



Agenda Date: 3/19/14
Agenda Item: 8C

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

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	DOCKET NOS. EO12090832V
L. 2012, C.24, THE SOLAR ACT OF 2012; AND)	& EO12090880V
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
L. 2012, C. 24, <u>N.J.S.A. 48:3-87(Q) (R) AND (S)</u> –)	
PROCEEDINGS TO ESTABLISH THE PROCESSES)	
FOR DESIGNATING CERTAIN GRID-SUPPLY)	
PROJECTS AS CONNECTED TO THE DISTRIBUTION)	
SYSTEM –)	
)	
TRUE GREEN CAPITAL/SPANNO PARTNERS)	
HOLDING, LLC. / NORTH PARK SOLAR, LLC)	DOCKET NO. EO13060563V

Parties of Record:

Jason Kislin, Esq., for True Green Capital (North Park Solar, LLC.)

BY THE BOARD:

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

Subsection q of the Solar Act provides that:

During the energy years of 2014, 2015, and 2016, a solar electric power generation facility project that is not: (a) net metered; (b) an on-site generation facility; (c) qualified for net metering aggregation; or (d) certified as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility, as provided pursuant to subsection t. of this section may file an application with the board for approval of a designation pursuant to this subsection that the facility is connected to the distribution system. An application

filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility. The board shall approve the designation if: the facility has filed a notice in writing with the board applying for designation pursuant to this subsection, together with the notice escrow; and the capacity of the facility, when added to the capacity of other facilities that have been previously approved for designation prior to the facility's filing under this subsection, does not exceed 80 megawatts in the aggregate for each year. The capacity of any one solar electric power supply project approved pursuant to this subsection shall not exceed 10 megawatts. No more than 90 days after its receipt of a completed application for designation pursuant to this subsection, the board shall approve, conditionally approve, or disapprove the application. The notice escrow shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection.

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

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

On November 9, 2012, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012. Over one hundred stakeholders representing the electric distribution companies ("EDCs"), solar market participants, landfill developers, environmentalists, municipalities, and ratepayers participated in the public hearing and submitted comments. Based in part upon the comments received from the public, Staff developed an application and a form of escrow agreement to implement the requirements of Subsection q.

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

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

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

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

Escrow Agreement at para. 10.

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

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

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

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

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

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

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

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

Staff discussed the Subsection q application process and forms with RE stakeholders at the regularly scheduled stakeholder meeting on May 14, 2013. On May 15, 2013, at 4:00 p.m. per the internal clock of the Board's email servers, the "Qnotice@bpu.state.nj.us" email address was activated by the Board's Information Technology staff. Twenty eight (28) Notices were filed from 15:59:37 (3:59 p.m. on the internal clock of the Board's email server) through 19:50:37 (7:50 p.m.) on Wednesday, May 15, 2013. Twenty seven of the twenty eight projects which filed the Notice also submitted an application.

A timely Notice was filed and on May 20, 2013 an application was submitted by Jim Spano, Spano Partners Holding, LLC. for North Park for an EY14 approval of a 7.6 MWdc grid supply solar facility proposed for Block 16, Lot 2.01 & 9.05 on 700 Rike Drive in Millstone Township, New Jersey 08535 in Monmouth County ("Millstone Project"). According to Staff's review, an escrow account was established at Investors Bank on May 15, 2013 which was not funded until May 17, 2013. Additionally, the escrow agreement failed to specifically identify the project for which funds were deposited. Staff recommended that the application be denied for lack of escrow funds deposited by May 15, 2013, and for the lack of a properly executed escrow agreement as required under the application procedures. Staff also recommended that two other North Park applications be denied for failing to satisfy all of the requirements of the application process. After review and consideration, by Order dated August 21, 2013 ("August

21 Order"), the Board adopted Staff's recommendations and denied the three North Park applications.

On or about September 6, 2013, North Park filed a motion for reconsideration of the August 21 Order. Because the Board did not timely act on the motion, it was deemed denied pursuant to N.J.A.C. 14:1-8.6. On or about December 4, 2013, North Park filed an appeal of the August 21 Order which is currently pending before the Appellate Division under Docket No. A-1605-13T2.

Subsequently, North Park and the Division of Law on behalf of Board Staff entered into negotiations, and on February 25, 2014, entered into the attached settlement agreement ("Settlement"). In relevant part, the Settlement provides that:

1. Board Staff will recommend that the Board approve the Settlement and thereby approve the Millstone Project as modified for designation as connected to the distribution system under Subsection q for EY 2014 under the same terms and conditions as applied to projects approved by the Board's February 4, 2014 Order.
2. North Park agrees to reduce the stated capacity of the Millstone Project to 6.5 MWdc, and within two weeks of the effective date of Board approval to a) file a revised application under Subsection q reflecting the reduced capacity, b) post a recalculated escrow and c) submit SREC Registration packages reflecting the reduced capacity for the Millstone Project.
3. North Park shall comply with all of the requirements of Subsection q.
4. As of the effective date of Board approval, North Park shall cause the Appeal to be dismissed with prejudice. Board counsel shall execute a stipulation of withdrawal within ten days of the effective date of Board approval.

DISCUSSION AND FINDING


The Board is mindful of the State's public policy favoring reasonable and appropriate settlements. See Herrera v. Twp. of S. Orange Vill., 270 N.J. Super. 417, 424 (App.Div.1993). As recently summarized by the New Jersey Supreme Court, public policy favors the settlement of disputes because, among other things, settlement spares the parties the risk of an adverse outcome and the time and expense of protracted litigation, and also preserves overstretched judicial resources. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 253-254 (2013).

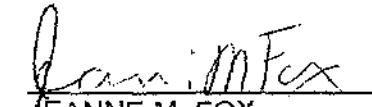
After review, the Board **FINDS** that the terms of the settlement are fair and reasonable. With the agreed upon reduction, the Millstone Project will utilize capacity which remains open in EY 2014 after the recently completed second round of Subsection q applications. Allowing North Park's Millstone Project to move forward at a reduced capacity comports with the requirements of Subsection q and eliminates the need for additional litigation.

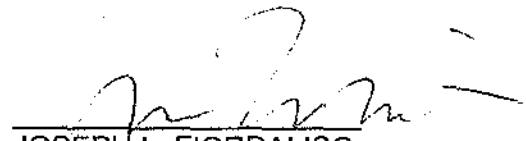
Accordingly, the Board **HEREBY ADOPTS** the Settlement in its entirety, incorporating the terms thereof into this Order as if fully set forth herein, and **HEREBY DIRECTS** the parties to comply with the terms of the Settlement.

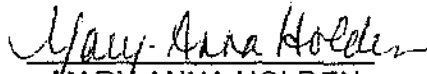
DATED: 3/19/2014

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

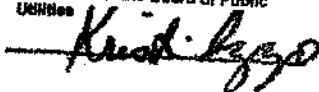

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

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



DOCKET NOS. EO12090832V & EO12090880V - IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012; and

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, N.J.S.A. 48:3-87(Q) (R) AND (S) – PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM –

DOCKET NO. EO13060563V - TRUE GREEN CAPITAL/SPANNO PARTNERS HOLDING, LLC. / NORTH PARK SOLAR, LLC

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Exhibit A

GREENBERG TRAURIG, LLP
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(973) 301-8410 (Facsimile)
Attorneys for North Park Solar, LLC

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1605-13T2

In the Matter of the Implementation of L. 2012,
C. 24, The Solar Act of 2012

And

In the Matter of the Implementation of L. 2012,
C. 24, N.J.S.A. 48:3-87(Q) (R) and (S) –
Proceedings to Establish the Processes For
Designating Certain Grid-Supply
Projects as Connected to the Distribution
System – Subsection (Q) Application Denials

STIPULATION OF WITHDRAWAL OF APPEAL

Appellant, North Park Solar, LLC hereby withdraws, with prejudice, its Notice of Appeal
filed in the above captioned action, which was filed on December 4, 2013.

GREENBERG TRAURIG, LLP
Attorneys for Appellant

JOHN J. HOFFMAN, ACTING ATTORNEY
GENERAL OF NEW JERSEY–
Attorney for the New Jersey Board of Public
Utilities

By: _____
Jason H. Kislin, Esq.

By: _____

Dated:

Dated:

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered into on this ~~25th~~ day of February, 2014, by, between, and among, on the one hand, North Park Solar, LLC ("North Park") and, on the other hand, the Staff of the New Jersey Board of Public Utilities (the "Board") (North Park and the Board Staff shall be collectively referred to as the "Parties").

WHEREAS, on or about May 15, 2013, North Park filed with the Board applications (the "Applications") for approval of the following projects as "connected to the distribution system" pursuant to N.J.S.A. 48:3-87-3(q) ("Subsection q"): (i) a 7.6 MWdc photovoltaic facility located at Block 16, Lot 2.01 and 9.05 in Millstone Township, NJ (commonly known as 700 Rike Drive, Millstone, New Jersey), with a PJM Queue Number W1-113 (the "Millstone Project"); (ii) a 1.7 MWdc photovoltaic facility located at Block 74, Lot 13.01 in Manalapan, NJ (commonly known as 371 Highway 33 East, Manalapan, NJ) with a PJM Queue Number W1-032; and (iii) a 5.9 MWdc photovoltaic facility located at Block 16, Lot 2.01 and 9.06 in Millstone Township, NJ, with a PJM Queue Number W2-078.

WHEREAS, by Order dated August 21, 2013, the Board denied the Applications in a matter entitled "In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012; And In the Matter of the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q) (R) and (S) – Proceedings to Establish the Processes For Designating Certain Grid-Supply Projects as Connected to the Distribution System – Subsection (Q) Application Denials" (Docket Nos. EO12090832V & EO12090880V) (the "Board Denial").

WHEREAS, on or about September 5, 2013, North Park filed a motion for reconsideration before the Board seeking reconsideration of the Board Denial, which on or about November 4, 2013, was deemed denied based on Board inaction.

WHEREAS, on or about December 4, 2013, North Park took an appeal of the Board Denial, which appeal is currently pending before the Superior Court – Appellate Division under Docket No. A-1605-13T2 (the "Appeal").

WHEREAS, the Parties to this Agreement desire to resolve the outstanding disputes, or potential disputes, as between them, by settlement and agreement, and without the expense and inconvenience of further litigation, and without the admission of liability or wrongdoing by any party hereto.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises hereinafter set forth, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto promise and agree as follows:

1. **Board Approval.** At its regularly scheduled monthly meeting in March 2014, Board Staff shall recommend that the Board approve this Settlement Agreement, and thereby approve the Millstone Project under Subsection q for Energy Year 2014 on terms substantially similar to those set forth in its Order dated February 4, 2014 in a matter entitled "In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012; And In the Matter of the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q) (R) and (S) – Proceedings to Establish the Processes For Designating Certain Grid-Supply Projects as Connected to the Distribution

System - Subsection (Q) Round Two Application Approvals" (the "Board Approval"), subject to the following conditions: (i) the stated capacity for the Millstone Project shall be reduced to 6.5 MWdc, (ii) within two weeks of the effective date of the Board Approval, North Park shall file a revised application under Subsection q reflecting the reduced capacity of the Millstone Project, and shall post a recalculated escrow amount complying with the statutory requirement of \$40,000 per MW; (iii) within two weeks of the effective date of the Board Approval, North Park shall resubmit SREC Registration packages reflecting the reduction in capacity of the Millstone Project, and (iv) North Park shall otherwise comply with all of the requirements of Subsection q.

2. **Dismissal of the Appeal.** Effective as of the date of the Board Approval, North Park shall cause the Appeal to be dismissed with prejudice, with each party to bear its own attorneys' fees, expenses and costs. The Board's counsel shall execute a Stipulation of Withdrawal of Appeal in the form attached hereto as Exhibit "A" and return it to counsel for North Park for filing within ten (10) days of the effective date of the Board Approval. The Parties agree to execute and file any and all other documents as may be necessary to cause the Appeal to be dismissed with prejudice.

3. **Mutual Release.** Except with respect to any rights pursuant to this Agreement, each of the Parties hereby waives, releases, relinquishes, and discharges each other Party and its and their affiliates, subsidiaries, predecessors, successors, and assigns, and its and their present and former directors, officers, employees, members, representatives, counsel and agents and its and their heirs, successors, and assigns from any and all claims, liabilities, suits, damages, actions, or manner of actions, whether in contract, tort, or otherwise which either Party ever had, or now has or hereafter may have against the other Party or any of them, whether the same be in administrative proceedings, in arbitration, in law, at equity, or mixed, arising from or relating to any act or omission, or thing or matter of any kind whatsoever, by or on behalf of the other party or any of them prior to the date hereof which arise out of, underlie or are related to the Litigation.

4. **No Admission.** No party hereto admits having engaged in any wrongful conduct or having violated the rights of any other Party hereto. The Parties agree that nothing in this Agreement constitutes or shall be deemed to constitute any admission of wrongdoing.

5. **Severability.** If any one or more of the provisions of this Agreement is ruled to be wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction then: (a) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable shall be unaffected; (b) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (c) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to amend and to reform the provision(s) to the minimum extent necessary to render it valid and enforceable in conformity with the parties' intent as manifested in this Agreement and a provision having a similar economic effect shall be substituted; and (d) if the ruling and/or the controlling principle of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

6. **Waiver of Breach.** The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent

breach of this Agreement. Further, no Party shall be deemed to have waived any provision of or right under this Agreement unless such waiver is set forth in writing signed by the Party against whom waiver is asserted.

7. **Construction.** This Agreement shall not be construed more strictly against any Party hereto merely by the virtue of the fact that the Agreement may have been drafted or prepared by such Party or its counsel, it being recognized that all of the Parties hereto have contributed substantially and materially to the preparation of such document and that this Agreement has been the subject of negotiations between the Parties and as a product of that negotiation.

8. **Headings.** The headings, captions, and titles appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the Agreement or any paragraph or provision therein.

9. **Effectuation.** Each of the Parties agrees to execute any and all additional documents necessary to effectuate the intent and purpose of this Agreement.

10. **Reliance Upon Counsel.** The Parties hereto have relied upon the advice and representation of counsel selected by them respecting the legal liabilities and obligations of the Parties hereto including, but not limited to, all claims released hereunder, and the Parties hereto have been fully advised as to the legal effect thereof by their respective counsel and the Parties have entered into this Agreement willingly and voluntarily with full knowledge of the consequences hereof.

11. **Binding Agreement.** This Agreement shall be binding on and shall inure to the benefit of the Parties hereto, and their respective officers, employees, agents, heirs, personal and legal representatives, successors, and assigns.

12. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and no representations, promises, or agreement, oral or written, relating hereto not herein contained shall be of any force or effect. No change or modification of this Agreement shall be valid or binding upon the Parties unless and until the same is in writing and signed by the Party against whom enforcement of such change or modification is sought.

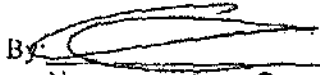
13. **Applicable Law.** The construction, interpretation, and enforcement of this Agreement shall at all times and in all respects be governed by the laws of the State of New Jersey, without reference to the State of New Jersey's choice of law or conflict of law provisions or principles.

14. **Counterparts.** This Agreement may be executed in one (1) or more counterparts, any of which, if originally executed, shall be binding upon the parties signing thereon, and all of which taken together shall constitute one and the same instrument.

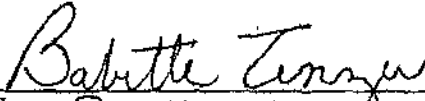
(signature page to follow)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

North Park Solar, LLC

By: 
Name: *James Spang*
Title: *Managing Member*

John J. Hoffman, Acting Attorney General of New Jersey
Attorney for Staff of the New Jersey Board of Public Utilities

By: 
Name: *Babette Tenzer*
Title: *Deputy Attorney General*

(Signature page to North Park/Board Settlement Agreement)