COMMENTS

NEW JERSEY BOARD OF PUBLIC UTILITIES

OFFICE OF CLEAN ENERGY

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOLAR ACT OF 2012 S-1925

Submitted by: Justin Michael Murphy, Esq.

These formal comments are submitted by Justin Murphy, Esq. – Development Attorney for the following Photovoltaic Development Teams: Comet Land Development, Regional Capital Group, and Millennium Land Development. Pursuant to the direetion of the officials at the Stakeholder meeting on November 9th, these eomments are submitted to the Office of Clean Energy, the New Jersey Department of Environmental Protection, and the New Jersey Board of Public Utilities. In addition, these comments supplement the oral comments/testimony submitted by Justin Michael Murphy, Esq. before the NJ BPU Stakeholder Meeting held on Friday, November 9, 2012 in Trenton, NJ.

The business entities mentioned above were in the process of developing ten photovoltaic projects in New Jersey. All projects were in various stages of the PJM Active Queue process (Feasibility, Impact, or Facilities Study phases). They were ground-mounted utility scale power facilities, located mainly in southern New Jersey. Total megawatts to be produced were approximately 100. As a result of S-1925/N.J.S.A. 48:3-87, specifically section (s), all but one of the projects remains in the PJM Queue. The removal of the other nine is a direct result of S-1925.

The Law, "Revises certain solar renewable energy programs and requirements; provides for aggregated net metering of electricity consumption related to properties owned by certain governmental bodies and school districts."[1] Specifically, ground-mounted utility-scale solar facilities will now be saddled with additional, unnecessary, regulatory burdens that have already precipitated the slowing down, if not outright abandonment of these types of projects. S-1925 redefines the designation, 'connected to the grid', as it relates to SREC eligibility. For example, a $40,000 per mW Notice Escrow to supply to the NJBPU. The escrow is held while the BPU is determining whether the ground-mounted utility scale project will receive the designation, "connected to the grid", for the purposes of qualifying for SRECs. A ten mW facility would require $400,000 in escrow to be posted with the BPU. In addition to this Notice Escrow, hundreds of thousands of dollars, and in some instances, over a million dollars, were previously spent by investors to have their projects approved for use and/or site plan from municipal planning/zoning boards, county planning boards, soil conservation districts, and the PJM process for interconnection. To incur this added expense, with no guarantee of receiving the designation, 'connected to the grid', creates unimaginable hurdles for project development. One need only research the PJM Queue listing since 2008; it is more than evident that the number of grid-connected PV projects in NJ has dropped off to practically zero.

The Development team that retains me is seeking clarification to certain sections of the Law, that may, or may not, be appropriately addressed by the BPU and DEP later this month. If possible, we are seeking to have legislators convey to the BPU the intent of the law on the following two issues/sections.

[1] Synopsis – Senate Committee Substitute - Bill 1925 – Fourth Reprint

Issue 1

The June 30, 2011 'Deadline' as set forth in section (s) of the law. Does this date represent a 'grandfathered' deadline for the designation of 'connected to the distribution system' in regards to requiring NJBPU approval. What 'approval' is required, prior SREC registration, section q. approval? Even though the express term 'grandfathered' is not found in the text of the law, entities, such as ours, are requesting the BPU construe the June 30, 2011 deadline for issuance of a PJM Facilities Study as some type of grandfather provision that allows for projects that did receive their PJM Facilities Study prior to June 30, 2011 to be designated as connected to the grid.' The requirement for SREC registration can be satisfied at a later date, conducive to each project's particular circumstances and PJM Interconnection process.

Issue 2

Locating a solar facility on a Brownfield parcel of property – One intention of the law is to locate solar facilities on Brown-fields parcels. In the scenario where a commercial operation is now abandoned leaving the land vacant or underutilized, that has contamination of lead and arsenic, and operated as tree nursery, since the intent is to channel solar development to these contaminated sites, can a Brown Field designation be obtained for such a site that may have been Farmland Assessed when it was operating commercially?

To address other sites with similar circumstances, Can the BPU implement S-1925, and ensure that there will be no distinction between a parcel of property located in a rural community and one located in an urban setting, that conforms to the brownfields definition as currently defined in S-1925 and New Jersey Law? We believe the intent of the law was to transform contaminated sites into clean energy production facilities. The remediation required for contaminated sites varies in each instance. However, it can be safely presumed that remediation required for a photovoltaic facility would be less intensive and less costly than for residential or commercial building development. Permitting the rural sites to locate a photovoltaic facility on a contaminated site would further the intent of the legislation, provide much needed in-state generation, reduce transmission congestion, and employ numerous engineers, developers, attorneys, and blue-collar workers. We respectfully submit that no distinction should be made between rural and urban brownfields parcels of land.

New Jersey Energy Policy

Finally, New Jersey's energy policy is incoherent and dysfunctional at best. We are not addressing the main problem: Lack of power generation in-state. We are losing Oyster Creek (loss of 654 Mega Watts of base load electric power), Governor Christie has announced there will be no permits issued for new coal fired generation in NJ, and now, the number of large utility-scale solar power facilities will never increase with an over supplied SREC market and the constraints imposed by S-1925. These larger solar facilities were pumping tens of millions of dollars to upgrade the electric distribution infrastructure of the local utility company, thereby relieving the electric rate-payer from picking up this tab in the future. Senate 1925 has forced

many projects to be abandoned. The new burdens and uncertainty make doing business in NJ much more difficult, if not impossible.

Respectfully Submitted for incorporation into the Stakeholder Process,

Justin Michael Murphy, Esq.

Business Development Attorney

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November 22, 2012

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Implementation of Subsections (s) – Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System pursuant to N.J.S.A. 48:3-87(s).

Dear Secretary Izzo,

You have requested public comment regarding the implementation of N.J.S.A 48:3-87(38)(s) (i.e., "Subsection (s)") of the new Solar Act. We developed the attached comments in collaboration with Elliot Shanley of PVOne, LLC, and endorse them in their entirety.

Thank you for considering these comments.

Very Truly Yours,

Michael P. Torpey
Managing Partner
A.F.T. Associates, LLC

Mark S. Bellin
Partner
A.F.T. Associates, LLC

Attachment

November 21, 2012

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, NJ 08625-0350

Re: Comments on Subsection (s) of the Solar Act

Dear Secretary Izzo,

We are pleased to submit for your consideration expanded written comments (hereinafter referred to as the "Submission") to augment our oral comments offered at the November 9, 2012 Stakeholders Meeting. With respect to S1925 (hereinafter referred to as the "Solar Act") and specifically as to N.J.S.A 48:3-87(38)(s) (hereinafter referred to as "Subsection (s)"), please find below our further comments.

Executive Summary

This Submission concerns a form of development that consists of the construction of a photovoltaic ("PV") ground mounted grid supply solar farm consisting of post or ballasted racking systems, solar panels, inverters, and transformers on a parcel of land that was previously used as farm land or assessed as farm land, with the electricity generated from that solar farm to be injected into the grid (hereinafter referred to as a "Project") pursuant to an executed Wholesale Marketing Participation Agreement (hereinafter referred to as a "WMPA") with PJM Interconnection, LLC (hereinafter referred to as "PJM"). We are assuming that all Projects referenced in this written Submission filed the Subsection (s) Notice of Intent within 60 days of July 23, 2012 as required by law and that all Projects have a PJM System Impact Study dated on or before June 30, 2011. It is our further assumption that the developers of the Projects had - prior to the passage of the Solar Act - taken all steps and performed all actions required by the then duly adopted laws or regulations for the development of the Project.

The Solar Act was adopted at a time of extreme lack of transparency in the solar industry in New Jersey. Other than to look at the PJM queue and seek to identify Projects in the pipeline, there was no reasonable manner with which to evaluate the number of Projects under development and their development timeframes. The overwhelming concern was that there were thousands of megawatts ("MW") of Projects in the pipeline, the development of which would overwhelm the SREC market and the value of the SREC incentive. There was a further concern that New Jersey's treasured farmland would be plundered and converted into one large contiguous ground mounted solar field.

With the required filings of the Subsection (s) notices of intent, we now know that the remaining universe of Projects of Subsection (s) numbers in the range of 500 MWs, approximately 0.3 percent of the tilled

farmland in New Jersey and approximately 13 percent of the projected 3.6 gigawatts ("GW") Renewable Portfolio Standard ("RPS"). With this information, we can now address the concerns of the perceived negative impact of the Projects. The Board should not regulate, administer, and manage the qualified subsection (s) Projects such that it would create inequitable forfeiture or untimely delay.

Accordingly, it is the contention of this Submission that in order for a Project be deemed "connected to the distribution system" by the Board under Paragraph S of the Solar Act as contemplated by the Solar Act and with the ramifications of that determination, **the developer of a Project need only file a Subsection S application with the BPU with the proof that the System Impact study was dated on or before June 30, 2011 and that the Notice of Intent was filed in accordance with the law.**

Our Submission is supported by the following Comments:

- Subsection (s) Interpretation: Any Project that satisfies the requirements of Subsection (s) should be eligible for SRECS. The criteria is that the Project: (1) has a PJM System Impact Study dated on or before June 30 2011; and (2) that a Notice of Intent was filed within 60 days of July 23, 2012; and (3) meets all previously required criteria in effect prior to passage of the Solar Act.

- Subsection (s) is Separate from (r): Subsection (s) should be deemed a completely separate application, separate and apart from Subsection (r) of the Act and Subsection (r) should have its own application process. In our view, Subsection (s) was not created to limit SREC eligibility but solely to limit the future development of Farmland with solar fields.

- Consideration of Supply and Demand of SRECs is Not Relevant: In interpreting Subsection (s), the Board should separate the issue of SREC supply from SREC demand as these are two distinct and separate issues. SREC supply and demand issues are distinct and separate matters that should be debated and addressed outside of Subsection (s). The intent of Subsection (s) is to regulate the future development of Projects on farmland, not to address the issues of the supply or demand of SRECS. Moreover, taking into account SREC imbalances would create a regulatory risk where none had existed before the investments in Projects were made, and would strand hundreds of millions of dollars.

- Management of SREC Market Impact: The SREC market is more appropriately addressed through other measures that the Board can implement on its own in order to address supply and demand imbalances. Therefore, potential SREC market impacts from Subsection (s) Project should not be taken into account for the determination of the meaning of Subsection S.

- Legal and Regulatory History Supported Project Development: All of the Subsection (s) Projects moved forward on the basis of a legal and regulatory environment that strongly supported the development of the Projects. SREC eligibility for these Projects began in 2008 and was supported through regulations and laws right up until the passage of the Solar Act.

- Project Development Cycle and Risk: Due to the complexity of the approvals needed, these Projects can take anywhere between 2-4 years before they are energized.

- Stranded Investment: The interpretation of a Subsection (s) filing should be based on a simple objective standard. To interpret otherwise could result in stranded investments of $2 billion in Projects and of $200 million of preconstruction Project development costs. And it could mean

that $2 billion of Project investment in these Subsection (s) Projects will not happen in New Jersey at a time when the local economy in New Jersey demands the investment. Given the history surrounding these Projects, equity and fairness would lead to an interpretation of Subsection (s) that was not intended to strand such investment but to simply limit farmland development for the development of future projects.

- Impact on Farmland: Total impact of 500MW would be 0.3% of New Jersey's tillable acres.

Comments

I. Subsection (s) Interpretation.

Legislative Intent

It is undisputed that a part of the overall purpose of the Solar Act was and is to limit and eventually end the "future" growth of Projects on open space and farmland and to encourage the development of projects on landfills and brownfields. The Solar Act is intended to limit grid projects in favor of net meter projects and to encourage the development of Projects on land that State believes to be of little to no value. The Legislature also wanted to take into account existing development on farmland. The legislation contains three separate and distinct Subsections ((q), (r), and (s)) to address the transition away from Projects not on landfills or brownfields.

Subsection (q) allows for the development of 80MWs per year for Energy Year ("EY") 2014-2016, capped at a system size of 10MWs. To be qualified under this section the owner must make a deposit of $40,000 per MW and the yearly capacity must not be satisfied. If the Project is approved but not built, the deposit will be forfeited. The purpose of this section is clearly meant to slowly wean the industry off of Projects by allowing Projects to move forward in the those years, but by imposing a deposit the legislation ensures that these are real Projects with the intention of moving forward due to the risk of losing money.

Subsection (r) concerns all Projects proposed for EY 2017 and beyond that either did not qualify under Subsection (q) or are not eligible under Subsection (s). Subsection (r) requires public notice and opportunity for public comment and hearings. Furthermore, Subsection (r) sets forth a number of subjective standards that the Board can apply in making the determination as to whether or not a Project should be approved. Therefore, Subsection (r) is intended to give the Board discretion on whether to allow the development of Projects that do not qualify under Subsection (q) from EY 2017 forward. It is unlikely that many developers, if any, will even pursue development given the regulatory risk of being denied approval.

Subsection (s) was specifically targeted at ending the development of Projects on farmland. Subsection (s) makes it clear that these Projects have only two ways they can be deemed connected to the grid: (1) Such Project is approved under Subsection (q); or (2) the Project received a system impact study on or before June 30, 2011 and filed a Notice of Intent to be qualified under this section within 60 days of the passage of the Solar Act. If a Project does not fall under either of these, it is ineligible for SRECs. So it is clear the purpose of this section is to end the development of Projects on farmland. But existing Projects that are either approved under Subsection (q) or meet the criteria of Subsection (s) may proceed and be eligible for SRECs.

II. Subsection (s) Is Distinct from Subsection (r)

Separate Application and Approval Process

As set forth above, Subsection (r) has a distinct and separate purpose from Subsection (s). Subsection (r) concerns the Board's authority to control the development of grid projects for EY 2017 and beyond. It has a completely different set of criteria for approval, in addition to notice and public hearing. The application for Subsection (r) approval will be some time far in the future. Subsection (s) makes clear that farmland Projects have only two avenues for approval. One of those avenues is not Subsection (r). Subsection (s) states in plain language that farmland Projects "shall only be considered connected to the

distribution system" if they meet requirement (1) or (2), which again does not include Subsection (r). Therefore, approval under Subsection (s) is a separate application and approval process from Subsection (r).

Subsection (s) Approval

Since Subsection (s) is separate and distinct from Subsection (r) with the goal of ending farmland development, such Projects can be approved provided they meet the simple criteria under Subsection (s): Approval under Subsection (q) or receipt of a system impact study on or before June 30, 2011; and Filed a Notice of Intent to be qualified under this section within 60 days of the passage of Solar Act. There are no subjective criteria in Subsection (s), as is contained in Subsection (r), nor does it require notice and public hearing. If that were required the Legislature would have said so and moreover the inability of a farmland Project to even seek Subsection (r) approval leads to the conclusion that sole purpose of Subsection (s) is to allow but limit the development of farmland Projects that meet the Subsection (s) criteria.

It should be noted that Subsection (s) 2(c) does further state……"and the facility has been approved as "connected to the distribution system" by the Board. We interpret this as the Legislatures acknowledgement that the Project must also meet all the previously required criteria in previous Laws/Regulations regarding eligibility to be deemed connected to the distribution system. In order to be SREC eligible under the prior existing regulations the criteria is to be directly connected to the electric grid at 69 kilovolts or less, and have an approved SRP application.

III. Consideration of SREC Supply and Demand Under this Proceeding

Market Impact is Not Relevant to the Subsection (s) Interpretation.

To date there has been discussion in making a determination on how to interpret Subsection (s) of Solar Act. We respectfully suggest that supply and demand issues of the SRECS and their valuation should be given no consideration in this matter. Subsection (s) was not the means to limit supply of SRECS but rather the means to end the development of Projects on farmland. Clearly, if supply and demand SREC issues were tied to Projects then the Legislation would have limited the amount that can be built on landfills and brownfields or for net-metered projects

There must be a separation of the discussions of Project eligibility from that of market impact. Project eligibility speaks to regulatory risk. SREC market impact and demand issues speak not to regulatory risk but to market value risk.

The Board should not intermix the eligibility issue with the SREC impact issue, and as such create regulatory risk in an effort to control market pricing. The solution to increasing the value of the SREC does not and should not lie in the creation of regulatory risk. If the Board were to act otherwise, the State and the Board would be sending a signal that regulatory continuity and certainty are no longer certain, and this will have negative consequences in the State with regard to future investment, in both solar and any other investments that require regulatory certainty. We strongly encourage the Board to consider the negative consequences of deeming Projects that have met the criteria stipulated under Subsection (s) as ineligible for SRECS. Projects that have achieved that level of completion have invested an appreciable amount of time, energy and capital to get the Project to that point of development, all the while doing so under a legal and regulatory framework that made the Project SREC eligible. Deeming Subsection (s) Projects as ineligible for SRECs would prevent nearly $2 billion in investment into the state and strand over or near $200 million in investments already made.

We suggest that the potential of SREC market impact should not be a factor in determining if a qualified Subsection (s) Project is "connected to the distribution system". The Projects were initiated and funded in good faith by developers that were encouraged to do so by the State of New Jersey via previous legal and regulatory actions. We believe that the Board should accept that these Projects are entitled to the designation as "connected to the distribution system" and look at the market impact as a separate issue that must now be dealt with in light of the fact that these Projects have met their legal hurdles to gain SREC eligibility, and that the negative consequences of ruling them as ineligible far outweighs the negative impacts of market impact.

But to the extent the Board will consider supply and demand we suggest that Board consider three other significant factors set forth below.

IV. Management of SREC Market Impact

The Free Market Should Govern Development

In 2007 the Board began the transition of the New Jersey solar market from rebates to the market based SREC incentive. The goal of that transition was to lower the cost to ratepayer support and to create a solar market that could grow without burdensome and constant regulatory intervention. The creation of the SREC market has largely accomplished those goals. The ability of a solar developer to build in a low priced SREC market results in significant reduction in costs to the ratepayer.

With respect to the Projects under Subsection (s), in order for Projects to be built, a developer would have to move forward in an SREC market with spot prices as low as $60 per megawatt-hour (MWh) and an inability to obtain long term contracts beyond three years. These conditions are making it difficult for financiers to invest in Projects. However, those that go forward would be built at the lowest cost to the Ratepayer to date.

Thus, Projects that can be fianced and built at current SREC levels give the Rate Payer their best return on their investment. This is something the Board should support, not oppose. Whether any of the Projects move forward will be dictated by needs of investors and SREC prices. Many of these Projects ultimately may not go forward due to financial viability, however it should be project economics that determine if these qualified Section (s) Projects get built, not a determination by the Board.

Board Authority to Balance Supply/Demand

The Board has at its disposal a tool to regulate the current RPS when it believes that intervention is warranted. This tool is given to the Board in A3520, the Solar Energy Advancement and Fair Competition Act, Section O, whereby it states:

> "o. The board, in consultation with the Department of Environmental Protection, electric public utilities, the Division of Rate Counsel in the Department of the Public Advocate, affected members of the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in subsection d. of this section, taking into account the cost impacts and public benefits of such increases including...."

If the Board deemed the market impact of the Subsection (s) Projects as so great such that actions are required, the Board has the power to adjust the demand for SRECs to account for the Subsection (s) Projects.

Discriminatory Application of the Law between Grid Supply and Net Metered Projects

As discussed above, it is apparent in the conversation that there is an attempt to limit the supply of SRECs so as to affect SREC prices. As also discussed, we strongly believe that this is not the correct approach, and that the market demand for SRECs should be the mechanism used to mitigate the effect of legitimate supply. That being said, if the Board should determine some or all of the Subsection (s) Projects as ineligible for SRECs, then it would seem as if the BPU is intermixing regulatory risk with market risk, with such approach being discriminatory in that it only targets the supply of grid SRECS and not net meter SRECs. If one were to consider which SREC is more cost effective to the ratepayer, then they would realize that it is the net meter SRECs that are more expensive, and perhaps it is net meter projects that should be regulated, and/or rationed. While we don't believe that this is the correct approach either, it does illuminate how the current dialogue is discriminatory and without merit from a Rate Payer perspective.

After the development of the 500MW of Subsection (s) Projects which should be deemed as connected to the distribution system, the Solar Act effectively eliminates all grid Projects, outside Subsection (q), by making their SREC eligibility subject to Board review. Developers will not take the capital risk to develop a Project far enough along in the development cycle to be able to meet the submittal guidelines called for in Subsection (r), only to potentially be denied. No one would put that much capital at regulatory risk. Subsection (s) Projects represents only 13% of the 3.6GW Solar RPS.

V. History of the Issuance Grid Supply SRECs in New Jersey.

It is important to understand that all of the investments made to date in the Subsection (s) Projects have been made at the encouragement of the laws and policies of the State. The advent of issuing SRECs for grid tied systems occurred through the passage of S2938 in January 2008. The provision allowing for it is codified at N.J.S.A. 48:3-87(e)(3).

> Such rules shall require the board or its designee to issue a credit or other incentive to those generators that do not use a net meter but otherwise generate electricity derived from a Class I renewable energy source and to issue an enhanced credit or other incentive, including, but not limited to, a solar renewable energy credit, to those generators that generate electricity derived from solar technologies.

The further development and support for grid tied systems came through the passage of amendments to N.J.A.C. 14:8-2.8 and 2.9 to allow solar electric generation facilities interconnected with an electric distribution system that serves New Jersey to generate solar RECs, regardless of whether the facility is located on a customer-generator's premises. The Board concluded "[t]hose facilities provide essential support to the reliability of the supply of electricity in New Jersey." In the Proposed Amendments issued in the New Jersey Register on June16, 2008 the Board set out very strong language on the importance of grid tied solar systems. It stated:

> [C]lean local electric generation is an essential element in any strategy to mitigate congestion on the electric transmission system and protect the reliability of New Jersey's supply of electricity. Larger-scale solar electric generation facilities in New Jersey, regardless of whether they are located on a customer-generator's premises, help to maintain the reliability of local electricity supplies in New Jersey. ... Specifically, those facilities provide local supplies of "reactive power" at the times that they are needed most. Reactive power is the energy supplied to create or be stored in electric or magnetic fields in and around electrical equipment. ... Local supplies of reactive power are essential, because reactive power can be transmitted only over relatively short distances during times of high electricity demand. The ability of larger solar facilities to

> provide local reactive power tends to occur at or near times of peak demand, when it is needed most.

This unequivocal language by the Board on the importance of grid tied solar demonstrates the Board's and the State's commitment to such generation. And such commitment sends a clear message to developers that the State is supportive of grid tied systems and that they should go out and build them.

The State's position on grid tied solar was further solidified with the passage of the Solar Energy Advancement and Fair Competition Act passed in January 2010. The legislation amended the definition of an SREC, 48:3-51, to make clear that under the law grid tied solar systems were entitled to the issuance of SRECs.

> "Solar renewable energy certificate" or "SREC" means a certificate issued by the board or its designee, representing one megawatt hour (MWh) of photovoltaic electricity generated solar energy that is generated by a facility connected to the distribution system in this State and has value driven based on the market.

Based on the legislative and regulatory history on the issuance of SRECs for solar grid tied system, it was more than reasonable for developers to rely on the state of law to go out and build systems with the expectation they would be issued SRECs. There was no indication from the State or the Board that the law would be changed such that a grid tied system could be determined to be not connected to the distribution system, thereby rendering a Project either under development or fully developed valueless. In reliance on this law investments were made on Projects.

VI. Project Development Cycle and Risk

Project Development Cycle

The development of a grid supply project is much more complicated and time consuming than a net meter project. The development cycle for a Project is anywhere from 2 to 4 years, and includes the following:

- Confirm land suitability for solar and interconnection
- Take control of a large area of land
- Prepare engineering for PJM submittals
- Submit Small Generation Interconnection Application to PJM
    - Feasibility Study
    - Systems Impact Study
- Execute PJM Wholesale Market Participants Agreement
- Execute Utility Interconnection Agreement
- Execute Utility Construction Agreement
- Prepare all civil engineering documents
- Apply to local township for Major Site Plan Approval
- Apply for Land Use Variance
- Apply for applicable state, and county environmental permits
- Construction
- Interconnection

The above represent the high-level development milestones for a grid supply Project. Just the PJM requirements alone can take over 12-18 months to complete. Add to this a timeframe of up to 36 months

for interconnection by the utility and an 8-12 month construction timeframe, grid projects have a development cycle from inception to fully energized in the range of 2 to 4 years.

When SREC eligibility was codified for grid Projects in A3520 in January 2010, and the Regulatory Risk that had been associated with SREC's was removed, grid supply developers were then confident that the State supported grid supply. So at the encouragement of this Act, and of previous BPU regulations that supported the benefits of grid supply, developers began to invest into the development of these Projects.

As stated above, the full cycle time for grid Projects is 2-4 years. Given that the Solar Act was passed in July 2012 only 2.5 years after the passage of A3520, essentially all investment in grid Projects during that 2.5 year period could be stranded. These investments, if deemed as NOT connected to the distribution system, will be stranded, as there was not enough development time to get the Project completed in the window between A3520 and the Solar Act.

Project Development Risk

As noted above, there are two succinctly different types of Risk when speaking of SRECS, with one being acceptable (market risk) and the other not being acceptable (regulatory risk). Developers take market risk, that being the risk of SREC pricing, but no developer or investor takes regulatory risk, which is why there was no grid supply development until the State passed several rules and laws that removed the regulatory risk element. Developers or investors would not have come forward if they knew that in the middle of their development cycle the State would reintroduce regulatory risk, and disqualify their Project from SREC eligibility.

VII. Stranded Investment.

It is worth highlighting on its own the potential for causing significant stranded investment if Subsection (s) Projects are not deemed eligible for SRECs even though they have satisfied the criteria of Subsection (s). Subsection (s) Projects were developed with the previous encouragement from both the Legislature aud the Board. The Board in fact strongly encouraged developers to go out and build such Projects. Given such history of grid eligibility for SRECs, the intent of Subsection (s) must be in accordance as was set forth above. In reviewing the stranded investment the Board should consider these points.

VII. Impact on Farmland

The Solar Act will end the development on farmland to preserve such land. But the impact of the Subsection (s) Projects should not be a factor, not only because the point of Solar Act was to end future development not past, but also because this limited number of Projects will have nominal impact on farmland. The Board should consider the following.

- Solar is relatively temporary as compared to other forms of development and as such it can be argued that grid solar does preserve farmland for the future.
- Solar allows farmland to recharge.
- Now that we know the universe of the Subsection (s) Projects as approximately 500MW, that would be equivalent to about 3,000 acres in total, as compared to the 800,000 acres of available tillable farmland in NJ, representing 0.3 percent of the total tillable acres.
- At the same time that this is being designed to preserve farmland, other State Agencies are relaxing and reducing "red tape" to help encourage development on these same lands for other forms of development, for example, housing

Conclusion

We implore the Board to consider the options of flexibility that is at their control when designing the implementation of this law.

We strongly recommend that the final interpretation of Subsection (s) is such that if your Project meets the criteria of the section, i.e.; has an SIS date on or before June 30, 2011 and has given their Notice of Intent within the 60 day window, that those Projects shall be determined to be "connected to the Distribution System"

The Application Process should be no more cumbersome, if not exactly the same as, the filing of the Notice of Intent.

Respectfully,

Elliott Shanley
PVOne, LLC

COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION (SEIA) ON THE REVIEW OF GRID-CONNECTED PROJECTS FOR SREC PROGRAM ELIGIBILITY PURSUANT TO SECTIONS, Q, R, AND S OF THE SOLAR ENERGY ADVANCEMENT AND FAIR COMPETITION ACT

Date: November 23, 2012
Re: Implementation of Sections (q), (r), and (s) – Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System

Dear Secretary Izzo,

The Solar Energy Industries Association (SEIA) is pleased to comment on the review of grid-connected projects for SREC program eligibility, pursuant to sections (q), (r), and (s) of the Solar Energy Advancement and Fair Competition Act (SEAFCA), according to the schedule set forth at the November 9, 2012 stakeholder meeting.[1] These comments are an elaboration of oral comments made by SEIA at this meeting.

SEIA is the national trade association for the U.S. solar industry and is a broad-based voice of the solar industry in New Jersey. SEIA member companies have installed over 60% of all MWs currently under operation in New Jersey and work in all market segments – residential, commercial, and utility-scale. In addition, SEIA member companies provide solar panels and equipment, financing and other services to a large portion of New Jersey solar projects. When establishing its policy positions, SEIA must balance diverse needs of its membership.

The legislation amending the SEAFCA (S.1925/A.2966) clearly lays out processes for approval of grid-connect projects post-EY14. What is less clear is what was intended for projects that were already very advanced and ready to be operational in EY13. In these comments, SEIA provides comments on the holistic application of Sections (q), (r), and (s), preliminary comments specific to Sections (q) and (r), and more detailed comments regarding Section (s) and "very advanced" projects.

In general, SEIA encourages the Board Staff to take an integrated approach to the review and designation of grid-connected projects as "connected to the distribution system" and thus eligible for SREC generation. That is, rather than focus on each of the relevant sections in isolation, the framework, for review of grid-connected projects must make sense as a whole.

[1] The comments contained in this filing represent the position of the SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

SEIA believes that this legislative framework reflects several broader principles including but not limited to: promoting the orderly development of the SREC market and the solar industry more generally; honoring the investment-backed expectations of market participants; and assuring that solar development going forward is consistent with New Jersey's interest in protecting scarce farmland and open space.

Consistent with these principles, in SEIA's view, the legislation establishes three distinct ways of treating grid-connected projects: 1) a set amount of new grid connected projects to participate in the SREC market ("non-discretionary capacity") pursuant to Section (q); 2) the potential for additional grid-connected capacity to qualify in the near- and medium-term should certain standards be met ("discretionary capacity") pursuant to Section (r); and 3) the grandfathering of very advanced projects that are not specifically addressed in the legislation but, due to their very advanced nature, merit program eligibility under the pre-existing designation process.

As described more fully below and consistent with an integrated approach to these sections, SEIA does not read Section (s) as providing a separate and distinct pathway for designation, but rather provides guidance and establishes a specific set of additional review criteria in the special case of farmland assessed grid-connected projects.

Section (q)

Section (q) provides for up to 80 MW of new grid-connected capacity in each of the next three compliance years (EY'14-'16). The Board "shall" approve applications for qualification provided notice escrow is submitted and sufficient headroom under the 80 MW cap exists. Unfortunately, the law does not specify how the Board shall allocate this capacity if applications for more than 80 MW of capacity are filed. Clearly, the Board retains some administrative discretion in allocating this capacity to serve the public interest.

To continue to respect investments made by developers of grid-connect projects, SEIA believes that the BPU should establish an orderly, rational queuing process that ranks projects based on progress towards achieving commercial operation. To the extent possible, this ranking should be based on project milestones that can be verifiable through publicly available information.

Section (r)

Section (r) is the point of entry for those projects seeking designation as "connected to the distribution system" that do not qualify under Section (q). Thus, this is the pathway for projects seeking to qualify in addition to the 80 MW per year eligible under Section q. for Energy Years 2014-16, and for projects seeking to qualify in years subsequent to Energy Year 2016.

Unlike Section (r), the law is clear as to the standard of review for project designation under this section. The legislation lays out four criteria that the Board must use to approve

projects under this subsection. One such criterion is the impact of the project on the broader solar market. The reference point against which individual projects are to be evaluated should be applied universally. SEIA urges the BPU to establish a clear and transparent process for determining the impact on the SREC market of a grid-connect project applying under this section.

Section (s)

Some have argued that Section (s) could be used as a third pathway for designation as "connected to the distribution system". SEIA does not interpret Section (s) in this way. Rather, Section (s) provides specific guidance, and in some cases sets additional limitations, on those projects proposed to be located on land devoted to agriculture.[2]

If, notwithstanding these comments, the Board nonetheless interprets Section (s) as providing a separate and distinct vehicle for approval of farmland-based grid connected projects, SEIA suggests it limit this pathway to very advanced projects pursuant to the criteria set forth in the following section of these comments.

Grandfathering of Very Advanced Projects

One question left open by S.1925/A.2966 is how to treat systems that become operational in EY2013. Since the focus of the legislation is on the solar market beginning in Energy Year 2014, it can be inferred that the legislature did not intend to infringe on the Board's discretion in reviewing those projects able to achieve commercial operation within EY2013. This interpretation would avoid a hardship on those projects that have invested substantial sums on construction and are nearly operational.

While there is always a certain amount of regulatory risk associated with developing solar projects reliant on SRECs, there is a subset of projects that had already invested substantial funds toward construction, and indeed near commercial operation, before S1925 was enacted into law and got 'caught' in the uncertainty of EY13.

SEIA proposes the following combination of criteria for consideration by the Board. Taken in their entirety, these criteria show serious prior intent to be operational by the end of EY13.

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[2] Section (s) farmland facilities must **either**:

- Qualify under Section Q; **or**
- Qualify under Section R. with the following additional requirements:
  - The developer file a notice of its intent to seek designation within 60 days of enactment; and
  - The developer demonstrates that they have obtained from PJM a system impact study prior to June 30, 2011.

These criteria for being deemed 'very advanced' *should be applied to both farmland assessed projects (i.e. those approved pursuant to Section s.) and non-farmland assessed* grid-connect projects.

Please note that the below criteria are similar to the criteria being proposed by Community Energy Solar.

1) As per Section S, SIS by June 30, 2011.
2) An SRP number on or before the date of enactment (July 23, 2012).
3) Funding of interconnection facility costs on or before the date of enactment[3], as demonstrated by:
    a. Posting of security, in the case of a signed three-party Interconnection Services Agreement ("ISA") between the developer, Electric Distribution Company ("EDC"), and PJM; OR
    b. Issuance of initial payment or security for interconnection construction costs from the developer to the EDC, in the case of two-party Wholesale Market Participation Agreement ("WMPA") and Interconnection Agreement(s) ("IA")[4] between the developer and EDC.[5]
4) Day for day extension, added to the 12-month anniversary of the SRP acceptance date, from the date of enactment (7/23/2012) until the time in which the BPU grants a "connected to the distribution system" designation.[6] Projects must be operational by the date of their SRP expiration or the project is no longer deemed 'connected to the distribution grid'.

Regardless of the pathway the Board uses for addressing these very advanced projects, SEIA urges the Board to make a determination as soon as possible and to consider the

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[3] It is critical that this criterion is not just a signed IA but that it also includes the funding of interconnection facility costs. It is the posting of initial payment or security that shows a project is very advanced, not merely the signing of an IA.

[4] EDC's have different forms of Interconnection Agreements, they may have a single IA or use multiple documents such an Interconnection Agreement and Construction Agreement. For the purpose of this letter, we consider all such agreements between the developer and EDC to be IAs.

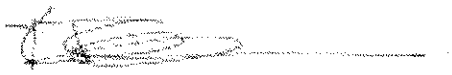
[5] Note that there are two routes for entering into interconnection agreements, one that requires posting of initial payment at signing and one which does not. In the ISA/ICSA route, a developer must post initial construction funding when signing the ISA. This information is publically available. In the WMPA/IA route, a developer can sign the WMPA and IA and then immediately suspend without providing any funding for the EDC to start construction of the interconnection facilities. Information on which projects in the WMPA/IA category have provided initial funding is not publically available; however the EDCs could fairly easily furnish this information to the BPU upon request.

[6] For example, if the Board gives notice to very advanced projects that they meet these criteria on December 17, 2012 a 147-day extension would be given to qualifying projects. To further the example, if a given project meets all the other criteria and has an SRP acceptance date of 4/15/12, that project would have to be operational by September 9, 2013 or lose its status as 'connected to the distribution grid'.

above criteria *in their entirety* and apply them to both farmland and non-farmland assessed projects.

Thank you for your consideration of our comments.

Respectfully submitted
On behalf of the Solar Energy Industries Association



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COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION (SEIA) ON THE PROCEEDING TO DEVELOP NET METERING AGGREGATION STANDARDS PURUSANT TO SECTION (E) OF THE SOLAR ENERGY ADVANCEMENT AND FAIR COMPETITION ACT

Date: November 23, 2012
Re: BPU Docket No. EO12090861V

Dear Secretary Izzo,

The Solar Energy Industries Association (SEIA) is pleased to comment on the proceeding to develop net metering aggregation standards pursuant to Section (e) of the Solar Energy Advancement and Fair Competition Act (SEAFCA), according to the schedule set forth at the November 9, 2012 stakeholder meeting.[1] These comments are an elaboration of oral comments made by SEIA at this meeting.

SEIA is the national trade association for the U.S. solar industry and is a broad-based voice of the solar industry in New Jersey. SEIA member companies have installed over 60% of all MWs currently under operation in New Jersey and work in all market segments – residential, commercial, and utility-scale. In addition, SEIA member companies provide solar panels and equipment, financing and other services to a large portion of New Jersey solar projects. When establishing its policy positions, SEIA must balance diverse needs of its membership.

Staff's current interpretation of the new Section (e) language pertaining to aggregated net metering will not materially expand the existing opportunities for the deployment of solar generation that is currently available to municipalities, state agencies and other governmental entities. SEIA believes this is contrary to the legislative intent behind the aggregated net metering amendments - and behind aggregated net metering more generally – which is to enable host customers to offset usage on affiliated sites, at the full retail rate, which would not otherwise be able to accommodate solar for cost or technical reasons.

As read by Staff, the structure of Section e. permits netting at *retail* value only for "the customer's facility or property on which the solar system was installed"; whereas only *wholesale* value is accorded to generation in excess of the host customer's annual consumption. Contrary to the general concept of aggregated net metering, which provides satellite accounts with full retail value for the kilowatt hours generated as if they were located onsite, with Staff's bifurcated approach would provide satellite accounts with no

[1] The comments contained in this filing represent the position of the SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

financial benefit whatsoever. Indeed, under this narrow interpretation of the statute, satellite load merely factors in as part of an accounting exercise to enable the sizing of the host's solar system beyond that strictly required to meet the host's annual usage and still retain eligibility for *onsite* net metering.

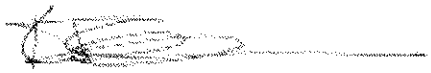
While it has to be conceded that the revised Section e. is not a model of clarity, statutes should be interpreted to give full effect to the legislative intent. "Interpretations that render the Legislature's words mere surplusage are disfavored." In re Commitment of J.M.B., 197 N.J. 563, 573 (2009). Rather, "our task requires that every effort be made to find vitality on the chosen language." Ibid. Unfortunately, the structure proposed by Staff would not alter the status quo.[2] Indeed, owners and operators of solar generation have always had the ability to segment a project such that a portion serves behind-the-meter load under a traditional net metering configuration; and a portion is connected to the grid with power sold to the utility under a Qualified Facilities agreement or into the organized wholesale market for energy.

At the very least, should Staff maintain the distinction between the host and its satellite accounts – in Staff's lexicon, between "aggregated on-site net metering" versus "aggregated offsite net metering" – it should nonetheless define the host site as expansively as permitted under New Jersey law to maximize the aggregated net metering opportunity and it's utility to governmental entities.

Thus, we would propose that the operative terms "*customer's facility*" and "*property on which the solar system was installed*" be defined broadly to encompass a single contiguous parcel under common ownership.[3] This would encourage aggregated net metering under a wider range of contexts including, for example, school campuses, governmental office complexes, and wastewater treatment facilities.

Thank you for your consideration of our comments.

Respectfully submitted
On behalf of the Solar Energy Industries Association



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[2] The ability for municipalities and other government entities to aggregate meters increases their ability to site solar systems on landfill and brownfield facilities within their control. An interpretation that does not alter the status quo seems to be inconsistent with priority placed on development of landfill and brownfield facilities.
[3] Likewise, the restriction against "on-site generation facilities" qualifying for aggregated net metering should be narrowly drawn.

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COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION (SEIA) ON THE PROCEEDING TO PROVIDE SRECS TO SOLAR GENERATION FACILITIES ON BROWNFIELDS, HISTORIC FILL AREAS, AND PROPERLY CLOSED LANDFILLS PURSUANT TO SECTION (T) OF THE SOLAR ENERGY ADVANCEMENT AND FAIR COMPETITION ACT

Date: November 23, 2012
Re: BPU Docket No. EO12090862V

Dear Secretary Izzo,

The Solar Energy Industries Association (SEIA) is pleased to comment on the proceeding to provide SRECs to solar generation facilities on brownfields, historic fill areas, and properly closed landfills pursuant to Section (t) of the Solar Energy Advancement and Fair Competition Act (SEAFCA), according to the schedule set forth at the November 9, 2012 stakeholder meeting.[1] These comments are an elaboration of oral comments made by SEIA at this meeting.

SEIA is the national trade association for the U.S. solar industry and is a broad-based voice of the solar industry in New Jersey. SEIA member companies have installed over 60% of all MWs currently under operation in New Jersey and work in all market segments – residential, commercial, and utility-scale. In addition, SEIA member companies provide solar panels and equipment, financing and other services to a large portion of New Jersey solar projects. When establishing its policy positions, SEIA must balance diverse needs of its membership.

SEIA's comments on Section (t) cover both Paragraph 1 on the Certification Process and Paragraph 2 on the type of additional incentives.

Paragraph 1 – Establishment of a certification program for providing SRECs to solar projects on landfills, brownfields, and historic fill

SEIA recognizes the balancing act that the BPU and DEP must perform when managing the dual priorities of steering solar projects towards the most appropriate sites and also encouraging development at the lowest cost to the ratepayer. Without having a clearer understanding of what certification criteria BPU/DEP has in mind, however, SEIA has some concern that solar development may be steered towards sites with high remediation and development costs, when sites that require less remediation may be

[1] The comments contained in this filing represent the position of the SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

better candidates for meeting the program's goals more efficiently and at lower ratepayer cost.

Of critical importance, SEIA urges the BPU/DEP to issue a draft certification process and application for public comment, as required by statute. It is difficult for SEIA to develop an informed opinion or suggest ways for improving the certification process without first having a clearer understanding of what requirements above the 'basic requirements' are being considered.

In drafting the certification process, SEIA hopes that the BPU/DEP will recognize the importance of providing clear and simple guidelines that the industry can follow in its development efforts. In order to stimulate solar development activity on these types of sites, developers must know how to identify sites that will clearly qualify for the program; the certification process must not require significant development activity *before* the point at which it becomes clear whether or not the site qualifies. That imperative argues for straightforward criteria, a simple process, and speedy certification for most if not all qualifying sites.

In order to achieve the policy goals envisioned by this legislation, SEIA hopes that the BPU/DEP will refrain from putting significant boundaries on the qualification criteria beyond what is broadly called for in statute. The market will respond to the legislature's call for solar development on disused land most efficiently and effectively if the category of qualifying sites is large. Alternatively, to the extent that the BPU/DEP restricts the program to a smaller sub-category of sites – and especially if that sub-category focuses on sites that will require more costly remediation and construction – the costs of the program will be higher, and competition will be reduced.

SEIA looks forward to continuing to work with the BPU/DEP to create a certification process that both meets both the solar development and remediation goals of the State of New Jersey.

<u>Paragraph 2 – Establishment of a financial incentive to supplement SRECs generated by such projects.</u>

SEIA supports a two-pronged approach to additional financial incentives for projects on landfills, brownfields, and historic fill.

1. Incremental funding through the OCE budget (or other appropriate funding source) to support remediation of such sites, modeled on the successful remediation program run by the Economic Development Authority.
2. **Additional capacity** within the EDC programs set aside for these projects.

The amount of remediation required before installing a solar project will vary greatly from site to site. Depending on the rigor of the certification process implemented per Paragraph 1 of this section, the amount of remediation could vary greatly.

SEIA **does not** support setting aside a larger portion of the **current capacity** in the EDC SREC programs (the current 180MW capacity over three years) for these projects. As per our comments during the stakeholder process that lead to the May 23, 2012 Board Order directing EDCs to file for a combined capacity of 180MW, SEIA believes that the size of these programs is already insufficient.

In addition, and perhaps more importantly, the policy objectives of the aforementioned Board Order and the legislative directive for incentives on landfills and brownfields are both separate and additive. Hence, SEIA believes that the most cost-effective way to provide additional financial incentive to these projects is through a carve-out in the EDC SREC finance programs, and that in order to fulfill the legislative intent, this capacity must additive to the current EDC programs now before the Board.

SEIA has heard some mention of the use of a "super-SREC"[2] for meeting the legislative requirement for additional incentives. SEIA is *decidedly against* the use of a "super-SREC" for incentivizing these or any type of project.

Thank you for your consideration of our comments.

Respectfully submitted
On behalf of the Solar Energy Industries Association

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Cc:
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Commissioner Fox
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[2] In these comments, SEIA is using the term 'super-SREC' to refer to any relationship between SRECs and MWhs other than 1 SREC being issued for every 1MWh of electrical generation.


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COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION (SEIA) ON THE PROCEEDING TO CONSIDER THE NEED TO SUPPLEMENT INCENTIVES FOR NET METERED PROJECTS THREE MW OR GREATER PURUSANT TO SECTION (W) OF THE SOLAR ENERGY ADVANCEMENT AND FAIR COMPETITION ACT

Date: November 23, 2012
Re: BPU Docket No. EO12090863V

Dear Secretary Izzo,

The Solar Energy Industries Association (SEIA) is pleased to comment on the proceeding to consider the need to supplement incentives for net-metered projects 3MW or greater pursuant to Section (w) of the Solar Energy Advancement and Fair Competition Act (SEAFCA), according to the schedule set forth at the November 9, 2012 stakeholder meeting.[1] These comments are an elaboration of oral comments made by SEIA at this meeting.

SEIA is the national trade association for the U.S. solar industry and is a broad-based voice of the solar industry in New Jersey. SEIA member companies have installed over 60% of all MWs currently under operation in New Jersey and work in all market segments – residential, commercial, and utility-scale. In addition, SEIA member companies provide solar panels and equipment, financing and other services to a large portion of New Jersey solar projects. When establishing its policy positions, SEIA must balance diverse needs of its membership.

When making a determination on Section (w), the Board needs to determine two issues: 1) are additional incentives for net-metered projects over 3MWs needed; and 2) is a 'super-SREC'[2] an appropriate incentive.

The legislative language in Section (w) asks whether special incentives for net metered projects over 3 MW are needed to improve the competitiveness of commercial and industrial users. SEIA does not believe that such projects require (for economic reasons) or merit (for public policy reasons) additional incentives. SEIA is also decidedly against the use of a 'super-SREC' as an additional incentive for any type of project.

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[1] The comments contained in this filing represent the position of the SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

[2] We use the term 'super-SREC' to refer to the concept of the Board issuing one SREC for any amount of electricity generation lower than one MWh. In this case, one SREC for every 0.75MWh generated.

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SEIA is against the provision of additional incentives to net-metered projects greater than 3 MW in size.

- *The commercial and industrial segment is already very well served by NJ's solar industry.* The 2011 NJ Energy Master Plan recognizes the economic benefit that net-metered systems bring to commercial and industrial users by reducing and stabilizing their energy bills. The market for commercial and industrial systems in NJ is extremely robust. NJ leads the US in total MWs installed in the commercial/industrial sector.[3] As of Q2 2012, over 70% of all MWs installed in NJ were in the commercial sector.[4]

- *The market for systems over 3MW has experienced healthy growth since net-metered projects over 2MW were allowed starting with the 2010 enactment of the Solar Advancement and Fair Competition Act.* The development cycle for a commercial project can be 6 months to a year or more. In the last two years, over 55MW of commercial projects over 3MW have been installed, reaching over 6% of total installed capacity.[5]

- *As a general rule of thumb, larger projects are less expensive on a per-watt basis than smaller projects.* According to the Lawrence Berkeley National Laboratory study 'Tracking the Sun IV', large PV installations exhibit economies of scale and may benefit from price reductions through volume purchase of materials and the ability to spread fixed costs and transaction costs over a larger number of installed watts.[6] Although economies of scale are greater at the low end of the size spectrum, this trend continues to manifest itself with further increases in system size.[7]

SEIA is decidedly against the use of 'super-SRECs'.

- *The use of 'super-SRECs' would be detrimental to a well-functioning SREC market.* A 'super-SREC' will make the market for SRECs more complicated and more illiquid. This would increase the transaction costs in the market and reduce the overall value of SRECs. In addition, such an incentive would tend to exacerbate the already oversupplied SREC market, further diluting the value of SRECs. Indeed, because of the diluting impact of super-SRECs, it could actually cause harm to those commercial and industrial users who have taken SREC risk in projects.

- *The use of a 'super-SREC' would not necessarily provide for 'additionality'.* The goal of any additional incentives is purportedly to push certain types of projects 'across the

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[3] U.S. Solar Market Insight Report, Q2 2012. GTM Research, SEIA.

[4] Ibid.

[5] See summary and project listing for all NJCEP solar projects greater than or equal to 3MW capacity. Sent in email from Charlie Garrison to the Renewable Energy Committee listserve on Nov 19, 2012.

[6] Tracking the Sun V: The Installed Cost of Photovoltacis in the U.S. from 1998-2011, LBNL, September 2012

[7] Ibid.

finish line'. The value of a 'super-SREC' mirrors the volatility of the SREC market. In other words, a 'super-SREC' is worth a lot less when SRECs are at $60 than when they are at $250. Due to this volatility, such an incentive mechanism would not necessarily cause a project to close on financing when it would not have otherwise done so.[8]

- *3 MW is an arbitrary metric and would create an incentive for oversizing systems that would otherwise be just below 3 MW.* Alternately, it might encourage larger fixed arrays over relatively smaller tracking systems[9]. This could yield the same energy production but produce more SRECs, diluting the overall value of the RPS with little or no benefit to either potential large solar hosts or the public.

- *The use of a 'super-SREC' removes the market's ability to find the correct price.* A 'super-SREC' fixes the price ratio between given projects, rather than letting the market find the price, which also runs counter to New Jersey's expressed policy goals of creating a market-based incentive program.

- *The use of 'super-SRECs' would shrink the amount of solar installed and cause rate payers to pay more for less solar.*

- *"Super-SRECs' would create an additional administrative burden on the BPU.* The compliance tracking systems and analysis methodologies would both need to change to accommodate super-SRECs.

Thank you for your consideration of our comments.

Respectfully submitted
On behalf of the Solar Energy Industries Association

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[8] For example, the maximum theoretical benefit at $60/SREC would be $20/MWh for systems over 3 MW, a level lost in the noise of volatility. In addition, because of diluting impact of 'Super-SRECs' they would dilute their own value. Even if the first large solar hosts to obtain 'super-SRECs' received some marginal benefit at first, each subsequent system eligible would cut into that value more and more severely meaning that, at best, 'super-SRECs' would confer only de minimis added value to the very first companies to use them. However, because of the annual (energy-year) cycle of utility SREC procurement, it is likely that anyone would realize meaningful added value.

[9] Tracking systems change the orientation of the PV panels throughout the day to track the changes in the sun angle. This allows more electricity output (measured in MWhs) from a smaller system size (measured in MWs).

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IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, c. 24, THE SOLAR ACT OF 2012	: : :	DOCKET NO. EO12090832V DOCKET NO. EO12090880V DOCKET NOS. EO12090860V, EO12090861V, EO12090862V, AND EO12090863V

DAY FOUR SOLAR, LLC'S COMMENTS REGARDING REGULATORY IMPLEMENTATION OF THE SOLAR ACT OF 2012

In response to the request of the New Jersey Board of Public Utilities ("BPU") for comments, Day Four Solar, LLC ("Day Four") hereby makes this submission on regulatory issues associated withimplementing the Solar Act of 2012 (L. 2012, c. 24) (the "Solar Act of 2012").

Day Four will focus its comments on Subsection s. of the Solar Act of 2012 ("Subsection S").

Until the Solar Act of 2012 was passed, and with it the requirements of Subsection S, solar developers such as Day Four could look at existing statutes and find support for large solar projects, including projects on land with agricultural or horticultural assessment. Chapter 90 was enacted in 2008, providing tax exemption for renewable energy systems. Chapter 146 was enacted in 2009, declaring that solar was an "inherently beneficial use" of property. Most importantly, in January 2010, Chapter 213 was passed, which expanded what was permitted on farmland to include generating power from solar energy.

In reliance on New Jersey's call for more in-state renewable power sources, Day Four began developing a 6 MW grid-connect solar generating project on land that has been assessed as agricultural. Day Four has a PJM-issued System Impact Study dated March 31, 2011. To date, Day Four's development effort has meant hundreds of thousands of dollars in investment for design, equipment and making arrangements for interconnection with PJM and the local utility. The Solar Act of 2012 changed the regulatory ballgame and implementation of the law is delaying development, despite Day Four's compliance with the requirement of Subsection S.

Two paths are provided under Subsection S, either of which developers with projects on farmland can follow. One path delays a would-be developer's project unless and until it qualifies with the BPU under Subsection q. That Subsection sets up rules for grid-connect projects to get approvals to interconnect in Energy Years 2014 through 2016; i.e. it is a path where interconnection (if approved at all) occurs after June 1, 2013. Subsection S, however, provides what is supposed to be a shorter path: if, like Day Four, a project as a PJM System Impact Study dating from before June 30, 2011, then a submission within 60 days of July 23, 2012, whereby the project confirms its intent to interconnect, is to lead to the BPU confirming it as "connected to the distribution system." This faster path has been followed; but it may not be a faster path. The BPU Staff has indicated another application will be required and reviewed – further delaying Day Four and other projects from proceeding. Day Four respectfully submits that its filing, and

those of other parties where their PJM documentation fits under the exception provided in Subsection S, should be approved immediately by the BPU.

Immediate action is needed approving projects under the second path set out in Subsection S that have PJM-issued System Impact Studies on or before June 30, 2011 and filed their notices with the BPU within 60 days of July 23, 2012. Millions of dollars were spent developing these projects in reliance on New Jersey's previously passed statutes. Day Four and other such developers followed the State's rules. Changing the rules now and/or further delaying these projects simply is not equitable. These projects should be designated by the BPU as "connected to the distribution system" and required to comply with installation, inspection and operational obligations that they have with the local utilities, as well as with local and other government entities including the BPU.

There has been a delay as everyone waits for the BPU to complete its implementation of the Solar Act of 2012. Respecting that the BPU has a job to do, Day Four also notes that the delays caused by the implementation of regulations for the Solar Act of 2012 should not cause Day Four and similarly situated developers to run up against other deadlines/restrictions set by the Solar Act of 2012 that would not apply if projects were allowed to immediately proceed under the shorter path established under Subsection S discussed above.

Day Four also notes that solar projects also have PJM timelines established with respect to PJM and local utility upgrades and that those PJM timelines basically have been in suspension due to BPU rules not being adopted and the resulting uncertainty about the ability of projects to be completed and still receive SRECs. Once regulations have been set by the BPU, there will be a ramp up period needed to align with PJM and local utility timelines in view of other demands on their time. In this context, Day Four respectfully notes that PJM-required construction frequently results in important improvements to the robustness and flexibility of the distribution systems – the need for which was made apparent by Hurricane Sandy. The one-year deadlines in SREC registrations for project completions should be pushed back for a time period equivalent to the time between (a) enactment of the Solar Act of 2012 and (b) the date on which the BPU grants the "connected to the distribution system" designation or, if applicable, such later date as PJM timelines will permit interconnection (the "Gap Period"). Likewise, the 80 MW cap to be imposed under Subsection q. starting June 1, 2013 should not apply until Day Four and similarly situated solar developers have had the Gap Period available to them to complete and interconnect their projects.

Day Four Solar, LLC thanks the BPU and the BPU Staff for the opportunity to make these comments about implementation issues and the Solar Act of 2012.

Respectfully submitted,

DAY FOUR SOLAR, LLC

Ralph Laks, Sole Managing Member

Dated: November 21, 2012

State of New Jersey
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

November 21, 2012

Via Overnight Delivery and Electronic Mail
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: In the Matter of Implementation of L.2012, c.24, the Solar Act of 2012
BPU Docket No.: EO12090832V

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel in connection with the above-captioned matters. Copies of the comments are being provided to all parties by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: Felicia Thomas-Friel
Felicia Thomas-Friel
Deputy Rate Counsel

c: Michael Winka, BPU
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I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012
BPU Docket No. EO12090832V

Comments of the New Jersey Division of Rate Counsel
Concerning Board Standards and Programs
November 21, 2012

The Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("BPU" or "the Board") for the opportunity to present our comments on the numerous new standards and programs outlined by the New Jersey Legislature in L. 2012, c. 24, also known as the Solar Act ("Solar Act"). Presented below is Rate Counsel's initial input concerning each topic listed by the Board in its October 25, 2012 "Notice of Stakeholder Meeting on the Solar Act of 2012 (L. 2012, c. 24)," and concerning the comments presented at the November 9, 2012 stakeholder meeting. Rate Counsel reserves its right to submit further comments at a later date or dates.

I. Initiation of a Proceeding to Investigate Approaches to Mitigate Solar Development Volatility Pursuant to N.J.S.A. 48:3-87(d)(3)(b).

Under N.J.S.A. 48:3-87(d)(3)(b) the Board is required, no more than 24 months following the date of enactment of the Solar Act (i.e., July 23, 2014), to complete a proceeding to investigate approaches to mitigate solar development volatility and submit a report on the results to the New Jersey Legislature. Rate Counsel looks forward to participating in the Board's investigation. In view of the importance of this matter, Rate Counsel requests that the Board, over the next 90 days, establish a timetable and procedural schedule for the investigation. In developing this timetable, Rate Counsel requests that all parties be given ample time to comment, develop their own analyses, respond to other parties analyses, and comment upon the final recommendation and report associated with solar development volatility that the Board will submit to the Legislature by July 23, 2014.

Rate Counsel will provide input in accordance with the schedule to be established by the Board but wishes to note, as a preliminary matter, that any report submitted to the Legislature on solar volatility should reflect the Board's responsibility under N.J.S.A. 48:3-87(l) to implement all of its responsibilities under N.J.S.A. 48:3-87 in such a matter as to:

(1) place greater reliance on competitive markets, with the explicit goal of encouraging and ensuring the emergence of new entrants that can foster innovations and price competition;

(2) maintain adequate regulatory authority over non-competitive public utility services;

(3) consider alternative forms of regulation in order to address changes in the technology and structure of electric public utilities;

(4) promote energy efficiency and Class I renewable energy market development, taking into consideration environmental benefits and market barriers;

(5) make energy services more affordable for low and moderate income customers;

(6) attempt to transform the renewable energy market into one that can move forward without subsidies from the State or public utilities;

(7) achieve the goals put forth under the renewable energy portfolio standards;

(8) promote the lowest cost to ratepayers; and

(9) allow all market segments to participate.

Thus, the report should reflect a balance between the objective of reducing solar industry volatility and the considerations enumerated above.

II. Implementation of Subsections (q), (r), and (s) – Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System Pursuant to N.J.S.A. 48:3-87 (q), (r), and (s).

N.J.S.A. 48:3-87(q) defines the terms and conditions under which projects anticipated to come on line in energy years 2014, 2015 and 2016 that are not (a) net metered, (b) an on-site generation facility, (c) qualified for net metering aggregation, or (d) certified as being located at a brownfield site, may request Board certification as "connected to the distribution system." This subsection requires applicants seeking such designations before the Board to include a notice escrow. The subsection limits the total accepted applications for this designation in any given year to 80 megawatts ("MWs") and restricts individual applicants to a capacity of 10 MW or less. The Board is required to rule on these applications within 90 days.

N.J.S.A. 48:3-87(r) identifies the eligibility and filing requirements for other types of otherwise non-qualifying solar projects seeking "distribution connected" status. N.J.S.A. 48:3-87(s) identifies the "distribution connected" eligibility and filing requirements for solar projects located on property subject to the "Farmland Assessment Act of 1964."

Rate Counsel offers the following suggestions for the Board in promulgating rules consistent with the above subsections of the legislation:

(1) The Board should define the filing requirements for any projects requesting "distribution connected" status. The legislation is silent on this matter. Rate Counsel recommends the Board require applicants to include a complete set of information about their project (size, cost, location, type of installation). The statutory provisions themselves provide a starting point for the types of information that could be used in these filings. Subsection (r)(2), for example, provides a list of additional criteria outlining the applicant's anticipated impact on solar markets, the distribution utility,

and ratepayers and similar types of requirements should be used in the subsection (s) proceedings.

(2) The filing requirements under all three subsections should include a statement explaining why it is in the public interest for the Board to approve the applicant's request.

(3) Applicants should be required to serve the Division of Rate Counsel at the same time they make a filing before the Board.

(4) Given the 90 day approval process for applications under subsections (q) and (r), the Board should include a completeness process similar to that adopted for applications under Section 13 of the RGGI law, N.J.S.A. 48:3-98.1. The 90 day approval clock should not begin until the applicant is found to have complied with the Board's filing requirements.

(5) For applications under subsection (r), the Board should define a process under which the 80 MW will be allocated in any given year and how carry-overs will be processed in later years, if at all. Given the 90 day approval window, it seems that a first-come, first-served process may be the only means for allocating the initial 80 MW annual limitation unless the Board established a timetable through the year in which this 80 MW allowance will be available to the market. If the Board can establish such a timetable for projects to come on line in Energy Year 2014, and for Energy Years 2015 and 2016, the Board could consider auctioning off the rights to this 80 MW in any given year. The Board could establish a solicitation process in which projects could bid for the right to be designated as "distribution connected," and the revenues generated from this process could be used to offset the SBC or other clean energy program costs.

(6) Non-approved applicants in excess of the annual 80 MW limitation provided in subsection (r) would likely still have to re-file applications, but the review could be expedited based upon the information included in the application like the public interest criteria, the size of the project, its location, the auction bid (if the Board chooses this option), or other benefits, provided a certification was submitted by the applicant stating that no other project details had changed or been modified since the original filing.

(7) The Board should direct the Office of Clean Energy to investigate, and estimate, for each energy year, the potential capacity eligible under subsection (r).

III. Initiation of a Proceeding to Establish a Program to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills Pursuant to N.J.S.A. 48:3-87(t).

N.J.S.A. 48:3-87(t) requires the Board, no more than 180 days after the enactment of the Solar Act (i.e., January 19, 2013), to establish a program to provide SRECs to solar generation projects located on landfills and brownfields, and to "establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility."[1] Rate Counsel is concerned that the financial incentives contemplated by this subsection be limited to those contemplated by the legislation.

Some parties in the recent stakeholder meeting argued that the Board should create something akin to a "super SREC" to apply some form of additional premium to landfill projects to pay for not just the costs of installing and operating the solar installation, but also the costs of site remediation. For instance, Bellmawr Borough in Camden County mentioned in the stakeholder meeting:

> We are particularly concerned about this legislation and are particularly appreciative of it because we are struggling with how to get our landfill properly closed and get to the finish line that you all envision so there could be solar on it. And that process has been complicated by what has happened to the hazardous discharge site remediation fund...[2]
>
> So as a community that has undertaken a $70 million remediation project where the community had put 20-some million dollars into the process, we are now staring at how do we get to the finish line.[3]

Rate Counsel strongly opposes diverting ratepayer money for site remediation and believes that any rules developed to define the types of incentives that will allowed under this subsection should be used strictly for solar project development and operation, as provided by the statutory language. Rate Counsel is also strongly opposed to the creation of an SREC carve-out for generation from facilities located on landfills, as this could lead to indirect subsidies for site remediation.

Rate Counsel also notes that additional costs to construct and operate solar generation facilities on remediated property are inherently variable depending on the type and extent of

[1] N.J.S.A. 48:3-87(t), emphasis added.
[2] Tr. 84: 13-19, emphasis added.
[3] Tr. 85: 9-12, emphasis added.

contamination, and the remediation techniques being employed. Furthermore, it is not clear that all of these costs will be incurred by the generator, rather than the electric distribution company ("EDC") responsible for interconnection,[4] and thus ultimately ratepayers. The Board should be mindful of this fact as it develops any incentive mechanism pursuant to subsection (t).

IV. Development of Net Metering Aggregation Standards Pursuant to N.J.S.A. 48:3-87(e)(4).

N.J.S.A. 48:3-87 (e)(4) requires the Board, within 270 days of the effective date of the Solar Act (i.e., April 19, 2013), to develop standards requiring electric distribution companies to offer "net metering aggregation" to public entities, allowing those entities to install a single solar generating facility sized based upon the combined annual energy usage of the customer's facilities. This subsection is explicit in providing that generation from the solar generation facility in excess of the host facility's usage will be credited at wholesale, and not retail, based rates:

> For the customer's facility or property on which the solar electric generation system is installed, the electricity generated from the customer's solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1) of this subsection to provide that the electricity generated in excess of the electricity supplied by the electric power supplier or the basic generation service provider, as the case may be, for the customer's facility on which the solar electric generation system is installed, over the annualized period, is credited at the electric power supplier's or the basic generation service provider's avoided cost of wholesale power or the PJM electric power pool real-time locational marginal pricing rate.[5]

In this way, the statutory provision recognizes that the opportunity cost of generation is best reflected by some measure of a wholesale rate, not something akin to a fully-bundled retail rate.

At the stakeholder meeting the Solar Energy Industries Association ("SEIA") lamented the wording of the legislation, and recommended the Board adopt a broad definition of the term "facility or property on which the solar electric generation system is installed" in an effort to "give a little bit of meaning to the statue."[6]

> Now, it's not a criticism of (...) board staff's interpretation. The Board has to take the statue as it finds it. I would say that one

[4] See, for example, Tr. 71:23 to 72:22.
[5] N.J.S.A. 48:3-87(e)(4), emphasis added.
[6] Tr. 100: 25 to 101:1.

> opportunity for the Board to get a little bit of meaning to the statue is to perhaps take a broad interpretation of the word property. The statue allows, (...) for retail crediting for meters where the system is situated on the property.
>
> So, for example, a campus type setting where you have multiple meters, we would like to see at least the Board interpret the term property broadly to accommodate all those meters on that contiguous property at retail value.[7]

Rate Counsel opposes any attempt to expand the definition of the "facility or property" to create a "retail" credit. The language of this statute was extensively debated and the Board should not interpret the language that resulted in a way that alters the outcome of those debates. The word "or property" as it appears in the statute was intended to cover situations in which the solar generating equipment is not installed on a roof or otherwise made part of an existing structure, but is instead installed adjacent to one of the customer's facilities on the same property. Rate Counsel maintains that the statute intended for an entity with multiple facilities to receive a "retail" credit for the usage of only a single facility and not all separately metered accounts owned by the governmental agency on contiguous land in a "campus-like" setting.

Rate Counsel further notes its continuing concern with the Board regulation at N.J.A.C. 14:8-4.3(l), that allows net metering customers to deliver electric generation but receive payment for generation, plus distribution and surcharges including the "non-bypassable" Societal Benefits Charge ("SBC").[8] As Rate Counsel explained most recently in its October 5, 2012 comments on the Board's Net Metering rulemaking proposal, BPU Docket No. EX11120885V, this regulation is contrary to the basic statutory provisions that govern net metering, and should be amended to limit the "retail" credit to generation.

V. Initiation of a Proceeding to Consider the Need to Supplement Incentives for Net Metered Projects Three MW or Greater Pursuant to N.J.S.A. 48:3-87(w).

N.J.S.A. 48:3-87(w) requires the Board, within 270 days, of the enactment of the Solar Act (i.e., by April 19, 2013) to complete a proceeding that would examine the possibilities of providing additional SREC-based incentives to commercial and industrial solar applications. Many participants at the Board's stakeholder meeting questioned the belief that larger solar generation facilities are not competitive with smaller ones. .[9] Rate Counsel agrees with this assessment, and

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[7] Tr. 100: 13-25.

[8] N.J.S.A. 48:3-60(a).

[9] *See* Tr. 111:17 to 112:5: "(...) SEIA very strongly questions the need as to whether we even need incentives for these sorts of projects. (...) New Jersey is already a leader in commercial and industrial projects (...) and as was mentioned before, we have seen these projects grow since the time that they were allowed." *See also,* Tr. 113:21 to 114:1; "But in any case it is true generally that (the commercial and industrial) slice of the market is the most cost-

recommends the Board not adopt any incentives based on the mistaken premise that larger solar generation facilities are not competitive in the solar market.

Rate Counsel also notes that the purpose of the incentives contemplated in subsection (w) is "to further the goal of improving the economic competitiveness of commercial and industrial customers from taking power from such projects."[10] Thus, the goal of the incentive is not to make the larger solar installation more competitive, but to make the commercial and industrial enterprise that is host to the installation more competitive. Rate Counsel does not believe that such an incentive is needed, and, if established, would likely be in contradiction to many of the goals of N.J.S.A. 48:3-87(l). Regardless, while the legislation requires the Board to review and investigate these issues, it does not require the Board to adopt a specific set of incentives.

Conclusion

For the reasons discussed above, Rate Counsel respectfully submits the following:

(1) The Board should act within the next 90 days to establish a procedural schedule for its investigation of approaches to investigate solar industry volatility pursuant to N.J.S.A. 48:3-87(d)(3)(b). Further, the report to be prepared pursuant to N.J.S.A. 48:3-87(d)(3)(b) should reflect a balance between the objective of reducing solar industry volatility and the considerations enumerated in N.J.S.A. 48:3-87(l).

(2) The application and approval processes for solar projects seeking "distribution connected" status under N.J.S.A. 48:3-87(r), (s) and (t) should be further defined as explained in more detail above, to assure that such status is granted in accordance with the applicable statutory provisions and in a manner consistent with the public interest.

(3) The Board should assure that the incentives to be implemented under N.J.S.A. 48:3-87(t) for solar generation facilities on brownfields, historic fill areas, and properly closed landfills are limited to the additional costs of constructing and operating such facilities, and do not require ratepayers to pay for site remediation. Additionally, in developing such incentives the Board should consider that some such costs may be incurred by the EDC rather than the generator.

(4) The Board should reject suggestions that it expand the availability of the "retail" net metering credits for municipalities participating in aggregated net metering under N.J.S.A. 48:3-87(e)(4), which is limited by statute to the "facility or property" on which the solar generation facility is installed, by adopting a "broad" definition of the word "property." The Board should also amend its present regulation that improperly

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effective of any market segment. It has generally the lowest cost per watt to build it of any kind of project and that includes the giant grid supply projects that require a lot of infrastructure to be built."

[10] N.J.S.A. 48:3-87(w), emphasis added.

includes charges for distribution service and surcharges including the SBC in the "retail" credit.

(5) The Board should not adopt any additional incentives for large net metered projects under N.J.S.A. 3-87(w).

The above comments are preliminary, based on the topics listed in the Board's October 25, 2012 Notice of Stakeholder Meeting and the comments presented at the stakeholder meeting on November 9, 2012. Rate Counsel reserves its right to submit further comments at a later date or dates.

IN THE MATTER OF	:	DOCKET NO. EO12090832V
THE IMPLEMENTATION OF	:	DOCKET NO. EO12090880V
L. 2012, c. 24, THE SOLAR ACT OF 2012	:	DOCKET NOS. EO12090860V –
	:	EO12090863V

COMMENTS OF NJ LAND, LLC
RESPONDING TO REQUEST FROM THE BOARD STAFF
AS PART OF THE STAKEHOLDER PROCESS ON THE
IMPLEMENTATION OF THE SOLAR ACT OF 2012

NJ Land, LLC ("NJ Land") submits these comments to the New Jersey Board of Public Utilities (the "Board"), in response to the request for public comments with respect to the Board's implementation of various sections of the Solar Act of 2012 (L. 2012, c. 24) (the "2012 Solar Act"). NJ Land's comments will focus on subsections t. and w. of the 2012 Solar Act.

NJ Land supports the speedy implementation of the provisions of the 2012 Solar Act dealing with financial incentives for solar projects on brownfields, areas of historic fill, and properly closed sanitary landfills, as well as for net-metered projects in excess of 3 MW. NJ Land is developing a solar generating facility greater than 3 MW, on an area of historic fill, for power delivery on a net-metered basis.

1. Financial Incentives for Brownfields, Areas of Historic Fill, and Properly Closed Sanitary Landfills.

The 2012 Solar Act included a new definition for "historic fill" and provides in subsection t. for the Board to establish a financial incentive to supplement SRECs for solar facilities constructed and operated on brownfields, areas of historic fill, and properly closed sanitary landfills. NJ Land supports this public policy initiative and urges the Board to promptly establish what the financial incentive or incentives will be.

In the case of brownfields, areas of historic fill, and properly closed sanitary landfills, developers typically spend considerable sums of money and time complying with New Jersey Department of Environmental Protection ("DEP") and/or United States Environmental Protection Agency ("EPC") directives and requirements to clean up and/or monitor alleged and/or actual contamination on sites. Usually, the contamination limits – sometimes severely – what type of development can be undertaken on the sites. Solar, with its limited ongoing, on-site human activity, can be the ideal and perhaps virtually only viable use of some of these sites. Financial incentives should help developers offset their pre-solar development costs, as well as additional costs that they may incur to construct and operate their solar projects -- together with their ongoing environmental monitoring costs. It is unlikely that financial incentives can come close to the environmental costs associated with a property where contaminants are present; but the incentives may allow these projects to be more competitive in delivery of renewable power.

NJ Land also submits that the concept of costs for which a financial incentive should be given should be liberally construed. Developers incur engineering, legal, and remediation costs to establish the parameters of the contamination present on a site and how to remove or encapsulate it. Some of the items delineated (such as construction debris and incinerator residue) as "historic fill" may not directly create an additional cost for construction; but their presence required an environmental assessment and prior and perhaps ongoing monitoring costs. These past costs should be valid in the context of qualifying for a financial incentive.

Financial incentives can run the gamut from EDA-backed financing, EDA guarantees of solar construction costs, additional SRECs, extension of SRECs arising from the project beyond the typical 15-year period, waiver of any remaining state taxes arising from profitable operation of the solar facility, waiver of the requirement that a government or school own the site in order to receive aggregated power from the site, and other incentives requested by the developer where a financial benefit can be demonstrated by the developer as supportive of its customer's job maintenance or job growth plans (i.e. a pass-through of a portion of the incentive to provide a lower power price to the customer).

No matter the financial incentives chosen, NJ Land urges the Board to quickly establish what the incentives will be, to liberally apply them for the projects in question, and to add alternative incentives when proposed and appropriate.

2. Financial Incentives for Net-metered Projects in Excess of 3 MW to Further the Goal of Improving Economic Competitiveness of Customers.

NJ Land also provides the following comments in support of the Board providing a financial incentive under subsection w. that is crafted to meet the intention of that subsection.

At the November 9, 2012 Stakeholder Hearing, opposition to providing additional SRECs to net-metered projects greater than 3 MW was voiced and parties asserted that such projects are the most economic and, therefore, the least in need of financial incentives from the Board. While not a party proposing or supporting the concept of subsection w. during the legislative process that led to the enactment of the 2012 Solar Act, NJ Land respectfully disagrees with the opposition if the financial incentive is carefully crafted.

The pertinent language of subsection w. is as follows:

> w. No more than 270 days ... complete a proceeding to consider whether to establish a program to provide, to owners of solar electric power generation facility projects certified by the board as being three megawatts or greater in capacity and being net metered, ..., a financial incentive that is designed to supplement the SRECs generated by the facility to further the goal of improving the economic competitiveness of commercial and industrial customers taking power from such projects. If the board determines to establish such a program pursuant to this subsection, the board may establish a financial incentive to provide that the board shall issue one SREC for no less than every 750 kilowatt-hours of solar energy generated by the certified projects. ....

Looking critically at the language of subsection w., NJ Land notes that the financial incentive supplementing the usual SRECs is "to further the goal *of improving the economic competitiveness of commercial and industrial customers* taking power from such projects." Therefore, it is safe to say that a financial incentive that is not shared with the project's customer would not be appropriate. But the key function of the financial incentive is to help pricing – presumably beyond what the pricing otherwise would be – in order to help the customer maintain or improve its employment and operations in New Jersey.

The Board knows that other states and regions of the country provide cheaper electricity rates than New Jersey. The Governor and the Lieutenant Governor repeatedly have sought to keep businesses from leaving New Jersey and/or to encourage businesses to come to New Jersey by offering pro-business treatment and tax incentives. A key element to encouraging cleaner power generation facilities in New Jersey is to reduce the importation of power from out of state (perhaps generated by coal plants) at times of peak usage. While larger behind-the-meter solar projects offer the prospect of lower electricity costs, it is no secret that lower SREC prices mean lower overall project revenue and, with those lower revenue levels, constrained ability to reduce electricity prices for behind-the-meter customers. NJ Land submits that an additional incentive is appropriate where the developer establishes that the additional incentive will both improve the project's economic viability and serve to improve the "economic competitiveness" of the customer; i.e. help in lowering the customer's overall cost of electricity versus the customer's cost of electricity delivered via BGS or a third party power supplier inclusive of the utility's charges ("Distribution Delivered Cost"). If the customer's price from the solar developer's net-metered system is lower than (a) the Distribution Delivered Cost and (b) the cost at which the developer otherwise would deliver the electricity absent the incentive, then the Board should grant the incentive because it would achieve the intent of subsection w: it would help the economic competitiveness of the customer.

While parties speaking at the November 9th hearing were leery of the Board providing additional SRECs out of fear of damaging an already impaired SREC market, NJ Land notes that the Board has the authority under subsection o. of the 2012 Solar Act, after consultation with the DEP and the Rate Counsel, to increase the solar renewable portfolio standards ("RPS"). Hence, it is possible to provide additional SRECs to these projects without harming the SREC market by making a concomitant increase in the SREC requirements of electricity suppliers. This would allow project developers to retain the SREC revenue stream from the SRECs at the original level of set under the RPS, while sharing the SREC revenue stream with the customer from the additional SRECs provided as a financial incentive. This would result in further energy savings for the customer, thereby furthering "the goal of improving the economic competitiveness" of the customer.

3. Government/School Metering Aggregation.

Comments also were sought with respect to development of net metering aggregation standards for government entities and schools under the 2012 Solar Act. NJ Land submits that the aggregation provisions of the 2012 Solar Act should be broadly interpreted in support of the

Legislature's intent. The Legislature created a new definition and provided a new pathway for aggregation – one that is not open to all would-be customers. Instead, it is open only to local, county and state government entities and to schools. From commentary made at a recent renewable energy committee meeting, as well as the November 9th hearing, apparently the Board Staff may be inclined to strictly parse the language and find that the school or government entity seeking to aggregate can only receive behind-the-meter treatment for the meter on the site that it owns where the solar facility is located, with only wholesale credit for its other meters. This result would render meaningless the Legislature's inclusion of the government aggregation provisions. The result of this interpretation is what was available for a solar developer before the enactment of the 2012 Solar Act if it built two facilities on a government/school site – one for the power needs of the customer on-site and a second solar facility to supply to the grid. All of the meters of the government or school entity should be given behind-the-meter treatment, with the utility repaid for its distribution and transmission charges. Finally, respecting the inclusion of the language regarding transmission, NJ Land submits that a utility should have to establish that transmission is involved for such an aggregation project before charging transmission fees; i.e. if the solar power is delivered over local distribution circuits to nearby government/school meters, a question arises as to whether or not transmission lines ever would be used to deliver the power from the solar site to the other government/school meters.

4. Conclusion.

Finally, although installation of solar installations has continued at too high a pace for the past year, SREC pricing has fallen dramatically. Ultimately, this hurts the economic viability of projects that have been built and undercuts the ability of the solar industry to build the types of solar projects that are preferred under the 2012 Solar Act. Further delay in mapping out and implementing regulations in furtherance of the 2012 Solar Act also creates regulatory uncertainty. In the end, solar jobs are being and will be lost. Projects – particularly grid-connected projects – rushing to completion before the commencement of the next energy year and the grid-connected limitations that then go into effect – are masking the collapse of the ability of many worthwhile projects favored by the provisions of the 2012 Solar Act. Also stymied are the local companies and people that would undertake these jobs. Clear rules and the mitigation of solar development volatility need to be addressed in the very near term. NJ Land respectfully urges the Board to move quickly to complete the regulatory framework called for under the 2012 Solar Act.

Respectfully submitted,

NJ LAND, LLC

Michael Maynard
Manager and Member

Dated: November 27, 2012

IN THE MATTER OF	:	**DOCKET NOS. EO12090832V**
THE IMPLEMENTATION OF	:	**DOCKET NOS. EO12090880V**
L. 2012, c. 24, THE SOLAR ACT OF 2012	:	**EO12090860V – EO12090863V**

COMMENTS OF PITTSGROVE SOLAR, LLC IN RESPONSE TO REQUEST FROM BOARD STAFF REGARDING STAKEHOLDER PROCESS ON THE IMPLEMENTATION OF THE SOLAR ACT OF 2012

Pittsgrove Solar, LLC ("Pittsgrove Solar") submits these comments to the New Jersey Board of Public Utilities (the "Board"), in response to the request for public comments on various proceedings being undertaken by the Board pursuant to the Solar Act of 2012 (L. 2012, c. 24) (the "New Solar Act"). The primary focus of Pittsgrove Solar's comments are on subsection s. of the New Solar Act.

As noted by the Board Staff in their request for comments, "certain grid-supply projects must receive Board approval of a designation as "connected to the distribution system" in order to receive Solar Renewable Energy Certificates (SRECs) useful in the NJ Renewable Portfolio Standard." Under subsection s. of the New Solar Act, certain grid-connected solar generating projects on farmland can obtain Board approval.

End Regulatory Uncertainty. Pittsgrove Solar has been in the process of developing a 2 MW, grid-connected solar generating facility on commercial (as opposed to preserved) farmland in Pittsgrove, New Jersey. Regulatory uncertainty has been created by the passage of and the implementation issues associated with the New Solar Act. Therefore, Pittsgrove Solar's first comment and request is for an expedited resolution of all matters associated with subsection s. of the New Solar Act.

Past State Policy. Prior to the passage of the New Solar Act, New Jersey had pursued a policy that promoted and encouraged distribution-connected solar – including solar on farmland and grid-connected solar. SRECs had not been limited to net-metered solar projects. In October 2008, the Legislature passed Chapter 90, which amended and supplemented Chapter 4 of Title 54 of the Revised Statutes (C. 43:4-2.113) to exempt renewable energy systems from taxation. In November 2009, the Legislature approved Chapter 146, which amended the definition under Section 3.1 of P.L.1975, c.291 (C.40:55D-4) of "inherently beneficial use" to include usage of property for a "wind, solar or photovoltaic energy facility or structure." And in January 2010, the Legislature passed Chapter 213 which, among other things, expanded the permitted usage of farmland by commercial farm owners and operators to include engaging "in the generation of power or heat from biomass, solar, or wind energy." Chapter 213 went on to amend tax assessment law to allow farmland valuation, assessment and taxation for land on which biomass, solar and wind energy generation facilities were erected if limited to 2 MW or less with the facilities using 10 acres or less.

Reliance on Past State Policy. Pittsgrove Solar and other would-be solar developers relied on the State's policies in proceeding with plans for grid-connected, solar generation facilities. In Pittsgrove Solar's case, it designed a system for a 2 MW grid-connected facility, using the land inside the solar array area for root plantings and/or other low growing vegetation. The acreage for Pittsgrove Solar's project is well under the 10 acre threshold noted above and, in fact, amounts to less than five (5.0%) percent of the farm. Pittsgrove Solar worked through the lengthy PJM interconnection process – obtaining a Feasibility/System Impact Study Report in January 2010, a Dynamic Study Report in September 2010, and a Facilities Study Report in November 2010. These led to an Interconnection Service Agreement and an Interconnection Construction Service Agreement. Such agreements are needed because PJM and the local utility have determined that distribution system upgrades are needed to make it more robust upon the interconnection of the power project. The simple facts are that Pittsgrove Solar's (as well as presumably every other) farm-based, grid-connected solar project has taken many months or years to develop, as well as involved the expenditure of significant amounts of money (millions of dollars in the case of many projects), and deposits for (non-refundable in many cases), and the commitment to, further expenditures for PJM/local utility upgrades.

Authorize Farm-Based Projects to Proceed. The New Solar Act, while enacted on July 23, 2012, drew a line in the sand for farm-based, grid-connected projects: having a PJM-issued System Impact Study dated on or before June 30, 2011. Of course, developers could not have known in 2010 or 2011 (as well as a portion of 2012) that this change in New Jersey policy was going to occur. Significant time and money was spent on these projects while following the rules then in effect. Pittsgrove Solar respectfully submits that equity calls for no further delay in permitting the farm-based projects that have their PJM-issued System Impact Studies to proceed to interconnect and obtain SRECs for their solar-generated electricity.

"Green Light" Projects under Subsection s.'s Second Path for Approval. Subsection s. of the New Solar Act provides two distinct paths for grid-connected solar projects on farmland that are interconnected to the distribution system to receive SRECs: (1) during the energy years 2014-2016, through the protocols affecting all grid-connected projects; and (2) during the current energy year by submission to the Board within 60 days of July 23, 2012 of a notice of its intent to interconnect while having a PJM-issued System Impact Study issued on or before June 30, 2011, with the Board approving the facility as "connected to the distribution system." Subsection s. goes on to state that the Board's review and oversight authority is not diminished by Subsection s. With any solar generation facility, the Board is concerned that local and other permits necessary for construction and all inspections (local, utility and otherwise) are properly attended to and that there is compliance with applicable regulations. But Pittsgrove Solar respectfully submits that where solar developers, such as Pittsgrove Solar, have the appropriate PJM-issued System Impact Study and duly filed the notice of intent to interconnect, the Board should promptly approve the facilities as connected to the distribution system, subject only to the facilities' compliance with applicable permits, inspections and regulations. Simply put, the time and expenditures incurred prior to enactment of the New Solar Act that are associated with projects that comply with this second path to approval for SRECs under subsection s. call for speedy action by the Board.

Provide Equitable Relief for Farm Projects under Subsection s.'s Second Prong from Upcoming Deadline of Subsection q. Another factor is at work here. Under subsection q. of the New Solar Act, an 80 MW per year limitation is established on grid-connected solar projects starting with Energy Year 2014 for three years. The Legislature's intent was not to force all farmland-based projects that comply with alternative (2) of subsection s. into compliance under subsection q. If it meant that result, then it would not have provided two alternative paths to such projects obtaining SRECs: (1) by compliance with subsection q. and (2) with the PJM System Impact Study and notice of intent procedure. But having duly filed the required notices of intent to interconnect, the Board is taking comments on subsection s. in mid-November, with Board Staff indicating that completion of another application will be called for in December. Accordingly, Pittsgrove Solar respectfully submits that -- for grid-connected solar projects on farmland with the appropriate PJM-issued System Impact Study and duly filed the notice of intent to interconnect -- the significant time and money expended prior to the enactment of the New Solar Act, and the understandable delay in formulating approaches and getting appropriate regulations in place to effect the New Solar Act, necessitate the Board providing equitable relief in the form of tolling the timeline for these projects seeking to comply under the second path to approval. Projects that do obtain the Board's approval as "connected to the distribution system" should have a time period equal in duration to the time between July 23, 2012 and the Board's approval of the projects added to the May 31, 2013 deadline for interconnection before subsection q. applies. The State's regulatory delay in implementing the alternative path under subsection s., no matter how well intentioned, should not impact complying projects by thrusting them into compliance with another subsection of the New Solar Act that otherwise would not have applied to them.

Provide Equitable Relief for Farm Projects Regarding SREC Project Registration. For grid-connected solar projects on farms that qualify to proceed under either path offered under subsection s., the Board should address another practical issue. When the New Solar Act went into effect on July 23, 2012, immediate regulatory uncertainty occurred regarding whether or not any pending farm-based, grid-connected solar project would be allowed to proceed. The only way to mitigate against further losses was to cease construction and any interconnection work being undertaken by the local utility under pending PJM agreements. Under the Board's registration program, developers have a year to complete their projects and, if they do not do so, they have to go back to the Office of Clean Energy and seek to re-register. Again, while the effort of the Board to properly formulate regulations called for under the New Solar Act have taken and will take time, the projects that qualify under subsection s. to proceed as "connected to the distribution system" should have the deadlines in their registrations tolled and an additional period of time granted extending the deadlines equal in duration to the time between July 23, 2012 and the date(s) on which the Board provides approval of the projects under subsection s. as "connected to the distribution system."

In conclusion regarding subsection s., millions of dollars have been expended by solar developers in the PJM interconnection process, as well as for local development approvals. The Board immediately should designate the farm-based projects "connected to the distribution systems" that have their PJM-issued System Impact Studies in place on before June 30, 2011 and filed their notices with the Board within 60 days of the enactment of the New Solar Act.

As to proceedings dealing with other portions of the New Solar Act, Pittsgrove Solar notes as follows:

1. The government and school metering aggregation provisions need to be interpreted in light of the Legislature's intent. Respectfully, that intent was to allow a government entity or a school district to have all of its meters under the same rate class be included and allowed to be offset as if all power was delivered behind-the-meter at one site – but for payment to the local utility for its delivery costs. The legislation means nothing if it is interpreted as giving the government or school customer only behind-the-meter treatment for one meter and wholesale treatment for the other meters. Such treatment already was available without amendment of existing law to include a "net metering aggregation" definition and subsection e. (4) in the New Solar Act.

2. Financial incentives for brownfields, historic fill areas and properly closed landfills should be undertaken so as not to add bonus SRECs and dilute the SREC market unless the Board increases the SREC requirements of BGS and third party suppliers by an amount equal to the bonus SRECs awarded.

3. Net Metered Projects that are 3 MW or greater are subject to the same comment noted in 2 above and also to the point that incentives for such projects need to be passed through to the customers. In other words, the point of the possible incentive is not to benefit the developer directly, but to be able to provide the customers with additional cost savings, so that they remain -- or become more -- economically competitive versus similar customers in different locations (i.e. different states where electricity rates are cheaper).

4. Pittsgrove Solar urges the Board to act quickly, as the solar industry – and the jobs it provides – needs to be supported. Wind projects called for by past and current administrations is not just around the corner. Solar is here now and it provides local, clean power that helps avoid importing of higher cost power. While the Board has until mid-2014 to formulate ways to mitigate solar development volatility, subsection o. of the New Solar Act provides the Board, after consultation with others, to increase the solar RPS. Solar developers, including Pittsgrove Solar, have expended millions to advance their projects. The Board should look for ways to curb development not supported by the New Solar act; but the Board also should be acting to respect the pending investments by providing "green lights" and equitable relief to projects commenced in reliance on past public policy.

Respectfully submitted,

PITTSGROVE SOLAR, LLC

Anthony Favorito
Manager and Member

Dated: November 19, 2012

James J. Dixon
Chief Legal and Compliance Officer
(914) 993-2135
NoyesM@coneddev.com

November 26, 2012

VIA EMAIL
B. Scott Hunter
Renewable Energy Program Administrator
Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Ave., POB 350
Trenton, NJ 08625-0350

Re: Public Comments on Proceedings Pursuant to the Solar Act of 2012 (L. 2012, c. 24)

Dear Mr. Hunter:

Consolidated Edison Development, Inc. ("ConEdison Development") is writing in response to your email dated November 13, 2012, in which you requested written comments on specific questions related to four distinct proceedings concerning the recently enacted solar legislation in New Jersey (L. 2012, c. 24)(the "Solar Act"). For the reasons set forth below, ConEdison Development urges the Board of Public Utilities (the "Board") to adopt rules to "grandfather" from certain provisions of the Solar Act any grid-connected solar project with respect to which a completed application for solar renewable energy credits ("SRECs") was filed prior to the date of enactment of the Solar Act.

Consolidated Edison Development, Inc

ConEdison Development is a wholly owned subsidiary of Consolidated Edison, Inc, which is one of the oldest and largest investor-owned utilities in the nation. Through its operating subsidiaries, ConEdison Development has more than 150 MW of solar photovoltaic projects in various stages of development. ConEdison Development owns and operates two of the largest solar energy projects in the State of New Jersey; namely, the 20 MW Pilesgrove Solar installation near Woodstown, and the 16MW Garden Solar installations located in the Kingwood/Raritan area of Hunterdon County. ConEdison Development has invested over $100 million in solar energy projects in the State of New Jersey, and created hundreds of high-paying construction jobs during an otherwise poor economic environment.

New Solar Act Provisions on Grid-Connected Solar Projects

On July 23, 2012, the 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 facilities. Specifically, the Solar Act added new subsections (q), (r), and (s) to N.J.S.A. 48:3-87, which in general require the Board to determine that a facility is

"connected to the distribution system" in order for it to qualify for SRECs. Subsection (q) requires the development of an escrow and application process as part of applications for SRECs by grid-connected solar projects in energy years ("EY") 2014, 2015 and 2016, subject to a "cap" of 80MW per EY. For grid-connected solar projects proposed in EY 2017 and beyond, Subsection (r) requires the Board to determine that relevant criteria are met in order to qualify for SRECs. Except as discussed below, Subsection (s) generally disallows SRECs in the case of a proposed grid-connected solar facility located on farmland.

The Solar Act requires the Board to conduct proceedings to establish new standards, and to develop new programs, to implement the directives of the Solar Act. On October 4, 2012, the Board directed its Staff to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act (Docket. No. EO1 2090832V). ConEdison Development's comments are being provided pursuant to this process.

Grandfathering Issues

Section 3 of the Solar Act provides that "[t]his Act shall take effect immediately," and contains no "grandfathering" provisions. It is conceivable that a grid-connected project in existence or under development prior to the enactment of the Solar Act, which applied for and received approval for SRECs under the regulatory regime existing prior to the Solar Act (the "Existing SREC Regime"), might no longer qualify for SRECs, since the project did not comply with the procedures set forth in the Solar Act which were not in place at the time of the project's development. Obviously, the New Jersey Legislature would not have intended to apply the Solar Act on a retroactive basis to the detriment of existing grid-connected projects and those under development at the time of the passage of the Solar Act. Such a retroactive application of the Solar Act would be unjust, unreasonable and of questionable legality and have a chilling effect on developers' willingness to make the considerable investment in these projects. It would deny to a developer of a grid-connected solar project the economic benefits afforded under the Existing SREC Regime, on which the developer relied for determining the viability of its project and investment of significant time and funds in the State of New Jersey solar energy market.

In new subsection N.J.S.A. 48:3-87(s), there is an exception to the general prohibition on grid-connected solar projects on farmlands, which seems to embody the concept of grandfathering projects begun before adoption of the new law. The exception applies in the case of a grid-connected project if "PJM issued a System Impact Study for the facility on or before June 30, 2011..." However, even this provision is not free from ambiguity, since it goes on to require that "the facility has been approved as 'connected to the distribution system' by the board." Thus, read literally, even an existing grid-connected solar facility, or one under development, which received a PJM System Impact Study prior to June 30, 2011, and which applied for and received approval for SRECs under the Existing SREC Regime, might no longer qualify for SRECs, since the Board did not previously approve it as "connected to the distribution system." Again, this cannot possibly have been the intent of the Legislature.

Proposed Solution

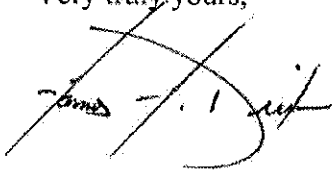
In order to clarify the intent of the Legislature with respect to the effective date provisions of the Solar Act, ConEdison Development recommends that the Board promulgate a rule to grandfather certain existing grid-connected solar projects, and those under development, from new subsections (q), (r), and (s) of N.J.S.A. 48:3-87. Specifically, ConEdison Development recommends that new subsections (q), (r), and (s) of N.J.S.A. 48:3-87 should not apply, and the Existing SREC Regime should continue to apply, in the case of any grid-connected solar project with respect to which a completed SREC Registration Packet was filed prior to July, 23, 2012, the date of the enactment of the Solar Act. ConEdison Development believes that the date of the filing of a completed SREC Registration Packet is an appropriate cut-off point for grandfathering under the Solar Act because it generally is the point in time when the developer has made a significant investment in a proposed solar project in reliance on the Existing SREC Regime. Prior to filing an SREC Registration Packet with respect to a grid-connected solar facility, the developer generally must have entered into contracts to have the facility constructed and interconnected to the local electric distribution system. See, Section 2B, New Jersey Clean Energy Program, "SREC Registration Program (SRP) Guidebook" (March 9, 2012)(Version 1.0). As a prerequisite to such contracts, a developer ordinarily will have secured the project site, obtained some form of approval from municipal land use authorities, and commissioned a series of studies by PJM, all at significant cost to the developer. As already indicated, it would be unjust and unreasonable to apply the Solar Act to deny SRECs to a developer who, prior to the date of the enactment of the Solar Act, has expended the time and funds required to submit an SREC Registration Packet in reliance on the Exiting SREC Regime.

Conclusion

For the reasons stated above, the effective date provisions of the Solar Act cannot be read or applied literally and retroactively, and therefore reasonable grandfathering rules must be adopted by the Board in order to apply the provisions of the Solar Act on a rational basis. To do otherwise will create a climate of uncertainty that will have a detrimental effect on developer's willingness to take make significant investment in the New Jersey solar energy market. ConEdison Development recommends a grandfathering rule under which the Solar Act (or at least subsections (q), (r), and (s) of N.J.S.A. 48:3-87) would not apply, and the Existing SREC Regime would continue to apply, in the case of any grid-connected solar project with respect to which a completed SREC Registration Packet was filed prior to July, 23, 2012, the date of the enactment of the Solar Act.

ConEdison Development appreciates this opportunity to provide comments on the implementation of the Solar Act, and thanks the Board and the Office of Clean Energy for their time and consideration.

Very truly yours,



Deborah Petrisko

From: Linda Wetzel
Sent: Monday, November 26, 2012 5:30 PM
To: Deborah Petrisko
Subject: FW: 9 FW: Solar ACT Comments

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
317 George Street, Suite 305, New Brunswick, NJ 08901
Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 4:54 PM
To: Linda Wetzel
Subject: 9 FW: Solar ACT Comments

#9

From: Keissler Wong [mailto:keissler88@gmail.com]
Sent: Saturday, November 24, 2012 12:13 AM
To: OCE
Subject: Solar ACT Comments

State of New Jersey

Board of Public Utility

State of New Jersey

Board of Public Utility

Attention Boards & Mr. B. Scott Hunter:

On July 23, Governor Mr. Christie signed legislation that modified a number of solar polices in the State('Solar Act") I understand the Board is working

expeditiously to design a number of processes and public comments needed to implement the provisions of the Solar Act.

I would like to propose some comments that all renewable solar energy projects that shall be qualify for a solar electric power generation facility to be build and Solar Renewable Energy Credits(SRECs') completed to meet the following criteria before July 23rd 2012:

- WMPA signed by PJM
- Interconnection and Construction Agreement signed with Utility company
- SRP registration before July 23, 2012
- Notice filed in writing by facility with Board of Designation in 60 days after July 23, 2012
- Approval from local township to construct SOLAR facility
- Value and tax assessments pursuant to the "Farmland Assessment Act of 1964", The land does not fallen into preservation of open space and it is
- temporarily relief in farmland assessments with less five years or it isn't zone as permanet farm land in the State.

I am respectfully requesting that the Board extend the time allotted for those projects to be built so that more renewable energy projects can get off the ground. As an interested stakeholder and proud citizen, I would like to see New Jersey become the #1 state for renewable energy in the nation. we dont

like to see the Board to invite a lawsuits . **American like to move forward.** Thank you very much for your time as well as consideration.

Best Regard.

Rock Solid Realty Inc.

Quantum Solar

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856-985-0074

NJ HIC# 13VH05405700

New Jersey Clean Energy Program
C/o Conservation Services Group
75 Lincoln Highway, Suite 100
Islin, NJ 08830

November 20, 2012

RE: Comments on the Issues discussed at the Nov 9, 2012 Public Hearing for Stakeholders for the changes in L. 2012, c. 24 ("Solar Act")

Dear Sirs:

Quantum Solar, Marlton, NJ, is thankful for the opportunity to comment on the issues discussed at the Nov 9, 2012 Public Hearing for Stakeholders for the changes in L. 2012, c. 24 ("Solar Act"). As small Solar PV installer/contractor with about 100kW in annual sales, we feel we represent an important segment in solar industry. We would like to comment on four of the topics discussed at the Stakeholders meeting on November 9, 2012.

First the issue of initiating a process to investigate approaches to mitigate Solar development volatility pursuant to N.J.S.A. 48:3-87(d)(3)(b).

Second are comments on the implementation of Subsections (q), (r), (s).

Third are comments on establishment of a program to provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills.

And fourth is to comment on considering the need to supplement incentives for net metered projects three MW or greater pursuant to N.J.S.A. 48:3-87 (w).

Quantum Solar has previously commented on the BPU proposals and welcomes the opportunity to comment again.

1. **Investigating approaches to mitigate Solar development volatility pursuant to N.J.S.A. 48:3-87(d)(3)(b).**

The economist views the SREC market as a "Capacity Market". In its simplest form, the two ends of the market drive prices. These two ends are the SACP and a "fire sale" value (some point near zero). Evidence for these divergent prices is present in virtually all the states that have SRECs At some point in time the price of SRECs is near the compliance price and at some other point in time, when capacity is achieved the price dives toward zero. In order to reduce the absolute volatility between these extremes one could simply reduce the SACP, which the Board has done, but this does not change the market dynamic and only lessens the price differential. In another move the Board or Legislature could threaten to react to volatility by changing the RPS on a more frequent interval, but this adds uncertainty to the market and subverts a requirement of the Act to improve stability for the solar market.

Quantum Solar proposes the following: Develop an Adjusted Market Value Base (AMVB) for SRECs. This would assign a derived or calculated value for SRECs that would be determined through a mutually agreed algorithm between the Rate Council and the BPU economists with

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input from the DEP and various other stakeholders. The AMVB would provide a financial and scientific basis for SREC prices and would be re-evaluated each year based upon market prices of energy (the LMP, price of fuel, electrical congestion, location of solar, and perhaps other externalities, etc). The recent MSEIA/Clean Power Research "The Value of Distributed Solar Electrical Generation to NJ and PA" report and the current joint BPU/DEP study on the value of distributed energy could provide a basis for the algorithm. It would be a transparent algorithm codified in regulation for all to use in estimating SREC value. Because it is a market derived value it could pass the competitive market test and insure long term financial incentives required by Section l and m of the Act insuring that SREC prices are driven by competitive market forces. The BPU could then assign a minimum value to SRECs generated during that energy year. It would be a post SREC generation value, which would add to the competitive forces driving the market price. The BPU could design the algorithm to allow the SRECs to be a fraction of the AVMB and even allow the SREC price to drop to zero by EY 2028 thus eliminating the regulatory burden of solar RECs.

The above is supported by language in the Solar Act where it states:

"d. (3)(b)...the board shall complete a proceeding to investigate approaches to mitigate solar development volatility..."

And:

m. The board shall ensure the availability of financial incentives under its jurisdiction, including, but not limited to, long-term contracts, loans, SRECs, or other financial support, to ensure market diversity, competition, and appropriate coverage across all ratepayer segments, including, but not limited to, residential, commercial, industrial, non-profit, farms, schools, and public entity customers.

And:

o. The board, shall consider...(2) reductions in peak demand for electricity and natural gas, and the overall impact on the costs to customers of electricity and natural gas;

I would be happy to present further details of this concept to your staff.

2. Comments on the implementation of Subsections (q), (r), (s).

Because of economies of scale, grid supply projects, whether they be on farmland, landfills, or rooftops, need very little SREC support to make the project viable and provide an IRR of 9.6%. The attached spreadsheet illustrates large grid supply with $20 SREC and an IRR of 6.8% with a 17% profit margin. A $60 value SREC provides an IRR of 9.6% with 17% profit.

One need not look beyond Pennsylvania, with year-long SRECs at below $20, to see the economics of installing solar. According to SEIA there was nearly a doubling of PA MW installed in 2011 from 2010. The Pennsylvania case is instructive because the market achieved overcapacity over 24 months ago and SREC prices have dropped steadily to the current price, all the while managing to nearly double the previous year capacity to 88MW. Is there profit at installing solar with a near zero SREC value? One could argue that the solar industry will continue to install large systems in spite of very low value SREC. However, the Solar Act requires all segments of the electricity market be served not just the MW projects. Commercial Systems below approximately 0.5MW - 1 MW require higher priced SRECs to be financially economical. And all residential systems require even higher SRECs to be financially viable.

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3. Comments on establishment of a program to provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills

We repeat the comments described in item #2, for this item. Although Landfills and Historic Fill et. al. may be a great location from a visual perspective to install solar, it may not be an appropriate location to install a rigid structure with attached large PV crystalline modules. Landfills and Historic Fill locations have an unstable geological base that does not lend itself to placing large fixed supported structures and electrical equipment for lifetimes estimated at 25+ years. The subsidence at landfills may be as much as 30' over a 25 year period. It would be important for staff to review the energy production, performance, and O&M at landfills where solar is currently installed prior to a determination to support this program. Brownfield are less of a concern, but Landfills/Historic fill are a poor choice for ground supported solar structures.

Please see picture below showing the poor condition and vegetative intrusion at the Edgeboro Landfill solar farm, taken Sept 6, 2012.

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4. **Comment on considering the need to supplement incentives for net metered projects three MW or greater pursuant to N.J.S.A. 48:3-87 (w).**

If grid supplied projects can be supported at low cost SRECs, large net metered projects definitely do not need additional SREC support. Net metered projects will have income on the avoided cost of electricity at about $0.10/kWh and grid supply will return about $0.05/kWh. So the energy value of net metered projects is about twice that of grid supply. This obviates the need for additional SREC support.

Thank you for the opportunity to comment on the Solar Act issues.

Sincerely,

John Jenks (856-985-0074)
Quantum Solar Solutions

Quantum Solar

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NJ HIC# 13VH05405700

Assumptions: **10MW Grid Supply Solar Commercial IRR and NPV**

Size in watts (DC)	10,000,000
kWh produced per year	11,000,000
Module Degradation (annually)	0.5%
Cost per watt installed (DC)	$1.97
Local/State rebate, if any (per watt):	$0.00
Price of solar power per kWh:	$0.055
Utility rate escalator:	2.0%
Discount Rate (Time Value of Money)	8%
Applicable federal tax rate:	35%
Applicable state tax rate:	5.00%
Blended State/Federal Tax Rate	38.3%
SREC value per kWh	$0.02
Federal Tax Credit	30%

Note: Federal depreciable base = Cost less half the Federal Tax Credit
Federal tax credit taken on full Initial Outlay, before state incentives
State tax rate reduced by the federal tax rate
Significant inverter repair anticipated at year 10

		Federal	State
Depreciable base:		$16,745,000	$19,700,000
Bonus depreciation	100%	$0	
MACRS yr1	20.00%	$3,349,000	$3,940,000
MACRS yr2	32.00%	$5,358,400	$6,304,000
MACRS yr3	19.20%	$3,215,040	$3,782,400
MACRS yr4	11.52%	$1,929,024	$2,269,440
MACRS yr5	11.52%	$1,929,024	$2,269,440
MACRS yr6	5.76%	$964,512	$1,134,720

Costs per Watt		**Sub totals**
Panels	$0.60	$6,000,000.00
Inverters	$0.26	$2,600,000.00
Wire etc.	$0.20	$2,000,000.00
Installation	$0.21	$2,100,000.00
Engineering	$0.05	$ 500,000.00
Racking, Pipe & mount	$0.22	$2,200,000.00
Ballast	$0.10	$1,000,000.00
Profit	$0.33	$3,300,000.00
Total	$1.97	

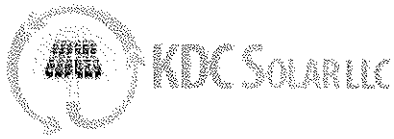
Project 20 Year IRR	**6.8%**
Project 20 Year NPV	$113,326

Year	Initial Outlay	Local Incentive	Federal Tax Grant	Federal Tax on Local Incentives	State Tax on Local Incentives	Federal Tax Benefit of Depreciation	State Tax Benefit of Depreciation	Revenue From System	Cash Flow	Cash Flow Balance
0	($19,700,000)								($19,700,000)	($19,700,000)
1		$220,000	$5,910,000	($77,000)	($11,000)	$1,113,543	$197,000	$605,000	$7,957,543	($11,742,458)
2		$218,900		($76,615)	($10,945)	$1,781,668	$315,200	$614,015	$2,842,223	($8,900,235)
3		$217,806		($76,232)	($10,890)	$1,069,001	$189,120	$623,163	$2,011,967	($6,888,268)
4		$216,716		($75,851)	($10,836)	$641,400	$113,472	$632,448	$1,517,351	($5,370,917)
5		$215,633		($75,472)	($10,782)	$641,400	$113,472	$641,872	$1,526,124	($3,844,793)
6		$214,555		($75,094)	($10,728)	$320,700	$56,736	$651,436	$1,157,605	($2,687,188)

Quantum Solar

P.O. Box 368
Collingswood, NJ 08108
856-985-0074

NJ HIC# 13VH05405700



November 23, 2012

To: New Jersey Office of Clean Energy

From: KDC Solar

RE: Comments on Proceedings Required Pursuant to The Solar Act; Docket No. EO12090832VOn November 9, 2012, a public hearing was held to discuss the various proceedings required pursuant to L. 2012, c. 24 (The Solar Act). Board staff has requested written comments related to four distinct proceedings be submitted by Friday, November 23, 2012.

KDC Solar writing to provide comments on the four matters under consideration:

1. Implementation of Subsections (q) (r) and (s) - Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System pursuant to N.J.S.A. 48:3-87 (q), (r), and (s);

2. The Establishment of a Program to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas and Properly Closed Landfills pursuant to N.J.S.A. 48:3-87 (t);

3. Development of Net Metering Aggregation Standards pursuant toN.J.S.A. 48:3-87 (e) (4);

4. Initiation of a Proceeding to Consider the Need to Supplement Incentives for Net Metered Projects Three MW or Greater pursuant to N.J.S.A. 48:3-87 (w).

KDC Solar is a New Jersey based solar developer located in Bedminster, NJ. We are one of New Jersey's largest developers of large scale, net metered solar facilities and have invested over $200 million in solar projects in New Jersey. These solar projects result in significantly lowering the cost of electricity for our customers while also helping the State to reach its clean energy goals and creating and retaining jobs. It is KDC Solar's goal to improve the economic competitiveness of New Jersey businesses by reducing their energy costs and thereby allowing them to stay, expand or locate to New Jersey.

Matter 1/Grid Supply under section q, r and s: With respect to the treatment of grid supply projects under Section q, r and s, KDC recommends that the Board follow the policy direction of the Energy Master Plan adopted by Governor Christie in December 2011: solar projects are of greater benefit when serving load, i.e., are net metered and reducing costs to energy users to New Jersey. Grid projects do not provide this benefit and should not be encouraged or promoted by the Board's action in this matter. Moreover, in an environment of significant SREC oversupply, the express purpose of the Solar Law enacted in July of 2012 was to help facilitate a market balance and grow jobs and projects. If allowed to earn SRECs, the more than 700 megawatts of grid supply projects currently under consideration would

effectively crush the market even further, putting off any hope of market balance in the next several years and frustrating the intent of the Statute.

Given the SREC oversupply environment, the Energy Master Plan and the Solar Law's intention to facilitate market balance, the BPU should reject these projects. The BPU should act as expeditiously as possible. The uncertainty over the regulatory treatment of more than 700 MW of projects continues to suppress SREC prices.

KDC Solar recognizes the some grid project developers are arguing that it is unfair to "change the rules of the game" and extinguish their SREC rights after they have invested in project development activities.

To the contrary, grid supply developers should have had no expectation that their projects would be SREC eligible particularly in light of the fact that as far back as spring 2009, the New Jersey Legislature was considering limitations on grid projects and the Draft Energy Master Plan evidenced similar concerns in June 2011. Moreover, rejection of all projects under Section r and s will not terminate the opportunity to develop grid supply projects. The Solar Law allows grid projects to file for SREC eligibility under the provisions of Section q. Accordingly, it would not be unfair to reject grid projects under Section r and s; and in fact it is imperative that these projects be rejected, given the mandates of the Energy Master Plan, the state of the SREC market and the opportunity for projects to file under section q.

Matter 2/ Solar Development on Landfills and Brownfields: Projects on landfills, brownfields and areas of historic fill deliver multiple benefits and are typically more expensive to develop. KDC is supportive of incentivizing landfill/brownfields/historic fill projects as these projects fulfill express public policy goals beyond Clean Energy goals. Because of the multiple benefits attached to these projects, we view these types of projects as "unique" in the same way we view over 3 MW net metered projects as unique (see below).

Once projects pass through the criteria that are developed by the DEP and qualify for incentive, the incentive should be competitive in nature, thereby ensuring that only the most cost efficient projects are developed and ratepayers are protected.

Matter 3/net metering aggregation: We support the development of net metering aggregation standards so long as the project fully compensates electric utilities for the use of their grid. This program can present some (limited) opportunity for development that assists local government in reducing their energy costs and achieve environmental goals.. In addition, we support a geographical project limit within municipal boundaries.

Matter 4/Incentives for net metered projects larger than 3 MW: Regarding providing incentive for net metered projects larger than 3 MW, as in Matter 2 above, we consider these projects unique in that they deliver multiple benefits. Such projects may include some of the largest employers in the State, where the State has an interest in retaining the Company and the related jobs. The ability to make larger projects more cost effective may also serve as a recruitment tool for companies looking to locate in New Jersey.

Companies like KDC can deliver a stable source of electricity for extended terms which is one item in a tool box to entice Companies to locate in New Jersey, and to keep companies from leaving the State. We recognize e that ultimately these incentives are paid by New Jersey ratepayers and that they should be

used sparingly only in instances where a) a proposed project can demonstrate a clear need for the incentive to enable it reduce energy costs to the user; and b) the proposed project can demonstrate that the incentive is needed to keep or attract a significant employer to New Jersey. The Board should establish a policy that allows projects to file, and the Board to approve proposals, on a case- by- case basis when the project can make such demonstrations.

We appreciate the opportunity to present our views and thank you for your consideration.

MSEIA MID-ATLANTIC SOLAR ENERGY INDUSTRIES ASSOCIATION

c/o Rutgers EcoComplex, Suite 208-B
1200 Florence-Columbus Road, Bordentown, NJ 08505

November 23, 2012

Mr. Scott Hunter
Renewable Energy Program Administrator
Office of Clean Energy
New Jersey Board of Public Utilities
44 S. Clinton Avenue POB 305
Trenton, NJ 08625-0350

Re: Comments regarding specific questions related to four proceedings.

Dear Mr. Hunter:

MSEIA is pleased to submit the following comments in response to questions posed at the Stakeholder meeting on November 9, 2012.

A. Implementation of Subsections (q)(r) and (s). Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System pursuant to N.J.S.A. 48:3-87 (q), (r), and (s).

MSEIA knows well that the New Jersey solar market is currently overbuilt relative to the minimum amount of SREC purchases required under current legislation. We also understand that many grid supply projects have been under development for up to several years and some have invested significant funds in design, permitting, securing town approval, securing PJM interconnection approval, making large deposits to PJM and various other expenses involved in the development of multi-MW solar projects. Unfortunately the amount of projects seeking Expedited Designation as being "connected to the Distribution Grid" and that meets the two initial criteria in the legislation is so large, approximately 500 MW, that these projects would further swamp the SREC market and have a disastrous impact on the solar Net Metered industry. Only a system that ranks grid supply projects based on merit will serve to minimize litigation over the results of the selection process, while preserving the substantial monies already invested to ultimately benefit the ratepayers of New Jersey in whatever further grid supply programs become available. We therefore recommend the following criteria be applied to rank the projects that applied for Expedited Designation. The ranking for the chosen block of project capacity (of up to 100 MW) should be used to selectr those projects that can secure

Expedited Designation. We generally agree with the comments submitted by Community Energy Solar regarding Expedited Designation.

1. A PJM System Impact Study dated on or prior to June 30, 2011.
2. SRP issuance prior to July 23, 2012.
3. The maximum size project should be 10MW (DC) and the projects that exceed this size should be reduced to this limit if they qualify under all the other criteria established.
4. Interconnection Service Agreement and Construction Service Agreements signed by the developer. The date of signing of these documents can create a ranking by date and further rank the projects in a scoring system. The execution of the documents by the developer supports the developer's intent to proceed because substantial cash deposits are required within defined timeframes in the agreements. The funding of the required cash deposits incurs additional cost and ongoing expense in the forgoing of any return on the funds on deposit. The signing date of PJM and the EDC are less relevant because the timing of those signings are not within the control of the project developer.
5. Local municipal or town approval. A project can only proceed if it receives approval from the local government entity that has jurisdiction over the land use. This process can take many months to over a year to secure approval, usually evidenced by a town Board Resolution. This process can be a costly one, in developing all the plans required and in the legal representation through multiple hearings. Town approval should be one of the criteria used in the selection of the subset to be granted Expedited Designation.
6. The amount of MW approved as "connected to the Distribution System" for interconnection should be limited to no more than 100 MW over two energy years. The projects that evidence substantial development process from meeting the above criteria but are not included in the block of no more than 100MW should be designated as a group and have priority as a class to participate in any subsequent grid supply solicitation(s).
7. MSEIA believes that a competitive solicitation for securing fixed long term energy supply is advantageous to New Jersey, and that the cost of generating a kWh of solar electricity is lower than any other new source of generation when the positive financial benefits of solar power is considered. See http://mseia.net/site/wp-content/uploads/2012/05/MSEIA-Final-Benefits-of-Solar-Report-2012-11-01.pdf for a recent analytical study on the value of solar generated electricity for New Jersey and Pennsylvania. The BPU should encourage and support new legislation to direct the EDC's to secure up to 300MW of grid supply solar capacity from the class of projects referenced in No. 6 above. The capacity and energy solicitation would be to purchase all the energy and environmental benefits at a fixed price per kWh for a twenty year term. Projects winning in this competitive solicitation would not earn SRECs. The cost of the energy secured would be blended into the EDC's cost structure and apportioned to all its customers through a volumetric surcharge.
8. MSEIA believes that the process described above and the development of up to 400MW of solar capacity will provide positive financial benefits to the ratepayers of New Jersey and the total development of up to this amount is necessary to avoid potential litigation

from those grid supply developers that invested substantial funds under a legal and regulatory structure that encouraged development but had unintended consequences.

9. Information and supporting documentation should be gathered from all projects seeking Expedited Designation and held confidential. Substantiation of all the selected criteria should be mandatory to be considered for Expedited Designation as being connected to the Distribution Grid. Projects selected under this process should be provided up to one year to complete construction but have up to an additional six months beyond the one year due to unexpected delays caused by EDC timing, governmental delay in final approvals or Force Majure.

B. Initiation of a Proceeding to Establish a Program to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills pursuant to N.J.S.A. 48:3-87 (t)

Although the legislation directed that a proceeding be established regarding incentives for the development of solar generation on landfills and other similar properties, we believe that the issues relating to the Expedited Designation of grid supply projects already under development should take precedence from a timing standpoint. The project development costs represented by the applications received by the BPU by September 21, 2012 represent a substantial investment in the development of a cleaner energy generation mix for New Jersey and are aligned with the legislated policies in place while they were being developed. We would not be surprised if the total development funds expended are in the $50 to $100 million range, excluding the construction cost of those projects on farmland that are already constructed or have been partially constructed. The state should not waste the very substantial time, effort and costs expended and resolve the issue of grid supply projects already under development before landfill projects receive special incentives.

Thus we recommend that any incentives for solar developed on Landfills or other similar properties apply only to projects that commence operation in energy year 2016 or later. This delay will help the net metered solar industry to stabilize and allow sufficient time for selected grid supply projects to be developed or cancelled.

B. Development of Net Metering Aggregation Standards pursuant to N.J.S.A. 48:3-87 (e) (4).

MSEIA believes that the intent of this section of the legislation was to create an aggregation approach that truly treated the electric usage at multiple government sites within a defined distance of each other as a single meter account. In other states, with New York being one example, multiple meters on a campus or other single owner site with multiple meter locations is treated as a single meter account for billing purposes. Interpreting this section as only allowing wholesale electric credits for solar electric produced from a single site does not forward the concept of Net Metering Aggregation.

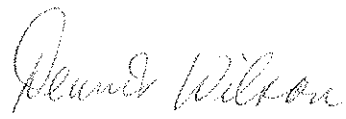
MSEIA believe that all the meters under common ownership to be supplied with solar electricity from one common site should receive full retail credit for the solar electricity allocated to that meter. The legislation specifically states that EDCs will be allowed to recover any additional costs incurred from Aggregated Net Metering, and this language can be interpreted to mean revenue recovery for lost margin from the accounts serviced. The proceeding should approach Aggregated Net Metering on that basis, require that sufficient data recording and meter communication be required so that all the meters supplied with solar electricity from the single remote site be easily aggregated for billing purposes. EDCs can then apply for rate recovery for any verifiable costs incurred.

D. Initiation of a Proceeding to Consider the Need to Supplement Incentives for Net Metered Projects Three MW or Greater pursuant to N.J.S.A. 48:3-87 (w).

MSEIA opposes any Supplemental Incentive for Net Metered projects of three MW or greater. The Board should not develop any program that would provide any Supplemental Incentive to solar projects of this minimum size. The cost to construct projects of this size is the lowest of any size solar system smaller than three MW and thus projects of this size do not need any supplemental incentive. The customers that fit into this category are generally substantial corporate entities that have more access to capital at lower cost than the rest of the solar customer segments, and thus any Supplemental Incentive would merely enhance the return on investment on such projects for the customer or the developer.

Sincerely,

Lyle K. Rawlings, P.E.
Vice-President, New Jersey



Dennis Wilson
President

NEXTera ENERGY RESOURCES

Comments of NextEra Energy Resources, LLC to the New Jersey Board of Public Utilities and the Office of Clean Energy on the Proceedings to Establish New Standards and to Develop New Programs to implement the Directives of the Solar Act
November 23, 2012

On behalf of NextEra Energy Resources, LLC ("NextEra") and its affiliates doing business in New Jersey, we thank the New Jersey Board of Public Utilities ("Board") and the New Jersey Office of Clean Energy ("OCE") for the opportunity to submit comments on the proceedings to establish new standards and to develop new programs to implement the directives of L.2012, c.24 ("Solar Act").

NextEra, a subsidiary of NextEra Energy, Inc., is among the leading competitive generation companies in the North America, with more than 16,000 megawatts of clean energy generation located across 23 states. NextEra is the nation's leader in clean energy production from the wind and sun, with over 8,000 megawatts from renewable energy resources. In New Jersey, NextEra Energy owns and operates the Paradise Solar facility in West Deptford, and is co-owner of a natural gas combined-cycle generating station in Sayreville. Additionally, NextEra is an active retail and wholesale supplier of electricity products in the State.

Like so many involved and invested in renewable energy, NextEra appreciates New Jersey's leadership in crafting among the most progressive renewable portfolio standards in the country, particularly in the area of solar energy. While NextEra's relative solar footprint in New Jersey is small, we developed and invested in the State based on certain assumptions that we believe are shared by the Board, OCE and many other solar market participants. Broadly, that assumption was that the State would promote a sustainable solar incentive ("SREC") program that would allow developers the opportunity to recover their investments and earn a fair return. Unfortunately, the SREC market experience to-date has been plagued by oversupply and volatility, leading many solar developers frustrated and hesitant to continue to invest in solar in New Jersey.

As required by the Solar Act and discussed at the stakeholder meeting on the Solar Act on November 9, 2012, the Board is to complete an investigation of approaches to mitigate solar development volatility by July 23, 2014. In advance of that, the Solar Act directs the Board to develop criteria for eligibility of certain grid-supply projects, to establish a program to provide SRECs and alternative financial incentives to solar generation facilities on brownfields, historic fill areas and properly closed landfills. It also directs the Board to develop net metering aggregation standards and consider the need to supplement incentives for net metered projects three megawatts or greater. We respectfully submit that investigating approaches to mitigate solar development volatility after the Board develops criteria, standards and incentives is the equivalent of "putting the cart before the horse."

The primary goal of the 2012 Solar Act was to achieve a supply/demand balance in the SREC market to enable continued growth of the solar sector in New Jersey. The solar industry has been an engine for job creation and economic growth throughout the State and because of

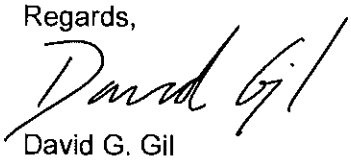
this, the idea of accelerating the Solar RPS enjoyed strong bipartisan support from the Legislative and Executive branches resulting in the 2012 SREC Legislation. Additionally, the State's' RPS explicitly requires the Board to place greater reliance on competitive markets, with the goal of encouraging and ensuring the emergence of new entrants that can foster innovations and price competition. It also attempts to transform the renewable energy market into one that can move forward without subsidies from the State or public utilities. NextEra suggests that staff should not consider eligibility requirements and solar incentives without considering how those could adversely impact the SREC market and competition in the State.

New Jersey's SREC market is already saturated. As indicated by staff, there will be an oversupply of SRECs until at least 2016. By softening eligibility requirements and offering new incentive programs, the Board could increase solar development in the short term, but it would worsen the SREC situation and send a clear message to solar developers that New Jersey is not a safe state to invest in over the long-term. As such, NextEra encourages the Board, OCE and staff to investigate approaches to mitigate solar development volatility in conjunction with its proceedings to determine eligibility, standards and incentives for certain projects. We also encourage the Board to take measures that place greater reliance on competitive markets and eliminate or minimize subsidies. This would send a clear message to solar developers that New Jersey is interested in the long-term health of its solar market and the stabilization of its SREC market.

NextEra appreciates the efforts of the Board, OCE and staff to establish policies and rules that encourage solar development in the state. However, we hope that the Board understands the significance of an oversupplied SREC market and the detrimental impact it will have on the market participants that have already invested in the State. Counties, municipalities, developers and other market participants invested heavily in solar projects in New Jersey based on expectations of a modest SREC market. However, the significant failure of the market to materialize as projected is putting a number of parties and solar projects at risk. As such, the Board's highest priority in considering new eligibility, standards and incentives should be the stabilization of the SREC market.

NextEra appreciates the opportunity to provide written comments on the proceedings to establish new standards and to develop new programs to implement the directives of the Solar Act. We also look forward to continuing to work with the Board, OCE and staff on encouraging competition and reducing subsidies in the New Jersey and stabilizing the State's SREC market.

Regards,



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November 22, 2012

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Implementation of Subsections (s) – Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System pursuant to N.J.S.A. 48:3-87(s).

Dear Secretary Izzo,

In response to your e request for public comment with regard to the implementation of N.J.S.A 48:3-87(38)(s), with particular focus on Subsection (s) of the new Solar Act. We reviewed the attached comments by Elliot Shanley of PVOne, LLC, and endorse them in full.

We would also like to note of the following duplicates in the list of projects that filed Subsection (s) Notices of Intent within 60 days of July 23, 2012: #56 duplicates #32, and #57 duplicates #44. In this regard, Project #32 (W3-080) and Project #44 (W1-119) are EffiSolar projects for which we filed Notices of Intent while #56 and #57 were apparently filed erroneously by someone who is not affiliated with EffiSolar.

Thank you for considering these comments.

Lawrence D. Neuman
President
EffiSolar Development LLC

November 21, 2012

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, NJ 08625-0350

Re: Comments on Subsection (s) of the Solar Act

Dear Secretary Izzo,

We are pleased to submit for your consideration expanded written comments (hereinafter referred to as the "Submission") to augment our oral comments offered at the November 9, 2012 Stakeholders Meeting. With respect to S1925 (hereinafter referred to as the "Solar Act") and specifically as to N.J.S.A 48:3-87(38)(s) (hereinafter referred to as "Subsection (s)"), please find below our further comments.

Executive Summary

This Submission concerns a form of development that consists of the construction of a photovoltaic ("PV") ground mounted grid supply solar farm consisting of post or ballasted racking systems, solar panels, inverters, and transformers on a parcel of land that was previously used as farm land or assessed as farm land, with the electricity generated from that solar farm to be injected into the grid (hereinafter referred to as a "Project") pursuant to an executed Wholesale Marketing Participation Agreement (hereinafter referred to as a "WMPA") with PJM Interconnection, LLC (hereinafter referred to as "PJM"). We are assuming that all Projects referenced in this written Submission filed the Subsection (s) Notice of Intent within 60 days of July 23, 2012 as required by law and that all Projects have a PJM System Impact Study dated on or before June 30, 2011. It is our further assumption that the developers of the Projects had - prior to the passage of the Solar Act - taken all steps and performed all actions required by the then duly adopted laws or regulations for the development of the Project.

The Solar Act was adopted at a time of extreme lack of transparency in the solar industry in New Jersey. Other than to look at the PJM queue and seek to identify Projects in the pipeline, there was no reasonable manner with which to evaluate the number of Projects under development and their development timeframes. The overwhelming concern was that there were thousands of megawatts ("MW") of Projects in the pipeline, the development of which would overwhelm the SREC market and the value of the SREC incentive. There was a further concern that New Jersey's treasured farmland would be plundered and converted into one large contiguous ground mounted solar field.

With the required filings of the Subsection (s) notices of intent, we now know that the remaining universe of Projects of Subsection (s) numbers in the range of 500 MWs, approximately 0.3 percent of the tilled farmland in New Jersey and approximately 13 percent of the projected 3.6

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gigawatts ("GW") Renewable Portfolio Standard ("RPS"). With this information, we can now address the concerns of the perceived negative impact of the Projects. The Board should not regulate, administer, and manage the qualified subsection (s) Projects such that it would create inequitable forfeiture or untimely delay.

Accordingly, it is the contention of this Submission that in order for a Project be deemed "connected to the distribution system" by the Board under Paragraph S of the Solar Act as contemplated by the Solar Act and with the ramifications of that determination, **the developer of a Project need only file a Subsection S application with the BPU with the proof that the System Impact study was dated on or before June 30, 2011 and that the Notice of Intent was filed in accordance with the law.**

Our Submission is supported by the following Comments:

- Subsection (s) Interpretation: Any Project that satisfies the requirements of Subsection (s) should be eligible for SRECS. The criteria is that the Project: (1) has a PJM System Impact Study dated on or before June 30, 2011; and (2) that a Notice of Intent was filed within 60 days of July 23, 2012; and (3) meets all previously required criteria in effect prior to passage of the Solar Act.

- Subsection (s) is Separate from (r): Subsection (s) should be deemed a completely separate application, separate and apart from Subsection (r) of the Act and Subsection (r) should have its own application process. In our view, Subsection (s) was not created to limit SREC eligibility but solely to limit the future development of Farmland with solar fields.

- Consideration of Supply and Demand of SRECs is Not Relevant: In interpreting Subsection (s), the Board should separate the issue of SREC supply from SREC demand as these are two distinct and separate issues. SREC supply and demand issues are distinct and separate matters that should be debated and addressed outside of Subsection (s). The intent of Subsection (s) is to regulate the future development of Projects on farmland, not to address the issues of the supply or demand of SRECS. Moreover, taking into account SREC imbalances would create a regulatory risk where none had existed before the investments in Projects were made, and would strand hundreds of millions of dollars.

- Management of SREC Market Impact: The SREC market is more appropriately addressed through other measures that the Board can implement on its own in order to address supply and demand imbalances. Therefore, potential SREC market impacts from Subsection (s) Project should not be taken into account for the determination of the meaning of Subsection S.

- Legal and Regulatory History Supported Project Development: All of the Subsection (s) Projects moved forward on the basis of a legal and regulatory environment that strongly supported the development of the Projects. SREC eligibility for these Projects began in 2008 and was supported through regulations and laws right up until the passage of the Solar Act.

- Project Development Cycle and Risk: Due to the complexity of the approvals needed, these Projects can take anywhere between 2-4 years before they are energized.

- Stranded Investment: The interpretation of a Subsection (s) filing should be based on a simple objective standard. To interpret otherwise could result in stranded investments of $2 billion in Projects and of $200 million of preconstruction Project development costs. And it could mean that $2 billion of Project investment in these Subsection (s) Projects will not happen in New Jersey at a time when the local economy in New Jersey demands the investment. Given the history surrounding these Projects, equity and fairness would lead to an interpretation of Subsection (s) that was not intended to strand such investment but to simply limit farmland development for the development of future projects.

- Impact on Farmland: Total impact of 500MW would be 0.3% of New Jersey's tillable acres.

Comments

I. Subsection (s) Interpretation.

Legislative Intent

It is undisputed that a part of the overall purpose of the Solar Act was and is to limit and eventually end the "future" growth of Projects on open space and farmland and to encourage the development of projects on landfills and brownfields. The Solar Act is intended to limit grid projects in favor of net meter projects and to encourage the development of Projects on land that State believes to be of little to no value. The Legislature also wanted to take into account existing development on farmland. The legislation contains three separate and distinct Subsections ((q), (r), and (s)) to address the transition away from Projects not on landfills or brownfields.

Subsection (q) allows for the development of 80MWs per year for Energy Year ("EY") 2014-2016, capped at a system size of 10MWs. To be qualified under this section the owner must make a deposit of $40,000 per MW and the yearly capacity must not be satisfied. If the Project is approved but not built, the deposit will be forfeited. The purpose of this section is clearly meant to slowly wean the industry off of Projects by allowing Projects to move forward in the those years, but by imposing a deposit the legislation ensures that these are real Projects with the intention of moving forward due to the risk of losing money.

Subsection (r) concerns all Projects proposed for EY 2017 and beyond that either did not qualify under Subsection (q) or are not eligible under Subsection (s). Subsection (r) requires public notice and opportunity for public comment and hearings. Furthermore, Subsection (r) sets forth a number of subjective standards that the Board can apply in making the determination as to whether or not a Project should be approved. Therefore, Subsection (r) is intended to give the Board discretion on whether to allow the development of Projects that do not qualify under Subsection (q) from EY 2017 forward. It is unlikely that many developers, if any, will even pursue development given the regulatory risk of being denied approval.

Subsection (s) was specifically targeted at ending the development of Projects on farmland. Subsection (s) makes it clear that these Projects have only two ways they can be deemed

connected to the grid: (1) Such Project is approved under Subsection (q); or (2) the Project received a system impact study on or before June 30, 2011 and filed a Notice of Intent to be qualified under this section within 60 days of the passage of the Solar Act. If a Project does not fall under either of these, it is ineligible for SRECs. So it is clear the purpose of this section is to end the development of Projects on farmland. But existing Projects that are either approved under Subsection (q) or meet the criteria of Subsection (s) may proceed and be eligible for SRECs.

II. Subsection (s) Is Distinct from Subsection (r)

Separate Application and Approval Process

As set forth above, Subsection (r) has a distinct and separate purpose from Subsection (s). Subsection (r) concerns the Board's authority to control the development of grid projects for EY 2017 and beyond. It has a completely different set of criteria for approval, in addition to notice and public hearing. The application for Subsection (r) approval will be some time far in the future. Subsection (s) makes clear that farmland Projects have only two avenues for approval. One of those avenues is not Subsection (r). Subsection (s) states in plain language that farmland Projects "shall only be considered connected to the distribution system" if they meet requirement (1) or (2), which again does not include Subsection (r). Therefore, approval under Subsection (s) is a separate application and approval process from Subsection (r).

Subsection (s) Approval

Since Subsection (s) is separate and distinct from Subsection (r) with the goal of ending farmland development, such Projects can be approved provided they meet the simple criteria under Subsection (s): Approval under Subsection (q) or receipt of a system impact study on or before June 30, 2011; and Filed a Notice of Intent to be qualified under this section within 60 days of the passage of Solar Act. There are no subjective criteria in Subsection (s), as is contained in Subsection (r), nor does it require notice and public hearing. If that were required the Legislature would have said so and moreover the inability of a farmland Project to even seek Subsection (r) approval leads to the conclusion that sole purpose of Subsection (s) is to allow but limit the development of farmland Projects that meet the Subsection (s) criteria.

It should be noted that Subsection (s) 2(c) does further state....."and the facility has been approved as "connected to the distribution system" by the Board. We interpret this as the Legislatures acknowledgement that the Project must also meet all the previously required criteria in previous Laws/Regulations regarding eligibility to be deemed connected to the distribution system. In order to be SREC eligible under the prior existing regulations the criteria is to be directly connected to the electric grid at 69 kilovolts or less, and have an approved SRP application.

III. Consideration of SREC Supply and Demand Under this Proceeding

Market Impact is Not Relevant to the Subsection (s) Interpretation.

To date there has been discussion in making a determination on how to interpret Subsection (s) of Solar Act. We respectfully suggest that supply and demand issues of the SRECS and their valuation should be given no consideration in this matter. Subsection (s) was not the means to limit supply of SRECS but rather the means to end the development of Projects on farmland. Clearly, if supply and demand SREC issues were tied to Projects then the Legislation would have limited the amount that can be built on landfills and brownfields or for net-metered projects

There must be a separation of the discussions of Project eligibility from that of market impact. Project eligibility speaks to regulatory risk. SREC market impact and demand issues speak not to regulatory risk but to market value risk.

The Board should not intermix the eligibility issue with the SREC impact issue, and as such create regulatory risk in an effort to control market pricing. The solution to increasing the value of the SREC does not and should not lie in the creation of regulatory risk. If the Board were to act otherwise, the State and the Board would be sending a signal that regulatory continuity and certainty are no longer certain, and this will have negative consequences in the State with regard to future investment, in both solar and any other investments that require regulatory certainty. We strongly encourage the Board to consider the negative consequences of deeming Projects that have met the criteria stipulated under Subsection (s) as ineligible for SRECS. Projects that have achieved that level of completion have invested an appreciable amount of time, energy and capital to get the Project to that point of development, all the while doing so under a legal and regulatory framework that made the Project SREC eligible. Deeming Subsection (s) Projects as ineligible for SRECs would prevent nearly $2 billion in investment into the state and strand over or near $200 million in investments already made.

We suggest that the potential of SREC market impact should not be a factor in determining if a qualified Subsection (s) Project is "connected to the distribution system". The Projects were initiated and funded in good faith by developers that were encouraged to do so by the State of New Jersey via previous legal and regulatory actions. We believe that the Board should accept that these Projects are entitled to the designation as "connected to the distribution system" and look at the market impact as a separate issue that must now be dealt with in light of the fact that these Projects have met their legal hurdles to gain SREC eligibility, and that the negative consequences of ruling them as ineligible far outweighs the negative impacts of market impact.

But to the extent the Board will consider supply and demand we suggest that Board consider three other significant factors set forth below.

IV. Management of SREC Market Impact

The Free Market Should Govern Development

In 2007 the Board began the transition of the New Jersey solar market from rebates to the market based SREC incentive. The goal of that transition was to lower the cost to ratepayer support and to create a solar market that could grow without burdensome and constant regulatory intervention. The creation of the SREC market has largely accomplished those goals. The ability of a solar developer to build in a low priced SREC market results in significant reduction in costs to the ratepayer.

With respect to the Projects under Subsection (s), in order for Projects to be built, a developer would have to move forward in an SREC market with spot prices as low as $60 per megawatt-hour (MWh) and an inability to obtain long term contracts beyond three years. These conditions are making it difficult for financiers to invest in Projects. However, those that go forward would be built at the lowest cost to the Ratepayer to date.

Thus, Projects that can be fianced and built at current SREC levels give the Rate Payer their best return on their investment. This is something the Board should support, not oppose. Whether any of the Projects move forward will be dictated by needs of investors and SREC prices. Many of these Projects ultimately may not go forward due to financial viability, however it should be project economics that determine if these qualified Section (s) Projects get built, not a determination by the Board.

Board Authority to Balance Supply/Demand

The Board has at its disposal a tool to regulate the current RPS when it believes that intervention is warranted. This tool is given to the Board in A3520, the Solar Energy Advancement and Fair Competition Act, Section O, whereby it states:

> "o. The board, in consultation with the Department of Environmental Protection, electric public utilities, the Division of Rate Counsel in the Department of the Public Advocate, affected members of the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in subsection d. of this section, taking into account the cost impacts and public benefits of such increases including...."

If the Board deemed the market impact of the Subsection (s) Projects as so great such that actions are required, the Board has the power to adjust the demand for SRECs to account for the Subsection (s) Projects.

Discriminatory Application of the Law between Grid Supply and Net Metered Projects

As discussed above, it is apparent in the conversation that there is an attempt to limit the supply of SRECs so as to affect SREC prices. As also discussed, we strongly believe that this is not the correct approach, and that the market demand for SRECs should be the mechanism used to mitigate the effect of legitimate supply. That being said, if the Board should determine some or all of the Subsection (s) Projects as ineligible for SRECs, then it would seem as if the BPU is intermixing regulatory risk with market risk, with such approach being discriminatory in that it only targets the supply of grid SRECS and not net meter SRECs. If one were to consider which SREC is more cost effective to the ratepayer, then they would realize that it is the net meter SRECs that are more expensive, and perhaps it is net meter projects that should be regulated, and/or rationed. While we don't believe that this is the correct approach either, it does illuminate how the current dialogue is discriminatory and without merit from a Rate Payer perspective.

After the development of the 500MW of Subsection (s) Projects which should be deemed as connected to the distribution system, the Solar Act effectively eliminates all grid Projects, outside Subsection (q), by making their SREC eligibility subject to Board review. Developers will not take the capital risk to develop a Project far enough along in the development cycle to be able to meet the submittal guidelines called for in Subsection (r), only to potentially be denied. No one

would put that much capital at regulatory risk. Subsection (s) Projects represents only 13% of the 3.6GW Solar RPS.

V. History of the Issuance Grid Supply SRECs in New Jersey.

It is important to understand that all of the investments made to date in the Subsection (s) Projects have been made at the encouragement of the laws and policies of the State. The advent of issuing SRECs for grid tied systems occurred through the passage of S2938 in January 2008. The provision allowing for it is codified at N.J.S.A. 48:3-87(e)(3).

> Such rules shall require the board or its designee to issue a credit or other incentive to those generators that do not use a net meter but otherwise generate electricity derived from a Class I renewable energy source and to issue an enhanced credit or other incentive, including, but not limited to, a solar renewable energy credit, to those generators that generate electricity derived from solar technologies.

The further development and support for grid tied systems came through the passage of amendments to N.J.A.C. 14:8-2.8 and 2.9 to allow solar electric generation facilities interconnected with an electric distribution system that serves New Jersey to generate solar RECs, regardless of whether the facility is located on a customer-generator's premises. The Board concluded "[t]hose facilities provide essential support to the reliability of the supply of electricity in New Jersey." In the Proposed Amendments issued in the New Jersey Register on June16, 2008 the Board set out very strong language on the importance of grid tied solar systems. It stated:

> [C]lean local electric generation is an essential element in any strategy to mitigate congestion on the electric transmission system and protect the reliability of New Jersey's supply of electricity. Larger-scale solar electric generation facilities in New Jersey, regardless of whether they are located on a customer-generator's premises, help to maintain the reliability of local electricity supplies in New Jersey. ... Specifically, those facilities provide local supplies of "reactive power" at the times that they are needed most. Reactive power is the energy supplied to create or be stored in electric or magnetic fields in and around electrical equipment. ... Local supplies of reactive power are essential, because reactive power can be transmitted only over relatively short distances during times of high electricity demand. The ability of larger solar facilities to provide local reactive power tends to occur at or near times of peak demand, when it is needed most.

This unequivocal language by the Board on the importance of grid tied solar demonstrates the Board's and the State's commitment to such generation. And such commitment sends a clear message to developers that the State is supportive of grid tied systems and that they should go out and build them.

The State's position on grid tied solar was further solidified with the passage of the Solar Energy Advancement and Fair Competition Act passed in January 2010. The legislation amended the definition of an SREC, 48:3-51, to make clear that under the law grid tied solar systems were entitled to the issuance of SRECs.

> "Solar renewable energy certificate" or "SREC" means a certificate issued by the board or its designee, representing one megawatt hour (MWh) of photovoltaic electricity generated solar energy that is generated by a facility connected to the distribution

system in this State and has value driven based on the market.

Based on the legislative and regulatory history on the issuance of SRECs for solar grid tied system, it was more than reasonable for developers to rely on the state of law to go out and build systems with the expectation they would be issued SRECs. There was no indication from the State or the Board that the law would be changed such that a grid tied system could be determined to be not connected to the distribution system, thereby rendering a Project either under development or fully developed valueless. In reliance on this law investments were made on Projeets.

VI. Project Development Cycle and Risk

Project Development Cycle

The development of a grid supply project is much more complicated and time consuming than a net meter project. The development cycle for a Project is anywhere from 2 to 4 years, and includes the following:

- Confirm land suitability for solar and interconnection
- Take control of a large area of land
- Prepare engineering for PJM submittals
- Submit Small Generation Interconnection Application to PJM
    - Feasibility Study
    - Systems Impact Study
- Execute PJM Wholesale Market Participants Agreement
- Execute Utility Interconnection Agreement
- Execute Utility Construction Agreement
- Prepare all civil engineering documents
- Apply to local township for Major Site Plan Approval
- Apply for Land Use Variance
- Apply for applicable state, and county environmental permits
- Construction
- Interconnection

The above represent the high-level development milestones for a grid supply Project. Just the PJM requirements alone can take over 12-18 months to complete. Add to this a timeframe of up to 36 months for interconnection by the utility and an 8-12 month construction timeframe, grid projects have a development cycle from inception to fully energized in the range of 2 to 4 years.

When SREC eligibility was codified for grid Projects in A3520 in January 2010, and the Regulatory Risk that had been associated with SREC's was removed, grid supply developers were then confident that the State supported grid supply. So at the encouragement of this Act, and of previous BPU regulations that supported the benefits of grid supply, developers began to invest into the development of these Projects.

As stated above, the full cycle time for grid Projects is 2-4 years. Given that the Solar Act was passed in July 2012 only 2.5 years after the passage of A3520, essentially all investment in grid Projects during that 2.5 year period could be stranded. These investments, if deemed as NOT connected to the distribution system, will be stranded, as there was not enough development time to get the Project completed in the window between A3520 and the Solar Act.

Project Development Risk

As noted above, there are two succinctly different types of Risk when speaking of SRECS, with one being acceptable (market risk) and the other not being acceptable (regulatory risk). Developers take market risk, that being the risk of SREC pricing, but no developer or investor takes regulatory risk, which is why there was no grid supply development until the State passed several rules and laws that removed the regulatory risk element. Developers or investors would not have come forward if they knew that in the middle of their development cycle the State would reintroduce regulatory risk, and disqualify their Project from SREC eligibility.

VII. Stranded Investment.

It is worth highlighting on its own the potential for causing significant stranded investment if Subsection (s) Projects are not deemed eligible for SRECs even though they have satisfied the criteria of Subsection (s). Subsection (s) Projects were developed with the previous encouragement from both the Legislature and the Board. The Board in fact strongly encouraged developers to go out and build such Projects. Given such history of grid eligibility for SRECs, the intent of Subsection (s) must be in accordance as was set forth above. In reviewing the stranded investment the Board should consider these points.

VII. Impact on Farmland

The Solar Act will end the development on farmland to preserve such land. But the impact of the Subsection (s) Projects should not be a factor, not only because the point of Solar Act was to end future development not past, but also because this limited number of Projects will have nominal impact on farmland. The Board should consider the following.

- Solar is relatively temporary as compared to other forms of development and as such it can be argued that grid solar does preserve farmland for the future.
- Solar allows farmland to recharge.
- Now that we know the universe of the Subsection (s) Projects as approximately 500MW, that would be equivalent to about 3,000 acres in total, as compared to the 800,000 acres of available tillable farmland in NJ, representing 0.3 percent of the total tillable acres.
- At the same time that this is being designed to preserve farmland, other State Agencies are relaxing and reducing "red tape" to help encourage development on these same lands for other forms of development, for example, housing

Conclusion

We implore the Board to consider the options of flexibility that is at their control when designing the implementation of this law.

We strongly recommend that the final interpretation of Subsection (s) is such that if your Project meets the criteria of the section, i.e.; has an SIS date on or before June 30, 2011 and has given their Notice of Intent within the 60 day window, that those Projects shall be determined to be "connected to the Distribution System"

The Application Process should be no more cumbersome, if not exactly the same as, the filing of the Notice of Intent.

Respectfully,

Elliott Shanley
PVOne, LLC

90 Woodbridge Center Drive, Woodbridge, NJ 07095 • Tel: (646) 414-2448 • Fax (646) 390-6555

November 22, 2012

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Development of Net Metering Aggregation Standards pursuant to N.J.S.A. 48:3-87 (e) (4).

Dear Secretary Izzo,

In response to your e request for public comment with regard to the Net Metering Aggregation Standards being developed pursuant to N.J.S.A. 48:3-87(e)(4) of the new Solar Act. We have reviewed the attached comments by A.F.T Associates and endorse them in full.

We would also like to refer to subparagraph (a) and note the exception to the prohibition against locating solar electric power generation on property that "has been actively devoted to agricultural or horticultural use and that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.) at any time within the 10 year period prior to the effective date of 10 P.L. , c. (C.)."

That exception states that "the municipal planning board of a municipality in which a solar electric power generation system is located may waive the requirement of this subparagraph (a)."

Thank you for considering these comments.

Lawrence D. Neuman
President
EffiSolar Development LLC

A.F.T. associates, LLC

15 West Front Street, 4th Floor

Trenton, NJ 08608

609-394-1166 or 0888

November 22, 2012

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Development of Net Metering Aggregation Standards pursuant to N.J.S.A. 48:3-87 (e) (4).

Dear Secretary Izzo,

You have requested public comment on Net Metering Aggregation Standards being developed pursuant to N.J.S.A. 48:3-87(e)(4) of the new Solar Act. We are respectfully submitting the comments below.

Net Metering Aggregation

The purpose of this provision is to allow the taxpayers of the State of New Jersey generally to benefit from savings to be obtained against energy costs by any State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority. This provision was intended to significantly empower the entities that qualify as Hosts, to permit the Hosts to not only earn significant savings in their energy costs, but also to reclaim landfills, brownfields, and open space that were being underutilized and/or untaxed, to generate employment, tax revenues and, lastly, to contribute to the RPS.

The idea is to allow one of the foregoing entities to net meter a host facility **(Solar Act uses the term "Customer's Solar Electric Power Generation System;" hereinafter the "Host")** in such a way as to allow the Host to design a renewable energy system to exceed the energy requirements of the Host and to inject the Excess Energy into the grid for compensation. The Host is permitted to design a system that takes into consideration the load of other physical facilities it owns in its jurisdiction or, in the case of the State, within 5 miles of the State's Host facility (**Solar Act uses the term "Qualified Customer Facilities;" hereinafter "Qualified Sites"**). While the Qualified Site continues to purchase and use load the way it always has, the Host gets an annual credit for the Excess Energy it generates at a stated value in the Solar Act. The thinking is that the Host will be

able to use landfills, brownfields and/or open space that it owns to generate solar energy and to be paid for the solar energy by way of a credit against its accounts.

For Net Metering Aggregation to provide benefits to the taxpayers as outlined above, the BPU must interpret the statute as described below. Failure to do so will result in this section of the law becoming a nullity, not only an illogical result, but one that would defeat the Legislature's clear intent.

Firstly and most importantly, the income to be earned by the Host for the Excess Energy must be credited at **retail** rates. An interpretation has been advocated by others that suggests the credit should be calculated at the "Avoided Cost of Wholesale Power" or the "PJM electric power pool real-time locationally marginal pricing rate" or LMP. The LMP would always be the higher of the two rates as it takes into consideration peak pricing, while the other index is an average of off peak and peak. We are attaching the LMP for JCP&L, in three indexes, giving the numbers for the years 2005 through 2011 (see "Attachment"). It is clear that this pricing would not support the installation of any type of solar system. Thus, unless the value of the energy is closer to a retail value as opposed to a wholesale value, no entity would be able to take advantage of this scheme.

Secondly, the Statute provides that the Qualified Sites must all be in the "same customer **rate** class under the applicable electricity tariff." It is critical that this be interpreted to mean that all of a customer's facilities be permitted to be included in the aggregation. A more restrictive interpretation would unnecessarily limit the savings opportunity for taxpayers and defeat clear Legislative intent.

Thirdly, aggregate net metering must be available to a Host regardless of whether a net metered account pre-existed the construction of the **Customer's Solar Electric Power Generation System**. An interpretation has been advocated suggesting that net metering aggregation be allowed only in the context of a pre-existing net metered account. Such a regulation, if adopted, would defeat the purpose of the Law by preventing, among other things, a Host from using the Law to reclaim a landfill, brownfields or open space.

Lastly, regulations should make clear that the Host Account and Qualified Sites **do not** have to be in the same customer rate class. An interpretation to the contrary would unnecessarily limit the scope of the Law and defeat the Legislature's clear intent. Specifically, such an interpretation would prevent a Host from using the Statute to reclaim a landfill, brownfields or open space.

Thank you for considering these comments.

Very Truly Yours,

Michael P. Torpey
Managing Partner
A.F.T. Associates, LLC

Mark S. Bellin
Partner
A.F.T. Associates, LLC

Attachment

ATTACHMENT
(Source: PVOne, LLC)

Solar Output Weighted Average LMP
(JCP&L, c/kwh)

	2005	2006	2007	2008	2009	2010	2011
JAN	6.17	6.20	4.63	7.37	7.15	5.87	5.55
FEB	4.84	5.65	7.25	6.83	4.91	4.55	4.87
MAR	5.88	6.08	6.58	8.55	4.49	4.03	4.65
APR	6.75	5.76	7.24	9.40	4.03	4.44	5.59
MAY	5.39	5.80	6.78	12.70	4.29	5.54	6.31
JUN	7.49	5.96	8.23	15.88	3.90	6.68	6.99
JUL	9.30	8.42	8.27	16.18	3.93	9.81	8.99
AUG	11.44	9.77	9.46	9.97	4.63	6.96	5.65
SEP	10.52	4.19	7.86	10.22	3.63	5.72	4.91
OCT	9.25	4.75	7.71	6.44	4.11	3.85	3.87
NOV	7.49	5.03	7.18	6.15	3.49	4.16	3.65
DEC	8.66	3.98	9.35	5.31	4.75	6.08	3.29
Average	**7.82**	**6.11**	**7.58**	**10.10**	**4.38**	**5.74**	**5.55**

Monthly Average LMP, Hours of 9:00am-6:00pm
(JCP&L, c/kwh)

	2005	2006	2007	2008	2009	2010	2011
JAN	6.34	6.43	4.85	9.13	7.47	6.09	6.05
FEB	4.94	5.61	7.28	9.17	4.98	4.62	5.04
MAR	5.79	5.97	6.50	9.90	4.45	3.99	4.59
APR	6.83	5.83	7.32	10.68	4.05	4.47	5.63
MAY	5.50	5.97	6.92	10.07	4.35	5.62	6.59
JUN	7.89	6.24	8.54	14.43	4.00	6.93	7.39
JUL	9.77	8.84	8.61	12.63	4.06	10.47	9.57
AUG	11.73	10.11	9.73	9.73	4.73	7.12	5.79
SEP	10.56	4.20	7.84	9.68	3.63	5.75	4.92
OCT	9.25	4.75	7.63	6.10	4.10	3.82	3.88
NOV	8.29	5.40	7.64	6.42	3.68	4.54	3.90
DEC	9.89	4.34	10.17	5.97	5.14	6.61	3.59
Average	8.07	6.14	7.75	9.49	4.55	5.83	5.58

Monthly Average LMP (JCP&L, c/kwh)							
	2005	2006	2007	2008	2009	2010	2011
JAN	5.74	5.87	4.54	8.37	6.94	5.82	6.22
FEB	4.83	5.66	7.60	8.52	5.03	4.67	4.94
MAR	5.50	5.91	6.22	8.65	4.31	3.88	4.37
APR	5.39	4.81	6.17	8.64	3.65	3.94	4.87
MAY	4.30	4.57	5.39	7.38	3.68	4.62	5.08
JUN	5.66	4.56	6.55	10.42	3.33	5.41	5.34
JUL	7.09	6.50	6.47	10.03	3.37	7.37	6.77
AUG	8.58	7.37	7.57	7.78	3.80	5.58	4.55
SEP	7.78	3.62	6.26	7.90	3.15	4.66	4.20
OCT	7.69	4.24	6.59	5.53	3.71	3.57	3.69
NOV	6.79	4.72	6.77	5.83	3.38	4.06	3.60
DEC	9.25	4.28	8.85	5.56	4.76	6.16	3.60
Average	6.55	5.18	6.58	7.88	4.09	4.98	4.77

November 23, 2012

Via Electronic Mail

B. Scott Hunter
Renewable Energy Program Administrator
Office of Clean Energy
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Re: Stakeholder Comments to Solar Act of 2012

Dear Mr. Hunter:

On behalf of Garden Solar, LLC ("GS") please accept these comments in response to the Board of Public Utilities ("Board") Staff's request for written comments regarding the Board's implementation of the Solar Act of 2012, P.L. 2012, c. 24 ("Solar Act"). More specifically, the Board Staff requested interested parties to submit written comments on specific questions related to four distinct proceedings the Board has commenced to implement the Solar Act.

On July 23, 2012, the 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 things, the Solar Act requires the Board to conduct proceedings to establish new standards and to develop new programs to implement the directives in the Solar Act. On October 4, 2012, the Board

directed Staff to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act. The comments herein are submitted as part of the stakeholder process and are organized in accordance with the topics for comments established by the Board Staff in its October 25, 2012 Notice of Stakeholder Meeting on the Solar Act.

GS is a New Jersey based solar developer that has successfully developed SREC registered wholesale grid-supply solar projects installed in New Jersey. GS has several other New Jersey ***SREC registered*** wholesale grid-supply projects located on farmland assessed properties that are in end stage development. GS has made substantial capital investments in these grid-supply projects. GS estimates that the projects it has developed have contributed to the employment of over 300 persons, vast equipment rentals and improved local commerce.

Unlike net-metered projects, grid-supply solar projects benefit all ratepayers of New Jersey in the delivery of reduced wholesale price electric energy to all ratepayers as solar facilities are price takers in the marginal cost determined PJM grid dispatch queue; thus solar facilities displace the deliverability of the highest marginal cost units at that time in the system. Further, solar facilities interconnected to the distribution grid are delivering to local load and bypassing the congestion rent of delivery to load versus in the instance of distant central station power delivering through the transmission grid and needing to be stepped down for local distribution grid delivery. Therefore, these marginal cost energy benefits are distributed to all ratepayers, the same population of users that monies are collected from to provide the benefits of solar to ratepayers, whereas in a net-meter facility all the benefits accrue to the host facility reducing its

operating costs and those benefits paid for by the general ratepayer population are not distributed. A further economic benefit of grid-supplied solar is that the scale of these systems has resulted in much reduced capital costs of the facilities and therefore the required level of SREC prices is reduced and results in a superior economic benefit to consumers. The solar SREC market even in its current "depressed" price levels is still capable of supporting scale, ex. 5-10 MW, grid-supplied solar in appropriate contract structures which would lead to a reasonable risk adjusted return to attract capital investment. All of the above reasons make clear the economic solar net benefit of grid-supplied solar to NJ ratepayers.

The Board's implementation of the Solar Act in a reasonable manner is important to developers like GS because such developers have expended considerable funds and resources in reliance upon the ability to develop solar projects eligible to produce SRECs based upon the existing laws and SREC qualification standards. Moreover, timely guidance from the Board Staff is important given that many projects are in critical stages of development and are near or under construction. For example, throughout the State there are grid-supply projects on farmlands that have received PJM SIS *after* June 30, 2011, and have received most other approvals (NJOCE SREC Acceptance letters, local land use approvals, DEP approvals, interconnection, etc.) and are ready for construction. In contrast, it is our understanding that are various projects in the State that received a PJM System Impact Study ("SIS") prior to June 30, 2011 but have not obtained (and are not likely to promptly obtain) other required approvals.

An essential step toward mitigating solar market volatility is for the Board to promptly determine which of the solar grid-supply projects that are under development in

New Jersey will be deemed connected to the distribution grid and thus entitled to SREC eligibility[1]. It is assumed that the development community has based its capital investments under the existing ***SREC registration*** parameters and that the Legislature established the 80MW annual limitation starting in Energy Year 2014 for projects that have not been started or would not qualify under subsection "s" of the Solar Act. Certainly the projects noticed under subsection "s" were considered eligible because they had already been granted an SREC registration: thus only new projects would be required to obtain further approvals.

The Board has already received notices from developers to have their projects qualified under subsection "s" of the Solar Act. As discussed below, the Board should promptly qualify those projects for SRECs. The Board should also promptly determine the process and criteria it will utilize to determine the future projects that will be included in the 80MWs annual allocations in energy Years 2014-2016. The prompt resolution of these issues is critical to the development of forward SREC pricing models which affect all segments of the solar industry.[2]

Implementation of Subsections (q) (r) and (s) of N.J.S.A. 48:3-87

Subsection "s"

[1] These comments submitted by GS are submitted without prejudice to GS' positions and claims in the event there is a legal challenge to the Solar Act or the implementation of the Solar Act. GS respectfully submits that the implementation of the Solar Act in a manner that deprives projects that have qualified for SRECs under existing requirements from SREC eligibility constitutes an unlawful taking. As discussed hereafter, the Board should implement the Solar Act in a manner that does not fatally undermine projects that developers have developed in accordance with all of the State's existing SREC requirements and in reliance upon those requirements.

[2] The market has likely factored into account the impact in the SREC market of projects that have been noticed under subsection "s".

Subsection "s" sets forth factors to be considered to determine whether non-net metered or non-on-site generation projects located on farmland assessed property are consider "connected to the distribution network." Subsection "s" provides in part:

> [...] a solar electric power generation facility that is not net metered or an on-site generation facility and which is located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c.48 (C.54:4-23.1 et seq.) at any time within the 10-year period prior to the effective date of P.L. 2012, c.24, shall only be considered "connected to the distribution system" if (1) the board approves the facility's designation pursuant to subsection q. of this section; or (2) (a) PJM issued a System Impact Study for the facility on or before June 30, 2011, (b) the facility files a notice with the board within 60 days of the effective date of P.L. 2012, c.24, indicating its intent to qualify under this subsection, and (c) the facility has been approved as "connected to the distribution system" by the board.

Projects that have received a PJM SIS prior to June 30, 2011, clearly should be considered as "connected to the distribution system". Additionally, subsection "s" permits projects that have filed a notice under subsection s(2)(b) and have been approved as "connected to the distribution system" to remain eligible for SRECs. As a result, projects that have received SREC registration approvals (and not SIS prior to June 30, 2011) can qualify for SRECs under subsection "s" because such projects have already been found to be connected to the distribution system as a result of the issuance of an SREC registration acceptance letter. GS submits that SREC rights for all projects that have obtained SIS by June 30, 2011 and/or have received SREC registration acceptance letters prior to the adoption of the Solar Act have been grandfathered by the Solar Act.

While satisfaction of the foregoing requirements is necessary for eligibility under subsection "s", rather than provide a blanket approval for all such noticed (grandfathered) projects, the Board may determine it is appropriate to evaluate the status of the eligible projects to determine which projects remain viable and have undertaken steps that cause their construction to be likely. Identifying such projects and limiting development to projects that are viable will enable the Office of Clean Energy ("OCE") (and the solar market) to better forecast future SREC production and reduce solar development uncertainty and volatility.

Several developers have filed notices to qualify their farmland grid-supply projects under subsection "s". As discussed above, these projects should be considered eligible under subsection "s" if they have obtained a SIS by June 30, 2011, or if they have received an SREC registration approval letter. Notwithstanding the foregoing, the Board should require each developer that has submitted a notice under subsection "s" to provide detailed information regarding its project so that the Board can evaluate the viability of the project. The information required by the Board should include:

- description/documentation of status of all local municipal and County land use approvals (including evidence of local government support)
- description/documentation of all State-related approvals (e.g., DEP)
- description/status/evidence of financing (demonstrate ability to construct within one year)
- evidence regional Soil Conservation approval
- description/evidence of interconnection status
- disclosure of all capital costs and expenditures incurred for the project
- estimated annual MWhs of production from facility
- description/status of engineering, procurement, construction (EPC) contracts

The OCE should analyze the foregoing information to evaluate whether the project is likely to be able to be constructed in the near future. Projects that have

obtained local and state (if any) approvals required for construction and have introduced evidence that project financing is in place or will likely be obtained should be found to be qualified for SRECs and should be permitted to proceed. Once such a determination is made, the Board should issue a new project SREC registration letter that provides sufficient time for the construction of the project. Projects that fails to meet certain eligibility but may otherwise remain viable should be recommended for submission into a priority queue as 'conditionally approved' for qualification under 'q' for Energy Years 2014-16.

While it is important that the OCE review projects proposed under subsection "s" to evaluate their viability, it is equally important that the OCE interpret subsection "s" in a manner that does not unreasonably harm project developers that have invested significant funds in the development of grid supply projects and further impede job creation. The State of New Jersey and the OCE have, to the benefit of the citizens of the State, properly encouraged the wide-spread development of solar energy projects. That development was achieved in part due to the OCE's SREC program which was modified in 2009 to permit large-scale grid supply projects to be eligible for SRECs. In response to, and reliance upon, the SREC program, developers have made substantial investments in the development of such projects. An unduly narrow construction of subsection "s" that unreasonably limits projects eligible to qualify under subsection "s" would be unfairly prejudicial to developers that have in invested hundreds of thousands of dollars to develop grid-supply projects.[3]

Subsection q

Subsection "q" permits non-net-metered and non-on-site solar generation projects to be designated by the Board as "connected to the distribution system" and thus eligible for SRECs. Subsection "q" indicates that such projects can be designated during Energy Years 2014- 2016 and that the aggregate MWs for such projects shall not exceed 80MWs per year. The Solar Act also makes clear that projects approved under subsection "q" shall not exceed 10MWs (ac).

It is likely that the number of MWs proposed in the aggregate by project developers filing under subsection "q" will exceed the annual 80 MWs limitation. Therefore, the Office of Clean Energy ("OCE") will be required to develop an objective, fair and reasonable method for determining which project applicants should be designated as "connected to the distribution network". The criteria should be intended to evaluate overall project viability which includes the ability to obtain local approvals and project financing. Moreover, priority should be given to projects that are the furthest along in the development cycle and where the developer can show that the project is reasonably likely to be constructed. Giving priority to the projects that are the most mature in the development cycle is fair to developers because many developers have already committed resources to the project that are likely to seek eligibility under subsection "q". In fact, projects that were under development at the time the Solar Act was adopted should be given priority for qualification under subsection "q" in the form of a 'reserve queue'. Conferring priority to such projects (assuming they do not qualify under subsection "s") will reduce the harm to solar developers that have commenced the development of solar projects in reliance upon current SREC eligibility requirements and

improve long-term market visibility to traders and market makers. Moreover, giving priority to projects that are the furthest in the development cycle is reasonable, because the Board will have substantial information to evaluate the viability of those projects (i.e., local approvals will have been obtained or denied, financing may be secured, etc.).

The additional project development milestones, beyond those of the existing SREC Registration, that the Board should evaluate to determine whether projects should be approved under subsection "q" should include:

- description of project
- description/documentation of status of all local municipal and County land use approvals (including evidence of local government support)
- whether an SREC registration letter was ever issued for the project
- description/documentation of all State -related approvals (DEP, etc.)
- description/status/evidence of financing (demonstrate ability to construct within one year)
- description/status of engineering, procurement, construction (EPC) contracts
- description/evidence of interconnection status
- description of estimate job creation
- disclosure of all capital costs and expenditures incurred for the project
- estimated annual MWhs of production from facility
  description of any unique benefits to the State or local community

The Board should also clarify when applications can be filed under subsection "q" (i.e., can they be filed before Energy Year 2014 for approval in EY 2014?)

Subsection "r"

For subsection "r" the Board should provide guidance regarding how it intends to interpret the requirement of subsection r(2)(d) including an explanation of information that an applicant should include in an application filed pursuant to subsection "r".

Programs to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills pursuant to N.J.S.A. 48:3-87 (t).

For projects certified under 48:3-87 (t), two (2) SRECs should be issued for each MWh of generation produced by the certified facility. This will provide significant incentives for the development of solar projects on these properties. The issuance of two SRECs for each MW will also be straight-forward, understandable and an easy program to administer.

The Board and NJDEP should establish rules governing responsibility for environmental harm that may be caused to the project site. For such projects, a Geotextile barrier should be required to be installed, which would then be capped prior to non-ground penetrating installation techniques. The Geotextile barrier would provide a known delineation between land owner and system operator responsibility. Unless negligence is shown on the part of the installer/lessee, the pre-existing conditions can remain the sole responsibility of the site owner. This can and should be administered by the NJDEP.

Net Metering Aggregation Standards pursuant to N.J.S.A. 48:3-87 (e) (4).

The Board is required to adopt net metering aggregation standards by April 19, 2013. Various aspects of the aggregated net metering section of the Solar Act require clarification. Clarification should start with a written statement by the sponsors of the bill (now the act) as to their express 'intent' in the drafting. The following issues should be clarified by the Board:

1. The Board should confirm that term "same customer rate class' means a single 'payee' of one account, regardless of 'rate class'.
2. The Board should confirm that a solar facility located on lands owned by a single customer where a meter does exist, shall be allowed to offset that facility's entire load, if possible, at the retail rate.

Supplemental Incentives for Net Metered Projects Three MW or Greater

The Board is required, after notice and opportunity for public comment and public hearing, to consider whether to establish a program to provide to owners of net metered projects three megawatts or greater a financial incentive to supplement SRECs "to further the goal of improving the economic competitiveness of commercial and industrial customers". GS asserts that there is no reason that net-metered projects that are 3MWs or greater should be granted enhanced SREC benefits. These projects already enjoy a lower system per watt installation cost due to scale and are generally located at host facilities with strong credit making the project financing easier and less costly. Allowing these customers and developers further advantage is a form of corporate welfare that is unnecessary to provide incentives for these projects and is unfair to the ratepayers that do not benefit from these projects.

* * *

We appreciate the opportunity for being able to submit these comments and look forward to participating in future stakeholder meeting sand comment submissions in connection with the Board's implementation of the Solar Act.

Respectfully submitted,

Brian J. Fratus /ss
Chief Executive Officer

-and-

Tim Ferguson /ss
Tim Ferguson
Chief Operating Office

cc: Hesser G. McBride, Jr., Esq.

COMMUNITY ENERGY SOLAR

November 21, 2012

B. Scott Hunter, Renewable Energy Program Administrator
New Jersey Board of Public Utilities (BPU)
44 S. Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350

RE: Comments Regarding Implementation of Subsections (q) (r) and (s) - Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System pursuant to N.J.S.A. 48:3-87 (q), (r), and (s).

Dear Mr. Hunter,

This letter is in response to the invitation to submit public comments made at the BPU stakeholder meeting on Friday November 9, 2012.

Over the past twelve years, Community Energy has developed and built over 500 MW ($1 billion) of wind and solar energy facilities in the region, including the only multi-turbine wind farm in New Jersey (the Jersey Atlantic Wind farm).

Community Energy Solar currently has two grid-supply solar PV projects under construction in New Jersey, West Pemberton Solar (SRP No. SRP11623) and Jacobstown Solar (SRP No. SRP11624). We have several million dollars invested specifically in these two projects --- including full funding for constructing the interconnection facilities, with the interconnection facilities already constructed by PSE&G on the West Pemberton project.

We are pleased to submit the following **comments specifically regarding the application/approval process for Subsection (s) projects.**

We understand and appreciate that the NJ SREC market is currently oversupplied, and that any solution for the treatment of Subsection (s) projects must contribute to a stabilized market going forward. We also believe it's important not to strip SREC Certification from the small subset of projects that are very advanced, have made significant financial investment, and would likely have been able to achieve commercial operation in EY2013 were it not for the uncertainty created by the passage of the Solar Act. We believe this small subset of projects should be allowed to proceed under an expedited designation of *connected to the distribution system* ("Expedited Designation"), as the current uncertainty and delay continues to threaten the viability of these projects.

Consistent with various comments provided at the BPU stakeholder meeting on November 9th, we agree and recommend that the imperative first step -- to avoid further costly delays and stranding good-faith investments in the state -- is for the BPU to grant Expedited Designation as soon as possible to projects that meet the following criteria:

1. A PJM System Impact Study dated 6/30/2011 or prior.

2. SRP Acceptance issued prior to the date of enactment of the Solar Act, which was 7/23/2012 ("Enactment Date").

3. Funding of interconnection facility costs prior to the Enactment Date as demonstrated by:
    a. Posting of security; in the case of a signed three-party Interconnection Services Agreement ("ISA") between the developer, Electric Distribution Company ("EDC"), and PJM; OR
    b. Issuance of initial payment or security for interconnection construction costs from the developer to the EDC; in the case of a two-party Wholesale Market Participation Agreement ("WMPA") and Interconnection Agreement(s) ("IA")[1] between the developer and EDC.

Projects receiving Expedited Designation should be required to complete construction and submit a Final As-Built Packet prior to expiration of their 12-month SRP period, plus a day-for-day extension calculated as the number of days from the Enactment Date until the Expedited Designation date. This day-for-day extension is necessary due to the uncertainty following the enactment of the Solar Act, which has caused projects to wait for clarification from the BPU.

Example: If Expedited Designation were granted 12/17/2012 (147 days after Enactment Date), and Project-A has an SRP Acceptance date of 7/15/2012, Project-A would have until 12/9/2013 (12 months + 147 Days from Enactment Date) to complete construction and submit a Final As-Built Packet.

In order to meet criteria #1, #2 and #3 above, a project would need to have made a significant financial investment and reached the following milestones prior to the Enactment Date:

- PJM Feasibility Study
- PJM Impact Study
- PJM Facility Study (if required)
- Executed ISA or IA
- EDC letter (or executed ISA) confirming that the project's point of interconnection is on the EDC's distribution system

We also recommend that project size be capped at a maximum of 10 MWdc. Projects that meet the above criteria, but are larger than 10 MWdc, could qualify for an Expedited Designation provided the project size is reduced to 10 MWdc or less.

We recommend the criteria for granting Expedited Designation should be applied to both farmland assessed projects that provided notice of intent to qualify by September 21, 2012 (i.e. those in Subsection (s)) and non-farmland assessed grid-connect projects.

Based on our analysis (which of course the Board would need to perform on its own and verify with the EDCs), it is likely that approximately 60 – 80 MWdc within Subsection (s) and approximately 10 - 20 MWdc of non-farmland assessed grid-connect projects could meet the above criteria for Expedited Designation, but only a portion would ultimately get financed and built in the required period of time.

[1] EDC's have different forms of Interconnection Agreements -- they may have a single IA or use multiple documents such an Interconnection Agreement and Construction Agreement. For the purpose of this letter, we consider all such agreements between the developer and EDC to be IAs.

Based on this same analysis, a smaller subset of projects have paid (to the EDC or PJM) the full interconnection cost estimates (i.e., through payment of invoices and security an amount equal to or greater than the estimated interconnection construction cost stipulated by the utilities in the ISA or IA). As the Board seeks to find the appropriate balance of its goals, this stricter interconnection milestone could also be utilized in place criterion number 3) listed above.

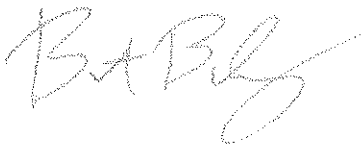
We recommend that remaining Subsection (s) and non-farmland projects that do not meet the above criteria should then be eligible to qualify under Subsection (q) or Subsection (r) of the Solar Act.

We believe our recommended approach to the treatment of grid supply projects would balance the goals of stabilizing the SREC market while avoiding the stranding of very advanced projects that have incurred significant investment prior to the Enactment Date.

Thank you for your time and consideration.

Sincerely,

Community Energy Solar, LLC



Brent Beerley, Manager
100 Matsonford Road
Three Radnor Corporate Center, Suite 300
Radnor, PA 19087
bbeerley@communityenergyinc.com

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:15 AM
To: Deborah Petrisko
Subject: FW: 18 FW: Public comments on Solar Act of 2012

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
317 George Street, Suite 305, New Brunswick, NJ 08901
Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 5:47 PM
To: Linda Wetzel
Subject: 18 FW: Public comments on Solar Act of 2012

#18

From: Scott Lewis [mailto:klughill@aol.com]
Sent: Friday, November 23, 2012 2:19 PM
To: OCE
Subject: Public comments on Solar Act of 2012

To Whom it May Concern:

Although I currently have 13 solar projects in NJ, all located on farm assessed land, I have come to the conclusion that only the 4 projects for which I have PJM and municipal approvals have any chance of being approved for SRECs. After spending 3 years and millions of dollars on these projects - this new law has basically put me out of business. If I cannot salvage at least the 4 projects for which I have municipal approvals - I will go bankrupt! If the purpose of the new law is to stabilize SREC prices and protect farmland and open space from solar development, then why does the law now allow interconnection into 69 Kv lines - these 69 Kv projects are some of the largest and most detrimental projects to SRECs, farmland and open space? Although the new law is unjust - I understand BPU did not make the law and is only trying to implement the law.

My comments pertain to Subsection (q) qualifications:

- I hope that OCE is still planning on clarifying which projects will qualify under Subsection (s) prior to the application deadline for the Subsection (q) projects, as it would be unfair to require the Subsection (q) projects to apply and pay $40,000/MW with the uncertainty of over 700 MW currently applied under Subsection (s).

- I believe the most important qualification, in addition to PJM approval - which I assume all applicants have, is having municipal approval.

- As far as the intention of the law to protect farmland and open space, the second qualification should protect farmland by not qualifying solar projects on Department of Agriculture designated farmland with "prime soils" and open space should be protected by not qualifying solar projects that require clearing of woodlands.

- As I continue to move forward with my projects and pay monthly engineering, legal and PJM invoices, I have still have not applied for SREC registration. At the advice OCE and the Iselin SREC Registration office, I am waiting for fully executed Interconnection and Construction Agreements from First Energy before applying, as First Energy requires from

12 to 18 months to complete the interconnection process on my projects. I know of many developers that registered for SRECs prior to even receiving municipal approvals or any signed agreements with the utility company and of course these registrations have now expired or been withdrawn. I make this point, as I sincerely hope that prior SREC registration is not considered as a qualification under any Subsection of the new law.

Thank you,

Scott Lewis
Green Energy Partners LLC
31 Fairview Hill Road
Newton, NJ 07860
(973) 271-2322

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:15 AM
To: Deborah Petrisko
Subject: FW: 19 FW: comments on solar act

Linda Wetzel
Director, Marketing & Communications
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From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 5:49 PM
To: Linda Wetzel
Subject: 19 FW: comments on solar act

#19

From: Lou Weber [mailto:louweber@earthlink.net]
Sent: Friday, November 23, 2012 1:55 PM
To: OCE
Subject: comments on solar act

To Whom it May Concern:

Although I understand the BPU is in charge of implementing the directives of the solar act and is not responsible for creating the law, my hope is that the BPU will give consideration to projects like ours that spent well over 1 million dollars during a 2 1/2 year period to develop a solar project under the then current rules, regulations and incentives of the State of New Jersey.

Our project, PJM queue number W3-140, is an 8 MW project located on Route 565 and Roy Road, Wantage Township, Sussex County. We have purchased the property, surveyed, engineered, delineated wetlands, made a non-refundable deposit toward the purchase of solar panels, hired accountants, lawyers and engineers, completed all the PJM studies and started preliminary construction.

The following comments pertain to item #1. Implementation of Subsection q:

I believe there should be a qualification/ranking system based on the following criteria (listed in order of importance):

1. Property purchase/ownership - not just under option/contract. We closed on our property for a purchase price of $1,150,000.

2. Municipal approval - obviously a very costly and necessary process. We have municipal approval.

3. As one of the goals of the new solar act is to preserve farmland and open space, consideration should be given to each applicant regarding the viability of the property remaining as farmland or open space should no solar development take place. Although our property is assessed as farmland, it is located in a highway commercial zone, the property is completely cleared and has prior approvals as a soil removal and blending operation - basically an open pit mine. Solar

development is obviously a much less detrimental impact to the environment than this use or any of the other allowed uses in the commercial zone.

4. PJM Impact Study due date - our Impact Study was due 6/30/2011 but was not received from First Energy until 8/3/2011. We paid $10,000 for this study and although we complained to First Energy, PJM and BPU when we did not timely receive the study - we were told by all three that First Energy "was busy and we needed to be patient". This delinquency has now negated our qualification under Subsection s and requires us to pay $40,000/MW under Subsection q.

Note regarding SREC Registration: We have heard rumors that prior SREC registration will be a criteria for qualification under Subsection q. If this is the case, we are being punished for following the rules of SREC registration and the advice of OCE. When we attempted to register our project for SRECs, we were informed by OCE that SREC registration was only good for one year. It was explained to us that many projects were prematurely registering for SRECs and that the registrations would expire long before the project was producing SRECs. Our PJM Impact Study states that "it is estimated that it will take one year from the date of a fully executed Interconnection Construction Service Agreement to complete the upgrades required for the W3-140 project". As per the PJM Impact Study, we were timing our registration for SRECs with receipt our fully executed Interconnection and Construction Agreements from First Energy. Although we have paid our interconnection deposit of $143,200 in March of 2012 and have since submitted the agreements back to First Energy with our signatures, we still have not received the fully executed agreements back from First Energy. As the timeliness of the entire PJM/First Energy process is completely out of our control, it does not seem that the SREC registration expiration guidelines take into account the complications and delays of the interconnection process.

Note regarding Subsection s projects: As per prior conversations with OCE, we understood that OCE was going to qualify projects under Subsection s prior to qualifying projects under Subsection q. I hope that this is still the case as there seems to be approximately 700 MW applied under Subsection s and if all of these projects were "approved/grand fathered" it doesn't seem fair to make Subsection q projects pay $40,000/MW to subscribe into a over-supplied SREC market.

We are not "large out-of-state" or "wall street" developers. We are small, local, born and raised in New Jersey, conservation minded developers mistakenly believing that "green energy" was a noble endeavor. It has taken us 2 1/2 years and 1 1/2 million dollars to acquire the property and all the necessary approvals to construct a solar array. Encouraged into this business by the State of New Jersey with its incentives and laws, we now find ourselves being put out of business by the same government. And now, just to apply for permission to qualify for SRECs we have to pay a $320,000 application fee - which, although we cannot afford to pay, I am sure the "wall street" developers can and will pay the $40,000/MW application fees for their projects. Was the law intended to wipe out the "little" guys and assure less competition for the "big" developers with political connections? Again, I know that BPU did not make this law so I apologize for complaining.

I hope that you will consider my comments.

Thank you,

Louis Weber
Mohawk Associates LLC
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Sparta, NJ 07871
(973) 222-6225

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:15 AM
To: Deborah Petrisko
Subject: FW: 20 FW: S1925 "Solar Act" Comments

Linda Wetzel
Director, Marketing & Communications
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From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 5:49 PM
To: Linda Wetzel
Subject: 20 FW: S1925 "Solar Act" Comments

#20

From: David W. Van Camp [mailto:vancamp@Princeton.EDU]
Sent: Friday, November 23, 2012 1:48 PM
To: OCE
Subject: S1925 "Solar Act" Comments

To whom this may concern,
The following are comments related to the "Implementation of Subsections (q) (r) and (s) - Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System pursuant to N.J.S.A 48:3-87 (q), (r), and (s):
-Determine criteria for these projects that will limit the impact to open space and farmland and stipulate that projects should not be located on parcels with soils classified as prime, of statewide importance or unique. Another criteria could be that sites cannot be located in Rural Planning Areas as defined by the State Development and Redevelopment Plan (SDRP) and large grid-supply solar sites should also not be in any Agricultural Development Area (ADA) as defined by County and State Agricultural Development Boards. Ground-mount solar is very consumptive of land at ~5 acres per MW. This is not meant to preclude on-site net-metered accessory uses of solar on farms.

-Limit eligible project size (MW) and ensure that sites selected do not create incompatible zoning issues (i.e. adjacent to residential, historic and scenic areas). Inherently beneficial use designation of solar by legislation has allowed some large solar installations on sites that are not particularly suitable and has impaired the ability of local Zoning Boards to deny these projects. This acts to negate comprehensive township master planning efforts and can negatively impact the lives of adjacent property owners. It also allows projects to proceed that may not be compatible with other environmental and energy policies.

-Grid-supply projects should not have a detrimental impact to the SREC market. The large over supply of SREC's have hurt the early residential/commercial adopters that relied on these for appropriate payback. The SREC program, while commendable, has become a crutch to the industry. While the socializing of some cost is unavoidable, considerations need to be made on how to lessen the cost of implementation to ratepayers moving forward.

-Consider impacts to the distribution system. The Energy Master Plan recognizes that many grid-supply projects have been and are being proposed for less populated areas of the State. This means energy is being sent to the grid in areas that may not be appropriately engineered to handle intermittent supply. The PJM Feasibility/Impact studies seem very

liberal in their scope of system impacts. In many cases projects require many miles of sub-transmission power lines to be installed. This infrastructure is not necessarily offsetting any costs to upgrade/harden our aging distribution system which should be considered a priority, especially in the wake of hurricane's Irene and Sandy.

I am very glad to see that subsection (t) is exploring ways to incentivize grid-supply solar on brownfields and landfills. My hope is that this will help steer large grid-scale solar off our prime agricultural lands and precious open space.

I am very appreciative of the work that is being done by the BPU to establish criteria that will allow for appropriate development of all renewable energy resources. Thank you for your time and consideration of these comments.

David Van Camp
Burlington Twp., NJ

Public Comments of the Interstate Renewable Energy Council, Inc. on the Solar Act
November 23, 2012

Interstate Renewable Energy Council, Inc.'s written public testimony on New Jersey's **Solar Act of 2012, Senate, No. 1925 (L. 2012, c. 24):** Net Metering Aggregation
Submitted via electronic mail (OCE@bpu.state.nj.us)

The Interstate Renewable Energy Council, Inc. (IREC) appreciates the opportunity to submit public comments to the New Jersey Board of Public Utilities (BPU) on the Solar Act of 2012, Senate, No. 1925 (Solar Act).[1]

At the outset, IREC acknowledges that the Solar Act, despite its limitations, presents the BPU a significant opportunity to improve upon the status quo of net metering in New Jersey. In particular, IREC suggests that the language of the Solar Act presents the opportunity for government customers to utilize the output from a single solar electric generation system (solar facility) to offset usage on **all** qualifying accounts located on the same "facility or property" as the solar facility. This form of aggregate net metering (ANM)[2] may not meet national best practices, but this one aspect of the new law, alone, signals a significant advance in state net metering policy. In this way, IREC suggests that the Solar Act equips the BPU with sufficient tools to implement net metering aggregation beyond what is currently being contemplated.

Background

IREC is a non-profit organization that has worked for three decades to accelerate the sustainable utilization of renewable energy resources through the development of programs and policies that reduce barriers to renewable energy deployment. IREC has participated in interconnection and net metering proceedings before more than forty state public utility commissions during the past five years, including the development and implementation of virtual net metering and ANM policies. Based on its experience in these forums and other venues, IREC has published model rules for net metering that include provisions to allow ANM.[3] IREC has been an active participant in the Net Metering and Interconnection Standards Working Group

[1] IREC's comments are limited to the provisions of the Solar Act that allow a customer with multiple meters to aggregate those meters for purposes of net metering –offsetting that load with generation from the customer's solar electric generating system.
[2] For purposes of these comments, we use ANM interchangeably with the statutory phrase "net metering aggregation".
[3] *See Net Metering Model Rules* (IREC), 2009, subsection (d), *available at* www.irecusa.org/wp-content/uploads/2009/11/IREC_NM_Model_October_2009-1-51.pdf.

and appreciates this additional opportunity to offer input prior to Staff's development and publication of a draft rule.

The Solar Act, as discussed at the November 9th public meeting, appears to explicitly limit the provisions of true net metering accounting—the ability to use kilowatt hours (kWhs) produced by a solar facility to offset usage at a meter—to "the facility or property" on which the solar generating system is located. For all of the customer's other off-site accounts, the Solar Act appears to require any annualized excess generation from the facility hosting the generator to be credited at a wholesale rate.

IREC concurs with the public statements of the Solar Energy Industries Association (SEIA) and other parties that providing credit to off-site accounts at wholesale rates will do little to change the status quo. That is why it is important to provide for the aggregation of meters at a single facility or property, to the full extent allowed by the Solar Act. Presuming that the goal of the Solar Act is to facilitate more net-metered projects, the sharing of wholesale credits among all accounts—other than the sole account associated with the solar facility—will likely prove inadequate to encourage any additional participation in net metering. Importantly, the Solar Act provides the BPU the statutory authority it needs to implement true net metering aggregation for government customer accounts on the same facility or property as a solar facility.

IREC suggests that the BPU focus on the meaning of a "facility or property" and the extent to which full retail net metering aggregation will be permitted for government customers, as discussed below.

I. The Solar Act Allows Government Entities that Exhibit Common Ownership over Multiple Properties and Facilities to Participate in a Net Metering Aggregation Project and Does Not Necessarily Require Qualified Entities to Share the Same Billing Identify or Utility Contact Information.

A primary benefit of net metering aggregation for multiple-metered customers is that it reduces generator costs by allowing a single generator to offset multiple meters, rather than requiring a separate, dedicated generator for each meter. IREC has previously noted this positive aspect of ANM in comments to the BPU[4] and reiterated these benefits in its public comments at

[4] IREC has previously commented on net metering aggregation as a best practice and has consistently encouraged the BPU to allow net metering aggregation through several previous comments. *See,* Comments of the Interstate Renewable Energy Council in response to the BPU's Invitation to Comment

the November 9th meeting. The BPU is certainly aware and understands that the central purpose of ANM is to provide a market accommodation for a small slice of customers who have multiple meters and want to install a generator that produces more energy than the customer consumes through any single meter.

The Solar Act falls significantly short of best practices by restricting this already small slice to an even smaller group of eligible customers: government entities. In IREC's experience with implementation of ANM in other states, the policy benefits all classes. Typical multiple-meter customers include farm owners, school districts, state and local governments, and businesses, but even some residential customers have more than one meter. For these customers, installing and interconnecting multiple net metering facilities is not the most efficient arrangement and can be prohibitively costly. ANM allows states to expand the benefits of net metering by removing significant barriers to these unique customer types, and most states that offer ANM do not limit eligibility, as shown in Table 1. The Solar Act's limitation to government agencies is unfortunate, but clear.

Table 1. Customer Eligibility Limitations in State ANM Policies

Type of Limitation	States that feature this limit	States that do not limit
Only certain classes may engage in ANM	CA, CT, NY	CO, DE, OR, PA, WV, VT, MA, RI, WA, ME

Given the limitation to government agencies, IREC suggests that the BPU make the most of the hand it has been dealt. IREC suggests that the BPU can maximize the effectiveness of net metering aggregation by clarifying what constitutes single ownership by a single government entity. Applicability of the statute to certain types of government customers is more straightforward, and the identity of a single "customer" is intuitive. For example, it is easy to imagine a school district as a single customer, since it is a conglomerate of individual schools operating under a central hierarchy. Thus, it would make sense to treat an elementary school adjacent to a middle school as a single property of a given governmental owner (i.e., a single utility customer), even though those two entities may have unique utility contact and billing

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on New Jersey's Interconnection and Net Metering Rules and Related Policy Considerations (July 8, 2011) (referencing informal comments submitted October 2010 and February 2011 providing background on meter aggregation policies in the United States).

information. It is less clear how the statute treats county and municipal subdivisions where there may be many branches and organizational offshoots to consider. For example, the Solar Act recognizes that a county or county authority could be a qualified customer, but also recognizes that a county agency—a subsidiary entity to the county—could be a qualified customer. This leaves uncertainty about whether a higher division of government could claim to have ownership over an account that is in the name of its subsidiary division.

To clarify this ambiguity, IREC suggests that the BPU apply a simple "buck stops here rule" to determine if multiple accounts are under common ownership of the same qualified government entity that is a "single customer" of the utility. Put another way, IREC suggests that all accounts connected to entities that derive their authority or appropriations from common political subdivision (i.e., state, county, or municipality) should be eligible for net meter aggregation. If the "buck" stops with the state government, then all entities that draw their authority and revenue from the state should be eligible to utilize net metering aggregation with other state-owned accounts that meet the requirements of the Solar Act, irrespective of whether they are in the same agency or branch of the state government and share the same utility contact information.

Interpreting the statute any other way could frustrate the intent of the law to accommodate its intended beneficiary. For example, if there are two state buildings that are next to each other, housing different state-level agencies that have different accounts payable addresses and contacts listed on their utility accounts, the BPU should allow them to aggregate meters for purposes of net metering because they are both under the umbrella of a single customer, the state government. Creating an artificial distinction, such as only allowing accounts under the same account payable address or name to be considered "common ownership", ignores the intent of the statute to open net metering aggregation up to and for the benefit of state, county, and city governments. Indeed, the benefits of net metering aggregation will often accrue up the ladder to the political authority that provides appropriations to agencies for utility purchases. Also, IREC's suggestion recognizes that multiple agencies under the same governmental umbrella often cluster together in government-owned facilities or properties.

In sum, the BPU should maintain flexibility to determine eligibility for participation in net metering aggregation by using a "buck stops here rule" that will avoid frustrating the intent

of the law by allow allowing accounts of the same division of government to engage in net metering aggregation.

II. The BPU Can Interpret "Facility or Property" Broadly to Allow a Government Customer to Offset Usage on All Accounts on the Same "Facility or Property" as the Solar Facility.

The BPU's determination that a government customer's qualifying accounts are on the same "facility or property" is critical because it directly affects the accounting procedure for usage and generation for that customer. Net metering aggregation, according to the Solar Act, "means **a procedure for calculating the combination of the annual energy usage for all facilities** owned by a single customer where such a customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority, and which are served by a solar electric power generating facility." [emphasis added].[5]

A government customer's accounts located on the same "facility or property" as the solar facility are calculated much differently than the other qualified facilities that are off-site. Subsection (e)(4) of the Solar Act addresses two factual circumstances for accounting for the usage of such customers under net metering aggregation: (1) for the "the customer's **facility or property** on which the solar electric generation system is installed..." [emphasis added]; and (2) for "the customer's qualified facilities, with the exception of the facility or property on which the solar electric power generation system is installed...." Under the first circumstance, generation and usage is to be accounted for as traditional net metering, pursuant to subsection (1). Under the second circumstance, the Solar Act simply states that "all electricity used" by those off-site facilities (i.e., accounts) "shall be billed at the full retail rate pursuant to the electric public utility."

The best practice in ANM is to allow all accounts under common ownership to benefit from the output of a single generation facility. The Solar Act falls somewhat short in the limiting the full benefits of on-site generation to a single facility or property.[6] In other states, as shown in

[5] N.J. Stat. § 48:3-87(e)(4).
[6] Pursuant to the Solar Act, the traditional net metering accounting provisions of N.J. Stat. § 48:3-87(e)(1) (subsection (1)), only apply to the "facility or property" on which the solar electric generating facility is located.

Table 2, it is possible for a single generator to offset usage on meters of a single customer on multiple properties that are not necessarily contiguous.

Table 2. Geographic Limitations in State ANM Policies

Type of Limitation	States that feature this limit
ANM within 2 miles of generating facility	PA, WV
ANM within service territory of utility	NY (load zone), DE, CA (boundary of eligible government entity's jurisdiction), CT, VT, WA, ME

Despite this limitation, the BPU can move New Jersey closer to best practices by taking an expansive approach to what constitutes a facility or property.

Consider a few examples. If a school has a maintenance building a block away from its classrooms, it would be reasonable to consider the parcels as a single school property. If City Hall is a block from the City's fire station and police station, they might collectively be considered a single property. In the spirit of the Solar Act, the BPU can adopt a definition of "facility or property" that allows aggregation in practical cases like these. The Solar Act does not require that the definition of a property is limited to contiguous parcels; the BPU can adopt a definition that allows nearby parcels to constitute a single property. For instance, parcels located within a mile of other parcels under the same ownership could reasonably be considered a single property. This would be a rule with clear, discernible boundaries that would accommodate significantly more customers than Staff's apparent and more restrictive interpretation that "facility" refers solely to the account hosting the solar facility.

IREC observes that the term "facility" is not defined in the Solar Act and appears to refer to much more than a single customer account. In common and industry usage, the term "facility" is not strictly synonymous with a single customer account. Indeed, a customer's facility might be a large building or campus served by multiple accounts. For example, in a single state building, several different agencies may be tenants and that entire building would be considered a "facility." Reading the Solar Act to allow only **one** meter the benefit of net metering aggregation conflicts with the commonly understood meaning of the word "facility." If the legislature intended to restrict subsection (1) accounting to a single account, it could have explicitly and plainly said so. That was the interpretation of net metering in New Jersey prior to the Solar Act,

and the BPU can assume that the legislature intended to change policy on this issue by passing the Solar Act.

At the November 9 meeting, Staff indicated that it currently interprets Solar Act subsection (e)(4) to mean that the "host" facility (i.e., the account with the solar electric generating facility) will engage in traditional, subsection (1) net metering, while the excess annual generation will be credited according to the "provider's avoided cost of wholesale power or the PJM electric power pool real-time locational marginal pricing rate."[7] As discussed above, this understanding unnecessarily cramps the meaning of the word "facility" and fails to account for the meaning of the word "property" to encompass more than one account in the first circumstance. IREC does agree with Staff's understanding of the Solar Act's provisions on providing credit at the wholesale rate for any remaining excess generation at the end of the annualized period to any accounts that are beyond the "facility or property" and are rightfully measured under the second circumstance.

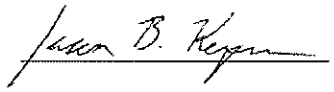
IREC suggests that the BPU can deliver on the underlying intent of the Solar Act to expand the status quo by allowing customers to apply the kWhs generated by the solar facility to offset the kWh usage from the eligible multiple meters on the same "facility or property".

III. Conclusion

IREC appreciates the many opportunities that the BPU has provided the public to comment and participate in the development of net metering and interconnection practices. IREC looks forward to future participation and finding ways to build upon the successes of the New Jersey net metering market. To that end, IREC presently encourages the BPU to expansively interpret the word "property" in the Solar Act to allow multiple-metered customers the ability to aggregate their loads on a property against a single solar electric generation facility and receive full retail credit for any excess generation.

[7] *Id.*

Respectfully Submitted on November 23, 2012,



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23 November 2012

Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Avenue, POB 350
Trenton, NJ 08625-0350

Attn: B. Scott Hunter at OCE@bpu.state.nj.us
Renewable Energy Program Administrator

Re: Comments on Solar Act of 2012 – Subsections (q), (r), and (s)

Mr. Hunter:

On behalf of Land Resource Solutions, a New Jersey based brownfield and landfill redevelopment company, we appreciate the opportunity to submit comments on the Solar Act of 2012 (the "Act"). Our comments presented herein are regarding implementation of subsections (q), (r), and (s) of the Act, which addresses "processes for designating certain grid-supply projects as connected to the distribution system".

Our comments are as follows:

1. Subsection (q) - We ask the Board to consider that in order to meet the stated legislative intent of the Solar Act, that certain projects for which notices have been filed may have a detrimental impact on the SREC market. Approval of projects for which notices have been submitted seeking eligibility would adversely impact the implementation of the Solar Act, is not consistent with the Energy Master Plan, and may have detrimental impact on the SREC market stability, further hampering implementation of the Solar Act.

2. Subsection (s) – We ask the Board to consider that some landfills and brownfields may be located on land assessed as farmland and should be considered as eligible for SRECs and any financial incentive, if properly remediated and/or closed.

We appreciate the opportunity to submit these comments and look forward to working with the Board and the NJDEP and NJ EDA to develop the Solar Act implementing regulations. Please feel free to contact the undersigned at 609.685.3729 or THouser@LRSrenewal.com with any questions or for further input.

Sincerely;
LAND RESOURCE SOLUTIONS, LLC

Trevan J. Houser
President

23 November 2012

Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Avenue, POB 350
Trenton, NJ 08625-0350

Attn: B. Scott Hunter at OCE@bpu.state.nj.us
Renewable Energy Program Administrator

Re: Comments on Solar Act of 2012 – Subsection (t)

Mr. Hunter:

On behalf of Land Resource Solutions, a New Jersey based brownfield and landfill redevelopment company, we appreciate the opportunity to submit comments on the Solar Act of 2012 (the "Act"). Our comments presented herein are regarding implementation of subsection (t) of the Act, which addresses "initiation of a proceeding to establish a program to provide SRECs to solar generation facilities on brownfields, historic fill areas, and properly closed landfills".

Our comments are as follows:

1. We ask the Board to consider that there are two (2) potential types of landfills subject to the Solar Act – those that are currently "properly closed" (of which there are few) and those that may be closed in the future (and which may be closed specifically for the purpose of creating a solar generation facility). We suggest that the benefit to the State of New Jersey for the latter category is double – a landfill closure and a renewable energy facility. We therefore suggest that the certification process allow for landfills to receive a conditional certification upon approval of a Landfill Closure Plan by the NJDEP, which will allow for the initiation of activities required for the solar redevelopment of the property, while the Landfill Closure Plan is being implemented. It would be understood that final SREC approval and any incentive funding provided to such projects would not be released until the landfill closure work is certified complete by NJDEP.

2. Regarding financial incentives to projects located on brownfields, historic fill areas, and properly closed sanitary landfills, we ask the Board to consider that the remediation and redevelopment of brownfields and sanitary landfills is critical to the implementation of the State Plan. Many such facilities exist in the state and are a drain on the municipalities in which they are located, but are well-suited for solar development, thereby making the remediation and closure of such facilities a priority. However, due to the diverse nature of these Sites, a programmatic or prescriptive approach to the financial incentive, which is fair to all projects, is not easily achieved. Therefore we suggest that the financial incentive remain flexible for all projects within constraints determined by the Board. Identification of these costs in the early stages of the project is critical to ensuring financing can be obtained. We suggest a percentage of costs program, approved at the project outset, as one method for accomplishing the required certainty to allow project to proceed.

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3. We strongly suggest that the Board work with the NJDEP to determine the program under which sanitary landfill closures will be conducted and certified – either the Site Remediation Program (presumable by LSRPs) or the Solid and Hazardous Waste Management Program. In order to receive financing, it would be beneficial to remediate many sanitary landfill facilities under the Site Remediation Program to allow for a remedial Action Outcome (RAO) to be issued. This issue should be clarified to ensure such facilities are able to be certified and redeveloped as solar generation facilities, as contemplated in the Solar Act.

4. We ask that the Board consider the fact that in a well-managed redevelopment project, certain activities that are conducted during the remedial work are in actuality required for the redevelopment and allocation of costs between remediation and redevelopment can be difficult. So we would request that the universe of cost that are considered for the financial incentive be flexible to allow for such costs to be considered.

We appreciate the opportunity to submit these comments and look forward to working with the Board and the NJDEP and NJ EDA to develop the Solar Act implementing regulations. Please feel free to contact the undersigned at 609.685.3729 or THouser@LRSrenewal.com with any questions or for further input.

Sincerely;
LAND RESOURCE SOLUTIONS, LLC

Trevan J Houser
President

23 November 2012

Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Avenue, POB 350
Trenton, NJ 08625-0350

Attn: B. Scott Hunter at OCE@bpu.state.nj.us
Renewable Energy Program Administrator

Re: Comments on Solar Act of 2012 – Subsection (w)

Mr. Hunter:

On behalf of Land Resource Solutions, a New Jersey based brownfield and landfill redevelopment company, we appreciate the opportunity to submit comments on the Solar Act of 2012 (the "Act"). Our comments presented herein are regarding implementation of subsection (w) of the Act, which addresses "initiation of a proceeding to consider the need to supplement incentives for net metered projects three megawatts or greater".

Our comments are as follows:

1. We ask the Board to consider that a approval of projects under this subsection may have a detrimental impact on the SREC market and such projects should be considered only upon determination that they enhance the overall solar market, are consistent with the Energy Master Plan, and will not have a detrimental impact on the SREC market.

We appreciate the opportunity to submit these comments and look forward to working with the Board and the NJDEP and NJ EDA to develop the Solar Act implementing regulations. Please feel free to contact the undersigned at 609.685.3729 or THouser@LRSrenewal.com with any questions or for further input.

Sincerely;
LAND RESOURCE SOLUTIONS, LLC

Treven J Houser
President

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:16 AM
To: Deborah Petrisko
Subject: FW: 24 FW: Public Comment on Various proceedings pursuant to the Solar Act of 2012 (L. 2012, c. 24)
Attachments: Cost Info To Henry.docx.docx

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
317 George Street, Suite 305, New Brunswick, NJ 08901
Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 5:52 PM
To: Linda Wetzel
Subject: 24 FW: Public Comment on Various proceedings pursuant to the Solar Act of 2012 (L. 2012, c. 24)

#24

From: King, Henry R. [mailto:HKing@ReedSmith.com]
Sent: Friday, November 23, 2012 8:33 AM
To: OCE
Subject: RE: Public Comment on Various proceedings pursuant to the Solar Act of 2012 (L. 2012, c. 24)

Attached please find further detailed information on the actual costs to develop, construct and operate a solar project on a landfill.

Please let me know if you have any questions.

Regards,

Henry

From: King, Henry R.
Sent: Wednesday, November 21, 2012 3:06 PM
To: 'OCE@bpu.state.nj.us'
Subject: Public Comment on Various proceedings pursuant to the Solar Act of 2012 (L. 2012, c. 24)

The following are my comments regarding subsection t. of the Solar Act. Please feel free to contact me with any questions or comments you may have.

Position: Subsection t. of the Solar Act should provide for additional incentives for solar projects located on a brownfield or properly closed landfill regardless of whether the project has started commercial operations prior to the date of the Solar Act. The additional incentive should be in the form of additional SRECs per MWh of energy produced.

Statutory Interpretation

Subsection t. of the Solar Act requires that the "board shall establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield or properly closed sanitary landfill facility."

Unlike the other new provisions of the Solar Act (subsections q, r and s), subsection t. does not specifically limit the application of the statute to projects placed into service during a particular energy year. The Board should not impose its own time restriction on projects certified under subsection t. and exclude projects that may have been placed into commercial operation prior to the date of passage of the Solar Act.

Subsection t. is meant to cover increased costs for both construction and operation of a solar project located on a brownfield or a properly closed sanitary landfill. While an existing project may have already incurred costs to construct the project, it will incur increased costs to operate the project over the life of the project, and will also pay back its construction loan over the life of the project. Without these additional incentives described in subsection t., these projects face an increased risk of bankruptcy, which could disrupt or deny the benefits that the Board desires associated with the location of solar projects on these sites.

How Much Should the Incentive Be

The additional costs incurred related to construction and operation of a solar project on a landfill include the following:

- Additional engineering costs to address geotechnical and stability issues at the landfill site;
- Additional permit costs related to the need to obtain permits to disrupt the closed landfill;
- Increased construction costs related to limited access of heavy trucks and machinery on the landfill;
- Increased cost on supporting structure design and materials, and cable management;
- Increased cost related to cleaning and decreased production from bird droppings;
- Increased operation costs related to limited access of heavy trucks for panel cleaning
- Increased cost on weed control;
- Increased insurance costs;
- Increased transactional costs related to negotiation of lease and other agreements to address special issues of locating a project on a landfill;
- Increased operational costs related to the need to have operators specially qualified to work on a landfill site; and
- Potential decrease in availability of the solar project due to disruptions based on landfill owner's need to repair landfill; and
- Increased costs to decommission the project.

These costs will not be uniform among all projects located on landfills and brownfields. However, based on discussions with developers of solar projects, the average amount of increased costs is approximately 30% greater compared to a ground-mounted project.

There are also public policy reasons to develop projects on these sites which are advanced by the supplemental financial incentives authorized by section t.

What type of Incentive Should be Provided.

Solar projects approved under subsection t. should received an increased SREC for each MWh of energy delivered. Although the SREC market has its issues to resolve, the use of SRECs as a basis to finance solar projects is well established, and the introduction of a different type of incentive could introduce unnecessary complications.

To account for projects that have already been placed into service, such an enhanced SREC could apply for the remaining energy years in which the project is eligible to receive SRECs. For example, if a solar projects located on a landfill was placed into commercial operation in 2010, and is eligible to receive SRECs through 2025, the enhanced SREC could apply only for energy years 2012 through 2025.

The most beneficial incentive for all solar projects, including projects located on landfills and brownfields, would be to have a long-term contract for the sale of SRECs over the term of the period that the project is eligible to generate SRECS. That contractual cash flow will allow projects to be financed and operate with defined margins for investors. The instability of the SREC market has discouraged SREC buyers from entering into such long-term contracts, which in turn has made the development and operation of solar projects more difficult to manage financially.

Landfill projects are typically not located in an area that would make them appropriate for a net metering. As a result, projects on landfills are typically grid connected and receive only the wholesale energy rate. Another incentive would be to require that the EDCs purchase the power generated from the landfill projects at the retail rate.

Regards,

Henry

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and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

The additional costs incurred to the construction and operation of the solar project on a landfill in New Jersey

Increased Cost for building the solar facility by about +30%:

- Additional cost for engineering , materials and labors to address geotechnical and stability issues at the landfill site;
- Additional permit costs related to the need to obtain permits to disrupt the closed landfill;
- Increased construction costs related to limited access of heavy trucks and machinery on the landfill;
- Increased transactional costs related to negotiation of lease and other agreements to address special issues of locating a project on a landfill;

Increased Cost for operating and maintaining the solar facility by about +15%:

- Increased insurance costs;
- Increased operational costs related to the need to have operators specially qualified to work on a landfill site;
- Increased cost related to cleaning the bird drops (near the active landfill site)
- Increased operation costs related to limited access for panel cleaning
- Increased cost on weed control, our panels are closed to ground, which get more impacted by weeds

Other additional Cost for our solar project on landfill (+10%):

- Potential decrease in availability of the solar project due to disruptions based on landfill owner's need to repair landfill; and
- Increased costs to decommission the project.

The following information is for your reference. In 2011, the benchmark cost for large commercial/utility project was around $4.00/Wdc, while our project cost was $5.30/Wdc, which is 32.5% higher than normal.

Benchmarks considered by the 1603 review team are continuously updated (as warranted) drawing on relevant publicly available information and analyses by various experts, data from existing 1603 applications and other confidential sources, and the 1603 review team's experience with solar PV properties.[7] As of the first quarter of 2011, benchmark solar PV market expectations are as follows:

	Residential	Residential/ Small Commercial	Commercial	Large Commercial/ Utility
Size Range	< 10 kW	10 - 100 kW	100 – 1000 kW	> 1 MW
Typical Size	5 kW	25 kW	250 kW	2 MW
Turnkey Price per W	+/- $7	+/- $6	+/- $5	+/- $4

These prices reflect a high quality of equipment (modules, inverters, racking) installed by reputable companies across the United States and include profit.

*The benchmark information is from the Treasury Department Website.

RenewTricity
All Your Energy Can Be Renewable

November 21, 2012

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, NJ 08625-0350

Dear Ms. Izzo:

We would like to share with the Bureau of Public Utilities commissioners our comments on the implementation of S1925, per your announcement to the New Jersey stakeholders. RenewTricity has been working since 2009 on the development of utility scale grid connected solar projects. We have invested significant amounts of time and money to bring these projects to fruition and now see the "finish line" on the horizon. We are very concerned that somehow the rules and regulations that we have followed up to this point will be altered. For this reason, we are particularly interested in the process that will be implemented regarding Subsection (S) as the future steps of our company are dependent upon the guidelines you issue in the coming days.

Attached you will find a letter from Elliott Shanley of PVOne, LLC, which we helped to draft. We believe it clearly addresses the relevant main issues and we trust that you will weigh our feedback carefully as you make your decisions.

Sincerely yours,

Kenneth Bob
President
Renewtricity, LLC

85 Challenger Road, Suite 501, Ridgefield Park NJ 07660
Tel: +1 (516) 644-5397
Website: http://www.renewtricity.net

PVONE

November 21, 2012

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, NJ 08625-0350

Re: Comments on Subsection (s) of the Solar Act

Dear Secretary Izzo,

We are pleased to submit for your consideration expanded written comments (hereinafter referred to as the "Submission") to augment our oral comments offered at the November 9, 2012 Stakeholders Meeting. With respect to S1925 (hereinafter referred to as the "Solar Act") and specifically as to N.J.S.A 48:3-87(38)(s) (hereinafter referred to as "Subsection (s)"), please find below our further comments.

Executive Summary

This Submission concerns a form of development that consists of the construction of a photovoltaic ("PV") ground mounted grid supply solar farm consisting of post or ballasted racking systems, solar panels, inverters, and transformers on a parcel of land that was previously used as farm land or assessed as farm land, with the electricity generated from that solar farm to be injected into the grid (hereinafter referred to as a "Project") pursuant to an executed Wholesale Marketing Participation Agreement (hereinafter referred to as a "WMPA") with PJM Interconnection, LLC (hereinafter referred to as "PJM"). We are assuming that all Projects referenced in this written Submission filed the Subsection (s) Notice of Intent within 60 days of July 23, 2012 as required by law and that all Projects have a PJM System Impact Study dated on or before June 30, 2011. It is our further assumption that the developers of the Projects had - prior to the passage of the Solar Act - taken all steps and performed all actions required by the then duly adopted laws or regulations for the development of the Project.

The Solar Act was adopted at a time of extreme lack of transparency in the solar industry in New Jersey. Other than to look at the PJM queue and seek to identify Projects in the pipeline, there was no reasonable manner with which to evaluate the number of Projects under development and their development timeframes. The overwhelming concern was that there were thousands of megawatts ("MW") of Projects in the pipeline, the development of which would overwhelm the SREC market and the value of the SREC incentive. There was a further concern that New Jersey's treasured farmland would be plundered and converted into one large contiguous ground mounted solar field.

With the required filings of the Subsection (s) notices of intent, we now know that the remaining universe of Projects of Subsection (s) numbers in the range of 500 MWs, approximately 0.3 percent of the tilled farmland in New Jersey and approximately 13 percent of the projected 3.6

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gigawatts ("GW") Renewable Portfolio Standard ("RPS"). With this information, we can now address the concerns of the perceived negative impact of the Projects. The Board should not regulate, administer, and manage the qualified subsection (s) Projects such that it would create inequitable forfeiture or untimely delay.

Accordingly, it is the contention of this Submission that in order for a Project be deemed "connected to the distribution system" by the Board under Paragraph S of the Solar Act as contemplated by the Solar Act and with the ramifications of that determination, **the developer of a Project need only file a Subsection S application with the BPU with the proof that the System Impact stndy was dated on or before June 30, 2011 and that the Notiee of Intent was filed in accordance with the law.**

Our Submission is supported by the following Comments:

- Subsection (s) Interpretation: Any Project that satisfies the requirements of Subsection (s) should be eligible for SRECS. The criteria is that the Project: (1) has a PJM System Impact Study dated on or before June 30, 2011; and (2) that a Notice of Intent was filed within 60 days of July 23, 2012; and (3) meets all previously required criteria in effect prior to passage of the Solar Act.

- Subsection (s) is Separate from (r): Subsection (s) should be deemed a completely separate application, separate and apart from Subsection (r) of the Act and Subsection (r) should have its own application process. In our view, Subsection (s) was not created to limit SREC eligibility but solely to limit the future development of Farmland with solar fields.

- Consideration of Supply and Demand of SRECs is Not Relevant: In interpreting Subsection (s), the Board should separate the issue of SREC supply from SREC demand as these are two distinct and separate issues. SREC supply and demand issues are distinct and separate matters that should be debated and addressed outside of Subsection (s). The intent of Subsection (s) is to regulate the future development of Projects on farmland, not to address the issues of the supply or demand of SRECS. Moreover, taking into account SREC imbalances would create a regulatory risk where none had existed before the investments in Projects were made, and would strand hundreds of millions of dollars.

- Management of SREC Market Impact: The SREC market is more appropriately addressed through other measures that the Board can implement on its own in order to address supply and demand imbalances. Therefore, potential SREC market impacts from Subsection (s) Project should not be taken into account for the determination of the meaning of Subsection S.

- Legal and Regulatory History Supported Project Development: All of the Subsection (s) Projects moved forward on the basis of a legal and regulatory environment that strongly supported the development of the Projects. SREC eligibility for these Projects began in 2008 and was supported through regulations and laws right up until the passage of the Solar Act.

- Project Development Cycle and Risk: Due to the complexity of the approvals needed, these Projects can take anywhere between 2-4 years before they are energized.

- Stranded Investment: The interpretation of a Subsection (s) filing should be based on a simple objective standard. To interpret otherwise could result in stranded investments of $2 billion in Projects and of $200 million of preconstruction Project development costs. And it could mean that $2 billion of Project investment in these Subsection (s) Projects will not happen in New Jersey at a time when the local economy in New Jersey demands the investment. Given the history surrounding these Projects, equity and fairness would lead to an interpretation of Subsection (s) that was not intended to strand such investment but to simply limit farmland development for the development of future projects.

- Impact on Farmland: Total impact of 500MW would be 0.3% of New Jersey's tillable acres.

Comments

I. Subsection (s) Interpretation.

Legislative Intent

It is undisputed that a part of the overall purpose of the Solar Act was and is to limit and eventually end the "future" growth of Projects on open space and farmland and to encourage the development of projects on landfills and brownfields. The Solar Act is intended to limit grid projects in favor of net meter projects and to encourage the development of Projects on land that State believes to be of little to no value. The Legislature also wanted to take into account existing development on farmland. The legislation contains three separate and distinct Subsections ((q), (r), and (s)) to address the transition away from Projects not on landfills or brownfields.

Subsection (q) allows for the development of 80MWs per year for Energy Year ("EY") 2014-2016, capped at a system size of 10MWs. To be qualified under this section the owner must make a deposit of $40,000 per MW and the yearly capacity must not be satisfied. If the Project is approved but not built, the deposit will be forfeited. The purpose of this section is clearly meant to slowly wean the industry off of Projects by allowing Projects to move forward in the those years, but by imposing a deposit the legislation ensures that these are real Projects with the intention of moving forward due to the risk of losing money.

Subsection (r) concerns all Projects proposed for EY 2017 and beyond that either did not qualify under Subsection (q) or are not eligible under Subsection (s). Subsection (r) requires public notice and opportunity for public comment and hearings. Furthermore, Subsection (r) sets forth a number of subjective standards that the Board can apply in making the determination as to whether or not a Project should be approved. Therefore, Subsection (r) is intended to give the Board discretion on whether to allow the development of Projects that do not qualify under Subsection (q) from EY 2017 forward. It is unlikely that many developers, if any, will even pursue development given the regulatory risk of being denied approval.

Subsection (s) was specifically targeted at ending the development of Projects on farmland. Subsection (s) makes it clear that these Projects have only two ways they can be deemed

connected to the grid: (1) Such Project is approved under Subsection (q); or (2) the Project received a system impact study on or before June 30, 2011 and filed a Notice of Intent to be qualified under this section within 60 days of the passage of the Solar Act. If a Project does not fall under either of these, it is ineligible for SRECs. So it is clear the purpose of this section is to end the development of Projects on farmland. But existing Projects that are either approved under Subsection (q) or meet the criteria of Subsection (s) may proceed and be eligible for SRECs.

II. Subsection (s) Is Distinct from Subsection (r)

Separate Application and Approval Process

As set forth above, Subsection (r) has a distinct and separate purpose from Subsection (s). Subsection (r) concerns the Board's authority to control the development of grid projects for EY 2017 and beyond. It has a completely different set of criteria for approval, in addition to notice and public hearing. The application for Subsection (r) approval will be some time far in the future. Subsection (s) makes clear that farmland Projects have only two avenues for approval. One of those avenues is not Subsection (r). Subsection (s) states in plain language that farmland Projects "shall only be considered connected to the distribution system" if they meet requirement (1) or (2), which again does not include Subsection (r). Therefore, approval under Subsection (s) is a separate application and approval process from Subsection (r).

Subsection (s) Approval

Since Subsection (s) is separate and distinct from Subsection (r) with the goal of ending farmland development, such Projects can be approved provided they meet the simple criteria under Subsection (s): Approval under Subsection (q) or receipt of a system impact study on or before June 30, 2011; and Filed a Notice of Intent to be qualified under this section within 60 days of the passage of Solar Act. There are no subjective criteria in Subsection (s), as is contained in Subsection (r), nor does it require notice and public hearing. If that were required the Legislature would have said so and moreover the inability of a farmland Project to even seek Subsection (r) approval leads to the conclusion that sole purpose of Subsection (s) is to allow but limit the development of farmland Projects that meet the Subsection (s) criteria.

It should be noted that Subsection (s) 2(c) does further state....."and the facility has been approved as "connected to the distribution system" by the Board. We interpret this as the Legislatures acknowledgement that the Project must also meet all the previously required criteria in previous Laws/Regulations regarding eligibility to be deemed connected to the distribution system. In order to be SREC eligible under the prior existing regulations the criteria is to be directly connected to the electric grid at 69 kilovolts or less, and have an approved SRP application.

III. Consideration of SREC Supply and Demand Under this Proceeding

Market Impact is Not Relevant to the Subsection (s) Interpretation.

To date there has been discussion in making a determination on how to interpret Subsection (s) of Solar Act. We respectfully suggest that supply and demand issues of the SRECS and their valuation should be given no consideration in this matter. Subsection (s) was not the means to limit supply of SRECS but rather the means to end the development of Projects on farmland. Clearly, if supply and demand SREC issues were tied to Projects then the Legislation would have limited the amount that can be built on landfills and brownfields or for net-metered projects

There must be a separation of the discussions of Project eligibility from that of market impact. Project eligibility speaks to regulatory risk. SREC market impact and demand issues speak not to regulatory risk but to market value risk.

The Board should not intermix the eligibility issue with the SREC impact issue, and as such create regulatory risk in an effort to control market pricing. The solution to increasing the value of the SREC does not and should not lie in the creation of regulatory risk. If the Board were to act otherwise, the State and the Board would be sending a signal that regulatory continuity and certainty are no longer certain, and this will have negative consequences in the State with regard to future investment, in both solar and any other investments that require regulatory certainty. We strongly encourage the Board to consider the negative consequences of deeming Projects that have met the criteria stipulated under Subsection (s) as ineligible for SRECS. Projects that have achieved that level of completion have invested an appreciable amount of time, energy and capital to get the Project to that point of development, all the while doing so under a legal and regulatory framework that made the Project SREC eligible. Deeming Subsection (s) Projects as ineligible for SRECs would prevent nearly $2 billion in investment into the state and strand over or near $200 million in investments already made.

We suggest that the potential of SREC market impact should not be a factor in determining if a qualified Subsection (s) Project is "connected to the distribution system". The Projects were initiated and funded in good faith by developers that were encouraged to do so by the State of New Jersey via previous legal and regulatory actions. We believe that the Board should accept that these Projects are entitled to the designation as "connected to the distribution system" and look at the market impact as a separate issue that must now be dealt with in light of the fact that these Projects have met their legal hurdles to gain SREC eligibility, and that the negative consequences of ruling them as ineligible far outweighs the negative impacts of market impact.

But to the extent the Board will consider supply and demand we suggest that Board consider three other significant factors set forth below.

IV. Management of SREC Market Impact

The Free Market Should Govern Development

In 2007 the Board began the transition of the New Jersey solar market from rebates to the market based SREC incentive. The goal of that transition was to lower the cost to ratepayer support and to create a solar market that could grow without burdensome and constant regulatory intervention. The creation of the SREC market has largely accomplished those goals. The ability of a solar developer to build in a low priced SREC market results in significant reduction in costs to the ratepayer.

With respect to the Projects under Subsection (s), in order for Projects to be built, a developer would have to move forward in an SREC market with spot prices as low as $60 per megawatt-hour (MWh) and an inability to obtain long term contracts beyond three years. These conditions are making it difficult for financiers to invest in Projects. However, those that go forward would be built at the lowest cost to the Ratepayer to date.

Thus, Projects that can be fianced and built at current SREC levels give the Rate Payer their best return on their investment. This is something the Board should support, not oppose. Whether any of the Projects move forward will be dictated by needs of investors and SREC prices. Many of these Projects ultimately may not go forward due to financial viability, however it should be project economics that determine if these qualified Section (s) Projects get built, not a determination by the Board.

Board Authority to Balance Supply/Demand

The Board has at its disposal a tool to regulate the current RPS when it believes that intervention is warranted. This tool is given to the Board in A3520, the Solar Energy Advancement and Fair Competition Act, Section O, whereby it states:

> "o. The board, in consultation with the Department of Environmental Protection, electric public utilities, the Division of Rate Counsel in the Department of the Public Advocate, affected members of the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in subsection d. of this section, taking into account the cost impacts and public benefits of such increases including...."

If the Board deemed the market impact of the Subsection (s) Projects as so great such that actions are required, the Board has the power to adjust the demand for SRECs to account for the Subsection (s) Projects.

Discriminatory Application of the Law between Grid Supply and Net Metered Projects

As discussed above, it is apparent in the conversation that there is an attempt to limit the supply of SRECs so as to affect SREC prices. As also discussed, we strongly believe that this is not the correct approach, and that the market demand for SRECs should be the mechanism used to mitigate the effect of legitimate supply. That being said, if the Board should determine some or all of the Subsection (s) Projects as ineligible for SRECs, then it would seem as if the BPU is intermixing regulatory risk with market risk, with such approach being discriminatory in that it only targets the supply of grid SRECS and not net meter SRECs. If one were to consider which SREC is more cost effective to the ratepayer, then they would realize that it is the net meter SRECs that are more expensive, and perhaps it is net meter projects that should be regulated, and/or rationed. While we don't believe that this is the correct approach either, it does illuminate how the current dialogue is discriminatory and without merit from a Rate Payer perspective.

After the development of the 500MW of Subsection (s) Projects which should be deemed as connected to the distribution system, the Solar Act effectively eliminates all grid Projects, outside Subsection (q), by making their SREC eligibility subject to Board review. Developers will not take the capital risk to develop a Project far enough along in the development cycle to be able to meet the submittal guidelines called for in Subsection (r), only to potentially be denied. No one

would put that much capital at regulatory risk. Subsection (s) Projects represents only 13% of the 3.6GW Solar RPS.

V. History of the Issuance Grid Supply SRECs in New Jersey.

It is important to understand that all of the investments made to date in the Subsection (s) Projects have been made at the encouragement of the laws and policies of the State. The advent of issuing SRECs for grid tied systems occurred through the passage of S2938 in January 2008. The provision allowing for it is codified at N.J.S.A. 48:3-87(e)(3).

> Such rules shall require the board or its designee to issue a credit or other incentive to those generators that do not use a net meter but otherwise generate electricity derived from a Class I renewable energy source and to issue an enhanced credit or other incentive, including, but not limited to, a solar renewable energy credit, to those generators that generate electricity derived from solar technologies.

The further development and support for grid tied systems came through the passage of amendments to N.J.A.C. 14:8-2.8 and 2.9 to allow solar electric generation facilities interconnected with an electric distribution system that serves New Jersey to generate solar RECs, regardless of whether the facility is located on a customer-generator's premises. The Board concluded "[t]hose facilities provide essential support to the reliability of the supply of electricity in New Jersey." In the Proposed Amendments issued in the New Jersey Register on June16, 2008 the Board set out very strong language on the importance of grid tied solar systems. It stated:

> [C]lean local electric generation is an essential element in any strategy to mitigate congestion on the electric transmission system and protect the reliability of New Jersey's supply of electricity. Larger-scale solar electric generation facilities in New Jersey, regardless of whether they are located on a customer-generator's premises, help to maintain the reliability of local electricity supplies in New Jersey. ... Specifically, those facilities provide local supplies of "reactive power" at the times that they are needed most. Reactive power is the energy supplied to create or be stored in electric or magnetic fields in and around electrical equipment. ... Local supplies of reactive power are essential, beeause reactive power can be transmitted only over relatively short distances during times of high electricity demand. The ability of larger solar facilities to provide local reactive power tends to occur at or near times of peak demand, when it is needed most.

This unequivocal language by the Board on the importance of grid tied solar demonstrates the Board's and the State's commitment to such generation. And such commitment sends a clear message to developers that the State is supportive of grid tied systems and that they should go out and build them.

The State's position on grid tied solar was further solidified with the passage of the Solar Energy Advancement and Fair Competition Act passed in January 2010. The legislation amended the definition of an SREC, 48:3-51, to make clear that under the law grid tied solar systems were entitled to the issuance of SRECs.

> "Solar renewable energy certificate" or "SREC" means a certificate issued by the board or its designee, representing one megawatt hour (MWh) of photovoltaic electricity generated solar energy that is generated by a facility connected to the distribution

system in this State and has value driven based on the market.

Based on the legislative and regulatory history on the issuance of SRECs for solar grid tied system, it was more than reasonable for developers to rely on the state of law to go out and build systems with the expectation they would be issued SRECs. There was no indication from the State or the Board that the law would be changed such that a grid tied system could be determined to be not connected to the distribution system, thereby rendering a Project either under development or fully developed valueless. In reliance on this law investments were made on Projects.

VI. Project Development Cycle and Risk

Project Development Cycle

The development of a grid supply project is much more complicated and time consuming than a net meter project. The development cycle for a Project is anywhere from 2 to 4 years, and includes the following:

- Confirm land suitability for solar and interconnection
- Take control of a large area of land
- Prepare engineering for PJM submittals
- Submit Small Generation Interconnection Application to PJM
    - Feasibility Study
    - Systems Impact Study
- Execute PJM Wholesale Market Participants Agreement
- Execute Utility Interconnection Agreement
- Execute Utility Construction Agreement
- Prepare all civil engineering documents
- Apply to local township for Major Site Plan Approval
- Apply for Land Use Variance
- Apply for applicable state, and county environmental permits
- Construction
- Interconnection

The above represent the high-level development milestones for a grid supply Project. Just the PJM requirements alone can take over 12-18 months to complete. Add to this a timeframe of up to 36 months for interconnection by the utility and an 8-12 month construction timeframe, grid projects have a development cycle from inception to fully energized in the range of 2 to 4 years.

When SREC eligibility was codified for grid Projects in A3520 in January 2010, and the Regulatory Risk that had been associated with SREC's was removed, grid supply developers were then confident that the State supported grid supply. So at the encouragement of this Act, and of previous BPU regulations that supported the benefits of grid supply, developers began to invest into the development of these Projects.

As stated above, the full cycle time for grid Projects is 2-4 years. Given that the Solar Act was passed in July 2012 only 2.5 years after the passage of A3520, essentially all investment in grid Projects during that 2.5 year period could be stranded. These investments, if deemed as NOT connected to the distribution system, will be stranded, as there was not enough development time to get the Project completed in the window between A3520 and the Solar Act.

Project Development Risk

As noted above, there are two succinctly different types of Risk when speaking of SRECS, with one being acceptable (market risk) and the other not being acceptable (regulatory risk). Developers take market risk, that being the risk of SREC pricing, but no developer or investor takes regulatory risk, which is why there was no grid supply development until the State passed several rules and laws that removed the regulatory risk element. Developers or investors would not have come forward if they knew that in the middle of their development cycle the State would reintroduce regulatory risk, and disqualify their Project from SREC eligibility.

VII. Stranded Investment.

It is worth highlighting on its own the potential for causing significant stranded investment if Subsection (s) Projects are not deemed eligible for SRECs even though they have satisfied the criteria of Subsection (s). Subsection (s) Projects were developed with the previous encouragement from both the Legislature and the Board. The Board in fact strongly encouraged developers to go out and build such Projects. Given such history of grid eligibility for SRECs, the intent of Subsection (s) must be in accordance as was set forth above. In reviewing the stranded investment the Board should consider these points.

VII. Impact on Farmland

The Solar Act will end the development on farmland to preserve such land. But the impact of the Subsection (s) Projects should not be a factor, not only because the point of Solar Act was to end future development not past, but also because this limited number of Projects will have nominal impact on farmland. The Board should consider the following.

- Solar is relatively temporary as compared to other forms of development and as such it can be argued that grid solar does preserve farmland for the future.
- Solar allows farmland to recharge.
- Now that we know the universe of the Subsection (s) Projects as approximately 500MW, that would be equivalent to about 3,000 acres in total, as compared to the 800,000 acres of available tillable farmland in NJ, representing 0.3 percent of the total tillable acres.
- At the same time that this is being designed to preserve farmland, other State Agencies are relaxing and reducing "red tape" to help encourage development on these same lands for other forms of development, for example, housing

Conclusion

We implore the Board to consider the options of flexibility that is at their control when designing the implementation of this law.

We strongly recommend that the final interpretation of Subsection (s) is such that if your Project meets the criteria of the section, i.e.; has an SIS date on or before June 30, 2011 and has given their Notice of Intent within the 60 day window, that those Projects shall be determined to be "connected to the Distribution System"

The Application Process should be no more cumbersome, if not exactly the same as, the filing of the Notice of Intent.

Respectfully,

Elliott Shanley
PVOne, LLC

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November 22, 2012

Client/Matter No. 17799/1

Via Email (OCE@bpu.state.nj.us)
Board of Public Utilities
State of New Jersey
44 South Clinton Avenue - 9th Floor
PO Box 350
Trenton, NJ 08625-0350

RE: Response to Request for Public Comments
New Jersey Solar Act, L. 2012, c. 24: Subsection (s)
***Developer*: EAI Investments, LLC**
***Project*: Hamptons at Pohatcong Solar Project, Pohatcong, NJ**
***PJM Queue No.*: W4-073**

Dear Madam or Sir:

What criteria should the BPU consider in certifying solar projects under the Solar Act's subsection (s)? Our client, EAI Investments, LLC ("EAI"), suggests the following:

1. Has the project received final, unappealable municipal land use approval?

2. Does the project have final, unappealable approval from other agencies having jurisdiction (i.e., the NJDEP, the Highlands Council, county planning board, and local soil conservation district)?

3. Has the project's developer entered into an interconnection agreement?

4. Has the project's developer entered into a construction agreement?

5. Has the project's developer entered into a wholesale market participation agreement?

6. Is the project registered with New Jersey's SREC Registration Program?

Each of the six objective criteria is an important milestone in the development of a solar project. Where the answers to these questions are "yes," it is more likely that (a) the project will be built and (b) the developer has incurred significant costs in bringing the project to the point of

being buildable and will suffer correspondingly significant financial harm if the project is not certified.

But, the subsection (s) equation cannot be based solely on *objective* criteria. EAI also submits that the BPU should make a *subjective* evaluation of a project's overall significance and importance. Here, EAI's project is no less than a constitutional necessity. Certainly, that fact should, in addition to any objective criteria, weigh in favor of subsection (s) certification.

Of course, this last point requires further explanation. What makes EAI's project unique is that it is the product of *Mt. Laurel* litigation that has spanned the past quarter-century. In fact, the project is the lynchpin of a 2011 settlement that could (a) end the litigation and (b) allow Pohatcong Township to achieve *Mt. Laurel* compliance. But, the subsection (s) certification process has cast the efficacy of the project into doubt and, accordingly, the 2011 settlement hangs in the balance.

EAI originally had court-ordered approval to construct 528 residential units on a 170-acre tract in Pohatcong Township. Under the referenced settlement, EAI essentially agreed to sell its development rights to 125 of these 170 acres. These 125 acres will be deed-restricted and preserved as open space.

The reduction in developable land meant a corresponding reduction in units: from the original 528 to 262. The 262 units, for which EAI has received final municipal approval, include 44 *Mt. Laurel* units. These units will bring Pohatcong into full compliance with its current *Mt. Laurel* obligation.

For the sale of its development rights, and the corresponding reduction in units, EAI required some form of compensation. The parties first tried to secure state and local preservation funds for this purpose. But, after a year of searching with no results, the parties arrived at an alternative.

The alternative was that EAI can build its solar project on the preserved 125 acres. The income from the solar project will offset EAI's lost income from the relinquishment of its development rights and the reduced unit count. Once the project is decommissioned, the land will become preserved open space. The fact that the land will become preserved open space upon the project's decommissioning will substantially mitigate any negative effects associated with the development.

Again, the solar project is the *lynchpin* of this 2011 settlement. Many times, New Jersey's courts have declared that the EAI parcel is the only suitable location in Pohatcong for the development of affordable housing. If the solar project is not certified under subsection (s), it

will not be financially viable and, as such, will not be built. If the solar project is not built, the residential development will not go forward. If the residential development does not go forward, Pohatcong will lose 44 *Mt. Laurel* units. If these units are not constructed, Pohatcong will remain deficient in its constitutional obligation to provide *Mt. Laurel* housing, with no realistic ability to achieve compliance.

Of course, the constitutional significance of EAI's solar project should weigh heavily in favor of certification. But, in addition to being *subjectively* "important," the EAI solar project meets the seven suggested *objective* criteria as well. The project received final, unappealable municipal approval in early 2012; EAI has entered into interconnection, construction, and wholesale market participation agreements; and the project is registered for the SREC Registration Program.

Given the foregoing, EAI submits that its project should receive priority consideration for subsection (s) certification.

Thank you for your consideration of this matter. If you have any questions with respect to anything in this letter, please let us know. At your convenience, please execute the enclosed copy of this letter and return it to our office in the envelope provided.

Very truly yours,

MICHAEL A. BRUNO

MAB/mh
Enc
cc: Kristi Izzo, Secretary of the Board of Public Utilities
John Garvey, Board of Public Utilities
Michael Winka, Director, Office of Clean Energy
Scott Hunter, Office of Clean Energy
Steven P. Gouin, Esq.

Docs #1155794-v1

PVONE

November 21, 2012

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, NJ 08625-0350

Re: Comments on Subsection (s) of the Solar Act

Dear Secretary Izzo,

We are pleased to submit for your consideration expanded written comments (hereinafter referred to as the "Submission") to augment our oral comments offered at the November 9, 2012 Stakeholders Meeting. With respect to S1925 (hereinafter referred to as the "Solar Act") and specifically as to N.J.S.A 48:3-87(38)(s) (hereinafter referred to as "Subsection (s)"), please find below our further comments.

Executive Summary

This Submission concerns a form of development that consists of the construction of a photovoltaic ("PV") ground mounted grid supply solar farm consisting of post or ballasted racking systems, solar panels, inverters, and transformers on a parcel of land that was previously used as farm land or assessed as farm land, with the electricity generated from that solar farm to be injected into the grid (hereinafter referred to as a "Project") pursuant to an executed Wholesale Marketing Participation Agreement (hereinafter referred to as a "WMPA") with PJM Interconnection, LLC (hereinafter referred to as "PJM"). We are assuming that all Projects referenced in this written Submission filed the Subsection (s) Notice of Intent within 60 days of July 23, 2012 as required by law and that all Projects have a PJM System Impact Study dated on or before June 30, 2011. It is our further assumption that the developers of the Projects had - prior to the passage of the Solar Act - taken all steps and performed all actions required by the then duly adopted laws or regulations for the development of the Project.

The Solar Act was adopted at a time of extreme lack of transparency in the solar industry in New Jersey. Other than to look at the PJM queue and seek to identify Projects in the pipeline, there was no reasonable manner with which to evaluate the number of Projects under development and their development timeframes. The overwhelming concern was that there were thousands of megawatts ("MW") of Projects in the pipeline, the development of which would overwhelm the SREC market and the value of the SREC incentive. There was a further concern that New Jersey's treasured farmland would be plundered and converted into one large contiguous ground mounted solar field.

With the required filings of the Subsection (s) notices of intent, we now know that the remaining universe of Projects of Subsection (s) numbers in the range of 500 MWs, approximately 0.3 percent of the tilled farmland in New Jersey and approximately 13 percent of the projected 3.6

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- Legal and Regulatory History Supported Project Development: All of the Subsection (s) Projects moved forward on the basis of a legal and regulatory environment that strongly supported the development of the Projects. SREC eligibility for these Projects began in 2008 and was supported through regulations and laws right up until the passage of the Solar Act.

- Project Development Cycle and Risk: Due to the complexity of the approvals needed, these Projects can take anywhere between 2-4 years before they are energized.

- Stranded Investment: The interpretation of a Subsection (s) filing should be based on a simple objective standard. To interpret otherwise could result in stranded investments of $2 billion in Projects and of $200 million of preconstruction Project development costs. And it could mean that $2 billion of Project investment in these Subsection (s) Projects will not happen in New Jersey at a time when the local economy in New Jersey demands the investment. Given the history surrounding these Projects, equity and fairness would lead to an interpretation of Subsection (s) that was not intended to strand such investment but to simply limit farmland development for the development of future projects.

- Impact on Farmland: Total impact of 500MW would be 0.3% of New Jersey's tillable acres.

Comments

I. Subsection (s) Interpretation.

Legislative Intent

It is undisputed that a part of the overall purpose of the Solar Act was and is to limit and eventually end the "future" growth of Projects on open space and farmland and to encourage the development of projects on landfills and brownfields. The Solar Act is intended to limit grid projects in favor of net meter projects and to encourage the development of Projects on land that State believes to be of little to no value. The Legislature also wanted to take into account existing development on farmland. The legislation contains three separate and distinct Subsections ((q), (r), and (s)) to address the transition away from Projects not on landfills or brownfields.

Subsection (q) allows for the development of 80MWs per year for Energy Year ("EY") 2014-2016, capped at a system size of 10MWs. To be qualified under this section the owner must make a deposit of $40,000 per MW and the yearly capacity must not be satisfied. If the Project is approved but not built, the deposit will be forfeited. The purpose of this section is clearly meant to slowly wean the industry off of Projects by allowing Projects to move forward in the those years, but by imposing a deposit the legislation ensures that these are real Projects with the intention of moving forward due to the risk of losing money.

Subsection (r) concerns all Projects proposed for EY 2017 and beyond that either did not qualify under Subsection (q) or are not eligible under Subsection (s). Subsection (r) requires public notice and opportunity for public comment and hearings. Furthermore, Subsection (r) sets forth a number of subjective standards that the Board can apply in making the determination as to whether or not a Project should be approved. Therefore, Subsection (r) is intended to give the Board discretion on whether to allow the development of Projects that do not qualify under Subsection (q) from EY 2017 forward. It is unlikely that many developers, if any, will even pursue development given the regulatory risk of being denied approval.

Subsection (s) was specifically targeted at ending the development of Projects on farmland. Subsection (s) makes it clear that these Projects have only two ways they can be deemed

connected to the grid: (1) Such Project is approved under Subsection (q); or (2) the Project received a system impact study on or before June 30, 2011 and filed a Notice of Intent to be qualified under this section within 60 days of the passage of the Solar Act. If a Project does not fall under either of these, it is ineligible for SRECs. So it is clear the purpose of this section is to end the development of Projects on farmland. But existing Projects that are either approved under Subsection (q) or meet the criteria of Subsection (s) may proceed and be eligible for SRECs.

II. Subsection (s) Is Distinct from Subsection (r)

Separate Application and Approval Process

As set forth above, Subsection (r) has a distinct and separate purpose from Subsection (s). Subsection (r) concerns the Board's authority to control the development of grid projects for EY 2017 and beyond. It has a completely different set of criteria for approval, in addition to notice and public hearing. The application for Subsection (r) approval will be some time far in the future. Subsection (s) makes clear that farmland Projects have only two avenues for approval. One of those avenues is not Subsection (r). Subsection (s) states in plain language that farmland Projects "shall only be considered connected to the distribution system" if they meet requirement (1) or (2), which again does not include Subsection (r). Therefore, approval under Subsection (s) is a separate application and approval process from Subsection (r).

Subsection (s) Approval

Since Subsection (s) is separate and distinct from Subsection (r) with the goal of ending farmland development, such Projects can be approved provided they meet the simple criteria under Subsection (s): Approval under Subsection (q) or receipt of a system impact study on or before June 30, 2011; and Filed a Notice of Intent to be qualified under this section within 60 days of the passage of Solar Act. There are no subjective criteria in Subsection (s), as is contained in Subsection (r), nor does it require notice and public hearing. If that were required the Legislature would have said so and moreover the inability of a farmland Project to even seek Subsection (r) approval leads to the conclusion that sole purpose of Subsection (s) is to allow but limit the development of farmland Projects that meet the Subsection (s) criteria.

It should be noted that Subsection (s) 2(c) does further state....."and the facility has been approved as "connected to the distribution system" by the Board. We interpret this as the Legislatures acknowledgement that the Project must also meet all the previously required criteria in previous Laws/Regulations regarding eligibility to be deemed connected to the distribution system. In order to be SREC eligible under the prior existing regulations the criteria is to be directly connected to the electric grid at 69 kilovolts or less, and have an approved SRP application.

III. Consideration of SREC Supply and Demand Under this Proceeding

Market Impact is Not Relevant to the Subsection (s) Interpretation.

To date there has been discussion in making a determination on how to interpret Subsection (s) of Solar Act. We respectfully suggest that supply and demand issues of the SRECS and their valuation should be given no consideration in this matter. Subsection (s) was not the means to limit supply of SRECS but rather the means to end the development of Projects on farmland. Clearly, if supply and demand SREC issues were tied to Projects then the Legislation would have limited the amount that can be built on landfills and brownfields or for net-metered projects

There must be a separation of the discussions of Project eligibility from that of market impact. Project eligibility speaks to regulatory risk. SREC market impact and demand issues speak not to regulatory risk but to market value risk.

The Board should not intermix the eligibility issue with the SREC impact issue, and as such create regulatory risk in an effort to control market pricing. The solution to increasing the value of the SREC does not and should not lie in the creation of regulatory risk. If the Board were to act otherwise, the State and the Board would be sending a signal that regulatory continuity and certainty are no longer certain, and this will have negative consequences in the State with regard to future investment, in both solar and any other investments that require regulatory certainty. We strongly encourage the Board to consider the negative consequences of deeming Projects that have met the criteria stipulated under Subsection (s) as ineligible for SRECS. Projects that have achieved that level of completion have invested an appreciable amount of time, energy and capital to get the Project to that point of development, all the while doing so under a legal and regulatory framework that made the Project SREC eligible. Deeming Subsection (s) Projects as ineligible for SRECs would prevent nearly $2 billion in investment into the state and strand over or near $200 million in investments already made.

We suggest that the potential of SREC market impact should not be a factor in determining if a qualified Subsection (s) Project is "connected to the distribution system". The Projects were initiated and funded in good faith by developers that were encouraged to do so by the State of New Jersey via previous legal and regulatory actions. We believe that the Board should accept that these Projects are entitled to the designation as "connected to the distribution system" and look at the market impact as a separate issue that must now be dealt with in light of the fact that these Projects have met their legal hurdles to gain SREC eligibility, and that the negative consequences of ruling them as ineligible far outweighs the negative impacts of market impact.

But to the extent the Board will consider supply and demand we suggest that Board consider three other significant factors set forth below.

IV. Management of SREC Market Impact

The Free Market Should Govern Development

In 2007 the Board began the transition of the New Jersey solar market from rebates to the market based SREC incentive. The goal of that transition was to lower the cost to ratepayer support and to create a solar market that could grow without burdensome and constant regulatory intervention. The creation of the SREC market has largely accomplished those goals. The ability of a solar developer to build in a low priced SREC market results in significant reduction in costs to the ratepayer.

With respect to the Projects under Subsection (s), in order for Projects to be built, a developer would have to move forward in an SREC market with spot prices as low as $60 per megawatt-hour (MWh) and an inability to obtain long term contracts beyond three years. These conditions are making it difficult for financiers to invest in Projects. However, those that go forward would be built at the lowest cost to the Ratepayer to date.

Thus, Projects that can be fianced and built at current SREC levels give the Rate Payer their best return on their investment. This is something the Board should support, not oppose. Whether any of the Projects move forward will be dictated by needs of investors and SREC prices. Many of these Projects ultimately may not go forward due to financial viability, however it should be project economics that determine if these qualified Section (s) Projects get built, not a determination by the Board.

Board Authority to Balance Supply/Demand

The Board has at its disposal a tool to regulate the current RPS when it believes that intervention is warranted. This tool is given to the Board in A3520, the Solar Energy Advancement and Fair Competition Act, Section O, whereby it states:

> "o. The board, in consultation with the Department of Environmental Protection, electric public utilities, the Division of Rate Counsel in the Department of the Public Advocate, affected members of the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in subsection d. of this section, taking into account the cost impacts and public benefits of such increases including...."

If the Board deemed the market impact of the Subsection (s) Projects as so great such that actions are required, the Board has the power to adjust the demand for SRECs to account for the Subsection (s) Projects.

Discriminatory Application of the Law between Grid Supply and Net Metered Projects

As discussed above, it is apparent in the conversation that there is an attempt to limit the supply of SRECs so as to affect SREC prices. As also discussed, we strongly believe that this is not the correct approach, and that the market demand for SRECs should be the mechanism used to mitigate the effect of legitimate supply. That being said, if the Board should determine some or all of the Subsection (s) Projects as ineligible for SRECs, then it would seem as if the BPU is intermixing regulatory risk with market risk, with such approach being discriminatory in that it only targets the supply of grid SRECS and not net meter SRECs. If one were to consider which SREC is more cost effective to the ratepayer, then they would realize that it is the net meter SRECs that are more expensive, and perhaps it is net meter projects that should be regulated, and/or rationed. While we don't believe that this is the correct approach either, it does illuminate how the current dialogue is discriminatory and without merit from a Rate Payer perspective.

After the development of the 500MW of Subsection (s) Projects which should be deemed as connected to the distribution system, the Solar Act effectively eliminates all grid Projects, outside Subsection (q), by making their SREC eligibility subject to Board review. Developers will not take the capital risk to develop a Project far enough along in the development cycle to be able to meet the submittal guidelines called for in Subsection (r), only to potentially be denied. No one

would put that much capital at regulatory risk. Subsection (s) Projects represents only 13% of the 3.6GW Solar RPS.

V. History of the Issuance Grid Supply SRECs in New Jersey.

It is important to understand that all of the investments made to date in the Subsection (s) Projects have been made at the encouragement of the laws and policies of the State. The advent of issuing SRECs for grid tied systems occurred through the passage of S2938 in January 2008. The provision allowing for it is codified at N.J.S.A. 48:3-87(e)(3).

> Such rules shall require the board or its designee to issue a credit or other incentive to those generators that do not use a net meter but otherwise generate electricity derived from a Class I renewable energy source and to issue an enhanced credit or other incentive, including, but not limited to, a solar renewable energy credit, to those generators that generate electricity derived from solar technologies.

The further development and support for grid tied systems came through the passage of amendments to N.J.A.C. 14:8-2.8 and 2.9 to allow solar electric generation facilities interconnected with an electric distribution system that serves New Jersey to generate solar RECs, regardless of whether the facility is located on a customer-generator's premises. The Board concluded "[t]hose facilities provide essential support to the reliability of the supply of electricity in New Jersey." In the Proposed Amendments issued in the New Jersey Register on June16, 2008 the Board set out very strong language on the importance of grid tied solar systems. It stated:

> [C]lean local electric generation is an essential element in any strategy to mitigate congestion on the electric transmission system and protect the reliability of New Jersey's supply of electricity. Larger-scale solar electric generation facilities in New Jersey, regardless of whether they are located on a customer-generator's premises, help to maintain the reliability of local electricity supplies in New Jersey. ... Specifically, those facilities provide local supplies of "reactive power" at the times that they are needed most. Reactive power is the energy supplied to create or be stored in electric or magnetic fields in and around electrical equipment. ... Local supplies of reactive power are essential, because reactive power can be transmitted only over relatively short distances during times of high electricity demand. The ability of larger solar facilities to provide local reactive power tends to occur at or near times of peak demand, when it is needed most.

This unequivocal language by the Board on the importance of grid tied solar demonstrates the Board's and the State's commitment to such generation. And such commitment sends a clear message to developers that the State is supportive of grid tied systems and that they should go out and build them.

The State's position on grid tied solar was further solidified with the passage of the Solar Energy Advancement and Fair Competition Act passed in January 2010. The legislation amended the definition of an SREC, 48:3-51, to make clear that under the law grid tied solar systems were entitled to the issuance of SRECs.

> "Solar renewable energy certificate" or "SREC" means a certificate issued by the board or its designee, representing one megawatt hour (MWh) of photovoltaic electricity generated solar energy that is generated by a facility connected to the distribution

system in this State and has value driven based on the market.

Based on the legislative and regulatory history on the issuance of SRECs for solar grid tied system, it was more than reasonable for developers to rely on the state of law to go out and build systems with the expectation they would be issued SRECs. There was no indication from the State or the Board that the law would be changed such that a grid tied system could be determined to be not connected to the distribution system, thereby rendering a Project either under development or fully developed valueless. In reliance on this law investments were made on Projects.

VI. Project Development Cycle and Risk

Project Development Cycle

The development of a grid supply project is much more complicated and time consuming than a net meter project. The development cycle for a Project is anywhere from 2 to 4 years, and includes the following:

- Confirm land suitability for solar and interconnection
- Take control of a large area of land
- Prepare engineering for PJM submittals
- Submit Small Generation Interconnection Application to PJM
    - Feasibility Study
    - Systems Impact Study
- Execute PJM Wholesale Market Participants Agreement
- Execute Utility Interconnection Agreement
- Execute Utility Construction Agreement
- Prepare all civil engineering documents
- Apply to local township for Major Site Plan Approval
- Apply for Land Use Variance
- Apply for applicable state, and county environmental permits
- Construction
- Interconnection

The above represent the high-level development milestones for a grid supply Project. Just the PJM requirements alone can take over 12-18 months to complete. Add to this a timeframe of up to 36 months for interconnection by the utility and an 8-12 month construction timeframe, grid projects have a development cycle from inception to fully energized in the range of 2 to 4 years.

When SREC eligibility was codified for grid Projects in A3520 in January 2010, and the Regulatory Risk that had been associated with SREC's was removed, grid supply developers were then confident that the State supported grid supply. So at the encouragement of this Act, and of previous BPU regulations that supported the benefits of grid supply, developers began to invest into the development of these Projects.

As stated above, the full cycle time for grid Projects is 2-4 years. Given that the Solar Act was passed in July 2012 only 2.5 years after the passage of A3520, essentially all investment in grid Projects during that 2.5 year period could be stranded. These investments, if deemed as NOT connected to the distribution system, will be stranded, as there was not enough development time to get the Project completed in the window between A3520 and the Solar Act.

Project Development Risk

As noted above, there are two succinctly different types of Risk when speaking of SRECS, with one being acceptable (market risk) and the other not being acceptable (regulatory risk). Developers take market risk, that being the risk of SREC pricing, but no developer or investor takes regulatory risk, which is why there was no grid supply development until the State passed several rules and laws that removed the regulatory risk element. Developers or investors would not have come forward if they knew that in the middle of their development cycle the State would reintroduce regulatory risk, and disqualify their Project from SREC eligibility.

VII. Stranded Investment.

It is worth highlighting on its own the potential for causing significant stranded investment if Subsection (s) Projects are not deemed eligible for SRECs even though they have satisfied the criteria of Subsection (s). Subsection (s) Projects were developed with the previous encouragement from both the Legislature and the Board. The Board in fact strongly encouraged developers to go out and build such Projects. Given such history of grid eligibility for SRECs, the intent of Subsection (s) must be in accordance as was set forth above. In reviewing the stranded investment the Board should consider these points.

VII. Impact on Farmland

The Solar Act will end the development on farmland to preserve such land. But the impact of the Subsection (s) Projects should not be a factor, not only because the point of Solar Act was to end future development not past, but also because this limited number of Projects will have nominal impact on farmland. The Board should consider the following.

- Solar is relatively temporary as compared to other forms of development and as such it can be argued that grid solar does preserve farmland for the future.
- Solar allows farmland to recharge.
- Now that we know the universe of the Subsection (s) Projects as approximately 500MW, that would be equivalent to about 3,000 acres in total, as compared to the 800,000 acres of available tillable farmland in NJ, representing 0.3 percent of the total tillable acres.
- At the same time that this is being designed to preserve farmland, other State Agencies are relaxing and reducing "red tape" to help encourage development on these same lands for other forms of development, for example, housing

Conclusion

We implore the Board to consider the options of flexibility that is at their control when designing the implementation of this law.

We strongly recommend that the final interpretation of Subsection (s) is such that if your Project meets the criteria of the section, i.e.; has an SIS date on or before June 30, 2011 and has given their Notice of Intent within the 60 day window, that those Projects shall be determined to be "connected to the Distribution System"

The Application Process should be no more cumbersome, if not exactly the same as, the filing of the Notice of Intent.

Respectfully,

Elliott Shanley
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609-394-1166 or 0888

November 22, 2012

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Development of Net Metering Aggregation Standards pursuant to N.J.S.A. 48:3-87 (e) (4).

Dear Secretary Izzo,

You have requested public comment on Net Metering Aggregation Standards being developed pursuant to N.J.S.A. 48:3-87(e)(4) of the new Solar Act. We are respectfully submitting the comments below.

Net Metering Aggregation

The purpose of this provision is to allow the taxpayers of the State of New Jersey generally to benefit from savings to be obtained against energy costs by any State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority. This provision was intended to significantly empower the entities that qualify as Hosts, to permit the Hosts to not only earn significant savings in their energy costs, but also to reclaim landfills, brownfields, and open space that were being underutilized and/or untaxed, to generate employment, tax revenues and, lastly, to contribute to the RPS.

The idea is to allow one of the foregoing entities to net meter a host facility **(Solar Act uses the term "Customer's Solar Electric Power Generation System;" hereinafter the "Host")** in such a way as to allow the Host to design a renewable energy system to exceed the energy requirements of the Host and to inject the Excess Energy into the grid for compensation. The Host is permitted to design a system that takes into consideration the load of other physical facilities it owns in its jurisdiction or, in the case of the State, within 5 miles of the State's Host facility (**Solar Act uses the term "Qualified Customer Facilities;" hereinafter "Qualified Sites"**). While the Qualified Site continues to purchase and use load the way it always has, the Host gets an annual credit for the Excess Energy it generates at a stated value in the Solar Act. The thinking is that the Host will be

able to use landfills, brownfields and/or open space that it owns to generate solar energy and to be paid for the solar energy by way of a credit against its accounts.

For Net Metering Aggregation to provide benefits to the taxpayers as outlined above, the BPU must interpret the statute as described below. Failure to do so will result in this section of the law becoming a nullity, not only an illogical result, but one that would defeat the Legislature's clear intent.

Firstly and most importantly, the income to be earned by the Host for the Excess Energy must be credited at **retail** rates. An interpretation has been advocated by others that suggests the credit should be calculated at the "Avoided Cost of Wholesale Power" or the "PJM electric power pool real-time locationally marginal pricing rate" or LMP. The LMP would always be the higher of the two rates as it takes into consideration peak pricing, while the other index is an average of off peak and peak. We are attaching the LMP for JCP&L, in three indexes, giving the numbers for the years 2005 through 2011 (see "Attachment"). It is clear that this pricing would not support the installation of any type of solar system. Thus, unless the value of the energy is closer to a retail value as opposed to a wholesale value, no entity would be able to take advantage of this scheme.

Secondly, the Statute provides that the Qualified Sites must all be in the "same customer **rate** class under the applicable electricity tariff." It is critical that this be interpreted to mean that all of a customer's facilities be permitted to be included in the aggregation. A more restrictive interpretation would unnecessarily limit the savings opportunity for taxpayers and defeat clear Legislative intent.

Thirdly, aggregate net metering must be available to a Host regardless of whether a net metered account pre-existed the construction of the **Customer's Solar Electric Power Generation System**. An interpretation has been advocated suggesting that net metering aggregation be allowed only in the context of a pre-existing net metered account. Such a regulation, if adopted, would defeat the purpose of the Law by preventing, among other things, a Host from using the Law to reclaim a landfill, brownfields or open space.

Lastly, regulations should make clear that the Host Account and Qualified Sites **do not** have to be in the same customer rate class. An interpretation to the contrary would unnecessarily limit the scope of the Law and defeat the Legislature's clear intent. Specifically, such an interpretation would prevent a Host from using the Statute to reclaim a landfill, brownfields or open space.

Thank you for considering these comments.

Very Truly Yours,

Michael P. Torpey
Managing Partner
A.F.T. Associates, LLC

Mark S. Bellin
Partner
A.F.T. Associates, LLC

Attachment

ATTACHMENT
(Source: PVOne, LLC)

Solar Output Weighted Average LMP
(JCP&L, c/kwh)

	2005	2006	2007	2008	2009	2010	2011
JAN	6.17	6.20	4.63	7.37	7.15	5.87	5.55
FEB	4.84	5.65	7.25	6.83	4.91	4.55	4.87
MAR	5.88	6.08	6.58	8.55	4.49	4.03	4.65
APR	6.75	5.76	7.24	9.40	4.03	4.44	5.59
MAY	5.39	5.80	6.78	12.70	4.29	5.54	6.31
JUN	7.49	5.96	8.23	15.88	3.90	6.68	6.99
JUL	9.30	8.42	8.27	16.18	3.93	9.81	8.99
AUG	11.44	9.77	9.46	9.97	4.63	6.96	5.65
SEP	10.52	4.19	7.86	10.22	3.63	5.72	4.91
OCT	9.25	4.75	7.71	6.44	4.11	3.85	3.87
NOV	7.49	5.03	7.18	6.15	3.49	4.16	3.65
DEC	8.66	3.98	9.35	5.31	4.75	6.08	3.29
Average	**7.82**	**6.11**	**7.58**	**10.10**	**4.38**	**5.74**	**5.55**

Monthly Average LMP, Hours of 9:00am-6:00pm
(JCP&L, c/kwh)

	2005	2006	2007	2008	2009	2010	2011
JAN	6.34	6.43	4.85	9.13	7.47	6.09	6.05
FEB	4.94	5.61	7.28	9.17	4.98	4.62	5.04
MAR	5.79	5.97	6.50	9.90	4.45	3.99	4.59
APR	6.83	5.83	7.32	10.68	4.05	4.47	5.63
MAY	5.50	5.97	6.92	10.07	4.35	5.62	6.59
JUN	7.89	6.24	8.54	14.43	4.00	6.93	7.39
JUL	9.77	8.84	8.61	12.63	4.06	10.47	9.57
AUG	11.73	10.11	9.73	9.73	4.73	7.12	5.79
SEP	10.56	4.20	7.84	9.68	3.63	5.75	4.92
OCT	9.25	4.75	7.63	6.10	4.10	3.82	3.88
NOV	8.29	5.40	7.64	6.42	3.68	4.54	3.90
DEC	9.89	4.34	10.17	5.97	5.14	6.61	3.59
Average	8.07	6.14	7.75	9.49	4.55	5.83	5.58

Monthly Average LMP
(JCP&L, c/kwh)

	2005	2006	2007	2008	2009	2010	2011
JAN	5.74	5.87	4.54	8.37	6.94	5.82	6.22
FEB	4.83	5.66	7.60	8.52	5.03	4.67	4.94
MAR	5.50	5.91	6.22	8.65	4.31	3.88	4.37
APR	5.39	4.81	6.17	8.64	3.65	3.94	4.87
MAY	4.30	4.57	5.39	7.38	3.68	4.62	5.08
JUN	5.66	4.56	6.55	10.42	3.33	5.41	5.34
JUL	7.09	6.50	6.47	10.03	3.37	7.37	6.77
AUG	8.58	7.37	7.57	7.78	3.80	5.58	4.55
SEP	7.78	3.62	6.26	7.90	3.15	4.66	4.20
OCT	7.69	4.24	6.59	5.53	3.71	3.57	3.69
NOV	6.79	4.72	6.77	5.83	3.38	4.06	3.60
DEC	9.25	4.28	8.85	5.56	4.76	6.16	3.60
Average	6.55	5.18	6.58	7.88	4.09	4.98	4.77

Blue Sky Technologies USA

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Subject: NJ Solar Act S1925

Date: Nov. 21, 2012

Comments from Blue Sky Technologies USA on NJ Solar Act S1925

Comments on Paragraphs q, r, and s prepared and submitted by Blue Sky Technologies USA:

General Comments:

1. The Bill is not balanced in its consideration of all factors in the approval criteria described in this Bill. The current Bill put too much focus on the SREC price and farmland preservation, without enough considerations on the following: Impact Study is only one of several steps in PJM Interconnection study (feasibility study, impact study, facility study, WMPA, Interconnection Agreement, Interconnection Construction Agreement, and the actual interconnection facility construction), the Township Land Use Variation public hearing and (conditional) approval, DEP report and approval, the stage of the project (how much efforts and capital invested), current SREC approval and account registration (SRP), etc.
2. The Bill is disconnected with the current procedures and review processes for approval. PJM has strict rules on how much time an application (facility) must sign the agreement and pay the fee to move to the next stage. Township public hearing is usually held once a month. DEP reports and approval require time for testing and procedures are long and slow. All these already make the success of big solar projects difficult. Now with S1925 and BPU's time line to provide details and high risk of disapproval, NJ government I losing credibility among the solar energy industry and financial industry.
3. We are against the additional incentive treatment for 3MW Net-metering projects and Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills. It does not help SREC value, and it will be the beginning of more and more complicated policies (e.g., solar carport costs more, should they also get additional incentive treatments? Certain zones have higher wind rating and the cost will be higher. There are many other examples.)

Specific Comments:

1. **Paragraph q** The current Bill stated that, starting in Line 30 on Page 30, "The board *shall approve* the designation if ...". Starting from Line 39, it stated that "No more than 90 days ... the board shall approve, conditionally approve, or disapprove the application. The criteria considered for "conditionally approve" should be detailed and the meaning should be clarified.
2. **Paragraph q** We suggest to add the following criteria to be adopted for "conditionally approve" if: the facility has filed a notice in writing with board applying for designation pursuant to this subsection, together with the notice escrow, and the facility was issued for WMPA by PJM, the conditional approval by Township Land Use for solar project, and SRP registered before July 23, 2012. The facility has only ONE year (instead of two years for facilities approved by board) to reach Commercial Operations following the date of the designation by the board pursuant to this subsection.
3. **Paragraph r** In (2), Criterion in (a) is considered "met" if the SRP was registered before July 23, 2012.
4. **Paragraph r** In (2), Criterion in (b) is considered "met" if the Township Land Use (for solar project) was conditionally approved before July 23, 2012.
5. **Paragraph r** In (2), Criterion in (c) is considered "met" if the PJM Impact Study was issued before July 23, 2012.
6. **Paragraph r** In (2), Criterion in (d) is considered "met" if the PJM Impact Study was issued before July 23, 2012.
7. **Paragraph s** If a project meets all criteria in Paragraph s except "located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964" at any time within the ten year period prior to July 23, 2012, but it is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964" for **less than five years** within the ten year period prior to July 23, 2012, this project shall be approved pursuant to Paragraph s.
8. **Paragraph s** The facility, meeting the following conditions, is considered as meeting the criterion of "PJM issued a System Impact Study for the facility on or before June 30, 2011": (1) PJM issued or the facility submitted a signed WMPA on or before Dec. 31, 2011, or (2) The facility submitted a signed Interconnection Agreement or Interconnection Construction Agreement or first interconnection construction payment on or before July 23, 2012. We recommend either one or more of the three conditions in (2) to be included.

Pin Su
President
Blue Sky Technologies USA

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November 20, 2012

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Applicability of N. J. S. A. 48: 3-87 et seq. (hereinafter the New Solar Act") to Existing Projects.

Dear Secretary Izzo,

You have requested public comment on subsections (r), (s) and (t) of the New Solar Act for the purpose of adopting regulations implementing these provisions. We are respectfully submitting comments pertinent to one of the solar farm sites under actual construction and development by one of our clients with the request that the proposed regulations provide clarity in terms what rules and regulations are actually applicable to the site.

THE FACTS

One of our ground mounted solar panel grid supply energy farm clients is the owner and developer of a 20 MW Solar Farm in Tinton Falls, Monmouth County, New Jersey (hereinafter the "Project"). All of the necessary approvals and agreements for construction and operation from any agency or entity having jurisdiction over same were obtained and executed before the adoption of the New Solar Act. Literally, the client had obtained every construction permit required for the construction of the Project before the advent of the New Solar Act.

Similarly, the client had made application to the PJM and obtained the Feasibility Study, the System Impact Study, before June 30 2011, and signed a WMPA with the PJM which is dated before the adoption of the New Solar Act. The same is true with SRP registration with the BPU, accepted and registered before the adoption of the New Solar Act.

The Project is part of a subdivided parcel of about 123 acres which was zoned AR Age Restricted under the zoning ordinances of the Borough of Tinton Falls. The larger tract was originally owned by the Joseph Scarano Sand and Gravel Co who operated and developed the site as a sand and gravel pit from the 1930s to the current era. The Sand and Gravel operation has ceased. The site has been tested for content and it has been determined that to return the site to grade, the site was filled, sometimes to 10 feet in depth, with combinations of asphalt, concrete, plastic, wood , roots, and branches, metal, brick, slag, and or ash and cinders.

The property is not assessed as farm land currently. We have not done a historical search of the real estate tax records, but we do know that the property was not farm land assessed when purchased by the client and we do not believe that a substantial portion of the property was farmed given its current condition.

The Project is located on about 99 acres of the overall site. The balance of the site is being developed with high density residential housing. The construction of the housing was approved and has begun.

The client commenced construction of the Project in 2011. At the time of the Governor's signature of the New Solar Act on July 23 2012, almost all of the 71000 solar panels, 32 inverters, and the transformer were installed. Since then, the project construction has been completed, and received successful commission by JCP&L and received Certification Identification from Tinton Falls Township on Oct. 25, 2012. The Project was not yet energized as of the date the New Solar Act was signed by the Governor, but the site was for all intents and purposes substantially complete. The Project would be energized today but for the advent of Hurricane Sandy and energization is imminent.

THE NEW SOLAR ACT

It is unclear from the plain language of the New Solar Act as to whether the Project is subject to the New Solar Act. Subsection (r) speaks to projects that are to be energized in the years 2016 and beyond. The Project would be energized now but for the hurricane and will be energized imminently. All the client is waiting for is for JCP and L to conduct some repairs caused by the storm so that the Project can be energized, which is expected shortly after Thanksgiving Holiday.

Subsection (s) speaks to projects to be located on farm land. The Project is not located on lands that were formerly farmed. It has been used by its owners as a sand and gravel pit since the 1930s. It is not assessed farmland for real estate tax purposes.

Subsection (t) speaks to landfill and brownfields but it is unclear as to whether the subsection was intended to apply to a project such as ours that has been constructed and about to be energized.

THE PROPOSED REGULATIONS

We are respectfully requesting that as the proposed regulations are drafted and adopted that some consideration be given to projects such as ours that have reached this level of development as of the date of the signature of New Solar Act.

Our client had undertaken and obtained every permit, approval, agreement, license, or registration, required by any entity, public, quasi public and or private for the ownership and operation of the Project prior to the adoption of the New Solar Act. There is literally no action that remained to be taken by the client pursuant to the then current law, rule or regulation in order for the client to have constructed the Project at significant cost. As the client proceeds in the near future to complete its financing, the Client needs the proposed regulations to be clear to provide its financiers with regulatory certainty.

Accordingly it seems reasonable, if not compelling, that some exception be included in the proposed regulations that Projects that have reached the milestones enumerated above are not subject to the New Solar Act at all and will be deemed connected to the grid for the purposes of being deemed eligible for SRECS in the ordinary course.

Alternatively, it would likewise seems very reasonable and compelling that the regulatory language for subsection (r) be crafted to include an exception to wit, that Projects that have reached the milestones enumerated above need not make application under (r) in order to be deemed connected to the grid. Were the site located on farmland, it is arguable that a similar exception under subsection (s) would be appropriate for the same reasons. It is acknowledged that if the client made application under subsection (t) and same was certified by the BPU, that there would be no involvement under (r) and (s). Our point is that the client may not wish to be involved in that application and may simply seek to proceed now to energize and be deemed connected to the grid.

As for Subsection (t), we are requesting that the regulatory language be clarified to indicate that the client is entitled to apply for the enhanced SREC. There is no guidance in the New Solar Act as to timing relative to the actual construction of the solar field. The reality is that the client has incurred significant costs in developing the Project. At this very moment, the client is engaged in some remediation work on the site as a result of the fill on the site. It would therefore be entirely consistent with the intent of the legislation to allow the client to make the application for the enhanced SREC.

Thank you for your consideration.

Very Truly Yours,

Michael P. Torpey
Managing Partner
A.F.T. Associates, LLC

Mark S. Bellin
Partner
A.F.T. Associates, LLC

Clean Energy Ventures

November 21, 2012

B. Scott Hunter
Renewable Energy Program Administrator, Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Ave., POB 350
Trenton, NJ 08625-0350

Dear Mr. Hunter,

New Jersey Resources Clean Energy Ventures ("CEV") appreciates the opportunity to respond to the BPU solicitation for comments on the administrative process to support the application and approval process for solar projects on assessed farmland ("grid supply projects").

The legislation provides a clear mandate to gradually reduce and significantly restrict the number of grid supply projects in the future, with approval authority vested in the BPU. At the November 2 stakeholder meeting, the BPU staff indicated that where possible it will implement policy as literally stated in the legislation, but where there is ambiguity, the BPU will need to exercise its judgment and experience. To guide its actions, CEV suggests that the BPU keep the following objectives in mind:

1) Consistent with the spirit of the legislation, the BPU should strike a balance between job promotion/retention and reducing the oversupply in the SREC market.

2) In keeping with the market-based philosophy of the NJ solar market, the BPU should favor an approval approach which enables those projects which have made the most progress in the development process to proceed towards commercial operation.

3) To promote long term market confidence and avoid creating stranded assets, the BPU must be fair and equitable in approving those projects which went into commercial operation after the legislation passed, and were in compliance with the rules in effect prior to the legislation passing.

CEV believes that the new applications should be solicited under the provisions of Section Q of the legislation for projects entering commercial operation beginning in energy year 2014. There are several reasons for this:

- Given the calendar, and the time involved in rolling out the new approval process, other than those projects which went into commercial operation after July 23, 2012, it is most likely that new projects will go into commercial operation at the earliest in energy year 2014.

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- The provisions of Section Q provide for reasonable and necessary limits on the amount of grid projects to be built over the next 3 years, and provide a balanced approach to sustaining jobs and supporting the SREC market.

- The BPU is within its legislative authority, under the provisions of Section R, to otherwise deny new grid projects given the length of overcapacity in the SREC market, and the 700MW pipeline filed under Section S, which is significantly in excess of what the new RPS can absorb. If CEV's recommendation is accepted, then the Section Q process will define the terms under which new grid projects will be deemed eligible to be connected to the distribution system through energy year 2016.

In implementing the Section Q approval process, there are a number of important administrative details which CEV recommends be adopted:

1) The 10MW project cap should be a site cap, excluding any projects which are already in commercial operation at that site. Projects which have previously filed at PJM for greater than 10MW would be permitted to downsize to <=10MW at that site. However, for example, a 20MW project would not be permitted to downsize to two 10MW projects at the same site.

2) As per the legislation, along with the application filing, applicants need to post $40K per MW into escrow. Upon filing, it must be clear to applicants that they are not eligible for a refund unless their project is not approved, their application is returned as incomplete, or they are approved and complete their project within the timeframes required.

3) To ensure the greatest likelihood that approved projects get built, the BPU should adopt a minimum standard of progress be achieved in order for the application to be filed. This would include proof of site control (see Exhibit 1), that the appropriate PJM Agreements (ISA/CSA/WMPA) are executed and that financing is in place. In addition, applicants should attach and update their SRP registration page and technical worksheet, and indicate the month, calendar year and energy year when they intend for their project to reach commercial operation.

4) To keep within the 80MW annual Section Q requirement, the BPU will sort and approve projects by energy year. Given that the legislation requires that projects be completed within two years, CEV recommends that the BPU only accept applications for projects which target completion two years forward.

5) To avoid the potential for lines of applicants when the application window opens, NJR recommends that the initial application window remain open for a specified period of days, rather than closing immediately when applications totaling 80MWs are received. If less than 80MWs are received within that window, the process can be converted to a rolling application basis, and be closed at such time as 80MWs are approved. In this case, the BPU should provide timely status updates.

6) If less than 80MWs of applications are received within the initial application window, the BPU can approve applications based on the project meeting the minimum progress standard and submitting the escrow. If more than 80MW are received, the BPU should evaluate projects side by side and prioritize using a series of additional criteria including:
    a. Existing SRP approval
    b. Progress milestones (see Exhibit 1)
    c. Project owner/developer entity cap per energy year
    d. Schedule R criteria (i.e. project location, jobs impact, etc.)

7) For approved projects, the BPU should issue a new SRP letter, with the expiration date set two years from the approval date. To respect the 80MW requirements and ensure the most viable projects go first, CEV suggests that the BPU consider May 31, 2014 as the expiration date for any project which petitions to build in energy year '14.

8) Post approval, the project will be bound by all existing SRP requirements. Other than for cases of force majeure, or unreasonable delays in utility interconnection, there will be no extensions.

Our final comment reflects the special case of those projects that received an SRP approval and began construction before the legislation passed, and went into commercial operation shortly after July 23, 2012. CEV has identified approximately 30MW of projects on the list of projects filed under section S which PJM has classified as "in-service". This includes CEV's 6.7MW (DC) Reeves Station Road project, which received SRP approval in April 2012, issued Purchase Orders for materials in May, began construction in June, and went into commercial operation on October 11, 2012. **We have invested approximately $20 million in this project which as of this date is not designated as connected to the distribution system.**

While the BPU could chose to consider these projects as part of our recommended approval process, the major provisions of section Q, including the posting of escrow, and the project size cap, are not relevant to projects already in commercial operation. It may be more appropriate, therefore, for the BPU to consider designation for these projects outside of the Section Q process. **In the interest of administrative ease, it is suggested that a simplified approval process consisting of proof of interconnection and approval to operate be sufficient to be designated as connected to the distribution system.**

CEV appreciates the opportunity to comment on the BPU rules for grid supply projects. We would welcome the opportunity to discuss these ideas with the BPU and other interested stakeholders.

Sincerely,

Richard R. Gardner
Vice President
NJR Clean Energy Ventures

Cc: S. Kosierowski, President, NJR Clean Energy Ventures Corporation
L. Barth, Director Business Development, NJR Clean Energy Ventures Corporation
C. Savastano, Director Business Development, NJR Clean Energy Ventures Corporation

Exhibit 1

Measures of Project Progress BPU

Status	Evidence
Site Control	Zoning board approval Permits including but not limited to DEP Letter of Interpretation, County Soil Conservation District, etc... Executed Land lease or proof of site ownership
Utility Interconnection Permits	Signed copy of PJM ISA/CSA/WMPA
Proof of Financing	Attestation signed by developer and project owner of status of financing; supporting documentation may also be provided at applicants option (purchase-sale agreement, term sheet, bank commitment letter)
Building and Electrical Permits	Construction permits issued
Material Purchases	Purchase Orders & Acknowledgements Shipping bills of lading Invoices Proof of Payments
Construction Activity	Pictures to document status
Permits to Operate	Local and utility

The section of the table within the red outline are considered minimum filing requirements.

Comments on the Solar Act of 2012 T&M Associates

NJSA 48:3-87 (e) (4) Net Metering Aggregation Standards

In reviewing the language in the referenced section we find several issues which will deter public entities from utilizing this provision especially if the public entity anticipates using a brownfield, or land fill site as the generation location.

Many municipalities control properties that may be physically located in another municipal jurisdiction. It appears that this section would prevent these public entities from using these locations for either siting the generation facility or as a load to aggregate even if the sites are in the same electrical public utility service area. We feel that all lands under the control of the public entity should be allowed to be included as load or as the location of the generation facility.

The section also limits the aggregation to loads with the same rate class. This would limit the public entity from combining single phase and three phase services or primary and secondary services from being bundled as load in an aggregation. We feel this provision should be more broadly interpreted to allow the public entity to benefit as broadly as possible.

This section appears to provide only wholesale credit for power generated while maintaining the retail charges generated at each of the aggregated load locations. The benefits to the public entities would be greatly deminished under this scenario and likely render aggregation unworkable. It was anticipated by the public community that aggregate net metering would function the same as behind the meter net metering where the offsets would be at the retail value of the power less the associated wheeling charges for the remote generation. The wheeling charges would be limited to the Ancillary Service charges associated with the transmission of the power along the electric public utilitiy's distribution network.

Many municipal entities have land fills and brownfields within their jurisdictions that could be used as the power generation facility in an aggregate net metering scenario. We feel the restrictions identified above will deter the use of these sites and therefore contradict the intent to reuse of these properties as anticipated in the law.

NJSA 48:3-87 (t) Establishing a Program to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas and Properly Closed Landfills.

This section addressed the opportunity to use landfills, brownfields and historic fill areas as solar power generation facilities. It recognizes that these areas will require non traditional construction methods for building a solar facility in these locations and that addition costs will be associated in the maintenance and operation of solar generation systems on these facilities. There are two cost issues related to these projects. One relates to the solar generation systems mentioned above and the second is associated with the closure of the landfills, brownfields and historic fill areas required before a solar generation facility can be constructed.

Costs associated with the closure of these sites is the responsibility of the owners and the funding for the closure is currently through and escrow established by the owner or through loans. Each location will have a unique financial obligation for the closure costs. If some or all of these costs are to be passed to the solar generation facility the viabiliy of providing renewable resources would be jepordized. The cleanup of the sites should be separate from the solar generation construction and operation extraordinary costs. The free markets should adjust rents to compensate for landfill modifications.

~~The free~~

One way of providing for these costs on projects involving landfills, brownfields and historic fill areas would be to force~~allow~~ SRECs associated with these facilities to be sold only in strips extending to the life of the PPA to 20 years. Therefore, there would be finality on the source of revenue from the SRECs and the financing of the construction, operation and maintenance of the solar facility and some potential for assistence in addressing the closure costs would be driven by the market. Longer duration SREC contracts would also lessen the need for high up front SREC pricing while ensuring a healthy growth in the market. It is important to note that the issue of financing these projects relates to the comments made on aggregate net metering above. Compensation at retail value of power is necessary to make these projects work.

It should be noted, that building solar facilities on landfills has historically been 25-35% more expensive than on greenfield sites therefore it is not inconceivable that to promulgate landfill development with retail PPA's at discounted rates to Municipalities, that the SREC multiplier mechanism should reward solar developers is not unreasonable.

Matthew M. Weissman
General Regulatory Counsel - Rates

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PSEG
Services Corporation

November 21, 2012

VIA UPS OVERNIGHT MAIL and VIA E-MAIL TO oce@bpu.state.nj.us

Honorable Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
PO Box 350
Trenton, New Jersey 08625

Re: In The Matter Of The Implementation Of L.2012, C. 24, The Solar Act Of 2012 -- Docket No. EO12090832V

In The Matter Of The Implementation Of L.2012, C. 24, N.J.S.A. 48:3-87(d)(3)(B) - A Proceeding To Investigate Approaches To Mitigate Solar Development Volatility -- Docket No. EO12090860V

In The Matter Of The Implementation Of L.2012, C. 24, N.J.S.A. 48:3-87(e)(4) - Net Metering Aggregation Standards -- Docket No.: EO12090861V

In The Matter Of The Implementation Of L.2012, C. 24, N.J.S.A. 48:3-87(t) - A Proceeding To Establish A Program To Provide SRECs To Certified Brownfield, Historic Fill And Landfill Facilities -- Docket No. EO12090862V

In The Matter Of The Implementation Of L.2012, C. 24, N.J.S.A. 48:3-87(w) - A Proceeding To Consider The Need For A Program To Provide A Financial Incentive To Supplement SRECs For Net Metered Projects Greater Than Three Megawatts -- Docket No. EO12090863V

Dear Secretary Izzo:

On behalf of Public Service Electric and Gas Company ("PSE&G"), please find an original and ten copies of our initial comments in the stakeholder proceedings recently commenced in accordance with the Solar Act of 2012 (L. 2012, c. 24, or "Solar Act"). A copy of these comments has also been submitted electronically to oce@bpu.state.nj.us.

PSE&G attended the initial stakeholder meeting on November 9, 2012 at the Trenton headquarters of the Department of Environmental Protection ("DEP"). We congratulate and thank the DEP, the Commissioners of the Board of Public Utilities ("Board"), and the Office of Clean Energy ("OCE") Staff for organizing and conducting that meeting so professionally and productively in the immediate aftermath of Hurricane Sandy. PSE&G also appreciates the

opportunity to submit these written comments.

Staff has requested that comments related to four distinct proceedings be submitted by Friday November 23, 2012. PSE&G appreciates this early opportunity to provide comments. As it has indicated in various other contexts, it fully supports the state's intent to encourage the continued development of solar and other renewable generating resources so long as both reliability and just and reasonable rates are preserved. In light of the early stage of each proceeding and the state of development of the agencies' proposals, PSE&G reserves the right to comment further following issuance of the Board's actual proposals. With that one reservation, PSE&G offers the following preliminary comments.

1. Implementation of Subsections (q) (r) and (s) - Processes for Designating Certain Grid-Supply Projects as "Connected to the Distribution System" pursuant to N.J.S.A. 48:3-87 (q), (r), and (s).

Certain grid-supply projects must receive Board approval of a designation as "connected to the distribution system" in order to receive SRECs. The Solar Act (1) provides the Board discretion in approving solar on certain farmland under subsection s; (2) requires the development of an escrow and application process for other grid-supply projects in EY14, 15 and 16 under subsection q; and (3) requires the Board to determine that relevant criteria are met for projects proposed in EY17 and beyond under subsection r, in order to be deemed "connected to the distribution system" and to qualify for SRECs.

Board Staff seeks "written comments that would enable the Staff to develop a recommendation to the Board for the establishment of an application process such as application requirements, minimum filing requirements, etc."

PSE&G Comments:

The Solar Act is clear that a solar generation facility that is owned or operated by an electric public utility and that is approved pursuant to N.J.S.A. 48:3-98.1 is not subject to any of the provisions described in N.J.S.A. 48:3-87(q), (r), and (s) and instead is, by definition, "connected to the distribution system" and thereby eligible for SRECs. This makes sense; public utility programs conducted under N.J.S.A. 48:3-98.1 are subject by their very nature to regular and extensive scrutiny by the Board and the Division of Rate Counsel.

At the same time, PSE&G appreciates the importance of the provisions of the Solar Act that recognize the practical aspects of incorporating solar generation into the existing system. For example, these provisions require a showing by third party solar developers that "there will be no impingement on the ability of an electric public utility to maintain its property and equipment in such a condition as to enable it to provide safe, adequate and proper service to each of its customers." N.J.S.A. 48:3-87(r)(2)(d). The Solar Act properly recognizes that for third party grid supply solar projects, in addition to market considerations, it will also be important for

the Board to evaluate impacts on the electric distribution system. As noted at the November 9, 2012 public hearing, PSE&G has actively participated in recent OCE efforts to make the process for evaluating proposed solar development projects more efficient, and will continue to look for ways to assist legitimate projects in moving forward with interconnection while also ensuring that appropriate safety and reliability concerns for the electric distribution system are evaluated and addressed.

2. Initiation of a Proceeding to Establish a Program to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills pursuant to N.J.S.A. 48:3-87 (t).

The Solar Act requires the Board, in collaboration with the NJDEP and NJEDA, to conduct/complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facilities certified as being located on a brownfield, historic fill area, or properly closed landfills, including projects owned or operated by an electric utility and approved pursuant to N.J.S.A. 48:3-98.1. For projects certified under this section, the Board shall establish a financial incentive to cover additional costs. Under the statute this "certification" process is an alternative to the project-by-project application process envisioned under subsections q, r, s. discussed above.

At the November 9 Public Hearing, Staff indicated that it will be developing a certification program for presentation to the Board by January 19, 2013, and will be presenting a program for financial incentives sometime after that date. PSE&G reserves its rights to submit additional comments on those proposals at the appropriate times. Staff has also indicated that written comments from interested stakeholders should be submitted now in order to enable Staff to develop a recommendation to the Board for the establishment of a certification program, including application requirements and minimum filing requirements.

PSE&G Comments:

PSE&G, as an electric local distribution company, is commonly involved in the interconnection of solar facilities with the electric distribution system. The costs of this interconnection become part of the project costs. In establishing certification and other rules for landfill projects, the agencies and their respective staffs should consider that projects built on brownfields, historic fill areas, and properly closed landfills often have higher interconnection costs than other projects. These higher costs usually occur either because of the distance between the electric generation system and the current road or other access point, and the additional complexity of crossing such sites due to the requirement that the developer maintain the integrity of liners or other materials that protect or encapsulate closed landfills, fill areas, or brownfields. PSE&G will work with the Board and other stakeholders to ensure that these costs are appropriately reflected in any financial incentives developed in this proceeding.

3. Development of Net Metering Aggregation Standards pursuant to N.J.S.A. 48:3-87 (e) (4).

The Board is required to adopt net metering aggregation standards by April 19, 2013. Staff has discussed the technical aspects of this section of the new law with the Net Metering and Interconnection Standards Working Group. At the November 9, 2012 stakeholder meeting, Staff provided an update on the discussions, outlined key concepts contained in the legislation, and discussed next steps in the rulemaking process. Initial written comments on the development of net metering aggregation standards were required to be submitted by Friday November 23, 2012.

PSE&G Comments:

PSE&G continues to support policy efforts to ensure the continued survival of a healthy solar industry in this state and region. However, as we have indicated in the past through our participation in the Board's net metering working group processes, any incentives intended to promote solar development through net metering policy must also (1) ensure grid reliability by avoiding uncoordinated proliferation of solar projects that could raise reliability concerns; and (2) minimize the inappropriate shifting of fixed distribution costs to those who have not or cannot take advantage of solar net metering to lower their retail energy costs.

PSE&G supports the "net metering aggregation" provided for under the Solar Act. Under the newly-enacted section N.J.S.A. 48:3-87.e., net metering aggregation allows the public entity customer to oversize its solar generation facility such that it "does not exceed the combined metered annual energy usage of the qualified customer facilities" (i.e., the aggregate usage of qualified facilities), provided that the qualified facilities are located within five miles of one another, are all located within the service territory of a single electric public utility, are served on the same utility rate schedule, and are served by the same electric power suppler or are supplied on basic generation service. Additionally, any electricity generated in excess of the needs of the facility where the solar generation system is installed (i.e., the host facility) over an annualized period will be credited to the host facility's billing account at the avoided cost of wholesale power.

The ability to oversize a net-metered generator is unique to this governmental market segment. Furthermore, this approach does not shift the fixed costs of the distribution network away from the system owner and onto other ratepayers. With the exception of the host meter to which the solar generation system is connected, the law provides that all other governmental facilities, located on the same or other properties, would be billed for utility service at the full retail rate.

As indicated by OCE Staff during the public hearing, the Solar Act clearly limits the provision of full retail credit to the meter to which the generating system is connected.[1] Specifically, the law states that in order to qualify for net metering aggregation, the "customer

[1] See the transcript of the November 9, 2012 Public Hearing, at 94-95.

must operate a solar electric power generation system using a net metering billing account," and that "[f]or the customer's facility or property on which the solar electric generation system is installed, the electricity generated from the . . . system . . . shall be accounted for pursuant to the provisions of paragraph (1) [that is, the existing net metering section] . . . to provide that the electricity generated in excess of the electricity supplied . . . for the customer's facility on which the . . . system . . . is installed . . . is credited at the . . . avoided cost of wholesale power . . . ." Under that paragraph, net metering is applicable only to the single customer billing account being net metered, while "[a]ll electricity used by the customer's qualified facilities, with the exception of the facility or property on which the . . . system is installed, shall be billed at the full retail rate . . . ."

Put simply, the Solar Act is clear in establishing that net metering aggregation solely permits the qualified facilities' to aggregate their usage to enable a larger system to be installed on one facility or property than would otherwise be permitted under current rules. Further, the only facility that would be entitled to net meter and receive a full retail credit would be the facility or property (through a single customer account) on which the solar generation facility is installed. All other "qualified customer facilities" that are aggregated to support the system size would be "billed at the full retail rate pursuant to the electric public utility tariff." The Solar Act also clearly states that if a solar generation system is installed on property (as opposed to a facility), that property must be "owned by the customer."

In the case of a college campus or other large property that has multiple "qualified customer facilities" located on the property that are all individually supplied and metered with separate utility accounts, and which contribute to the size of the solar generating system located on one of the facilities or on the property, net metering at the full retail rate would only be permissible for the customer account related to the facility or property on which the solar generating system is installed and interconnected. All other "qualified customer facilities" on the campus would pay the full retail rates through their individual customer accounts in accordance with their electric utility's tariff. The overall utility bill to the university would be reduced by the full retail credit to the host, as well as revenues attributable to the wholesale sale of excess solar generation and the sale of Solar Renewable Energy Credits generated.

4. Initiation of a Proceeding to Consider the Need to Supplement Incentives for Net Metered Projects Three MW or Greater pursuant to N.J.S.A. 48:3-87(w).

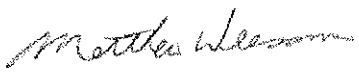
The Board is required after notice and opportunity for public comment and public hearing to consider whether to establish a program to provide to owners of net metered projects three megawatts or greater a financial incentive to supplement SRECs "to further the goal of improving the economic competitiveness of commercial and industrial customers." Board staff discussed the installation activity of projects of this scale in the stakeholder meeting on Friday. Initial written comments on the need for supplemental incentives must be submitted by Friday November 23, 2012.

PSE&G Comment:

The Board should recognize that incremental incentives for large net-metered projects will result in the shifting of even more fixed distribution costs to those who have not or cannot take advantage of solar net metering to lower their retail energy costs.

PSE&G hopes that these preliminary comments are of assistance to the Board in addressing implementation of the Solar Act, and we look forward to continuing to participate in these proceedings. Thank you very much for your consideration.

Very truly yours,



C Honorable Robert M. Hanna
Honorable Nicholas Asselta
Honorable Joseph L. Fiordaliso
Honorable Jeanne M. Fox
Honorable Mary-Anna Holden
Elizabeth Ackerman
Tricia Caliguire, Esq.
Scott Hunter

November 23, 2012

Mr. Michael Winka
Director
Office of Clean Energy
New Jersey Board of Public Utilities

New Jersey Solar Energy Coalition Comments
November 9, 2012 Stakeholder Meeting

The membership of the New Jersey Solar Energy Coalition is comprised of a number of solar developers and contractors in all market sizes and areas throughout New Jersey, associated engineering, legal and financial firms that support the solar market and developers of commercial and industrial properties that also have direct involvement in solar development and ownership. Our organization was formed in 2011 based upon the single goal of supporting New Jersey's statutory development plan as defined by the renewable portfolio standard and balancing the many good issues associated with the engine of public support that provides the platform for the program. We appreciate the number of stakeholder interests represented in these proceedings and respect these views but hope that our interests are recognized to align with the long-term interests and success of the public policy embodied in our laws and regulations.

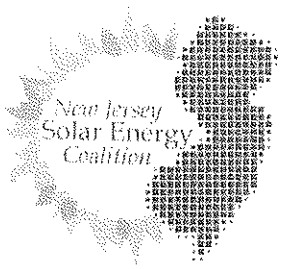
We would also like to thank the Board Staff for their tireless effort in working with stakeholder groups to assist in resolving these important issues. Clearly within the confines of the authority that the legislation has provided the Board of Public Utilities we think that the staff has appropriately identified all of the issues that need to be resolved in order to achieve the goals of the legislation.

To that end, we would like to make the following observations and recommendations for consideration:

1. Implementation of Subsections (q) (r) and (s) process for designating certain grid supply projects as connected to the distribution system pursuant to an N.J.S.A. 48:3 – 87 (q), (r), and (s).

While we appreciate the difficult task that has been presented to the Board in establishing criteria for eligibility under each subsection of the law, we hope that the Board can divine a fair process that will protect the marketplace. Clearly the inclusion of anywhere near 500 MW of additional grid-based farmland capacity under the current statutory renewable portfolio standard will crush any hope that the legislation holds in rebalancing the market. While we appreciate the need for the Board to carefully consider all of the equity issues presented on a case-by-case basis we would recommend that the Board exercise its existing statutory authority to raise the renewable portfolio standard commensurately to absorb any additional adverse impacts.

2520 Highway 35, Suite 301 Manasquan, NJ 08736
Phone: 732.360.6004 E- mail: info@njsec.org www.njsec.org



2. Initiation of a proceeding to establish a program to provide solar renewable energy credits to solar generation facilities on Brownfields properly closed landfills and historic fill areas pursuant to N.J.S.A. 48:3 – 87 (t).

In our opinion, the Board must protect the integrity of the solar renewable energy credit program by maintaining the current design basis of one credit for each megawatt hour of solar production. The creation of a "super credit" based upon a higher factor or the creation of a credit based upon less than one hour of produced capacity would in our opinion lead to significant market turmoil and open the door to an unending line of projects seeking special treatment, while introducing additional supply to an already oversupplied SREC market. While we can appreciate the fact that challenged properties may require additional sources of funding to become viable solar production fields, in our opinion we believe that this can be accomplished without touching the existing energy credit framework.

In our opinion, the creation of "gap funding" required to supplement renewable energy credit revenues can be obtained through a competitive bidding process where developers could bid the amount of additional funding required to complete the project and the municipality on a low bid basis would award bids. Once selected, this funding source could be achieved through the sale of tax credits that would be awarded to the developer. For example, if a developer won a bid of $300,000 as the required gap financing necessary to construct a solar facility on a landfill, the state would award him $300,000 in tax credits that he could then sell to New Jersey companies with a New Jersey corporate tax liability at a minimum of $.75 on the dollar. This would follow programs similarly constituted such as the new EDA program "Grow New Jersey."

Similarly, Property Assessed Clean Energy (PACE) financing is a type of financing that is an alternative to a loan. This financing method may be used to encourage the installation of renewable energy and energy efficiency technologies by helping customers overcome the financial barrier associated with high up-front equipment costs. Some states are also allowing water conservation and other improvements to be financed using this mechanism. This financing mechanism is similar in some regards to a loan program. While it does not reduce the upfront price tag of solar systems, it can help make purchases more affordable by spreading the cost of the system over time.

PACE financing effectively allows property owners to borrow money from a local government to pay for renewable energy and/or energy-efficiency improvements. The amount borrowed is typically repaid via a special assessment on property taxes, or another locally collected tax or bill, such as utility bills, or water or sewer bills. Only the property

owners within the local jurisdiction that opt into the PACE program will be subject to this special assessment. In addition to reducing the upfront costs of renewable energy and/or energy efficiency improvements, PACE financing allows the cost of home improvements to be linked to the property. If a property owner participating in a PACE program sells the property, then the repayment obligation will legally transfer with the property. This approach has a number of appealing features, including: long-term, fixed-cost financing; loans that are tied to the tax capacity of the property rather than to the owner's credit standing; a repayment obligation that legally transfers along with the sale of the property; and a potential ability to deduct the repayment obligation from federal taxable income, as part of the local property tax deduction.

Either of these programs could form the basis of a source of additional funding to assist municipalities in remediating and returning to productive use Brownfields, landfills and areas of historic fill.

3. Update on the development of net metering aggregation standards pursuant to N.J.S.A. 48:3 – 87 (e) (4).

Based upon our detailed review of the statute relating to net metering aggregation or "virtual net metering" for municipalities, the counties and the state, we find that the law lacks enough specific guidance to be actionable. In our opinion, there are sections of the law that are contradictory, standards and requirements are cited that seem to have no rational basis for existence, and we are not sure that we understand the level of authority that has been granted the Board in creating a regulatory process that would make sense. For instance, (i) the property upon which the solar array is constructed must be owned by the utility customer, (ii) all facilities utilizing the renewable energy must be of the same rate class, and (iii) the owner of the system will be compensated for all energy used offsite at the avoided wholesale cost of power following a year end reconciliation, to name a few. Therefore we believe that the legislature should revisit this narrow area of the law and provide additional clarity so that the Board can more effectively create the fabric of regulation necessary to enact these provisions productively.

As currently constituted, we find that the law creates more questions than answers in this specific regard and would not achieve its desired result of incentivizing aggregate net metering projects benefitting government entities.

We appreciate the opportunity participate in this important dialogue and look forward to continuing to work with the Board and other stakeholders.

Gary N. Weisman

President
New Jersey Solar Energy Coalition

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November 19, 2012

Client/Matter No. 17101/1 and 17122/3

Via E-mail (OCE@bpu.state.nj.us)
Board of Public Utilities
State of New Jersey
44 South Clinton Avenue - 7th Floor
Trenton, NJ 08625-0350

RE: Response to Request for Public Comments
New Jersey Solar Act, L. 2012, c. 24: Subsection (s)
***Developer*: OCI Solar Power, LLC**
***Projects*: Holmdel Road Solar Project, Holmdel, NJ**
Elmer Road Solar Project, Vineland, NJ

Dear Sir or Madam:

Our client, OCI Solar Power, LLC ("OCI"), is the developer of two solar projects, each located on farmland-assessed property. Each project is 3 MW in size and has received final, unappealable municipal land use approval. The Holmdel project is currently under construction.

Both projects are eligible for certification as "connected to the distribution system" under subsection (s) of the New Jersey Solar Act, L. 2012, c. 2. Accordingly, on September 14, 2012, OCI filed notices with your office indicating its intent to qualify each project under subsection (s). In early October, your office published a "Solar Act Project List" on which OCI's projects are numbers 30 and 31.

On November 9, 2012, you held a public meeting to discuss the Solar Act. Specifically, you solicited stakeholders' opinions as to what criteria should be considered in determining whether a given project is "connected to the distribution system" under subsection (s). You also asked that written public comments on this issue be submitted by November 23, 2012.

In response to your request for public comment, OCI suggests the following criteria:

1. Is the project under construction?

2. What will be the project's impact on the state's SREC market?

3. Has the project achieved the following milestones:

   a. Has the project received final, unappealable municipal land use approval?

   b. Has the project's developer entered into an interconnection agreement?

   c. Has the project's developer entered into a construction agreement?

   d. Has the project's developer entered into a wholesale market participation agreement?

Of course, the answer to question #1 is paramount. Assume, for example, that a particular project is not certified by the BPU as "connected to the distribution system." That project is then ineligible to participate in New Jersey's SREC market. If the project is not under construction, its developer may simply elect not to move forward. But, if construction is underway, the project's developer likely has passed the point of no return. This developer has not only incurred significant soft costs (to obtain municipal approvals), but has also expended hard money on installation. It is this developer who will suffer real financial harm if his project is not certified. Thus, projects under construction should receive priority consideration.

With respect to question #2, a project's expected impact on New Jersey's SREC market is also a crucial consideration. Smaller projects have the least impact on the state's SREC market. Thus, these projects should receive priority consideration.

Finally, with respect to #3, these particular milestones are important for two reasons. First, where a project has achieved all four milestones, it is more likely that the project's developer has incurred significant soft costs. This developer will suffer the greatest financial harm if his project is not certified. Second, where the developer has achieved these milestones, it is more likely that the project will be built. Projects that have a realistic chance of being built should receive priority consideration.

To recap, OCI suggests that the Board consider:

1. Whether the project is under construction;

2. The project's impact on the state's SREC market; and

3. The four milestone criteria: (1) municipal approval, (2) interconnection agreement, (3) construction agreement, and (4) wholesale market participation agreement;

By giving each criterion appropriate weight, the BPU will be able to make an informed determination as to which projects should be certified as "connected to the distribution system" under subsection (s). Parenthetically, it is worth noting that both OCI projects generally meet the suggested criteria. The one exception is that the Elmer Road project, while fully approved, is not yet under construction. Construction on the Holmdel project began in October 2012. The facility is expected to be fully operational by early next year. Both projects are 3 MWs in size, meaning neither will have a substantial impact on the state's SREC market.

Thank you for your consideration. Please indicate your receipt of this letter by signing the enclosed copy of this letter and returning the signed copy to our office.

Very truly yours,

MICHAEL A. BRUNO

The undersigned hereby acknowledges receipt of the enclosed application this _____ day of November, 2012.

_____

MAB/mh
Enc
cc: Stephen Elkind, OCI Solar Power
Steven P. Gouin, Esq.

Docs #1155871-v2

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:19 AM
To: Deborah Petrisko
Subject: FW: 40 FW: N.J.S.A. 48:3-87(t) request

Importance: High

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
317 George Street, Suite 305, New Brunswick, NJ 08901
Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 6:03 PM
To: Linda Wetzel
Subject: 40 FW: N.J.S.A. 48:3-87(t) request
Importance: High

#40

From: Harlan Vermes [mailto:HVermes@aesolar.com]
Sent: Tuesday, November 20, 2012 2:33 PM
To: OCE
Cc: Dan Lichtman
Subject: N.J.S.A. 48:3-87(t) request
Importance: High

To whom it may concern,

Per your request to submit written comments from interested stakeholders regarding the N.J.S.A. 48:3-87(t) Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills:

We have an existing customer that is interested in installing a solar field on parcel of land that would qualify for this program and intend to use the generated capacity for their own demand. They currently use approximately 15,000,000 kWh per year of electricity for their facility and would like to supplement their current solar arrays that are only covering roughly 2,000,000 kWh of electricity.

The land parcel is located directly adjacent to their facilities, with no other business or residents between them. We respectfully request a means of certification, application requirements, and financial incentives available for this project. Kindly respond with our next steps.

Warm regards,

Harlan Vermes - Business Development Manager
Absolutely Energized Solar Electric
www.aesolar.com

O: 732-792-0700

F: 732-385-1359
M: 856-380-0858

INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC

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spearlman@iandplaw.com

November 15, 2012

VIA OVERNIGHT DELIVERY
President Robert M. Hanna
New Jersey Board of Public Utilities
44 So. Clinton Ave.
Trenton, NJ 08625

Re: SREC Market effects on County Renewable Energy Programs

Dear President Hanna,

I am writing on behalf of several clients, specifically Morris County and Somerset County (including their implementing agents, the county improvement authorities in Morris and Somerset, the "*Counties*"), with respect to the Board of Public Utilities' (the "*BPU*") requirement to review and determine the treatment of proposed grid supply solar projects in the State, specifically as such projects seek access to SRECs, all pursuant to P.L. 2012, c. 24, enacted July 23, 2012 (the "*2012 SREC Legislation*"). Please note this letter was prepared in consultation with Gabel Associates, renewable energy consultant and construction manager for the Counties with regard to each respective County's Renewable Energy Program (defined below). As will be explained below, the Counties have a significant vested interest, and in particular through their County Guaranties (defined below), a substantial financial interest, in assuring that the SREC market be stabilized in the State of New Jersey (the "*State*").

Over the past three years, the Counties have undertaken several hybrid (i.e., government financed, PPA model) pooled programs (collectively, the "*Renewable Energy Pro*grams") for the financing, construction, installation and operation of 26 MW of solar renewable energy projects for their constituent local governments, such as municipalities, school districts, and local authorities and commissions (collectively, the "*Local Units*"). These Renewable Energy Programs, including two pools of Local Units (tranches) in each of Morris and Somerset Counties, have resulted in the installation of solar panels on facilities owned by the Local Units in each of the Counties at NO net cost to the Local Units. This extremely popular Renewable Energy Program, utilized at over 100 facilities for 50 Local Units in these Counties, was achieved, in large part through County improvement authorities, which provided low cost bonding financing to competitively selected solar developers, and in return have achieved 15 year locked in PPA pricing that saves anywhere from 23% to 60% off of current and projected tariff rates for these Local Units. In the end, the Local Units achieve major, stable budget

savings, the advantages of renewable energy (including curriculum for school districts), and with the bonding performed at the County level as a shared service (following the State directive to maximize the use of shared services, as well as in accordance with the Governor's 2011 Energy Master Plan for solar energy), the Local Units did/do not even have to make any capital payments for these projects, as the solar developers are obligated to effectively pay back the bond debt service through a financing lease, basic lease payment structure. The considerable Local Unit (and local taxpayer) interest becomes evident when one takes these main features into account.

The solar developers participating in these Renewable Energy Programs were equally enthused with the structure, as in essence the County financing took the place of their higher cost private capital, were it available in today's post 2008 credit crunch competitive marketplace for capital (plus it preserves their access to private capital for other projects). These developers were unconcerned with the financing lease structure, as in essence their basic lease payments took the place of their traditional private capital loan repayments, and at much cheaper rates, while preserving their rights to take advantage of the federal tax benefits and SRECs (the financing lease structure allows the solar developer to be the "owner" of the systems for federal tax purposes, as these triple net leases shift substantially all of the benefits and burdens of ownership to the solar developers, even though the developers are only system lessees for State law purposes, a desired governmental result in case of developer default). It was that financing savings (without the loss of the federal tax benefits and SREC benefits available to a solar developer in a traditional PPA model) that allowed the private solar developers to embed the savings, and rebate a portion of it, in the dramatically lower PPA pricing afforded the Local Units.

As the key to the entire structure was for the Counties to act as banks through their improvement authorities, and achieve a low cost of capital to pass on to the solar developers in order to obtain the below market PPA pricing for the Local Units, the Counties were required to offer their full faith and credit guaranties (the "*County Guaranties*") on the improvement authority bonds ("*Bonds*"), as required by the municipal marketplace. Specifically and collectively, to finance the 26MW at over 100 sites for 50 Local Units across two Counties, the county improvement authorities in Morris County and Somerset County, each in two tranches, issued 4 Renewable Energy Program series of bonds in an aggregate principal amount of $119M. Currently, there remains outstanding an aggregate principal amount of $96,235,000.

As noted earlier, the risk of repayment of these Bonds is on the solar developer, which is also entitled to the federal tax benefits, the SRECs, and the PPA pricing in order to generate cash flow to make its basic lease payments that in turn pay down the Bonds. Since the federal tax benefits and PPA pricing are established at closing (these deals have all closed since 2010), the only variable remaining for solar developer success is SREC pricing. The central point of providing this information is for the BPU to appreciate that if the solar developers are not successful due to SREC market failures, there are significant County Guaranties that would have to be called upon. To be clear, these Renewable Energy Programs do not guaranty the solar developers a specific rate of return, and by State law, the solar developers were all chosen under

a competitive RFP process that included PPA price and other factors (the selection criteria and evaluation reports are publicly available, as required by law). However, the overriding County concern, for which we write and advise the BPU, is that an absolute failure of the SREC market could come back to the Counties due to the County Guaranties. The Counties took significant measures to mitigate their County Guaranty risks (through reserve funds, payment and performance bonds, bidding requirements to "minimum" SREC values, buying down the debt through equity contributions from developers, and certain other security devices), but a failure of the SREC market leading to developer default (none of these Renewable Energy Programs are in default, and to date, every single basic lease payment has been made, and all Bonds are current) could, and likely would, affect the financial obligations of the Counties, to some extent, after these security devices are employed, due to the County Guaranties issued in good faith and with an expectation that some, modest SREC market would continue to exist.

Given the financing structure described, the stabilization of the SREC market is a key factor for the continued success of this highly popular Renewable Energy Program that provides tax savings to Local Units. In fact, as previously noted, the continued destabilization of the SREC market could bring negative impacts on the financial health of the Counties.

The primary goal of the 2012 SREC Legislation was achieving a supply/demand balance in the SREC market in order to enable continued growth of the solar sector in the State. The solar industry has been an engine for job creation and economic growth throughout the State and because of this, the idea of accelerating our Solar RPS enjoyed strong bipartisan support from the Legislative and Executive branches resulting in the 2012 SREC Legislation.

As a matter of statutory authority, the disposition of grid supply projects was placed with the BPU. The treatment of Grid supply projects, typically much larger then net metered projects, has been a public policy question since 2009. It has been understood that allowing unfettered growth of grid supply projects would swamp the SREC market, crowding out smaller, more distributed and net metered projects.

The Governor's Energy Master Plan ("*EMP*") clearly placed emphasis on net metered projects as it is well established that net metered projects provide "dual benefits," serving commercial, industrial, and government energy users, and provide tangible benefits to economic growth in the State. In fact, the 100 + facilities throughout Morris, Sussex and Somerset Counties are examples of projects with multiple benefits. The projects lower the cost of electricity over a long term for the Local Units through Power Purchase Agreements, providing real savings and predictability of energy prices. In an environment where costs of services increase, solar adoption through this Renewable Energy Program represents a way to mitigate local property tax increases – locking in savings and lower energy costs over the long term which translates into lower property taxes.

While the EMP favored net metered projects, it also explicitly limited grid supply projects on farmland. To the extent the EMP endorsed grid supply projects, it was for development on the State's brownfields and landfills.

With the 2012 SREC Legislation providing the mandate to decide, and the EMP providing policy guidance, we are currently at the beginning of stakeholder proceedings on this issue. The BPU must consider a number of grid supply projects that if built, would collectively thwart the primary purpose of the 2012 SREC Legislation, affecting the supply/demand balance for several years to come.

The EMP provides a legal requirement and a policy basis to guide BPU determinations in the area of evaluating grid supply projects and their impact on the net metered market. **The BPU is legally required to implement the EMP "to the maximum extent practicable and feasible," N.J.S.A. 52:27F-15.** As noted previously, the EMP clearly favors net metered projects. Accordingly, the BPU is legally mandated to limit development of grid supply projects.

The grid supply pipelines to be reviewed by BPU, which together represent 735.9 MW are as follows:

- **Section s List**: There are 446 MW (44 projects) on farmland with a PJM System Impact Study completed before June 30, 2011 which submitted required notification to BPU prior to September 21, 2012. These projects should be reviewed against the criteria outlined in Section r, provided below.

- **SRP Approval**: There are 289.9 MW (35 projects) for which the OCE provided SRP approval and which were not on-line at the time of the enactment of the legislation. These are not on the Section S list above and it is possible these projects may argue they are "grandfathered" given the fact they have an SRP approval. However, SRP approval does not constitute a legal right to register SRECs until project receives its Final Interconnection Approval from the utility, has final approval and a New Jersey Certification number from the OCE. Accordingly, the BPU should find that any project that has an SRP number but was not on-line (i.e. in commercial operation), by the effective date of the legislation, July 23, 2012, should be found to be a "proposed" project under section r of 2012 SREC Legislation. As a proposed project it will be required to go through the review process of Section r, provided below.

The two pipelines noted above will be subject to the following criteria, outlined in Section r of the 2012 SREC Legislation:

+ Impact on the SREC market,
+ Development of solar power in the State,
+ Preservation of open space,
+ Impact on electric rates,
+ Economic development, and
+ The ability of an electric public utility to provide safe, adequate, and proper service.

Since the SREC market is already saturated, there is a solid basis to reject these projects; particularly in light of (i) the EMP policy favoring net metered versus grid projects; and (ii) the legal mandate for the BPU to implement the EMP to the "maximum extent practicable and feasible". The BPU should review, restrict and reject these projects as expeditiously as possible in order to achieve the market balance the legislation sought and thereby enable the growth of net metered projects in future years.

These projects should be allowed to file under Section q, which allows projects to avoid the review process discussed above if they provide certain information and provide a refundable (if built) payment to the BPU of $40,000 per MW. Opening this section q process will allow projects to move forward if they so desire (up to 80 MW per year for three years) and will ameliorate complaints and challenges relative to restrictions. This is the avenue for development for these types of projects provided for by the legislation.

In conclusion, the BPU has a solid legal and policy foundation on which to reject a large percentage of grid supply projects as outlined above. The BPU should move to reject projects as expeditiously as possible, thereby sending a clear and unambiguous signal into the market place that will help to balance SREC supply and demand. Until such decisions are made, the prospect of an additional 700 + MW of grid supply projects that do not meet (and will frustrate) the Administration's EMP goals will continue to hover over the SREC market, freezing development and depressing SREC prices.

As discussed in detail above, we hope the BPU appreciates that this is an issue of significant importance to, at a minimum, the Counties that have been working to help the State meet its property tax stabilization and clean energy goals. We request that the BPU support this effort by rejecting the SREC qualification of "Section r" and "Section s" grid supply projects, and thereby stabilize the SREC market.

On behalf of the Counties, Gabel Associates and I appreciate your attention to this matter.

Very truly yours,

STEPHEN B. PEARLMAN, Esq.

SBP/amc
cc: Commissioner Holden
Commissioner Asselta
Commissioner Fox
Commissioner Fiordlisio
Tricia Caliquire Esq
Elizabeth Ackerman
Michael Winka
John Bonanni, Morris County Administrator
Mike Amorosa, Somerset County Administrator
John Eskilson, Sussex County Administrator
Steven Gabel, Pam Frank, Gabel Associates

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:20 AM
To: Deborah Petrisko
Subject: FW: 42 FW: SRECS

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
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Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 6:04 PM
To: Linda Wetzel
Subject: 42 FW: SRECS

From: gepsr65@aol.com [mailto:gepsr65@aol.com]
Sent: Tuesday, November 13, 2012 11:22 AM
To: OCE
Subject: SRECS

I HAVE INSTALLED A SOLAR SYSTEM AT MY STORE AND DID IT WITH THE HELP OF SELLING THE SRECS TO OFFSET THE HUGH EXPENSE. I FEEL THAT I CANNOT RECOMEND ANYONE TO INSTALL A SYSTEM AT THE PRESNT SREC VALUES. IF YOU WANT THE SMALL BUSINESS PEOPLE TO USE SOLAR ENERGY, YOU SHOULD LIMIT THE SIZE OF THE INSTALLATIONS OR SET UP A SYSTEM THAT WOULD HELP STABILIZE THE SREC VALUE AT A REASONABLE LEVEL.

SINCERELY,

GEORGE PIPER

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:20 AM
To: Deborah Petrisko
Subject: FW: 43 FW: SREC devaluation

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
317 George Street, Suite 305, New Brunswick, NJ 08901
Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 6:04 PM
To: Linda Wetzel
Subject: 43 FW: SREC devaluation

#43

From: David Reiss [mailto:davidreiss48@comcast.net]
Sent: Tuesday, November 13, 2012 10:24 AM
To: OCE
Cc: jim@solarelectricnj.com
Subject: SREC devaluation

To whom it may concern:

I purchased solar panels for my home a couple years ago in good faith that the SREC income would help to pay defray the expense of having the system installed. I put out $40,000.00 initially. Now because of large profit making interests being allowed to seize the opportunity, my SREC value has dwindled greatly making it very difficult to recover what I invested.

I am angry and very disappointed that this has been allowed. Please help us home owners who took the opportunity and are hurting now as a result of the current actions by business opportunists

Regards,

David Reiss (856-435-9473.)

Deborah Petrisko

From: Linda Wetzel
Sent: Tuesday, November 27, 2012 9:20 AM
To: Deborah Petrisko
Subject: FW: 44 FW: Public Comment on Solar Act of 2012

Linda Wetzel
Director, Marketing & Communications
Applied Energy Group, Inc.
317 George Street, Suite 305, New Brunswick, NJ 08901
Tel (732) 246-5700 • *Fax (732) 246-5775* • www.AppliedEnergyGroup.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Monday, November 26, 2012 6:04 PM
To: Linda Wetzel
Subject: 44 FW: Public Comment on Solar Act of 2012

#44

From: Jim SENJ [mailto:jim@solarelectricnj.com]
Sent: Monday, November 12, 2012 4:36 PM
To: OCE
Subject: Public Comment on Solar Act of 2012

Honorable Board of Public Utilities Commissioners,

At the Stakeholder meeting this past Friday, Nov. 2, 2012, it was suggested that we put our comments in writing to you. I am a small solar pv integrator located in Southern New Jersey and have been in the business for the past four years. I entered the business after being a principal in a large residential development and building company. At one time we employed close to 100 people. The economy forced me out of the home building market and I began a new career in solar pv. In this business I have used sub-contractors that employ over 40 people. They have recently had severe lay-offs due to the crash in the SREC market and lack of new projects. I have enjoyed the solar pv industry, knowing that I am "replacing" all the trees that I cut down over the 40 years to build homes. Unfortunately, I am afraid that the market is headed in the wrong direction and is dying for the small business person.

As you are well aware, solar became very desirable in New Jersey and "net-metering" made economic sense to both homeowners and business owners. The RPS set by the State made the value of SRECs sufficient to make the cost of solar beneficial to owners. The net-metering law was revised to allow SRECs to be earned by grid connected projects, and now these large projects have flooded the market with SRECs. Due to that and other factors, S1925 was adopted. In S1925 two areas exist that I would like to comment on.

First, the provision that landfills and brown fields receive special incentives to be constructed NJSA 48:3-87(T). It appears to me that several projects that were planned prior to S1925 now feel that a special incentive makes their project viable. Even those not planned feel that they need a special incentive to proceed. It is my opinion that if it is proven that an incentive is needed, then this should come from either the DEP or EDA.

Second, Supplement Incentives for Net Metered Projects Three MW or Greater NJSA 48:3-87(W). As I commented at the meeting, there is an oversupply of SRECs currently and projected for another two years. These projects are still viable and have no need for a greater financial incentive to build them. Although it isn't part of S1925, IF there is any segment that needs additional incentive, it is the small business that struggles every month with their electric bill and other overhead, and isn't making a profit to be offset by the Federal tax credit. These businesses could use an incentive to be able to install solar pv now that the Treasury Department 1603 grant has expired and the SREC value has decreased so greatly due to an oversupply.
Thank you for your time and consideration to all comments.

Jim McAleer

Jim McAleer, President
Solar Electric NJ, LLC
916 Mt. Vernon Ave.
Haddonfield, NJ 08033
Jim@SolarElectricNJ.com

November 27, 2012

Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Attn: B. Scott Hunter at OCE@bpu.state.nj.us
Renewable Energy Program Administrator

Re: Comments on Solar Act of 2012 – Subsection (t)

Dear Mr. Hunter:

On behalf of the Brownfield Coalition of the Northeast, we appreciate the opportunity to submit comments on the Solar Act of 2012 (the "Act"). Our comment presented herein is regarding implementation of subsection (t) of the Act, which addresses "initiation of a proceeding to establish a program to provide SRECs to solar generation facilities on brownfields, historic fill areas, and properly closed landfills".

Regarding financial incentives to projects located on brownfields, historic fill areas, and properly closed sanitary landfills, we ask the Board consider that the remediation and redevelopment of brownfields and sanitary landfills is critical to the implementation of the State Plan. In addition, many such facilities exist in the state and are a drain on the municipalities in which they are located, but are well-suited for solar development, thereby making the remediation and closure of such facilities a priority. We suggest that the financial incentive remain flexible for all projects within constraints determined by the Board. Identification of these costs in the early stages of the project is critical to ensuring financing can be obtained for brown to green solar projects. We suggest a percentage of the costs needed to develop solar on landfills be issued as a grant and approved at the project outset, as one method for accomplishing the required certainty to allow these projects to proceed.

Very truly yours,

SR Jaffe

Stephen R. Jaffe
President
Brownfields Coalition of the Northeast

Rachel

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November 21, 2012

VIA OVERNIGHT MAIL & ELECTRONIC MAIL

Scott Hunter
Renewable Energy Program Administrator
Office of Clean Energy
Board of Public Utilities
44 S. Clinton Avenue
Trenton, NJ 08625

Re: Response to BPU Request for Comments from Stakeholders Concerning Subsection q. of the Solar Act of 2012

Submitted on Behalf of Beaver Run Solar Farm, LLC
c/o Charles Shotmeyer
Lafayette, New Jersey SREC Registration Program No. SRP13278

Dear Mr. Hunter:

This firm serves as legal counsel to Beaver Run Solar Farm LLC ("BRSF") with respect to the above referenced solar project (the "Project"). As you know, BRSF submitted a formal application under Subsection q. of the Solar Act on September 25, 2012 and supplmented its submissions via correspondence dated October 29, 2012.

To date, BPU has not approved any solar facilities for designation as connected to the distribution system under the provisions of Subsection q. To our knowledge, no other entity has submitted an application to the BPU ahead of BRSF's September 25, 2012 application. BRSF believes that given the unambiguous nature of the language contained in Subsection q, BRSF's application should be the first such application that the BPU should administer and approve for Energy Year 2014.

Nonetheless, on behalf of BRSF, we are submitting comments to the BPU in response to the BPU's request for stakeholder input concerning the Solar Act and as a sign of our continued commitment to work with BPU to advance its Subsection q. authorization process as soon as possible.

BRSF believes that following topics are worthy of stakeholder discussion and consideration by the BPU with respect to Subsection q.:

- **Formation of Queue** – During the Stakeholder meeting on November 9, 2012, BPU made it clear that many projects that submitted applications under Subsection s. would not be approved. BRSF believes that these "rejected" projects should not be given any preferential treatment under Subsection q.. All projects that have submitted under Subsection s., and have been denied by the BPU, should be required to file a new application under Subsection q. if they wish to seek approval under that Subsection.

- **Timing** – As we have indicated in prior correspondences and conversations with the BPU, timing is extremely important for BRSF. BRSF has experienced significant delays and has incurred unnecessary costs as a result of the perceived uncertainty of the Solar Act language and the current stakeholder process. BRSF asks that the BPU set a definitive date by which it will begin administering applications under Subsection q..

- **Queue Position** – The statute requires BPU to approve the first 80MW of projects presented to it for Energy Year 2014. The statute provides no discretion to BPU in this regard. While BPU presumably could establish a formal application procedure to administer the statutory requirements, neither the statute nor the legislature directed BPU to promulgate such as procedure as both explicitly did with respect to other sections of the same legislation. BRSF will be happy to comply with any such procedure as a supplement to its existing September 25, 2012 application. However, it would be both inequitable and contrary to the statutory mandate for BRSF to surrender its current place in the queue simply because a new procedure has been created by administrative fiat. BRSF has consistently done everything in its power to comply with the statute and move the Project forward. This level of commitment and determination should be rewarded and cannot be penalized under these circumstances.

- **Fairness and Reliance** – Fairness dictates that the BPU give preference to project owners who reasonably and faithfully relied on New Jersey law and regulations to expend significant time and money to develop a solar project before a change in the law that creates new regulatory requirements but that does not prohibit their project. The BPU must consider the degree to which a project owner has relied upon then-existing regulatory programs and BPU policy to advance his or her project. BRSF has relied to a great degree on the process and policies in place prior to the implementation of S1925. As noted above, BRSF has steadily advanced the Project over the last three years. BRSF has always relied upon BPU's regulations, policies and actions in this process, including BPU's issuance of SREC Program Approval renewal after the adoption of S1925. Even this month, BRSF has (1) has made a $56,000 payment due in connection with currently warehoused solar panels intended for the Project; (2) signed an Interconnection Agreement with The Sussex Rural Electric Cooperative more or less obligating BRSF to pay over $800,000 in system upgrades; (3) signed a

Wholesale Market Participation Agreement with PJM; and (4) signed two agreements, an Interconnection Agreement and Construction Agreement with Jersey Central Power & Light Company incurring a payment of $29,300 for estimated project costs. Failure by BRSF to take any of these actions would have had a materially adverse impact on the Project. BRSF undertook these additional actions because it believes that the BPU will treat its Project application under Subsection q. fairly and with expedience, and in accordance with the explicit statutory requirements.

As noted in BRSF's prior submissions, every day that passes without a designation from the BPU further jeopardizes the Project and, in turn, BRSF's significant economic investment. BRSF has advanced the Project on every level and is fully committed to bringing the Project to fruition. BRSF would like to begin actual Project construction in the fourth quarter of 2012/first quarter of 2013. It is anticipated that the Project, once designated by the BPU as connected to the distribution system pursuant to Subsection q., will be substantially completed in Energy Year 2013 (i.e., before June 1, 2013) and commissioned in the in fourth quarter of 2013 (i.e., during Energy Year 2014).

We look forward to working cooperatively with the BPU in its stakeholder process.

Very truly yours,

DeCotiis, FitzPatrick & Cole, LLP

By: Ryan Scerbo
Ryan J. Scerbo, Esq.

cc: Tricia Caliguire, Chief Counsel, BPU
Rachel Boylan, DAG, BPU
Charley Shotmeyer, Shotmeyer Bros.
Chuck Shotmeyer, Shotmeyer Bros.
Jay Gordon, BRSF
William Harla, Esq.

NJLM New Jersey State League of Municipalities

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EMAIL league@njslom.com www.njslom.com

William G. Dressel, Jr., EXECUTIVE DIRECTOR Michael J. Darcy, CAE, ASSISTANT EXECUTIVE DIRECTOR

December 6, 2012

Re: Comments on the implementation of PL 2012, c. 24 ("Solar Act.")

Dear Mr. Hunter:

Please accept these comments regarding the implementation of the PL 2012, c 24 on behalf of the New Jersey State League of Municipalities.

In regards to subsection s of the Solar Act, it is our interpretation that it was intention of the Legislature to discourage grid-connected projects on farmland and instead and encourage such projects at suitable sites, including but not limited to brownfields, parking lots, rooftops and landfills.

Specifically, the Solar Act provides projects that not net-metered or for on-site generation located on land assessed under the Farmland Assessment Act of 1964 within the ten year period preceding July 23, 2012 shall be "connected to the distribution system" under the following conditions:

1) projects receive BPU approval under subsection q of the Solar Act;
2) PJM issued a System Impact Study on or before June 30, 2011;
3) the applicant notifies the Board within 60 days of July 23, 2012 that it intends to qualify under subsection s; and
4) Approved as "connected to the distribution system" by the BPU.

Additionally, subsection s states,

> *Nothing in this subsection shall limit the board's authority concerning the review and oversight of facilities, unless such facilities are exempt from such review as a result of having been approved pursuant to subsection q. of this section.*

Regulations and policies developed by the Board to implement the Solar Act should assure strict compliance with the limits proscribed in Act and not allow for deviation from the Act. We therefore recommend that any such policies should, at the very least, include the following.

One, any solar application, including those subject to subsection s, should require municipal site plan review and approval, together with any other necessary local

approvals, including but not limited to a "c" variance or a "d" variance, as may be needed.

Two, the applicant should demonstrate that the application complies with all applicable State, county and municipal regulations, including but not limited to the uniform construction code, required approvals from the Department of Environmental Protection and regional soil conservation approvals.

Three, the Board should carefully assure the consistency of the application with municipal zoning and planning goals. The Board review process must allow for active participation of the municipality in an open and transparent process.

Four, the Board should also take into account Statewide as well as municipal planning goals and objectives. These efforts are consistent with long-standing State policies, including the basic principles of the State Plan, the preservation of farmland and open space and the State energy master plan. These policies are also consistent with local planning priorities, particularly municipalities who have zoned to accommodate both the preservation of farmland and renewable energy sites where appropriate.

Further, at the Board's November 9 hearing comments were made and submitted asking for an expedited process for certain projects, including those with PJM approval by June 30, 2011. We express concern over such an approach, as any application should be carefully and appropriately reviewed. Establishing a special status, even for projects in the administrative pipeline, creates a troublesome precedent.

We appreciate the opportunity to comment and the League would welcome a continuing partnership with the Board to provide guidance and assistance on the implementation of viable renewable energy policies and, in particular, the Solar Act.

Thank you,

Very truly yours,

Janice S. Mironov, President
New Jersey League of Municipalities
Mayor, East Windsor

William G. Dressel, Jr, Executive Director
New Jersey League of Municipalities

Thomas & Mary Van Wingerden
138 Morris Turnpike, Newton NJ 07860
Cells 973-445-5370, email: maryvw@yahoo.com

November 22, 2012

Mr. B. Scott Hunter
Renewable Energy Program Administrator
Office of Clean Energy
Division of Economic Development & Energy Policy NJ BPU
44 S. Clinton Ave,. POB 350
Trenton, NJ 08625-350
Phone-609-292-1956

Re: Solar Act of 2012, comments for approving certain farmlands

Dear Mr. Hunter,

We are writing to you in reference to the November 9, 2012 public hearing regarding the Solar Act of 2012. We are the owners of our 100 acre farm in Frankford, New Jersey. We have been in contract to sell our land to Scott Lewis of Green Energy Partners LLC of Newton, New Jersey since early 2011.

We would like to comment on the approval of solar generating facilities on certain farmlands. Our proposed facility would not significantly impact the preservation of open space because we are not prime farmland. We were denied farmland preservation five years because our land was hilly and not tillable. Additionally, we did not have enough road frontages. We suggest the board do evaluations/inspections of all farmland properties being considered.

We also believe the board should consider reviewing all farmlands that have received all necessary approvals by the time this bill was signed on July 23, 2012. We received PJM approvals for feasibility studies in April 2011. Our PJM impact studies were approved in September 2011. Our PJM que # is X1-116. We received township approvals in May 2012 to have a 5 mw solar electric generation facility.

We sincerely appreciate your efforts in trying to resolve this issue. We are open to any questions or comments that you may have. Please do not hesitate to call us.

Sincerely,

Thomas & Mary Van Wingerden

November 27, 2012

Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Attn: B. Scott Hunter at OCE@bpu.state.nj.us
Renewable Energy Program Administrator

Re: Comments on Solar Act of 2012 – Subsection (t)

Dear Mr. Hunter:

On behalf of the Brownfield Coalition of the Northeast, we appreciate the opportunity to submit comments on the Solar Act of 2012 (the "Act"). Our comment presented herein is regarding implementation of subsection (t) of the Act, which addresses "initiation of a proceeding to establish a program to provide SRECs to solar generation facilities on brownfields, historic fill areas, and properly closed landfills".

Regarding financial incentives to projects located on brownfields, historic fill areas, and properly closed sanitary landfills, we ask the Board consider that the remediation and redevelopment of brownfields and sanitary landfills is critical to the implementation of the State Plan. In addition, many such facilities exist in the state and are a drain on the municipalities in which they are located, but are well-suited for solar development, thereby making the remediation and closure of such facilities a priority. We suggest that the financial incentive remain flexible for all projects within constraints determined by the Board. Identification of these costs in the early stages of the project is critical to ensuring financing can be obtained for brown to green solar projects. We suggest a percentage of the costs needed to develop solar on landfills be issued as a grant and approved at the project outset, as one method for accomplishing the required certainty to allow these projects to proceed.

Very truly yours,

SR Jaffe

Stephen R. Jaffe
President
Brownfields Coalition of the Northeast

Hunter, B

From: Paul Shust <PShust@pro-techenergy.com>
Sent: Friday, November 30, 2012 2:49 PM
To: Hunter, B; Heather Rek; OCE
Cc: John Drexinger; Bskoultchi@whitmanco.com; Tammy.Gray@csgrp.com
Subject: RE: SRP12915- Increase in System Size

Mr. Hunter,

The answer to your questions is "yes". Please let me know if you require any additional information in order to complete this request. Thank you for your cooperation in this matter.

Paul Shust

pro-tech energy solutions LLC

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Branchburg, NJ 08876
(908) 526-3322 (phone)
(908) 526-3301 (fax)
(908) 256-1764 (mobile)
pshust@pro-techenergy.com

From: Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
Sent: Thursday, November 29, 2012 3:53 PM
To: Heather Rek; OCE
Cc: Paul Shust; John Drexinger; Bskoultchi@whitmanco.com; Tammy.Gray@csgrp.com
Subject: RE: SRP12915- Increase in System Size

Ms. Rek,

Did you wish to have this submission added to the comments assembled from staff's request for public comment in the Stakeholder proceedings on the Solar Act and public hearing held November 9th?

Scott

From: Heather Rek [mailto:HRek@pro-techenergy.com]
Sent: Wednesday, November 28, 2012 8:49 AM
To: OCE
Cc: Paul Shust; John Drexinger; Barry Skoultchi, P.E. (Bskoultchi@whitmanco.com); Tammy.Gray@csgrp.com
Subject: SRP12915- Increase in System Size

We are requesting an increase in the system size of SRP # 12915 -Meadows of Mansfield project –from the current 6.8496 MW system size to 9.7 MW. The client's original intention was to utilize the second portion of the property as a residential development. At this time, our client has decided to move forward with the residential project and has requested that we increase the system size from the original application filing to the new system size. This particular project does not fall under the current legislation S-1925 because it is a Non-farmland accessed property. The client would like to operate under the system size requirements for a grid supplied project and stay below the 10 MW limit.

Please find these attached documents are intended to update an SRP registration packet that was previously submitted and has been assigned SRP # 12915.
I have enclosed the following documents for your review:

- Revised Conceptual plan showing new 9.7 Mw system;
- Revised Technical worksheet reflecting the increase in system size capacity; and
- PV Watts – Ideal & Designed

If you require any additional information, please let me know.

Regards,

Heather Rek

pro-tech energy solutions LLC

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