, and on 5/20/2013 an application was submitted on behalf of EAI Investments, LLC. The application was for an EY15 conditional approval of a 10 MWdc grid supply solar facility proposed for Block 93, Lot 4 & 5 on High Street & Carpentersville Rd. in Pohatcong, NJ 08865, Warren County. The application did not indicate if funds had been deposited and no escrow agreement was submitted with the application. Staff recommends that the application be denied for lack of an escrow deposited by May 15, 2013, and the lack of a properly executed escrow agreement as required under the application procedures and Subsection q.

Lumberton Solar, LLC

EO13060550V

Lumberton Solar, LLC / Lumberton

(W2-090)

Notice #28 was filed by Joy Chao, and on 5/20/2013 an application was submitted on behalf of Lumberton Solar, LLC, for an EY15 conditional approval of a 10 MWdc grid supply solar facility proposed for Block 37, Lot 7 on Stacy Haines Rd. in Lumberton, NJ 08048, Burlington County. The application did not indicate if funds had been deposited in an escrow account, and no escrow agreement was submitted with the application. Staff recommends that the application be denied for lack of an escrow deposited by May 15, 2013, and the lack of an executed escrow agreement as required under the application procedures and Subsection q.

G&S Solar LLC.

EO13070676V

G&S Wantage Solar LLC. / Wantage

(W3-110)

The 29th project on the list did not include a Notice filed with the Board as directed in the Subsection q application instructions. On 7/1/2013, David Khasidy submitted an application on behalf of G&S Wantage Solar LLC. for a 9.389 MW dc grid supply solar facility proposed for Block 4, Lots 1.01 & 1.06 on Boulder Hills Blvd & Route 23 in Wantage, NJ 07461 in Sussex County. As stated above, no Notice was filed with the Board. The application did not indicate if funds had been deposited in an escrow account, and no escrow agreement was submitted with the application. Staff recommends that the application be denied for lack of a properly filed Notice, the lack of an escrow account with funds deposited by May 15, 2013, and the lack of a properly executed escrow agreement as required under the application procedures and Subsection q.

Staff also recommends that the Board announce the opening of a subsequent application period beginning October 15, 2013, consistent with the legislative intent of Subsection q to allow up to 80 MW of capacity in each of the three energy years covered, and in response to the expressed

interest from developers of facilities whose applications under Subsections s or t were denied or deferred.

DISCUSSION AND FINDINGS

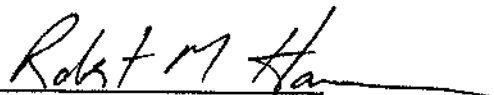
The Board **HEREBY FINDS** that Staff conducted an application process for determining eligibility of grid supply solar electric generation facilities to be considered "connected to the distribution system serving New Jersey" pursuant to Subsection q of the Solar Act, and that the process followed was consistent with the Board's directives in the May 9, 2013 Order and with Subsection q. The Board **FINDS** that for each of the eight projects described above, the applicants failed to fulfill one or more of the requirements for filing an application pursuant to Subsection q.

The Board **HEREBY DENIES** eight applications, as identified above, seeking approval for EY14 or conditional approval for EY 15 or EY16 pursuant to Subsection q for failure to comply with the requirements of Subsection q as implemented in the application procedures adopted by the Board to ensure that all applicants were treated openly and fairly.

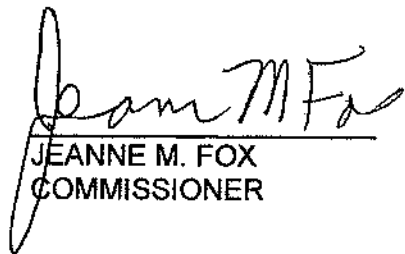
The Board **HEREBY ANNOUNCES** that an additional application process under Subsection q will be opened beginning on October 15, 2013, and **HEREBY DIRECTS** Staff to notify stakeholders of available capacity within each of the applicable Energy Years and of the process to be used for that solicitation.

DATED: 8/21/13

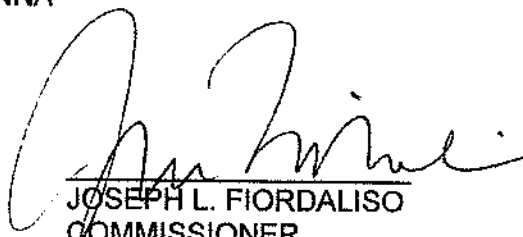
BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT



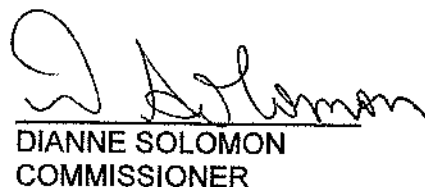
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JOSEPH L. FIORDALISO
COMMISSIONER



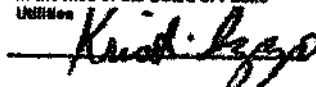
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ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



Docket No. EO12090832V – In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012; and

Docket No. EO12090880V – In the Matter of the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(q), (r) and (s) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System – Subsection (q) Application Denials

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