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June 21, 2013

Client/Matter No. 17799/1

VIA ELECTRONIC FILING

Joseph H. Orlando, Clerk
Appellate Division
Superior Court of New Jersey
Hughes Justice Complex
25 W. Market Street, PO Box 006
Trenton, NJ 08625-0006

RECEIVED
DIVISION OF LAW
2013 JUN 24 PM 1:10

**RE: *In the Matter of Implementation of L. 2012, c. 24, The Solar Act of 2012, and
In the Matter of Implementation of L. 2012, c. 24, N.J.S.A. § 48:3-87(q), (r), (s)***
Appellant: EAI Investments, Inc.

Dear Mr. Orlando:

Our firm represents EAI Investments, LLC for purposes of this appeal. We have filed EAI's Notice of Appeal and Case Information Statement via electronic filing on the Appellate Division's website. Please return a filed copy to me and charge our account No. 35600 to cover the filing costs. If you have any questions please contact me. Thank you for your attention to this matter.

Very truly yours,


PAUL H. SCHNEIDER

PHS/mh

Enclosures

cc: EAI Investments, LLC
Robert M. Hanna, President, N.J. Board of Public Utilities
Caroline Vachier, DAG
Michael A. Bruno, Esq.
Steven P. Gouin, Esq.

Docs #1331771-v1



**New Jersey Judiciary
Superior Court - Appellate Division
NOTICE OF APPEAL**

Type or clearly print all information. Attach additional sheets if necessary.

ATTORNEY / LAW FIRM / PRO SE LITIGANT (2)

TITLE IN FULL (AS CAPTIONED BELOW): (1)
In the Matter of 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)(s): Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as Connected to the Distribution System - Request for Approval of Grid Supply Solar Electric Power Generation Pursuant to Subsection (s)

NAME
 Paul H. Schneider, Esq. - Giordano, Halleran & Ciesla, PC

STREET ADDRESS
 125 Half Mile Road, Suite 300

CITY Red Bank	STATE NJ	ZIP 07701	PHONE NUMBER 732-741-3900
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EMAIL ADDRESS
 pschneider@ghclaw.com

ON APPEAL FROM

TRIAL COURT JUDGE (3) n/a	TRIAL COURT OR STATE AGENCY (4) NJ Board of Public Utilities	TRIAL COURT OR AGENCY NUMBER (5) EO12090832V/EO12090880V
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(7) Notice is hereby given that **(6)** EAI Investments, LLC appeals to the Appellate Division from a Judgment or Order entered on _____ in the Civil Criminal or Family Part of the Superior Court or from a State Agency decision entered on May 10, 2013.

(8) If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.
 Denial of Docket No. EO12121124V - EAI Investments, LLC's application for approval as "connected to the distribution system" under subsection (s) of the N.J. Solar Act of 2012, L. 2012, c. 24, N.J.S.A. 48:3-87(s).

(9) Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) Yes No
 If not, has the order been properly certified as final pursuant to R. 4:42-2? Yes No

For criminal, quasi-criminal and juvenile actions only:

(10A) Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

(10B) This appeal is from a conviction post judgment motion post-conviction relief.
 If post-conviction relief, is it the 1st 2nd other _____
specify

(10C) Is defendant incarcerated? Yes No
 Was bail granted or the sentence or disposition stayed? Yes No

(10D) If in custody, name the place of confinement:

Defendant was represented below by:
 Public Defender self private counsel _____
specify

(11) Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	Board of Public Utilities	6/21/13
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)	Caroline Vachier, DAG	6/21/13

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
----------------------	--	-----------------

(12) Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office			
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

(13) Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).
List the date(s) of the trial or hearing:
11/9/12, 12/11/12, 1/7/13, 2/14/13, 3/13/13, 4/9/13, 4/29/13 - Transcripts have been requested by Appellant Renewtricity (Docket Nos. EO12121094V and EO12121095) and arrangements are being made with counsel.
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief.
I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

(14) June 21, 2013
DATE

(15)


SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



**New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

TITLE IN FULL (1)

TRIAL COURT OR AGENCY DOCKET NUMBER (2)

I/M/O Implementation of L. 2012, c. 24, the Solar Act of 2012, and I/M/O Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(q)(r)(s): Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as Connected to the Distribution System - Request for Approval of Grid Supply

EO12090832V/EO12090880V

■ Attach additional sheets as necessary for any information below.

(3) APPELLANT'S ATTORNEY EMAIL ADDRESS: pschneider@ghclaw.com

PLAINTIFF DEFENDANT OTHER (SPECIFY) Applicant

NAME

Paul H. Schneider, Esq.

CLIENT

EAI Investments, LLC

STREET ADDRESS

125 Half Mile Road, Suite 300

CITY

Red Bank

STATE

NJ

ZIP

07701

TELEPHONE NUMBER

732-741-3900

(4) RESPONDENT'S ATTORNEY * EMAIL ADDRESS: caroline.vachier@dol.lps.state.nj.us

NAME

Caroline Vachier, DAG

CLIENT

NJ Board of Public Utilities

STREET ADDRESS

124 Halsey Street, PO Box 45029

CITY

Newark

STATE

NJ

ZIP

07102

TELEPHONE NUMBER

973-648-3709

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

The Appellant EAI Investments, LLC submitted an application to the NJBPU under subsection (s) of the N.J. Solar Act of 2012 for designation of a proposed 17.9 MW solar facility as "connected to the distribution system." The BPU denied EAI's application by Order (attached) dated May 10, 2013. EAI's individual Docket No. is EO12121124V.

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? YES NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6) YES NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice? YES NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) YES NO

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Please see attached.

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only):
 Please see attached.

(10) IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? n/a YES NO

2. Did the trial judge issue written findings or an opinion? If so, on what date? n/a YES NO

3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? YES NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: n/a

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(11) (A) Arises from substantially the same case or controversy as this appeal? YES NO

(12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? YES NO

(13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? YES NO

(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:	Appellate Division Docket Number:
Appeals of the same order were filed by Effisolar Development, LLC and Renewtricity	TBD TBD

(15) Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. YES NO

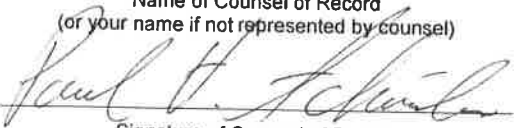
Explain your answer:

(16) I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

(17) EAI Investments, LLC
Name of Appellant or Respondent

(18) Paul H. Schneider, Esq.
Name of Counsel of Record
(or your name if not represented by counsel)

(19) June 21, 2013
Date

(20) 
Signature of Counsel of Record
(or your signature if not represented by counsel)

ATTACHMENT TO CASE INFORMATION STATEMENT

EAI INVESTMENTS, LLC

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

The Appellant, EAI Investments, LLC (“EAI”) is the developer of a fully-approved, 242-unit residential, *Mt. Laurel* housing project (“the Project”), to be developed in Pohatcong Township, NJ (“Pohatcong”). Long ago, the Project was declared Pohatcong’s only realistic opportunity to provide its fair share of affordable housing. The Project includes 44 units of affordable housing, which, if constructed, will satisfy Pohatcong’s decades-old affordable housing obligation. If it is not constructed, Pohatcong may never be *Mt. Laurel* compliant.

In 1988, Pohatcong first designated the Project’s location, a 170-acre parcel located at the corner of High Street and Carpentersville Road (“the EAI Parcel”),¹ as the township’s sole affordable housing compliance property. For the past 20+ years, the Project has been delayed primarily due to ever-changing government regulation. Since 1990, the Project has been the subject of interminable *Mt. Laurel* litigation involving, at various points, Pohatcong, the New Jersey Department of Environmental Protection (“DEP”), and the Highlands Council.

In 2011, the involved parties – including EAI, Pohatcong, DEP, and the Highlands Council – reached a compromise that would finally allow the Project to move forward. EAI agreed to redesign the Project so that it would contain fewer market-rate residential units (it had once been approved for 466 market-rate units) with no reduction in the number of affordable units provided. The 242 units would be condensed into a 44.5-acre portion of the EAI Parcel and EAI would surrender its development rights to the remaining 124.5 acres (“the Preserved Land”), which, under the compromise, would be deed-restricted and preserved as open space.

¹ The EAI Parcel is designated as Block 93, Lots 4 and 5 on the Township’s Tax Map.

EAI did this in exchange for (1) a determination from the Highlands Council that the Project was “consistent” with the Highlands Regional Master Plan; (2) a wastewater management plan amendment from the DEP that was necessary for the Project to move forward; (3) approval of the Project’s General Development Plan from Pohatcong; and (4) the ability to construct a 16.9-megawatt solar power generation facility (“the Facility”) on the Preserved Land.

In 2010-11, the approximate value for a 25-year lease for the Facility was about \$20,000 per MW per year (total, \$340,000 per year). After 25 years, the Facility would have generated approximately \$8,500,000 in lease revenue. This would be by no means a windfall for EAI, but it would be enough to compensate EAI for its lost development rights. The value of the solar lease was predicated on the concept that, during its operational period, the Facility would generate income by producing and selling “solar renewable energy certificates” (“SRECS”).

In New Jersey, SRECs are sold through the state’s SREC Tracking System (“STS”) to energy providers, such as JCP&L or PSE&G. These energy providers must purchase SRECs to satisfy their “Renewable Portfolio Standard,” or “RPS,” requirement. The RPS requirement is the statutory minimum percentage of the electricity that energy providers sell to consumers that must be produced by solar power generation. If energy providers do not satisfy their RPS, they must pay a statutory penalty. That statutory penalty is known as the “solar alternative compliance payment,” or “SACP.” One SACP payment is due for each megawatt hour (“MWh”) that an energy provider is deficient. Since one SREC can be traded for one SACP, purchasing SRECs from private facilities is one way that energy providers satisfy the RPS.

Before a solar facility may start producing electricity, it must register with the state’s SREC Registration Program (“SRP”). Once the facility’s registration is complete, the project is issued a certification number that enables it to generate SRECs. The facility’s owner then

reports the amount of energy produced by the facility to the STS. The facility earns an SREC – which is placed in the facility’s customer account with the STS – for every one megawatt hour (“MWh”) of solar electricity it produces.

SRECs are not electricity. They are purely artificial “credits” whose purpose is to encourage solar development by allowing developers to recoup their investment more quickly. The value of an SREC is, theoretically, determined by market forces. The price is dictated by supply (how many SRECs are being produced) and demand (how many SRECs are necessary for energy providers to avoid paying the SACP). But if the market price of an SREC were ever to exceed the SACP, energy providers would simply pay the SACP, rather than purchase an SREC. Thus, the SACP caps the SREC market by providing a maximum price.

At the time the Facility was first proposed, the SACP was high – approximately \$700 – and SRECs were trading on the STS for about \$600 apiece. Because the Facility would generate about 20,000 SRECs per year, it would be desirable for a solar provider to lease it from EAI. Again, this would protect EAI’s interest, by providing the required compensation for the lost development rights to the Preserved Land and for the reduced unit count. It would also protect the state’s interest in preserving ecologically valuable farmland because the Facility would be operational only for a limited time only and land upon which it was built would be deed-restricted from further development.

On February 27, 2012, the Project, including the Facility, received final municipal land use approval from Pohatcong – with the blessing of both the Highlands Council and the DEP. On March 19, 2012, EAI registered the Facility with the SRP.

At that time, any solar facility could produce and sell SRECs, so long as it was registered with the SRP. But the Solar Act, signed into law by Governor Christie on July 23, 2012,

mandates that a solar facility is only eligible for the production and sale of SRECs if it is determined by the BPU to be “connected to the distribution system.” To be certified, all proposed solar facilities must survive an application and review process managed by the BPU.

Ostensibly, the Solar Act was enacted to stabilize the state’s SREC market, which had seen SREC prices tumble from over \$600 apiece in 2009 to under \$100 in early 2012. This volatility had been due, in part, because all solar facilities could produce and sell SRECs so long as they were registered with the SRP. The Solar Act inputs controls to limit the number of new facilities that will be eligible to produce and sell SRECs. The Solar Act also increased the statutory RPS requirement and decreased the SACP.

The Solar Act’s subsection (s) (“Subsection (s)”) states that the BPU may only certify a facility that is located on “farmland” as “connected to the distribution system” if “PJM issued a System Impact Study for the facility on or before June 30, 2011.” “PJM” is PJM Interconnection, a conglomerate of energy providers that operates the power grid in New Jersey. The “PJM System Impact Study” (“SIS”) is a report prepared by PJM that determines a plan, with approximate cost and construction time estimates, for the connection of a proposed facility to the PJM grid.

EAI’s Facility is located on “farmland” as defined by the Solar Act, and so the requirements of Subsection (s) apply. The date on the cover sheet of EAI’s SIS is October 2011, but EAI entered into an agreement with PJM for the production of its SIS on April 17, 2011. This was almost a year before EAI received final municipal land use approval and well before the June 30, 2011 deadline. Further, on April 17, 2011, EAI paid PJM a deposit of \$10,000.

EAI also obtained every other agreement and approval necessary to build the Facility and connect it to the PJM grid. EAI registered with the SREC Registration Program (March 19,

2012); it received final approval from Pohatcong and from all state agencies with jurisdiction over the Project (such as the Highlands Council and DEP) (February 27, 2012); and it entered into an interconnection agreement (May 24, 2012), a construction agreement (May 24, 2012), and a wholesale market participation agreement (December 11, 2011) – all of which were necessary for the Facility to begin producing electricity after it was built.

By July 2012, the Facility was essentially “shovel-ready.” But since the Solar Act was passed, EAI has been forced to wait and see whether the BPU will certify the Facility as “connected to the distribution system.”

If the Facility is not designated as “connected to the distribution system” it will no longer be economically viable. No party will lease the Facility if it is not eligible to produce and sell SRECs. In fact, if it cannot produce SRECs, the Facility will likely *lose money*. So if the Facility is not certified as “connected to the distribution system,” EAI will not receive the expected lease income to compensate for its lost developments rights. In that case, there is no way EAI could proceed with the Project as currently approved. Essentially, the viability of the entire Project – and the ability of Pohatcong to satisfy its fair share affordable housing obligation is now *inexorably intertwined* with the certification of the Facility as “connected to the distribution system.”

The current approval took nearly 25 years of litigation, negotiation, and compromise to achieve. If the Facility is not certified by the BPU, and the Project cannot be built, Pohatcong may lose out, forever, on its only realistic opportunity to provide its fair share of affordable housing. Of course, the state has a constitutional obligation to provide affordable housing. In light of this constitutional obligation, the Solar Act is unconstitutional if, in fact, it prohibits the

BPU from certifying the Facility as “connected to the distribution system.” The BPU cannot be forced to regulate in a manner that would violate the state’s constitutional obligation.

On December 17, 2012, EAI filed an application with the BPU for certification of the Facility as “connected to the distribution system” under subsection (s). By Order dated May 10, 2013 (copy attached), the BPU denied EAI’s application, meaning the Facility is not “connected to the distribution system” and, therefore, not eligible to produce and sell SRECs. It is this Order that EAI challenges on appeal.

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2.6-2(a)(5).

- I. The BPU abused its discretion in denying Appellant’s application for designation as “connected to the distribution system.”
- II. The BPU misconstrued the language of N.J.S.A. 48:3-87(s) in denying the Appellant’s application for designation as “connected to the distribution system.”
- III. N.J.S.A. 48:3-87(s) is unconstitutional on its face.
- IV. N.J.S.A. 48:3-87(s) is unconstitutional as applied to Appellant.
- V. N.J.S.A. 48:3-87(s) should be interpreted to avoid an unconstitutional result.
- VI. The appealed Order is arbitrary, capricious, and unreasonable and is not supported by substantial credible evidence in the record.
- VII. The appealed Order violates legislative polices which are expressed or implied in relevant law governing the agency.
- VIII. The BPU violated the requirements of New Jersey’s Administrative Procedure Act in implementing N.J.S.A. 48:3-87(s).



**New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

TITLE IN FULL (1)

TRIAL COURT OR AGENCY DOCKET NUMBER (2)

I/M/O Implementation of L. 2012, c. 24, the Solar Act of 2012, and I/M/O Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(q)(r)(s): Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as Connected to the Distribution System - Request for Approval of Grid Supply

EO12090832V/EO12090880V

■ Attach additional sheets as necessary for any information below.

(3) **APPELLANT'S ATTORNEY** EMAIL ADDRESS: pschneider@ghclaw.com

PLAINTIFF DEFENDANT OTHER (SPECIFY) Applicant

NAME

Paul H. Schneider, Esq.

CLIENT

EAI Investments, LLC

STREET ADDRESS

125 Half Mile Road, Suite 300

CITY

Red Bank

STATE

NJ

ZIP

07701

TELEPHONE NUMBER

732-741-3900

(4) **RESPONDENT'S ATTORNEY *** EMAIL ADDRESS: caroline.vachier@dol.lps.state.nj.us

NAME

Caroline Vachier, DAG

CLIENT

NJ Board of Public Utilities

STREET ADDRESS

124 Halsey Street, PO Box 45029

CITY

Newark

STATE

NJ

ZIP

07102

TELEPHONE NUMBER

973-648-3709

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) **GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:**

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(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? YES NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6) YES NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice? YES NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) YES NO

(8) **GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:**

Please see attached.

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DATE OF YOUR INQUIRY: n/a

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(11) (A) Arises from substantially the same case or controversy as this appeal? YES NO

(12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? YES NO

(13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? YES NO

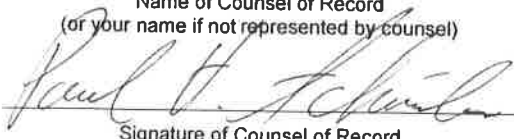
(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:	Appellate Division Docket Number:
Appeals of the same order were filed by Effisolar Development, LLC and Renewtricity	TBD TBD

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

(15) State whether you think this case may benefit from a CASP conference. YES NO
Explain your answer:

(16) I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

(17) <u>EAI Investments, LLC</u> Name of Appellant or Respondent	(18) <u>Paul H. Schneider, Esq.</u> Name of Counsel of Record (or your name if not represented by counsel)
(19) <u>June 21, 2013</u> Date	(20)  Signature of Counsel of Record (or your signature if not represented by counsel)

ATTACHMENT TO CASE INFORMATION STATEMENT

EAI INVESTMENTS, LLC

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

The Appellant, EAI Investments, LLC (“EAI”) is the developer of a fully-approved, 242-unit residential, *Mt. Laurel* housing project (“the Project”), to be developed in Pohatcong Township, NJ (“Pohatcong”). Long ago, the Project was declared Pohatcong’s only realistic opportunity to provide its fair share of affordable housing. The Project includes 44 units of affordable housing, which, if constructed, will satisfy Pohatcong’s decades-old affordable housing obligation. If it is not constructed, Pohatcong may never be *Mt. Laurel* compliant.

In 1988, Pohatcong first designated the Project’s location, a 170-acre parcel located at the corner of High Street and Carpentersville Road (“the EAI Parcel”),¹ as the township’s sole affordable housing compliance property. For the past 20+ years, the Project has been delayed primarily due to ever-changing government regulation. Since 1990, the Project has been the subject of interminable *Mt. Laurel* litigation involving, at various points, Pohatcong, the New Jersey Department of Environmental Protection (“DEP”), and the Highlands Council.

In 2011, the involved parties – including EAI, Pohatcong, DEP, and the Highlands Council – reached a compromise that would finally allow the Project to move forward. EAI agreed to redesign the Project so that it would contain fewer market-rate residential units (it had once been approved for 466 market-rate units) with no reduction in the number of affordable units provided. The 242 units would be condensed into a 44.5-acre portion of the EAI Parcel and EAI would surrender its development rights to the remaining 124.5 acres (“the Preserved Land”), which, under the compromise, would be deed-restricted and preserved as open space.

¹ The EAI Parcel is designated as Block 93, Lots 4 and 5 on the Township’s Tax Map.

EAI did this in exchange for (1) a determination from the Highlands Council that the Project was “consistent” with the Highlands Regional Master Plan; (2) a wastewater management plan amendment from the DEP that was necessary for the Project to move forward; (3) approval of the Project’s General Development Plan from Pohatcong; and (4) the ability to construct a 16.9-megawatt solar power generation facility (“the Facility”) on the Preserved Land.

In 2010-11, the approximate value for a 25-year lease for the Facility was about \$20,000 per MW per year (total, \$340,000 per year). After 25 years, the Facility would have generated approximately \$8,500,000 in lease revenue. This would be by no means a windfall for EAI, but it would be enough to compensate EAI for its lost development rights. The value of the solar lease was predicated on the concept that, during its operational period, the Facility would generate income by producing and selling “solar renewable energy certificates” (“SRECS”).

In New Jersey, SRECs are sold through the state’s SREC Tracking System (“STS”) to energy providers, such as JCP&L or PSE&G. These energy providers must purchase SRECs to satisfy their “Renewable Portfolio Standard,” or “RPS,” requirement. The RPS requirement is the statutory minimum percentage of the electricity that energy providers sell to consumers that must be produced by solar power generation. If energy providers do not satisfy their RPS, they must pay a statutory penalty. That statutory penalty is known as the “solar alternative compliance payment,” or “SACP.” One SACP payment is due for each megawatt hour (“MWh”) that an energy provider is deficient. Since one SREC can be traded for one SACP, purchasing SRECs from private facilities is one way that energy providers satisfy the RPS.

Before a solar facility may start producing electricity, it must register with the state’s SREC Registration Program (“SRP”). Once the facility’s registration is complete, the project is issued a certification number that enables it to generate SRECs. The facility’s owner then

reports the amount of energy produced by the facility to the STS. The facility earns an SREC – which is placed in the facility’s customer account with the STS – for every one megawatt hour (“MWh”) of solar electricity it produces.

SRECs are not electricity. They are purely artificial “credits” whose purpose is to encourage solar development by allowing developers to recoup their investment more quickly. The value of an SREC is, theoretically, determined by market forces. The price is dictated by supply (how many SRECs are being produced) and demand (how many SRECs are necessary for energy providers to avoid paying the SACP). But if the market price of an SREC were ever to exceed the SACP, energy providers would simply pay the SACP, rather than purchase an SREC. Thus, the SACP caps the SREC market by providing a maximum price.

At the time the Facility was first proposed, the SACP was high – approximately \$700 – and SRECs were trading on the STS for about \$600 apiece. Because the Facility would generate about 20,000 SRECs per year, it would be desirable for a solar provider to lease it from EAI. Again, this would protect EAI’s interest, by providing the required compensation for the lost development rights to the Preserved Land and for the reduced unit count. It would also protect the state’s interest in preserving ecologically valuable farmland because the Facility would be operational only for a limited time only and land upon which it was built would be deed-restricted from further development.

On February 27, 2012, the Project, including the Facility, received final municipal land use approval from Pohatcong – with the blessing of both the Highlands Council and the DEP. On March 19, 2012, EAI registered the Facility with the SRP.

At that time, any solar facility could produce and sell SRECs, so long as it was registered with the SRP. But the Solar Act, signed into law by Governor Christie on July 23, 2012,

mandates that a solar facility is only eligible for the production and sale of SRECs if it is determined by the BPU to be “connected to the distribution system.” To be certified, all proposed solar facilities must survive an application and review process managed by the BPU.

Ostensibly, the Solar Act was enacted to stabilize the state’s SREC market, which had seen SREC prices tumble from over \$600 apiece in 2009 to under \$100 in early 2012. This volatility had been due, in part, because all solar facilities could produce and sell SRECs so long as they were registered with the SRP. The Solar Act inputs controls to limit the number of new facilities that will be eligible to produce and sell SRECs. The Solar Act also increased the statutory RPS requirement and decreased the SACP.

The Solar Act’s subsection (s) (“Subsection (s)”) states that the BPU may only certify a facility that is located on “farmland” as “connected to the distribution system” if “PJM issued a System Impact Study for the facility on or before June 30, 2011.” “PJM” is PJM Interconnection, a conglomerate of energy providers that operates the power grid in New Jersey. The “PJM System Impact Study” (“SIS”) is a report prepared by PJM that determines a plan, with approximate cost and construction time estimates, for the connection of a proposed facility to the PJM grid.

EAI’s Facility is located on “farmland” as defined by the Solar Act, and so the requirements of Subsection (s) apply. The date on the cover sheet of EAI’s SIS is October 2011, but EAI entered into an agreement with PJM for the production of its SIS on April 17, 2011. This was almost a year before EAI received final municipal land use approval and well before the June 30, 2011 deadline. Further, on April 17, 2011, EAI paid PJM a deposit of \$10,000.

EAI also obtained every other agreement and approval necessary to build the Facility and connect it to the PJM grid. EAI registered with the SREC Registration Program (March 19,

2012); it received final approval from Pohatcong and from all state agencies with jurisdiction over the Project (such as the Highlands Council and DEP) (February 27, 2012); and it entered into an interconnection agreement (May 24, 2012), a construction agreement (May 24, 2012), and a wholesale market participation agreement (December 11, 2011) – all of which were necessary for the Facility to begin producing electricity after it was built.

By July 2012, the Facility was essentially “shovel-ready.” But since the Solar Act was passed, EAI has been forced to wait and see whether the BPU will certify the Facility as “connected to the distribution system.”

If the Facility is not designated as “connected to the distribution system” it will no longer be economically viable. No party will lease the Facility if it is not eligible to produce and sell SRECs. In fact, if it cannot produce SRECs, the Facility will likely *lose money*. So if the Facility is not certified as “connected to the distribution system,” EAI will not receive the expected lease income to compensate for its lost developments rights. In that case, there is no way EAI could proceed with the Project as currently approved. Essentially, the viability of the entire Project – and the ability of Pohatcong to satisfy its fair share affordable housing obligation is now *inexorably intertwined* with the certification of the Facility as “connected to the distribution system.”

The current approval took nearly 25 years of litigation, negotiation, and compromise to achieve. If the Facility is not certified by the BPU, and the Project cannot be built, Pohatcong may lose out, forever, on its only realistic opportunity to provide its fair share of affordable housing. Of course, the state has a constitutional obligation to provide affordable housing. In light of this constitutional obligation, the Solar Act is unconstitutional if, in fact, it prohibits the

BPU from certifying the Facility as “connected to the distribution system.” The BPU cannot be forced to regulate in a manner that would violate the state’s constitutional obligation.

On December 17, 2012, EAI filed an application with the BPU for certification of the Facility as “connected to the distribution system” under subsection (s). By Order dated May 10, 2013 (copy attached), the BPU denied EAI’s application, meaning the Facility is not “connected to the distribution system” and, therefore, not eligible to produce and sell SRECs. It is this Order that EAI challenges on appeal.

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2.6-2(a)(5).

- I. The BPU abused its discretion in denying Appellant’s application for designation as “connected to the distribution system.”
- II. The BPU misconstrued the language of N.J.S.A. 48:3-87(s) in denying the Appellant’s application for designation as “connected to the distribution system.”
- III. N.J.S.A. 48:3-87(s) is unconstitutional on its face.
- IV. N.J.S.A. 48:3-87(s) is unconstitutional as applied to Appellant.
- V. N.J.S.A. 48:3-87(s) should be interpreted to avoid an unconstitutional result.
- VI. The appealed Order is arbitrary, capricious, and unreasonable and is not supported by substantial credible evidence in the record.
- VII. The appealed Order violates legislative polices which are expressed or implied in relevant law governing the agency.
- VIII. The BPU violated the requirements of New Jersey’s Administrative Procedure Act in implementing N.J.S.A. 48:3-87(s).



**New Jersey Judiciary
Superior Court - Appellate Division
COURT TRANSCRIPT REQUEST**

Please type or clearly print all information.

Instructions:

1. Complete all information
2. File a separate request for each court reporter or court clerk who recorded a portion of the proceeding
3. Attach the Appellate Division or Supreme Court Clerk's copy to the Notice of Appeal (R. 2:5-1(f))
4. Attach transcript fee.

PLAINTIFF(S) **(1)**

TRIAL COURT DOCKET NUMBER **(2)**

v.

COUNTY / COURT **(3)**

DEFENDANT(S)

REQUESTING PARTY (4)

NAME

EMAIL ADDRESS

PHONE NUMBER

ADDRESS

CITY

STATE

ZIP

TO (5)

NAME / ADDRESS (COURT REPORTER or COURT CLERK (if sound recorded))

(6) It is hereby requested that you prepare for use on (check one) appeal non-appeal* an original and _____ copies of the following:

DATE OF PROCEEDING **(7)**

TYPE OF PROCEEDING (e.g., trial, sentencing, motion, etc.) **(8)**

NAME OF JUDGE **(9)**

I agree to pay for the preparation and any copies ordered of the transcript(s) for the above date(s) pursuant to R. 2:5-3(d).

(10) _____

SIGNATURE OF REQUESTING PARTY

DATE

Transcript fees are set by New Jersey Statute 2B:7-4. An additional sum or reimbursement may be required prior to or at the completion of the transcript order.

(11) DEPOSIT ATTACHED: \$ _____

* Only the Supervisor of Court Reporters should receive copies of non-appeal transcript requests.

CC: 1. CLERK, Appellate Division, or CLERK, Supreme Court (see INSTRUCTIONS above)

(12) 2. Supervisor of Court Reporters _____

3. Trial Court Transcript Office

4. Other attorneys / Pro Se parties _____



Agenda Date: 4/29/13
Agenda Item: 8C-2

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

ORDER

IN THE MATTER OF IMPLEMENTATION)
OF L.2012, C. 24, THE SOLAR ACT OF)
2012; AND)

Docket No. EO12090832V

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

Docket No. EO12090880V

GreenPower Development; V4-009
(EO12121089V)

EffiSolar Development LLC.; W1-120
(EO12121118V)

Millennium Development; W2-050
(EO12121090V)

EffiSolar Development LLC.; W1-119
(EO12121119V)

PVOne/Moncada NJ Solar; W3-139
(EO12121091V)

EffiSolar LLC.; W3-029
(EO12121120V)

Pittsgrove Solar/Favorito; V2-035
(EO12121092V)

Tetrattech; W1-113 (EO12121121V)

Day Four Solar/Ralph Laks; W2-019
(EO12121093V)

Tetrattech; W2-078 (EO12121122V)

Renewtricity; W2 – 060 (EO12121094V)

Tetrattech; W1-032 (EO12121123V)

Renewtricity; W3-044 (EO12121095)

EAI Investments, LLC., W4-073
(EO12121124V)

Frenchtown III Solar; W2-016 (EO12121096)	Syncarpha Capital; W3-126 (EO12121125V)
Rock Solid Realty NJ; X1-037 (EO12121097V)	Syncarpha Capital; W1-076 (EO12121126V)
Invenergy Solar Development; V4-024 (EO12121098V)	Syncarpha Capital; W3-041 (EO12121127V)
Invenergy Solar Development; V4-024 (Project 2) (EO13040331V)	Hardwick Solar Farm LLC.; W2-084 (EO12121128V)
Invenergy Solar Development; V4-025 (EO12121099V)	Garden Solar; W2-080 (EO12121129V)
United Solar Works; W4-018 (EO12121100V)	Garden Solar; W2-076 (EO12121130V)
United Solar Works; W4-040 (EO12121100V)	Community Energy; W3-159 (EO12121131V)
Blue Sky Technologies obo North America Solar Corp.; W4-103 (EO12121102V)	Community Energy; W1-129 (EO12121132V)
Alethea Cleantech Advisors; W3-095 (EO12121103V)	Community Energy; W2-102 (EO12121133V)
Alethea Cleantech Advisors; W2-061 (EO12121104V)	Community Energy; W1-127 (EO12121134V)
OCI SOLAR POWER Solar Power, LLC., W1-112 W3-101 (EO12121105V)	Community Energy; W3-158 (EO12121135V)
APPROVAL OF APPLICATION FOR NJ CLEAN ENERGY VENTURES, W2-056 EffiSolar Development LLC.; W3-080 (EO12121107V)	Community Energy; W1-130 (EO12121136V)
EffiSolar Development LLC.; W3-077 (EO12121108V)	Community Energy; V4-062 (EO12121137V)
EffiSolar Development LLC.; W2-088 (EO12121109V)	Quakertown Farms; W3-003 (EO12121138V)
EffiSolar Development LLC.; W3-146 (EO12121110V)	Atlantic Green Power Corp.; V4-042 (EO12121139V)
EffiSolar Development LLC.; W2-091 (EO12121111V)	Atlantic Green Power Corp.; V4-023 (EO12121140V)
	Atlantic Green Power Corp.; V4-041 (EO12121141V)

EffiSolar Development LLC.; W3-076
(EO12121112V)

Brickyard Solar Farm, LLC.; X4-031
(EO12121144V)

EffiSolar Development LLC.; W2-083
(EO12121113V)

(SEE ATTACHED SERVICE LIST)
For Parties of Record

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") considers fifty four (54) applications filed as of December 17, 2012, by the referenced developers under N.J.S.A. 48:3-87(s)(2) for approval of their proposed solar electric generating facilities as "connected to the distribution system." For the reasons stated below, the Board denies thirty four applications requesting approval under Subsection s. The Board defers decision on twenty applications where any indication was made that all final unappealable federal, state, and local approvals had been secured pending further review.

BACKGROUND

The Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 to -107, was enacted on February 9, 1999. Among its purposes was to lower the high cost of energy and improve the quality and choices of service for all the State's consumers, N.J.S.A. 48:3-50a(1). EDECA established the framework for the deregulation and restructuring of the State's electric and natural gas utilities, and set certain directives and timetables regarding the implementation of electric retail choice. The Board was given broad authority and discretion, based on its expertise, to implement and oversee the transition from a regulated to a competitive power supply marketplace.

EDECA also mandated that the Board adopt renewable energy portfolio standards, N.J.S.A. 48:3-87, culminating in the adoption by the Board of Renewable Portfolio Standards regulations, N.J.A.C. 14:8-2.1 to -2.11 (the "RPS"). The RPS are designed to encourage, among other things, the development of renewable sources of electricity. N.J.A.C. 14:8-2.1(a). EDECA also mandated that the Board create a renewable energy trading program which led to the creation of renewable energy certificates that can be used to assist in meeting the RPS.

Under EDECA, retail sellers of energy in New Jersey must satisfy the RPS, which mandate, among other things, that a specified portion of the energy sold in this State be from solar electric power generators connected to the distribution system in the State. N.J.S.A. 48:3-87(d)(3). These sellers of energy can satisfy their obligations under the solar portion of the RPS by purchasing solar renewable energy certificates ("SRECs"). N.J.S.A. 48:3-87(d)(3)(c). Only solar electric power generating facilities that are connected to the distribution system in the State can qualify to be issued SRECs. See N.J.S.A. 48:3-51 (definition of "SREC").

Although the solar RPS was originally measured as percentage of electric sales, this was changed by the Solar Energy Advancement and Fair Competition Act of 2009, L. 2009, c. 289, to a fixed GW requirement. Based upon RPS compliance reports submitted to Board Staff by the load serving entities with an RPS obligation, demand for SRECs has never fallen, even with reduced retail electric sales which accompanied the economic downturn in 2009-10. In fact, it

was increased by the Solar Advancement and Fair Competition Act of 2009. The solar obligation doubled from Energy Year¹ 2008 to EY 2009, and increased it again by more than 30% from EY 2009 to EY 2010, despite the decline in retail electric sales.

During 2010, and through the first six months of 2011, New Jersey saw a surge in the construction of solar energy facilities as a result of rapidly falling costs of solar technology, the broadening in eligibility of federal tax incentives as part of the national stimulus program, as well as a spike in SREC prices which resulted from the Board's increase in the Solar Alternative Compliance Payment ("SACP") schedule happening simultaneously with the boost in demand from the Solar Energy Advancement and Fair Competition Act. SREC prices approached the ceiling established by the SACP, and made investment in solar development very attractive. Many of these projects, as expressed in comments received by the Board and which are summarized below, were purely speculation driven, grid-supply projects, proposed and installed without regard for appropriate land use or energy policy concerns.

The RPS rules were amended by statute in 2009 to allow direct grid supply projects, i.e., facilities which sell their power as wholesale electric generators, to participate in the New Jersey SREC market. The first grid supply projects entered the SREC market in 2009. Since the RPS rules were changed to expand SREC creation beyond net metered installations, PSE&G has developed nearly 80 MW dc of grid supply capacity, and a total of thirty three private sector projects have been built for 123 MW dc.

The SREC market for EY 2012 was supplied fully within the first two months and, as a result, SREC prices dropped from a spot market high of approximately \$600 to a low near \$160 as reflected in Board Staff's monthly SREC pricing reports. Despite the inversion of the SREC market from being in a state of shortage to one characterized by excess supply starting in 2011, solar development in New Jersey has maintained a significant rate of installation activity. The slowing average rate of project completion from its peak near 50 MW per month in March 2012 to a more sustainable recent average of 20 MW per month is likely the result of the after effects of the reversion of the federal cash grant to an investment tax credit and the moderation of SREC prices.

The Solar Act of 2012, a bi-partisan effort to stabilize the solar market, was signed into law by Governor Christie on July 23, 2012, and took effect immediately. L. 2012, c. 24, § 3 ("Solar Act"). The law amends N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87, which are provisions of EDECA.

The current estimates, generated by Staff on a monthly basis and critiqued by market participants in monthly open stakeholder meetings, appear to show that the market for SRECs will be long through EY 2016 despite the doubling of the solar RPS starting with EY 2014 by the Solar Act of 2012. New generation is still anticipated to come on line at a rate of 20 MW per month on average for at least the foreseeable future.

Prior to the Solar Act, whether solar generated electricity could be the basis for an SREC usable for RPS compliance depended on meeting the requirements of N.J.A.C. 14:8-2, including but not limited to pre-registration through N.J.A.C. 14:8-2.4, which is commonly referred to as the SREC Registration Program ("SRP"). One of the RPS requirements is that the energy be generated at a facility issued a Certification Number through the Board's registration process.

¹ An energy year ("EY") is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

See N.J.A.C. 14:8-2.4(a). The registration process includes an application and review process to determine whether a solar facility meets SREC eligibility requirements. N.J.A.C. 14:8-2.4(f). After review is completed, and provided that SREC eligibility requirements are satisfied, the facility is issued a conditional registration. The notice of conditional registration, also known as the SRP acceptance letter, which includes an expiration date twelve months from its issuance, states that if the solar facility is constructed which meets all program eligibility requirements including compliance with all federal, state, and local laws, a Certification Number will be issued for the solar facility upon completion of construction, submission of a final as-built package, and inspection. N.J.A.C. 14:8-2.4(f)(4)(i) and (ii).

Following conditional registration, construction of the solar facility could begin, and the facility must be completed prior to the registration expiration date, although one extension is allowed. See N.J.A.C. 14:8-2.4(f)(5) and (g). It is not until after the facility owner submits a post-construction certification package that includes a copy of the approval from either the relevant electric distribution company ("EDC") or PJM Interconnection, L.L.C. ("PJM") to interconnect and energize the facility, and after inspection of the facility or waiver of inspection per N.J.A.C. 14:8-2.4(i) and (k), that a Certification Number is assigned to the facility for use in obtaining SRECs from PJM-Environmental Information Services Generation Attribute Tracking System ("PJM-EIS GATS"). N.J.A.C. 14:8-2.4(l). See N.J.A.C. 14:8-2.2 (definition of "Generation Attribute Tracking System").

The Solar Act adds requirements that are not in the SRP for Board approval or designation of certain projects as being "connected to the distribution system" in order to earn SRECs. "Connected to the distribution system" is defined by the Solar Act to mean a solar electric power generation facility that is:

(1) connected to a net metering customer's side of a meter, regardless of the voltage at which that customer connects to the electric grid, (2) an on-site generation facility, (3) qualified for net metering aggregation as provided pursuant to ... [N.J.S.A. 48:3-87(e)(4)], (4) owned or operated by an electric public utility and approved by the board pursuant to ... [N.J.S.A. 48:3-98.1], (5) directly connected to the electric grid at 69 kilovolts or less, regardless of how an electric public utility classifies that portion of its electric grid, and is designated as "connected to the distribution system" by the board pursuant to ... [N.J.S.A. 48:3-87(q) through (s)], or (6) is certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill, or on a properly closed sanitary landfill facility. Any solar electric power generation facility, other than that of a net metering customer on the customer's side of the meter, connected above 69 kilovolts shall not be considered connected to the distribution system.

[N.J.S.A. 48:3-51.]

N.J.S.A. 48:3-87(s) ("Subsection s") applies to land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to -23.24, at any time within the 10 year period prior to the Solar Act's effective date ("farmland"). Under Subsection s, a solar electric power generation facility on qualifying land that is not net-metered or an onsite generation facility (that is, the electricity is not being used to satisfy the electrical needs of structures on or adjacent to the land where the solar facility is located) is subject to a review process by the Board to determine whether the

proposed project should be approved as connected to the distribution system and therefore eligible to earn SRECs. This is incremental to satisfaction of the SRP process.

A proposed solar generating facility on farmland can be reviewed under either Subsection s(1) or s(2). The provision relevant here, Subsection s(2), provides that the Board can approve a proposed facility on farmland if "PJM issued a System Impact Study for the facility before June 30, 2011," the facility filed a notice of intent to qualify under Subsection s(2) with the Board within (60) sixty days of the effective date of the Act, (i.e., by September 21, 2012), and the Board approves the facility as "connected to the distribution system." The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those approved under Subsection q as described above. N.J.S.A. 48:3-87s.

By notice dated July 23, 2012, Board Staff notified stakeholders of the passage of the Solar Act; that the Board was creating processes to implement the provisions of the Solar Act; and directed that, as required by the provisions of the Solar Act, notices of intent be filed with the Board on or before September 21, 2012 by any proposed solar generating facility seeking to qualify under Subsection s(2).

After public notice, on November 9, 2012, Board Staff held a public hearing with stakeholders to discuss the various provisions of the Solar Act, and receive oral comments on implementation of the Board's various responsibilities under the Solar Act. This was followed by a request for written comments which were due by November 23, 2012.

Comments and Staff Responses

At and following the November 9, 2012 public meeting, Board Staff received and reviewed verbal and written comments on implementation of all sections of the Solar Act. The summary below is limited to those comments made with reference to implementation of Subsection s. All other comments have been addressed or will be addressed in future Orders; all public comments can be found on the New Jersey Clean Energy Program website at www.njcep.com.

Comments: Justin Murphy requests that the Board read the requirement in Subsection s that a project have received a PJM System Impact Study ("SIS") by June 30, 2011, as a "grandfathering" provision which entitles all facilities that received such an SIS by that date to be designated "connected to the distribution system." He also argues that New Jersey is not addressing "the main problem," the loss of generation, and states that the constraints imposed by the Solar Act make it more difficult for large-scale solar generation to be sited in-State.

Blue Sky Technologies proposes that if a project "meets all criteria" in Subsection s except that it has been assessed as farmland "for less than five years", such a project should be approved.

Response: In the Solar Act, the Legislature limited eligibility for approval under Subsection s to projects: (1) proposed to be located on agricultural land taxed pursuant to the "Farmland Assessment Act of 1964"; (2) for which PJM issued a System Impact Study on or before June 30, 2011; and (3) for which notice of intent to apply under Subsection s was filed with the Board within sixty days of the effective date of the legislation, *i.e.*, by September 21, 2012. N.J.S.A. 48:3-87 (s) 2 (b).

Comment: A.F.T. Associates, EffiSolar, Renewtricity, and PVOne, LLC ("PVOne"), submitted comments stating that "the remaining universe" of Subsection s projects would produce energy

in the range of 500 MW, which they characterized as approximately 0.3 percent of the tilled farmland in New Jersey and approximately thirteen percent of the projected RPS (estimated at 3.6 gigawatts).

Response: Twenty-five (25) developers, or their agents, submitted Subsection s applications, representing fifty-seven (57) solar projects and approximately 640 MW dc, 580 MW ac of total solar capacity.

Comments: PVOne states that in order for a project to be approved under Subsection s the applicant need only have received a PJM SIS by June 30, 2011, and filed a Notice of Intent with the Board within the sixty days provided by the Solar Act. In support of its contention, the commenter argues that none of the criteria of Subsection r should be applied to projects applying under Subsection s. Consideration of the supply and demand for SRECs is not relevant because the market will regulate supply and demand, and the appropriate way for the Board to increase demand is to increase the solar RPS; that grid-supply developers have invested millions of dollars in reliance upon State law and regulation encouraging solar development, and that these millions will be stranded if the Board does not designate as "connected to the distribution system" all developers that received a PJM SIS by June 30 2011 and submitted a notice of intent to file within sixty days.

Scott Lewis states that the Solar Act has essentially put him out of business and that he now hopes to salvage only those projects for which he has already received municipal approvals, which he believes should be the most important criteria after receipt of the PJM SIS. Mr. Lewis also states that he has refrained from applying to the SRP on the advice of the Board's renewable energy market manager, and should not be penalized for not applying.

Response: Under the Solar Act, the Board can approve a proposed facility on farmland if "PJM issued a System Impact Study for the facility before June 30, 2011," the facility filed a notice of intent to qualify under Subsection s(2) with the Board by September 21, 2012, and the Board approves the facility as "connected to the distribution system. The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those approved under Subsection q as described above. N.J.S.A. 48:3-87s. Staff notes that, if the intent of the Legislature were for the market alone to regulate supply and demand of SRECs, the Legislature would not have taken action via the Solar Act to accelerate the RPS and to place restrictions on the amount of solar which can be located on farmland and open space.

Per amendments made to RPS rules at N.J.A.C. 14:8-2.4 effective June 4, 2012, registration in the SRP is required within 10 days of contract execution for installation of a solar facility. Board Staff has received numerous inquiries from developers of projects that have not progressed to the point of installation contract execution and do not have an expectation of completing a project within the twelve month completion timeframe contemplated in the rules. Staff has advised developers of such projects to wait to register until they execute a contract for installation, and then file within the 10 day period.

Comments: Day Four Solar, LLC ("Day Four") states that in reliance on State law prior to the passage of the Solar Act, it had begun developing a 6 MW grid-connected project on land that had been assessed as farmland and has invested hundreds of thousands of dollars in design, equipment and making arrangements for interconnection. Day Four argues that its receipt of an SIS prior to June 30, 2011 and its filing of a Notice of Intent by September 21, 2012, entitles it to approval under Subsection s.

Pittsgrove Solar, LLC ("Pittsgrove Solar") contends that Subsection s requires only that a project have received a PJM SIS by June 30, 2011 and have submitted a notice of intent to file within sixty days of the Solar Act in order to be designated as "connected to the distribution system." In support of this position, Pittsgrove Solar argues that had the Legislature intended that Subsection s(2) would provide a stream-lined path in addition to the (q), or (s)(1), process. In addition, Pittsgrove Solar argues that, in reliance on State law prior to the passage of the Solar Act, it had begun developing a 2 MW grid-connected project on land that had been assessed as commercial, rather than preserved farmland.

Rock Solid Realty proposes that all solar projects be designated as eligible to be generate SRECs if they meet the following criteria:

- Wholesale Market Participant Agreement
- Interconnection and Construction Agreement signed with EDC
- SRP registration before July 23, 2012
- Notice of Intent filed within 60 days of Solar Act
- Approval from local township to construct a solar facility
- Value and tax assessments pursuant to the Farmland Assessment Act of 1964
- Land has not "fallen into" preservation of open space, is in temporary relief from farmland assessments with less than five years or it isn't zoned as permanent farm land in the State

Response: Under the Solar Act, the Board can only approve a proposed facility on farmland if the Board "approves the facility's designation pursuant to subsection q." or "PJM issued a System Impact Study for the facility before June 30, 2011," the facility filed a notice of intent to qualify under Subsection s(2) with the Board by the September 21, 2012, and the Board approves the facility as "connected to the distribution system. The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those approved under Subsection q as described above. N.J.S.A. 48:3-87(s) only applies to land that has benefitted from tax treatment under the Farmland Assessment Act of 1964 within the ten years prior to July 23, 2012.

Comment: Garden Solar asserts that grid-supply projects benefit all New Jersey ratepayers by reducing wholesale electric prices and bypassing local congestion, thus distributing marginal cost benefits to all ratepayers. The commenter states that "timely guidance" from Board Staff is necessary because many projects are in "critical stages" of development, "at or near construction." With respect to Subsection s, Garden Solar argues that all projects that have received an SIS prior to June 30, 2011 and/or have received SREC Registration Program approvals prior to the effective date of the Solar Act should be considered for eligibility as "connected to the distribution system." Should the Board wish to further evaluate the status of a project, the commenter urges the following criteria:

- Description/documentation of status of all municipal land use approvals, including evidence of local government support
- Description/documentation of all State-related approvals such as DEP permits
- Description/status/evidence of financing, defined as "ability to construct within one year"
- Evidence of regional Soil Conservation approval
- Description/evidence of interconnection status
- Disclosure of all capital costs and expenditures incurred

- Estimated annual MWhs of production from the facility
- Description/status of engineering, procurement, construction (EPC) contracts

After evaluating these criteria, the Board should, if it determines that the project is likely to be constructed in the near future, issue a new SREC registration letter that provides "sufficient" time for construction. Projects that lack some of these criteria but "remain viable" should be "conditionally approved" under Subsection q. A narrower construction of (s), Garden State argues, would be unfairly prejudicial to developers that invested hundreds of thousands of dollars in grid-supply projects.

Community Energy urges that projects be evaluated for eligibility to generate SRECs based on the following criteria:

- An SIS on or before June 30, 2011
- SRP acceptance issued prior to enactment of Solar Act
- Funding of interconnection facility costs prior to enactment of Solar Act, as demonstrated by:
 - Posting of security in the case of a signed three-party Interconnection Services Agreement between the developer, the EDC, and PJM; or
 - Issuance of initial payment of security for interconnection construction costs from the developer to the EDC in the case of a two-party Wholesale Market Participation Agreement and Interconnection Agreement(s) between the developer and the EDC
- To meet the criteria above, the commenter adds that a project would need to have received:
 - 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.
- The commenter recommends that project size be capped at a maximum of 10 MW.
- The commenter believes its criteria should be applied to all projects, whether located on farmland or not.

MSEIA states that approximately 500 MW of grid supply projects are currently under development, and that only a system that ranks these projects based on merit will minimize litigation over the results of the selection process. MSEIA suggests a lengthy list of criteria, including a PJM SIS issued prior to June 30, 2011, an SRP acceptance issued prior to June 23, 2012, a maximum size of 10 MW, interconnection service agreements and construction service agreements signed by the developer, with these agreements ranked by date, local approvals in place, and a limitation on the total amount of MW approved to no more than 100 MW over two energy years. MSEIA argues on behalf of a competitive solicitation for securing fixed long term energy supply, and urges the Board to support new legislation which would direct the State's EDCs to secure up to 300 MW of grid supply solar capacity from the projects which meet MSEIA's criteria.

Stephen B. Pearlman, on behalf of Morris and Somerset Counties ("the Counties"), urges the Board to adopt a strict interpretation of Subsections (q), (r), and (s), limiting grid supply projects to the maximum extent feasible in order to promote the stability of the SREC market. Noting that the Counties have pledged their full faith and credit on the improvement authority bonds which have underwritten numerous solar projects developed through public-private partnerships, Mr. Pearlman states that the Counties would be adversely affected if a plunge in SREC prices causes the solar developers involved to default on their financial obligations. The commenter states that such a plunge is inevitable if too many projects are designated "connected to the distribution system." To avoid such an occurrence, Mr. Pearlman urges the Board to review applications under Subsection (s) against the criteria laid out in Subsection (r); to find that any project which has an SRP number but was not in commercial operation by July 23, 2012 is a "proposed" project subject to Subsection (r) review; and to require these projects to apply under Subsection (q) if the applicants wish to be designated "connected to the distribution system." Mr. Pearlman urges the Board to act expeditiously, arguing that until the Board has ruled, uncertainty will hang over the SREC market, depressing prices and freezing development.

Response: Staff has reviewed the criteria proposed by commenters and recommends that the Board award approvals under Subsection s based upon the most objective standard possible, progress toward construction completion. Receipt of all final non-appealable federal, state, and local approvals has also been deemed relevant to determining the status of a project.

Comment: EAI submits that its project should be designated as connected to the grid because it has received final municipal land use approval; received final unappealable approval from several state agencies with jurisdiction; has entered into an interconnection agreement; the developer has entered into a construction agreement; the developer has entered into a WMPA; and the project is registered with the SRP. In addition, EAI argues that its project is unique in that its completion is essential to the successful resolution of long-standing Mt. Laurel litigation. According to EAI, the courts have held that the property on which it intends to place housing is the only location in the town suitable for Mt. Laurel housing. EAI has agreed to reduce the number of units to be constructed and to maintain 125 acres as open space, but it claims that in order to make the project viable, it must be allowed to place solar generation on these acres. According to the commenter, if the solar project is not built the residential development will not go forward, the Mt. Laurel housing will not be constructed, and the town will remain deficient in its constitutional obligation to provide this housing.

Response: See Staff response to previous comment, above. Staff makes no comment on the policy of promoting low- and moderate-income housing other than to state that the Solar Act does not in any way restrict the building of such housing.

Comment: Day Four Solar, Pittsgrove Solar, Rock Solid Realty, EffiSolar, Garden Solar, Community Energy Solar, Mohawk Associations, Renewtricity, and OCI Solar (all grid-supply solar developers) state that Subsection s requires only that a project have received a PJM SIS by June 30, 2011 and have submitted a notice of intent to file within sixty days of the Solar Act in order to be designated as "connected to the distribution system." In support of this position, these commenters argue that various grid supply developers have proposed alternative or additional criteria and rankings of their own, and the proposals are not consistent.

Response: Board Staff agrees with the commenters that all market participants will benefit from an objective standard for approval under Subsection s, and refers the commenters to its answer above.

Comment: SEIA, a national trade association for the U.S. solar industry, advocates a "holistic" approach to Subsections q, r, and s, with special consideration or "grandfathering" given to "very advanced" projects which become operational during Energy Year 2013. SEIA contends that Subsection s is not meant to establish a third path for SREC eligibility but suggests that if the Board regards it as providing such a path, it limit that path to very advanced projects and provides a list of the criteria it believes should be met by such projects.

Comment: Rate Counsel offers interrelated comments on Subsections q, r, and s, suggesting that the criteria laid out in Subsection r be used to evaluate applications submitted under Subsection s and that filings under all three subsections should include a statement explaining why designating the applicant's project to be 'connected to the distribution system' would be in the public interest.

Response: Board Staff agrees with SEIA that the most objective criteria for approval under this section is the stage of completion of the proposed project. Staff believes that it has requested the appropriate information in the application process to gauge project status, and agrees that approving only advanced projects is in the public interest at this time.

Comments: Quantum Solar contends that because of economies of scale, grid supply projects have very little need for SRECs to be economically viable. In support of its position, Quantum Solar points to Pennsylvania, where it alleges that SRECs are selling for below \$20 and yet solar installations have nearly doubled, to 88 MW, from 2010 to 2011.

KDC Solar, a New Jersey-based developer of large scale net metered solar facilities argues that grid supply projects do not supply the "dual benefit" of net metered projects and that the hundreds of megawatts of grid supply solar currently under consideration would further suppress the SREC market. The commenter further contends that grid supply developers do not have a legitimate reliance argument because as far back as spring of 2009 the New Jersey Legislature was considering limitations on grid supply projects and the Draft Energy Master Plan released in June 2011 also evidenced concern over the effect of these projects.

NextEra, LLC; NJSEC; and the League of Municipalities encourage the Board to hold firm on the Solar Act's limitations on grid supply solar and by so doing encourage long-term investment in the State.

The League of Municipalities urges that all municipal approvals be acquired and that no "expedited" process be created for any class of projects.

David W. Van Camp states that criteria for (q), (r), and (s) projects should limit the impact on open space, eligible project size and detrimental impact on the SREC market as well as consider impacts on the distribution system.

Land Resource Solutions asks the Board to consider that some projects for which notices of intent to seek approval under Subsection s have been filed may have a detrimental impact on the SREC market.

George Piper, David Reiss, and Jim McAleer state that given the plunge in SREC prices, they could not recommend to anyone that they install a solar system, and urge the Board to limit the size of installations or otherwise stabilize the SREC market to help homeowners and small businesses.

Response: It was commonly understood by market participants that the Solar Act was intended to provide the Board with tools to help "stabilize the solar market" and to implement provisions within the Energy Master Plan which gives preference to solar facilities located on brownfields, landfills, and other underutilized or "dual benefit" sites over facilities located on farmland and open space. Consistent with this intent, the Solar Act contains within its many provisions various requirements for Board action including new requirements for proposed facilities anticipating interconnection with the electric grid as a direct grid supply, wholesale power generator to be eligible for participation in the New Jersey SREC market. Staff makes recommendations for Board action as required under the Solar Act keeping in mind the provisions of the Energy Master Plan and the potential impact of additional development on the New Jersey solar market

Comment: Thomas and Mary Windergen state that their farm is not "prime farmland," and ask the Board to review all projects located on farmland that have received all necessary approvals on an individual basis.

Response: Board Staff has and will continue to review all applications for approval under the Solar Act on an individual basis.

The Subsection s Application Process

On November 30, 2012, Board Staff distributed the subsection s(2) application via mass email distribution to renewable energy stakeholders, and posted the application form on its webpage and on the webpage of the New Jersey Clean Energy Program. Any company applying for eligibility for SRECs under N.J.S.A. 48:3-87(s)(2) was required to submit a completed application package by December 17, 2012.

Applicants were required to submit a completed application providing information in response to twenty seven questions and, where relevant, the attachment of ten appendices among four general categories, all designed specifically to aid Staff in making a recommendation to the Board as to which proposed projects should be approved under N.J.S.A. 48:3-87(s). The required information included the following:

1. PJM Interconnection Queue Documentation; System Impact Study (SIS); Construction Service agreement (CSA) and Interconnection Service Agreement (ISA)

PJM Interconnect, LLC, under the jurisdiction of the Federal Energy Regulatory Commission, manages the process for interconnection of wholesale electric power generators. The PJM SIS, as discussed above, is an early milestone in the interconnection approval process. It was required for Subsection s eligibility, as specified in the Solar Act, to be issued by PJM for the proposed facility by June 30, 2011. Applicants were required to submit the entire PJM SIS including the cover letter which contains the month and year of issuance.

2. Permits and Qualifications

Each applicant was asked if all final, unappealable federal, state and local approvals had been secured. Additionally, applicants were required to submit proof of local permits to demonstrate that the facility could be constructed and operational in a reasonable period of time. Such documents may include a local zoning resolution containing the municipality's approval, construction permits and/ or the Certificate of Occupancy for the prospective solar site.

3. Current Status of Project Development

The first question on the Subsection s application required the applicant to characterize the status of the project by designating which of seven project milestones that could apply to a project, from "designed" to "authorized to energize." Applicants were asked a series of questions designed to provide insight into project development progress including; whether equipment had been purchased, whether construction had begun, when construction was initiated, whether materials were onsite, if any part of the project was currently installed, what materials were onsite, whether the project was interconnected, and when the project was anticipated to be interconnected. Applicants that claimed construction was initiated or materials were onsite were required to attach photographs of the completed construction or materials onsite. Staff determined that by supplying photos of the location of the proposed solar facility, the applicants would be providing the most accurate real time accounts of the construction progress, which could serve as evidence of potential to begin operations as represented.

4. Project Financial Data

Applicants were asked several questions with regard to the financial status of their proposed facilities to further enable Staff to determine the likelihood of timely project completion. Applicants that claimed to have purchased equipment were required to provide, as an attachment to the application, proof of expenditures via purchase orders, invoices or other proof of payment. Applicants were asked to provide anticipated total installed facility cost, the amount invested in project development to date, documentation of an application to safe harbor the IRS Section 1603 cash grant, whether project financing had been secured, and whether an SREC off take contract had been secured.

This financial data provided Staff with the ratio of reported investments made in the prospective generation facility to the total cost of the project. This ratio, in conjunction with the construction start date and anticipated end date provided in the application, furthered Staff's understanding of the cost, and time, required to complete the solar project.

STAFF REVIEW AND RECOMMENDATIONS

A total of fifty seven (57) Subsection s applications were received and reviewed by Board Staff. Fifty five (55) applications were date stamped by the Board's mailroom staff as received by the December 17, 2012 deadline. Subsequent to the deadline, one applicant brought to the attention of Board Staff that its application was apparently lost after receipt in the Board's mailroom as delivery of the Subsection s application package was verified by a Fed Ex tracking slip. And, on April 9, 2013, one applicant submitted an application despite acknowledging missing the Subsection s minimum requirements for a PJM SIS by June 30, 2011, the 60 day Board notice requirement, and the application deadline. This application was retained for review since the developer submitted a letter to the Board immediately preceding the application

development process described above, but was not directly informed of the application requirement until February 12, 2013².

Among the 56 applications verified as received within the announced deadline of December 17, 2012, six applicants failed to meet the 60 day notice requirement but were retained for review nonetheless³. A total of twenty-five (25) developers, or their agents, submitted Subsection s applications, representing fifty-seven (57) solar projects and approximately 640 MW dc, 580 MW ac of total solar capacity.

As a preliminary matter, Staff concluded that, while the Legislature gave the Board wide discretion to implement several of the provisions of the Solar Act, the Legislature limited eligibility for approval under Subsection s to projects: (1) proposed to be located on agricultural land taxed pursuant to the "Farmland Assessment Act of 1964," (2) for which PJM issued a System Impact Study on or before June 30, 2011, and (3) for which notice of intent to apply under Subsection s was filed with the Board within sixty days of the effective date of the legislation, i.e., by September 21, 2012. N.J.S.A. 48:3-87 (s) 2 (b). Seven projects did not meet these threshold requirements but were reviewed by Staff nonetheless: Rocksolid Realty for X1-037, United Solar Works for W4-018 and W4-040, Blue Sky Technologies for W4-103, OCI Solar Power for PJM W3-101, EAI Investments for W4-073, and finally Brickyard Solar for X4-031.

Staff reviewed the application for each of the fifty seven (57) projects described above, along with any additional correspondence or comments submitted by the applicant. Following the review of application materials, Staff ranked the projects by progress toward completion based on the data submitted.⁴ The key criteria utilized by Staff to judge project progress included the application submissions regarding project completion status, anticipated completion date, pictures of any completed construction, and percentage of funding expended. The top ten projects ranked by these criteria reported expending at least 14% of estimated total installed costs, the top three of which have expended more than 60% of estimated costs. The remaining forty seven (47) projects reported spending 13% or less of estimated installation costs. The majority of applications, forty six (46) proposed facilities, reported spending less than 9% of the anticipated total installed facility costs as of December 17, 2012. Over half of the Subsection s applicants (30 of 57) reported expending less than two percent of total costs. Staff conducted field visits of the top twelve projects to determine accuracy of the applicant's reported completion status for the proposed facilities.

Based upon its field inspections of the top twelve most advanced projects, Staff found one project was fully constructed and operational, one project was one third complete and operational with the remaining two thirds under construction expecting interconnection in May of 2013, and a third project was nearly complete and awaiting final interconnection. Staff found

²Staff does not concede that the applicant was entitled to personal notice when the deadlines were publically posted.

³Among the 56 applications verified as received within the announced deadline of December 17, 2012, six applicants failed to meet the 60-day notice requirement. Rather than dispute the veracity of the applicants' explanations for missing the deadline, Staff chose to review these applications. The one project that submitted after December 17 also missed the 60 day notice and the PJM SIS by June 30, 2011 requirement.

⁴"Completion" includes all the activities required in developing a project, including but not limited to construction.

the remaining nine project sites among the top twelve to be largely in the same state of progress, most had only been cleared of debris with no physical signs of solar specific installation activities having been initiated. One project was found to have driven pilings on site, and remained in the same state as pictured in the application submitted on December 14, 2012.

Staff has reviewed the application for each of the fifty-four (54) projects described below, along with any additional correspondence or comments submitted by the applicant. Staff's recommendation for each project is included below the description.

Project Descriptions, Staff Review and Recommendations

Applications Recommended for Denial due to Statutory Non-compliance

The following seven projects are recommended to be denied by the Board for further consideration under Subsection s due to their non-compliance with the statutory requirement that a PJM SIS be issued before June 30, 2011.

Rock Solid Realty -- (Howell) Dkt. No. EO12121097V -- (PJM X1-037)

On August 14, 2012, applicant Rock Solid Realty submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant seeks approval for a proposed 19.325 MW project located in Howell Township, New Jersey for which a PJM SIS was issued on December 19, 2011.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that its proposed facility had only progressed to the design stage of project development. The applicant indicated that the proposed facility had received all unappealable federal, state and local approvals, and the Construction Service Agreement (CSA) and Interconnection Service Agreement (ISA) have been executed and interconnection facility costs have been funded. The applicant indicated that no equipment had been purchased, no materials were on site, no construction had been initiated but financing has been secured and an application had been submitted to safe harbor a Treasury Section 1603 Cash Grant. The applicant indicated that Appendix 8, documentation demonstrating safe harbored funds, and Appendix 9, documentation of executed construction financing, were "to be provide(d) later."

The projected cost of the project was stated to be \$49,000,800. As of the date of submittal, \$7,100,899 had been reported as expended, equivalent to 14.5% of the total. The applicant has not commenced construction but indicated an "estimate" of initiation as February 28, 2013, and indicated an anticipated completion date of July 30, 2013. The application also indicated that the project was not authorized to energize; it is not currently installed; and an SREC off take contract has not been secured.

Staff finds that this project does not meet the Subsection s requirement of a PJM SIS issued by June 30, 2011, and recommends the application be denied approval under Subsection s(2). Additionally, since the project remains in the early stages of completion, equipment has not been purchased, construction has not commenced, and would be impossible to complete before June 1, 2013, timely completion remains speculative, under the criteria described above, Staff would recommend the application be denied approval under subsection s(2).

United Solar Works -- (Monroeville/Elk) Dkt. No. EO12121100V -- (PJM W4-018)

On August 20, 2012, applicant United Solar Works submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

Applicant, by note filed with the application package, disputes Staff's interpretation of the Solar Act requirements of a PJM SIS issued by June 30, 2011, and instead sites the project's execution of a System Impact Study Agreement dated May 25, 2011 as qualifying the project for consideration under Subsection s. Applicant supplied a copy of the PJM SIS which indicates that it was issued in September 2011.

Applicant's proposed 12 MW dc, 10 MW ac project is located in Elk, New Jersey. On its application in question number one, the applicant failed to indicate the current status of project development for the proposed facility.

The projected cost of the project was stated to be \$ 32,000,000. As of the date of submittal, \$425,000 had been expended, equivalent to 1.3% of the total. The applicant indicated it planned to commence construction on March 15, 2014, and that it anticipated a completion date of November 15, 2014.

The application indicated that the applicant had not purchased material or equipment. No materials were on site and no construction had begun. The applicant represented that it had secured federal, state, regional or local approvals; but the project was not interconnected or authorized to energize and it is not currently installed. The applicant indicated the CSA and ISA have not been executed, and interconnection facility costs have not been funded. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing and an SREC off take contract have not been secured.

Staff does not agree with the applicant's interpretation of Subsection s (2) as permitting the date of the execution of the SIS agreement, and not the date of the issuance of the study, to be determinative. Applicant admits that its study was not issued prior to the June 30, 2011 date. Staff finds that this project does not meet the Subsection s requirement of a PJM SIS issued by June 30, 2011, and recommends the application be denied approval under Subsection s(2). Additionally, since this project is still in the early stage of completion and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

United Solar Works -- (Mullica Hill/Harrison Twp.) Dkt. No. EO12121101V -- (PJM W4-040)

On August 20, 2012, applicant United Solar Works submitted a Notice of Intent to apply under Subsection (s) for designation as connected to the distribution system so that the project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. Applicant by note filed with the application package disputes Staff's interpretation of the Solar Act requirements of a PJM System Impact Study issued by June 30, 2011, and instead sites the project's execution of a System Impact Study Agreement dated April 26, 2011 as qualifying the project for consideration under Subsection s(2). In lieu of a PJM SIS, Applicant supplied a copy of the PJM Facility Study Report issued April 2011. A copy of the PJM SIS that Staff obtained from the PJM website indicates that it was issued in September 2011.

Applicant's proposed 11.5 MW dc, 9.6 MW ac project is located in Harrison Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed and cleared the site of the proposed project.

The projected cost of the project was stated to be \$34,000,000. As of the date of submittal, \$425,000 had been expended, equivalent to 1.25% of the total. The applicant indicated it planned to commence construction on September 5, 2013, and that it anticipated a completion date of February 28, 2014.

The application indicated that the applicant had not purchased material or equipment. No materials were on site and no construction had begun. The applicant represented that it had secured federal, state, regional or local approvals; but the project was not interconnected or authorized to energize and it is not currently installed. The applicant indicated the CSA and ISA have not been executed, and interconnection facility costs have not been funded. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing and an SREC off take contract have not been secured.

Staff notes that even though the Notice of Intent was filed beyond the statutory deadline, Staff reviewed the application. Staff does not agree with the applicant's interpretation of Subsection s(2) as permitting the date of the execution of the SIS agreement, and not the date of the issuance of the study, to be determinative. Applicant admits that its study was not issued prior to the June 30, 2011 date. Staff finds that this project does not meet the Subsection s requirement of a PJM SIS issued by June 30, 2011, and recommends the application be denied approval under Subsection s(2). Additionally, since this project is still in the early stage of completion and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

North America Solar Corp./Blue Sky Technologies -- (Springfield) Dkt. No. EO12121103V - (W4-103)

On August 22, 2012, applicant North America Solar Corporation/Blue Sky Technologies submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant identified the PJM SIS issuance date as September 28, 2011. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. A copy of the PJM System Impact Study report confirms that it was issued on September 28, 2011.

Applicant's proposed 8.6 MWdc project is located in Springfield Township, New Jersey. On its application, the applicant represented that it had designed and cleared the site of the proposed project. The projected cost of the project was stated to be \$27,000,000. As of the date of submittal, \$3,600,000 had been reported as expended, equivalent to 13.3% of the total. The applicant indicated it initiated construction on February 14, 2012, and that it anticipated a completion date of June 30, 2013. Staff did not conduct a visit to the site of the proposed facility since the application was not deemed compliant with the statutory requirement for a PJM System Impact Study issued by June 30, 2011.

The application indicated that the applicant had purchased material or equipment but no materials were on site. The applicant represented that it had secured federal, state, regional or local approvals; but the project was not interconnected or authorized to energize and it is not

currently installed. The applicant indicated the CSA and ISA have been executed, and interconnection facility costs have been funded. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing has been secured. An SREC off take contract has not been secured.

Applicant admits that its SIS was not issued within the statutory deadline. However, Staff reviewed the application. Staff finds that this project does not meet the Subsection s requirement of a PJM System Impact Study issued by June 30, 2011, and recommends the application be denied approval under Subsection s(2). Additionally, since this project is still in an early stage of completion, no materials were reported onsite, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

OCI Solar Power -- (Vineland) Dkt. No. EO12121106V -- (PJM W3-101)

On September 14, 2012, applicant OCI Solar Power submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant identified the PJM SIS issuance date as March 21, 2011. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. A copy of the PJM SIS indicates that it was issued in July 2011.

Applicant indicated that the proposed project capacity is 3.5 MW ac and 3.5 MW dc to be located in the City of Vineland, New Jersey. On its application, the applicant represented that the project had only progressed as far as the design stage.

The projected cost of the project was stated to be \$13,400,000. As of the date of submittal, \$467,816 had been expended, equivalent to 3.5% of the total. The applicant failed to indicate when construction would be initiated, when materials would be delivered, or when system interconnection was anticipated to be completed.

The application indicated that the applicant had purchased material or equipment but no materials were on site. The applicant represented that it had secured federal, state, regional and local approvals; but the project was not interconnected or authorized to energize and it is not currently installed. The applicant indicated the CSA and ISA have not been executed nor have interconnection facility costs been funded. The applicant indicated that no application has been submitted to safe harbor Treasury Section 1603 Cash Grant, project construction financing has not been secured, and an SREC off take contract has not been secured.

Applicant has failed to support its representation that its SIS was issued within the statutory deadline. Additionally, since based on the information provided with the application, this project has not progressed to an advanced stage of completion and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

EAI Investments LLC -- (Pohatcong) Dkt. No. EO12121124V -- (PJM W4-073)

On September 19, 2012, applicant EAI Investments, LLC submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. An application was filed on December 17, 2012. Applicant proposes an 17MW dc and 17 MW ac project to be located in Pohatcong Township, New Jersey. The applicant indicated that it had designed the project, and cleared the site but

no equipment had been purchased and no materials were onsite. The applicant failed to indicate when construction would be initiated. The application indicated that it had secured all federal, state, regional and local approvals. An application has not been submitted to safe harbor Treasury Section 1603 Cash Grant. A CSA and ISA have been executed and interconnection facility costs have been funded. Project construction financing has not been secured. EAI's SIS was issued in October 2011.

The projected cost of the project was stated to be \$68,000,000. As of the date of submittal, \$4,473,100 had been expended, equivalent to 6.6% of the total. The project application also fails to provide an anticipated completion date. The system has not been authorized to energize; has not interconnected. Further, an SREC off take contract has not been secured.

Since this project does not satisfy the statutory requirement for a timely issued SIS, has not progressed to an advanced stage of completion and prospects for timely completion remain speculative, Staff recommends the application be denied approval under Subsection s(2).

Brickyard Solar Farm LLC -- (Howell) Dkt.No. EO12121144V -- (PJM X4-031)

On April 10, 2013, applicant Brickyard Solar Farm LLC submitted an application under Subsection s. Applicant attached a letter dated November 15, 2012 to President Hanna requesting approval to be "grandfathered from the new bill A-2966 in order to implement my 1.94 MW solar electric farm...Queue position X4-031." The applicant did not include a PJM SIS as required but instead submitted the PJM SIS agreement dated July 24, 2012 which indicates that the project was not in a position to have secured the SIS by June 30, 2011.

Applicant's proposed 2.079 MW dc, 1.846 MW ac project is located in Howell Township, New Jersey. The applicant indicated in response to the application's first question that the current status of project development is "designed, site cleared, and construction initiated." The applicant indicated that all federal, state and local approvals have been secured. Equipment has been purchased and "Heavy Equipment for Deployment" were the materials identified as currently onsite, delivered on January 15, 2011.

The project application stated that construction was initiated on January 15, 2011 but noted "ground preparation: graded and seeded" as materials installed. The applicant provided September 1, 2013 as an anticipated completion date. The projected cost of the project was stated to be \$8,696,114. The applicant stated that \$372,145 had been invested in project development or 4.3%.

Also, the applicant indicated that it had filed an application to safe harbor a Treasury Section 1603 Cash Grant; however, a CSA and ISA had not been executed nor had interconnection facility costs been funded. Further, the application indicated that project construction financing has been secured but an SREC off take contract had not been secured.

Since this project was unable to satisfy the statutory requirement for a timely issued SIS, has not progressed to an advanced stage of completion and any prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Applications Recommended for Denial due to Lack of Required Approvals

Staff finds the following twenty seven applications, each with a timely PJM issued SIS, lack sufficient progress to make a recommendation to approve, and further finds that each project has not secured all final unappealable approvals. Therefore, Staff recommends that the following twenty seven (27) applications be denied approval under Subsection s.

PVOne/Moncada NJ Solar -- (Broadway/Franklin Township) Dkt. No. EO12121091V -- (PJM W3-139)

On September 17, 2012, applicant PVOne/Moncada NJ Solar submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's 8.2 MW dc, 6.3 MW ac project is proposed to be located in Broadway, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed and cleared the site; secured final, nonappealable federal, state, regional and local approvals (with the exception of one that had been granted but remained within the appeal period); equipment and solar panels had been purchased, and solar panels were onsite, delivered May 17, 2012. The CSA and ISA have been executed, and interconnection facility costs have been funded. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant; construction financing has been secured.

The projected cost of the project was stated to be \$24,471,000. As of the date of submittal, \$3,524,954 had been expended, equivalent to 14.4 % of the total. At the time of filing, the applicant had not commenced construction but indicated in its application it planned to begin construction on February 2, 2013, and that it had an anticipated completion date of May 31, 2013. The application also indicated that the project was not currently installed; nor has the project been authorized to energize; and an SREC off take contract has not been secured.

On April 9, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated. Staff found no part of the project had been installed and could not verify that any materials were onsite. Since this project had not secured all final unappealable approvals by the date of the application, has not progressed to an advanced stage of completion, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Renewtricity -- (Florence) Dkt. No. EO12121094V -- (PJM W2-060)

On August 10, 2012, applicant Renewtricity submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 25.2 MW dc, 20MW ac project is located in Florence Township, Burlington County, New Jersey.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that its proposed facility had only progressed to the design stage of project development. The applicant indicated that it had not secured all final unappealable federal, state, and local approvals and submitted an addendum stating that as a result of its inability to secure approval from Florence Township Zoning Board, it has been unable "to achieve certain milestones." The CSA and ISA have been executed, and

interconnection facility costs have been "signed but not funded" and no application had been submitted to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$53,600,000. As of the date of submittal, \$611,000 had been expended, equivalent to 1.1% of the total. The applicant has not commenced construction but indicated an "estimate" of initiation as August 1, 2013, and indicated an anticipated completion date of March 1, 2014. The application also indicated that the project was not authorized to energize; it is not currently installed; construction financing has not been secured; and an SREC off take contract has not been secured.

Since this project remains in the early stages of completion, local approvals have not been secured, equipment has not been purchased, construction has not commenced, neither project financing nor an SREC off take contract has been secured and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Renewtricity -- (Washington Twp.) Dkt.No. EO12121095V -- (PJM W3-044)

On August 10, 2012, applicant Renewtricity submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 23.9 MW dc, 19MW ac project is located in Washington Township, Warren County, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

On its application, the applicant represented that its proposed facility had only progressed to the design stage of project development. The applicant indicated that it had not secured all final unappealable federal, state, and local approvals and submitted an addendum stating that "since the Washington Township Planning Board only approved this project in November 2012 after a six month process, we were not previously able to reach some of the milestones outlined in the application." The applicant indicated the CSA and ISA have been executed and interconnection facility costs have been "signed but not funded," and no application had been submitted to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$51,725,000. As of the date of submittal, \$594,000 had been expended, equivalent to 1.15% of the total. The applicant has not commenced construction but indicated an "estimate" of initiation as May 1, 2013, and indicated an anticipated completion date of January 14, 2014. The application also indicated that the project was not authorized to energize; it is not currently installed; construction financing has not been secured; and an SREC off take contract has not been secured.

Since this project remains in the early stages of completion, final unappealable local approvals had not been secured by the date of application, equipment has not been purchased, construction has not commenced, neither project financing nor an SREC off take contract has been secured, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Hardwick Solar Farm / Klughill -- (Montague) Dkt. No EO121211128V -- (PJM W2-084)

On September 21 2012, applicant Hardwick Solar Farm submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 8.0MW dc project is located

in Montague Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

On its application, the applicant represented that its proposed facility had only progressed to the design stage of project development. The applicant indicated that it had not secured all final unappealable federal, state, and local approvals. The application reflected that equipment was purchased. Also, an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$21,459,000. As of the date of submittal, \$83,640 had been expended, equivalent to 0.39% of the total. The project application indicates that construction was to commence on April 1, 2013, and that the anticipated completion date is October 1, 2013.

Project construction financing has not been secured. A CSA and ISA have not been executed, and interconnection facility costs have not been funded. The applicant also indicated that the project has not been installed, and construction has not commenced. The system has not been authorized to energize; has not interconnected; and no materials are onsite. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, final unappealable approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Invenergy Solar Development -- (Quinton, "Project #1") Dkt. No. EO12121098V -- (PJM V4-025 originally noticed as V4-024)

On August 15, 2012, applicant Invenergy Solar submitted a Notice of Intent to apply under Subsection s for designation of three distinct facilities as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant submitted two facilities proposed for interconnection at PJM queue position V4-024, and one facility proposed at PJM queue position V4-025.

The applicant subsequently submitted three applications by the cut-off date of December 17, 2012 with two applications for proposed facilities at PJM queue position V4-025 and one application proposed at V4-024. Invenergy's application for "project #1" proposes a 12.5 MW dc, 10.0MW ac project located in Quinton, New Jersey to be interconnected at PJM queue position V4-025. On its application, the applicant represented that it had designed and site cleared the project.

The projected cost of the project was stated to be \$30,000,000. As of the date of submittal, \$280,000 had been expended, equivalent to 0.93% of the total. The applicant indicated that it planned to commence construction on September 1, 2013, and that it anticipated a completion date of May 1, 2014.

The application also indicated that it had not purchased material or equipment. No materials are on site and no construction has begun. The applicant has not secured federal, state, regional or local approvals; the project was not interconnected or authorized to energize and it is not currently installed. Further, the applicant indicated the CSA and ISA have not been executed, and interconnection facility costs have not been funded. An application has not been

submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing and an SREC off take contract have not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Invenergy Solar Development -- (Quinton, "Project #2") Dkt. No. EO12121099V -- (PJM V4-024)

On August 15, 2012, applicant Invenergy Solar submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 10 MW dc, 8.0 MW ac project is located in Quinton, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed and cleared the site of the proposed project.

The projected cost of the project was stated to be \$24,000,000. As of the date of submittal, \$225,000 had been expended, equivalent to 0.94% of the total. The applicant indicated it planned to commence construction on September 1, 2013, and that it had an anticipated completion date of May 1, 2014.

The application indicated that the applicant had not purchased material or equipment. No materials were on site and no construction had begun. The applicant had not secured federal, state, regional or local approvals; the project was not interconnected or authorized to energize, and it is not currently installed. The applicant indicated the CSA and ISA have not been executed, and interconnection facility costs have not been funded. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing and an SREC off take contract have not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Invenergy Solar Development -- (Woolwich/Beckett, "Project #3") Dkt. No. EO12121099V - (PJM V4-025)

On August 15, 2012, applicant Invenergy Solar submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 12.5 MW dc, 10.0 MW ac project is located in Woolwich, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed and cleared the site of the proposed project.

The projected cost of the project was stated to be \$ 30,000,000. As of the date of submittal, \$250,000 had been expended, equivalent to 0.83% of the total. The applicant indicated it planned to commence construction on September 1, 2013, and that it anticipated a completion date of May 1, 2014.

The application indicated that the applicant had not purchased material or equipment. No materials were on site and no construction had begun. The applicant had not secured federal, state, regional or local approvals; the project was not interconnected or authorized to energize and it is not currently installed. The applicant indicated the CSA and ISA have not been executed, and interconnection facility costs have not been funded. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant and project construction financing and an SREC off take contract have not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Alethea Cleantech Advisors -- (Franklin) Dkt. No. EO12121104V -- (PJM W3-095)

On September 13, 2012, applicant Alethea Cleantech Advisors submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 9.7MW dc, 7.8 MW ac project is located in Franklin, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed the site, equipment was purchased and materials were in storage. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. The applicant indicated the CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$31,013,011. As of the date of submittal, \$1,943,882 had been expended, equivalent to 6.27% of the total. The project application indicates that construction was to commence on January 9, 2013, and that it had an anticipated completion date of March 31, 2014. Staff did not conduct a visit to the site of the proposed facility since the applicant indicated that it had not secured federal, state, regional or local approvals which would have enabled commencement of construction. The applicant also indicated that the project had not been installed, construction had not commenced and construction financing had not been secured. The system has not been authorized to energize and the project has not interconnected. Further, an SREC off take contract has not been secured.

Since this project is still in an early stage of completion, federal state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

EffiSolar Development -- (Franklin Township) Dkt. No. EO12121108V -- (PJM W3-077)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. Applicant stated its proposed project size is 15 MW ac and 13.3MW dc, which is likely juxtaposed, and is actually 15 MW dc and 13.3 MW ac. The project is proposed to be located in Franklin Twp., New Jersey. The applicant indicated the CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$ 36,109,800. As of the date of submittal, \$372,380 had been expended, equivalent to 1.03% of the total. The project application indicates that construction will commence in 2015, and that the project has an anticipated completion date of 2016.

The applicant indicated that it had not secured federal, state, regional or local approvals; an application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing has not been secured. On its application the applicant states equipment was not purchased. The applicant also indicated that the project has not been installed; construction has not commenced; and construction financing has not been secured. No action has been taken on project development regarding design or site clearing. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

EffiSolar Development -- (Frelinghuysen) Dkt. No. EO12121110V -- (PJM W3-146)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. Applicant stated its proposed project size is 10 MW ac and 6.8 MW dc, which is likely juxtaposed and is actually 10 MW dc and 6.8 MW ac. Applicant's project is proposed to be located in Frelinghuysen, New Jersey. The applicant indicated the CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$17,680,000. As of the date of submittal, \$209,650 had been expended, equivalent to 1.19% of the total. The project application indicates that construction will commence in 2016, and that the project has an anticipated completion date of 2016.

No action has been taken on project development regarding design or site clearing. The application indicated that the applicant had not secured federal, state, regional or local approvals; an application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing has not been secured. Equipment was not purchased. The applicant also indicated that the project has not been installed; construction has not commenced; and construction financing has not been secured. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

EffiSolar Development -- (Stewartville/Greenwich) Dkt. No. EO12121112V -- (PJM W3-076)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 18.0MW dc, 17 MW ac project is located in Greenwich, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The application indicates a CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$46,800,000. As of the date of submittal, \$416,850 had been expended, equivalent to 0.89% of the total. The project application indicates that construction will commence in 2016, and that the anticipated completion date is 2016.

According to the information provided in the application, no action has been taken on project development regarding design or site clearing. The application indicated that the applicant had not secured federal, state, regional or local approvals, and had not submitted an application to safe harbor a Treasury Section 1603 Cash Grant. Project construction financing has not been secured. Equipment was not purchased; the project has not been installed; construction has not commenced; and construction financing has not been secured. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

EffiSolar Development -- (Kingwood) Dkt. No. EO12121115V -- (PJM W3-149)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. Applicant stated its proposed project size is 17 MW ac and 15.9 MW dc, which is likely juxtaposed and is actually 17 MW dc and 15.9 MW ac. Applicant's project is proposed to be located in Kingwood, New Jersey. The application indicates a CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$41,340,000. As of the date of submittal, \$588,780 had been expended, equivalent to 1.42% of the total. The project application indicates that construction will commence in 2016, and that the anticipated completion date is 2016.

State, federal and local approvals have not been secured; equipment has not been purchased; and the applicant has not submitted an application to safe harbor a Treasury Section 1603 Cash Grant. Project construction financing has not been secured, and the project has not been installed. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, federal, state, and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

EffiSolar Development -- (Ringo/Raritan) Dkt. No. EO12121120V -- (PJM W3-029)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 17.9MW dc, 17 MW ac project is located in Raritan, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant indicated that equipment was purchased, and an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$50,700,250. As of the date of submittal, \$948,670 had been expended, equivalent to 1.87% of the total. The project application indicates that construction will commence in 2015-16, and that the anticipated completion date is 2016.

The application indicated that the applicant has not secured all federal, state, regional or local approvals. The applicant indicated no action has been taken on project development regarding design or site clearing. Project construction financing has not been secured. The applicant also indicated that the project has not been installed, and construction has not commenced. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Syncarpha Capital -- (Sandyston) Dkt. No. EO12121125V -- (PJM W3-126)

On September 14, 2012, applicant Syncarpha Capital submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 5 MW dc, 4 MW ac project is located in Sandyston, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. According to information provided with the application, equipment was purchased but no materials are onsite, a CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$15,096,761. As of the date of submittal, \$929,858 had been expended, equivalent to 6.16% of the total. The project application indicates that construction will commence on January 9, 2013, and that the anticipated completion date is January 1, 2014.

The application indicated that all federal, state, regional and local approvals have not been secured. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant. No action has been taken on project development regarding design or site clearing. The

applicant also indicated that the project has not been installed, and construction has not commenced. The system has not been authorized to energize; has not interconnected. And project construction financing has not been secured. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Syncarpha Capital -- (Kingwood) Dkt. No. EO12121126V -- (PJM W1-076)

On September 14, 2012, applicant Syncarpha Capital submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 8.0 MW dc, 7.4 MW ac project is located in Kingwood, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The application reflected that equipment was purchased but is not onsite, and the project was designed. A CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$21,632,466. As of the date of submittal, \$1,503,450 had been expended, equivalent to 6.16% of the total. The project application indicates that construction will commence on January 5, 2013, and that the anticipated completion date is September 1, 2013.

The application indicated that all federal, state, regional and local approvals have not been secured. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant. The applicant also indicated that the project has not been installed; construction has not commenced and no materials are on site. The system has not been authorized to energize, and has not interconnected. Project construction financing has not been secured. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Syncarpha Capital -- (Springfield.) Dkt. No. EO12121127V -- (PJM W3-041)

On September 14, 2012, applicant Syncarpha Capital submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 11.30MW dc, 9 MW ac project is located in Springfield Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The application reflected that equipment was purchased but is not onsite, a CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$33,651,900. As of the date of submittal, \$2,362,050 had been expended, equivalent to 7.02% of the total. The project application indicates that construction will commence on January 8, 2013, and that the anticipated completion date is December 1, 2013.

The application indicated that all federal, state, regional and local approvals have not been secured. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant. The applicant failed to indicate if any action has been taken on project development. The applicant also indicated that the project has not been installed, and construction has not commenced. The system has not been authorized to energize, has not interconnected, and no materials are on site. Project construction financing has not been secured. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Garden Solar LLC. – (Raritan/Flemington) Dkt. No. EO12121129V -- (PJM W2-080)

On September 21 2012, applicant Garden Solar LLC.. submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 2.3 MW dc, 2 MW ac project is located in Raritan Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. A CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$6,000,000. As of the date of submittal, \$350,000 had been expended, equivalent to 5.83% of the total. The project application indicates that construction is to commence on January 4, 2013, and that the anticipated completion date is September 30, 2013.

The application reflects that equipment was not purchased and does not indicate if any action has been taken regarding project development. Also, an application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing has not been secured. The application indicated that all federal, state, regional and local approvals have not been secured. The applicant also indicated that the project has not been installed; construction has not commenced and no materials are on site. The system has not been authorized to energize and has not interconnected. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Garden Solar LLC. – (Lambertville/West Amwell) Dkt. No. EO12121130V -- (PJM W2-076)

On September 21, 2012, applicant Garden Solar LLC. submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 2.3MW dc, 2 MW ac project is located in West Amwell, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The projected cost of the project was stated to be \$6,000,000. As of the date of submittal, \$225,000 had been expended, equivalent to 3.75% of the total. The project application indicates that construction was to commence on January 4, 2013, and that the anticipated completion date is September 30, 2013.

According to the information provided with the application, no action has been taken regarding project development site clearing or design. A CSA and ISA have not been executed, and interconnection facility costs have not been funded.

The application reflected that equipment was not purchased and an application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant. Project construction financing has not been secured. The application indicated that the requisite federal, state, regional and local approvals have not been secured. The applicant also indicated that the project has not been installed; construction has not commenced; and no materials are on site. The system has not been authorized to energize and has not interconnected. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Community Energy -- (Upper Freehold/Allentown) Dkt. No. EO12121131V -- (PJM W3-159)

On September 20, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 11.4 MW dc, 9.5 MW ac project is located in Allentown, New Jersey.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant indicated that the project was designed and the site was cleared. The project application indicates that construction was to commence on January 15, 2014, and that the anticipated completion date is May 15, 2014.

The projected cost of the project was stated to be "approximately" \$23,000,000. As of the date of submittal, "approximately" \$50,000 had been expended, equivalent to 0.22 % of the total. Also, the applicant indicated that it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have not been executed, and interconnection facility costs have not been funded. The application reflected that equipment was not purchased, and project construction financing has not been secured. The application indicated that the requisite federal, state, regional and local approvals have not been secured. The applicant also indicated that the project has not been installed; construction has not commenced, and there are no materials on site. The system has not been authorized to energize and has not interconnected. Further, an SREC off take contract has not been secured.

Since this project is still in the early stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Community Energy -- (Harmony) Dkt. No. EO12121134V -- (PJM W1-127)

On September 20, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's 3.54MW dc, 3 MW ac project is located in Harmony, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant indicated the project was designed and the site was cleared. Also, the applicant indicated that it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed, and interconnection facility costs have been funded.

The project application indicates that construction was to commence on May 15, 2013, and that the anticipated completion date is October 15, 2013. The projected cost of the project was stated to be "approximately" \$7,500,000. As of the date of submittal, "approximately" \$400,000 had been expended, equivalent to 5.33% of the total.

The application reflected that equipment was not purchased and project construction financing has not been secured. The application states that all the requisite federal, state, regional and local approvals have not been secured. The applicant also stated that the project has been not been installed; construction has not commenced; and currently there are no materials on site. Also, the system has not been authorized to energize and has not interconnected. Further, an SREC off take contract has been secured.

Since this project has not progressed to an advanced stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Community Energy -- (Millstone) Dkt. No. EO12121135V -- (PJM W3-158)

On September 20, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 9.6 MW dc, 8 MW ac project is located in Millstone, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant indicated the project was designed and the site was cleared. Also, the applicant indicated that, due to its ability to utilize the federal investment tax credit, it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant.

The project application indicates that construction was to commence on January 15, 2014, and the anticipated completion date is May 15, 2014. The projected cost of the project was stated to be "approximately" \$19,000,000. As of the date of submittal, "approximately" \$50,000, equivalent to 0.26% of the total, had been spent.

A CSA and ISA have not been executed, and interconnection facility costs have not been funded. The application reflected that equipment was not purchased, and project construction financing has not been secured. The application states that all the requisite federal, state, regional and local approvals had not been secured by the application date. The applicant also stated that the project has been not been installed; construction has not commenced; and currently there are no materials on site. Also, the system has not been authorized to energize

and has not interconnected. Further, neither construction financing nor an SREC off take contract has been secured.

Since this project has not progressed to an advanced stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Community Energy -- (Buena Vista/Vineland) Dkt. No. EO12121136V -- (PJM W1-130)

On September 20, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 11 MW dc, 9.2 MW ac project is located in Buena Vista, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. Also, the applicant indicated that it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant. The applicant indicated the project was designed and the site was cleared.

The project application indicates that construction was to commence on August 1, 2013, and that the anticipated completion date is December 13, 2013. The projected cost of the project was stated to be "approximately" \$22,000,000. As of the date of submittal, "approximately" \$216,000 had been expended, equivalent to 0.98% of the total.

A CSA and ISA have not been executed, and interconnection facility costs have not been funded. The application reflected that equipment was not purchased and project construction financing has not been secured. The application states that all the requisite federal, state, regional and local approvals have not been secured. The applicant also stated that the project has been not been installed; construction has not commenced; and currently there are no materials on site. Also, the system has not been authorized to energize and has not interconnected. However, an SREC off take contract has been secured.

Since this project has not progressed beyond the early stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Community Energy -- (Greenwich Township, Cumberland County) Dkt. No. EO12121137V -- (PJM V4-062 & W1-048)

On September 20, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 9.6 MW dc, 8 MW ac project is located in Greenwich Township, New Jersey.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant indicated that it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant. The applicant indicated the project was designed and the site was cleared. The project application indicates that construction was to commence on January 15, 2013, and that the anticipated completion date is May 15, 2014. The projected cost of the project was stated to be "approximately" \$19,000,000. As of the date of submittal, "approximately" \$250,000 had been expended, equivalent to 1.3 % of the total.

A CSA and ISA have not been executed, and interconnection facility costs have not been funded. The application reflected that equipment was not purchased and project construction financing has not been secured. The application states that all the requisite federal, state, regional and local approvals have not been secured. The applicant also stated that the project has been not been installed; construction has not commenced; and currently there are no materials on site. Also, the system has not been authorized to energize and has not interconnected. However, an SREC off take contract has been secured.

Since this project has not progressed to an advanced stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Quakertown Farms -- (Franklin) Dkt. No. EO12121138V -- (PJM W3-003)

On December 14, 2012, applicant Quakertown Farms LLC submitted an application under Subsection s with a cover note to appendix 2, acknowledging failure to comply with the procedures established by Board Staff to provide notice of intent to seek approval within sixty days of the effective date of the Solar Act. Applicant cited its belief that the "BPU was remiss in providing proper notice of the September 21, 2012 filing deadline due to the fact that as a registered PJM Queue participant with a system impact study prior to stated date within legislation, we should have received some notice of such filing deadline." Quakertown Farms produced a letter dated October 1, 2012, addressed to the Board Secretary proposing a 10 MW facility with a PJM SIS issued on June 20, 2011.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. Applicant's proposed 10 MW dc, 8.5 MW ac project is located in Franklin Township, Hunterdon County, New Jersey. The applicant indicated the project has only progressed to the design stage, and local site plan approvals were expected to be obtained in December 2012. No equipment has been purchased and no materials were currently onsite.

The project application provided no indication of when construction was to commence, no indication of when materials would be delivered and no indication of an anticipated completion date. The projected cost of the project was stated to be \$34,000,000. The applicant failed to divulge how much has been invested in project development.

Also, the applicant failed to indicate whether it had filed an application to safe harbor Treasury Section 1603 Cash Grant, whether a CSA and ISA had been executed or interconnection facility costs funded. The application failed to indicate whether project construction financing has been secured or whether an SREC off take contract had been secured.

Staff reviewed this application notwithstanding the applicant's failure to meet the statutory deadline for filing its notice of intent, and the incompleteness of the information provided with the application. Staff does not concede that the applicant was entitled to personal notice of deadlines established in the Solar Act. Since based on the information provided, the project lacked all final unappealable approvals by the application date, this project has not progressed to an advanced stage of completion and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Atlantic Green Power Corp. -- (Upper Pittsgrove) Dkt. No. EO12121139V -- (PJM V4-042)

On December 17, 2012, applicant Atlantic Green Power Corporation submitted an application under Subsection s with a cover sheet labeled attachment #2, acknowledging failure to comply with the procedures established by Board Staff to provide notice of intent to seek approval within sixty days of the effective date of the Solar Act. Applicant advised "we are not in receipt of correspondence from the Board with guidance to the requirement in N.J.S.A. 48:3-87 (s) 2 (a) possibly due to the relocation of our office...That office was flooded during Superstorm Sandy." Atlantic Green Power, in its cover letter, proposed a 20 MW facility at PJM Queue number V4-042 for which a PJM SIS was issued on September 27, 2010.

Applicant's proposed 20 MW ac project is located in Upper Pittsgrove Township, New Jersey. The applicant failed to indicate in response to the application's first question the current status of project development. The applicant did indicate that all federal, state and local approvals had not been secured. No equipment has been purchased, no construction initiated, and no materials were currently onsite.

The project application provided no date for when construction was to commence but did note in the margins of the application that the project was "awaiting facilities studies." The applicant provided no date for when materials would be delivered but offered in the margins of the application "90 days after site work." The applicant provided no indication of an anticipated completion date. The projected cost of the project was stated to be \$50,000,000. The applicant stated that \$275,000 had been invested in project development or 0.55%.

Also, the applicant indicated that it had not filed an application to safe harbor a Treasury Section 1603 Cash Grant, a CSA and ISA had not been executed nor were interconnection facility costs funded. Further, the application indicated that project construction financing had not been secured nor has an SREC off take contract been secured.

Staff reviewed the application notwithstanding the failure to timely file a notice of intent as required by the statute. Staff does not concede that the applicant was entitled to personal notice of the statutory deadline. Since based on the information provided this project has not progressed to an advanced stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Atlantic Green Power Corp. -- (Upper Pittsgrove) Dkt. No. EO12121140V -- (PJM V4-023)

On December 17, 2012, applicant Atlantic Green Power Corporation submitted an application under Subsection s with a cover sheet, labeled attachment 2, acknowledging failure to comply with the procedures established by Board Staff to provide notice of intent to seek approval within sixty days of the effective date of the Act. Applicant advised "we are not in receipt of correspondence from the Board with guidance to the requirement in N.J.S.A. 48:3-87 (s) 2 (a) possibly due to the relocation of our office...That office was flooded during Superstorm Sandy." Atlantic Green Power, in its cover letter, proposed an 18 MW facility at PJM Queue number V4-023 for which a PJM SIS was issued on September 24, 2010.

Applicant's proposed 18 MW ac project is located in Upper Pittsgrove Township, New Jersey. The applicant failed to indicate in its response to the application's first question the current

status of project development. The applicant did indicate that all federal, state and local approvals had not been secured. No equipment has been purchased, no construction initiated and no materials were currently onsite.

The project application provided no date for when construction was to commence but did note in the margins of the application that the project was "awaiting facilities studies." The applicant provided no date for when materials would be delivered but offered in the margins of the application "90 days after site work." The applicant provided no indication of an anticipated completion date. The projected cost of the project was stated to be \$45,000,000. The applicant stated that \$300,000 had been invested in project development or 0.66%.

Also, the applicant indicated that it had not filed an application to safe harbor a Treasury Section 1603 Cash Grant, a CSA and ISA had not been executed nor had interconnection facility costs been funded. Further, the application indicated that project construction financing had not been secured nor has an SREC off take contract been secured.

Staff reviewed this application even though the notice of intent required under the statute was not filed. Staff does not concede that the applicant was entitled to personal notice of the statutory deadline. Since this project has not progressed to an advanced stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, based on the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Atlantic Green Power Corp. -- (Upper Pittsgrove) Dkt.No. EO12121141V -- (PJM V4-041)

On December 17, 2012, applicant Atlantic Green Power Corporation submitted an application under Subsection s with a cover sheet, labeled Attachment 2, acknowledging failure to comply with the procedures established by Board Staff to provide notice of intent to seek approval within sixty days of the effective date of the Solar Act. Applicant advised "we are not in receipt of correspondence from the Board with guidance to the requirement in N.J.S.A. 48:3-87 (s) 2 (a) possibly due to the relocation of our office...That office was flooded during Superstorm Sandy." Atlantic Green Power, in its cover letter, proposed a 20 MW facility at PJM Queue number V4-041 for which a PJM SIS was issued on September 27, 2010.

Applicant's proposed 20 MW ac project is located in Upper Pittsgrove Township, New Jersey. The applicant failed to respond to the application's first question requiring an indication of the current status of project development. The applicant did indicate that all federal, state and local approvals had not been secured. No equipment has been purchased, no construction initiated and no materials were currently onsite.

The project application provided no date when construction was to commence but did note in the margins of the application that the project was "awaiting facilities studies." The applicant provided no date when materials would be delivered but offered in the margins of the application "90 days after site work." The applicant provided no indication of an anticipated completion date. The projected cost of the project was stated to be \$50,000,000. The applicant stated that \$275,000 had been invested in project development or 0.55%.

Also, the applicant indicated that it had not filed an application to safe harbor a Treasury Section 1603 Cash Grant, a CSA and ISA had not been executed nor were interconnection facility costs funded. Further, the application indicated that project construction financing had not been secured nor has an SREC off take contract been secured.

Staff reviewed the application even though the applicant failed to file the notice of intent required by the statute. Staff does not concede that the applicant was entitled to personal notice of the statutory deadline. Based on the information provided, since this project remains in the early stage of completion, all federal, state, regional and local approvals had not been secured by the application date, and prospects for timely completion remain speculative, under the criteria described above, Staff recommends the application be denied approval under Subsection s(2).

Applications Recommended for Deferral of Decision Pending Further Board Action

Staff finds the following twenty applications were not sufficiently advanced to support a recommendation for approval for designation as "connected to the distribution system" for purposes of SREC eligibility. However, each project does have a timely PJM issued SIS and had secured all final unappealable federal, state, and local approvals by the application deadline, indicating sufficient progress had been achieved to make project commencement less speculative than those projects that had not secured all final unappealable approvals. Given the current state of the solar market, as described above, and the need for stability and predictability during the implementation of the Solar Act, Staff recommends the use of final, unappealable approvals as the demarcation for projects to be deferred for further consideration. Staff finds that more information is required and additional milestones must be achieved to enable a recommendation for approval or denial based upon the project's prospects for completion. Therefore, Staff recommends that the following twenty (20) applications be deferred under Subsection s for submission of additional information and additional Board review.

GreenPower Development -- (Upper Deerfield) Dkt. No. EO12121089V -- (PJM V4-009)

On July 24, 2012, applicant GreenPower Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 12.5MW dc, 9.5 MW ac project is located in Upper Deerfield, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

On its application, the applicant represented that it had designed and "partially" cleared the site; secured federal, state, regional and local approvals; commenced construction on January 10, 2011, and that it had an anticipated completion date of October 30, 2013.

The projected cost of the project was stated to be \$30,000,000. According to the application, as of the date of submittal, \$1,400,000 had been expended, equivalent to 4.67% of the total.

The application also indicated that no equipment had been purchased; no materials were onsite; the project was not currently installed; the CSA and ISA have not been executed, and interconnection facility costs have not been funded nor has the project been authorized to energize. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant; construction financing has not been secured and an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff

recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Millennium Development -- (Raritan/Ringoes) Dkt. No. EO12121090V -- (PJM W2-050)

On July 31, 2012, applicant Millennium Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 9.799MW ac, 7.8 MW dc project is located in Raritan Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed the site; secured federal, state, regional and local approvals; purchased equipment; executed a CSA and ISA; and submitted an application to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$25,970,000. As of the date of submittal, the applicant represented that \$427,932 "plus \$1,585,054 on equipment" had been expended, equivalent to 7.75% of the total. An anticipated completion date was not listed on the application.

The application also indicated that it had not begun construction; no materials were onsite; no portion of project was currently installed; the project has not been authorized to energize nor has an anticipated date of interconnection been supplied. Additionally, construction financing has not been secured; and an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Pittsgrove Solar -- (Pittsgrove) Dkt. No. EO12121092V -- (PJM V2-035)

On August 3, 2012, applicant Pittsgrove Solar submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's 2.3 MW dc, 2.0 MW ac proposed project is located in Pittsgrove, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant represented that it had designed and cleared the site; construction was initiated; and that it had secured federal, state, regional and local approvals. The applicant also indicated it had purchased equipment and materials which were located onsite including support piles which were installed and structural racking. The applicant indicated the CSA and ISA have been executed, interconnection facility costs have been funded, and an application has been submitted to safe harbor Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$7,145,779. As of the date of submittal, \$1,469,009.66 had been expended, equivalent to 20.56% of the total. The applicant commenced construction on January 24, 2011, and indicated an anticipated completion date of May 31, 2013. The application also indicated that the project was not authorized to energize; construction financing has not been secured; and an SREC off take contract has not been secured.

On February 26, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated. Staff found the project remained in roughly the same state as pictured in the application's appendix 5; with all support piles installed. No other materials were confirmed onsite.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Day Four Solar -- (North Hanover) Dkt. No. EO12121093V -- (PJM W2-019)

On August 7, 2012, applicant Day Four Solar submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant indicated the proposed system was 6.0 MW ac, 5.6MW dc, which is probably a typographical error with the true anticipated system size as 6.0 MW dc, and 5.6 MW ac. The project is located in North Hanover, New Jersey.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. On its application, the applicant represented that it had designed, cleared and initiated construction at the site; secured federal, state, regional and local approvals; and had purchased equipment. The applicant indicated that purchased materials and solar panels were located onsite. The applicant indicated the CSA and ISA have been executed, interconnection facility costs have been funded, and an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$15,540,250. As of the date of submittal, \$777,000 had been expended, equivalent to 5% of the total. The applicant noted that construction commenced on January 11, 2011, and indicated an anticipated completion date of August 30, 2013. The application also indicated that the project was not authorized to energize; it is not currently installed; construction financing has not been secured; and an SREC off take contract has not been secured.

On February 22, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated. Staff found no evidence of construction activity undertaken at the property identified as the proposed solar facility site. No materials were confirmed onsite.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Frenchtown III Solar -- (Kingswood) Dkt. No. EO12121096V -- (PJM W2-016)

On August 10, 2012, applicant Frenchtown 111 Solar submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 12 MW dc, 9 MW ac project

is located in Kingswood, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

On its application, the applicant represented that it had secured federal, state, regional and local approvals, and had purchased equipment. The applicant indicated the CSA and ISA have been executed and interconnection facility costs have been funded, and an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant and that project construction financing and an SREC off take contract have been secured.

The projected cost of the project was stated to be \$34,000,000. As of the date of submittal, the applicant represented that \$14,000,000 had been expended, equivalent to 41% of the total. The applicant commenced construction on May 1, 2012, and indicated an anticipated completion date of July 8, 2013.

On April 9, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated. Staff found no evidence of construction activity undertaken at the property identified as the proposed solar facility site. No materials were confirmed onsite.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Alethea Cleantech Advisors -- (East Amwell) Dkt. No. EO12121105V -- (PJM W2-061)

On September 13, 2012, applicant Alethea Cleantech Advisors submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 3.3 MW dc, 2.7 MW ac project is located in East Amwell, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

On its application, the applicant represented that it had designed the site, equipment was purchased and materials were in storage. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. The applicant indicated the CSA and ISA have been executed but interconnection facility costs have not been funded since FirstEnergy/JCPL (FE) postponed the funding requirement pending other approvals. Applicant supplied an explanation with Appendix 7 to its application; "(FE) eliminated the customer requirement to post a security deposit simultaneously with the submission of an executed Interconnection Agreement and Construction Agreement." The application indicated that the applicant had secured federal, state, regional or local approvals.

The projected cost of the project was stated to be \$11,137,805. As of the date of submittal, \$884,567 (\$320,281 plus \$564,286 in equipment) had been expended, equivalent to 7.94% of the total. The project application indicates that construction was to commence on January 2, 2013 "pending BPU approval," and that it had an anticipated completion date of June 1, 2013, "pending BPU approval." Staff did not conduct a site visit since the applicant indicated that construction would not be initiated until Board made a decision with respect to the Subsection s application.

The applicant also indicated that the project is not installed; construction had not commenced; and construction financing had not been secured. The system has not been authorized to energize and has not interconnected. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Florence) Dkt. No. EO12121107V -- (PJM W3-080)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

Applicant stated its proposed project size is 15 MW ac and 14.8MW dc, which is likely juxtaposed and is actually 15 MW dc and 14.8 MW ac. The proposed project is located in Florence, New Jersey. On its application the applicant states that equipment was purchased. The application indicated that the applicant had secured federal, state, regional and local approvals, and an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$42,279,370. As of the date of submittal, \$566,400 had been expended, equivalent to 1.3% of the total. The project application indicates that construction will commence in 2015, and that the anticipated completion date is 2015-16.

The applicant indicated the CSA and ISA have not been executed, and interconnection facility costs have not been funded. The applicant also indicated that the project has not been installed, construction has not commenced and construction financing has not been secured. No action has been taken on project development regarding design or site clearing. The system has not been authorized to energize and has not interconnected. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Freehold) Dkt. No. EO12121109V -- (PJM W2-088)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection (s) for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 20.9MW dc, 17 MW ac project is located in Freehold, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The applicant represented that equipment was purchased. The application indicated that the applicant had secured federal, state, regional and local approvals, and an application has been

submitted to safe harbor a Treasury Section 1603 Cash Grant and project construction financing had been secured. The applicant indicated the CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$59,947,974. As of the date of submittal, \$444,100 had been expended, equivalent to 0.74% of the total. The project application indicates that construction will commence in 2015-16, and that there is an anticipated completion date of 2016.

No action had been taken on project development regarding design or site clearing. The applicant also indicated that the project has not been installed, construction has not commenced and construction financing has not been secured. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Stewartville/Greenwich) Dkt. No. EO12121111 -- (PJM W2-091)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

Applicant's 11.4MW dc, 10 MW ac project is located in Greenwich, New Jersey. The application indicated that the applicant had secured federal, state, regional and local approvals, and the CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$26,003,000. As of the date of submittal, \$415,500 had been expended, equivalent to 1.60% of the total. The project application indicates that construction will commence in 2016, and that the project has an anticipated completion date of 2016.

No action has been taken on project development regarding design or site clearing. An application has not been submitted to safe harbor a Treasury Section 1603 Cash Grant, and project construction financing has not been secured. On its application applicant states equipment was not purchased. The applicant also indicated that the project has not been installed, and construction has not commenced.. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Kingwood/Frenchtown) Dkt. No. EO12121113V -- (PJM W2-083)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 16.4MWdc, 16 MW ac project is located in Kingwood, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The application indicates a CSA and ISA have been executed and interconnection facility costs have been funded. Equipment has been purchased. The application indicated that the applicant secured federal, state, regional and local approvals, and had submitted an application to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$48,161,550. As of the date of submittal, \$442,800 had been expended, equivalent to 0.92% of the total. The project application indicates that construction will commence in 2014, and that the anticipated completion date is 2015.

According to information provided in the application, no action has been taken on project development regarding design or site clearing. The project has not been installed; construction has not commenced; and construction financing has not been secured. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain speculative. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Howell) Dkt. No. EO12121114V -- (PJM W3-079)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

Applicant stated its proposed project size is 14 MW ac and 9.5 MW dc, which is likely juxtaposed, and is actually 14 MW dc and 9.5 MW ac. Applicant's project is proposed to be located in Howell, New Jersey. The application indicates a CSA and ISA have been executed and interconnection facility costs have been funded. State, regional and local approvals have been secured.

The projected cost of the project was stated to be \$26,206,300. As of the date of submittal, \$398,200 had been expended, equivalent to 1.52% of the total. The project application indicates that construction will commence in "estimated 2013-14", and that the anticipated completion date is 2014.

According to the information provided in the application, no action has been taken on project development regarding design or site clearing. Equipment has not been purchased and the applicant has not submitted an application to safe harbor a Treasury Section 1603 Cash Grant.

Project construction financing has not been secured; the project has not been installed, and construction has not commenced. The system has not been authorized to energize, has not interconnected, and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Lumberton) Dkt. No. EO12121116V -- (PJM W2-090)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

Applicant stated its proposed project size is 20 MW ac and 18.8 MW dc, which is likely juxtaposed and is actually 20 MW dc and 18.8 MW ac. Applicant's project is proposed to be located in Lumberton, New Jersey. State, federal and local approvals have been secured; equipment was purchased; and the applicant has submitted an application to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$55,122,795. As of the date of submittal, \$412,990 had been expended, equivalent to 0.75% of the total. The project application indicates that construction will commence in 2013, with an anticipated completion date of 2014.

According to the information provided in the application, no action has been taken on project development regarding design or site clearing. Project construction financing has not been secured; the project has not been installed, and construction has not commenced. The system has not been authorized to energize; has not interconnected; and no material is on site. Further, an SREC off take contract has not been secured. Also, the application indicates a CSA and ISA have not been executed but interconnection facility costs have been funded.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (North Hanover) Dkt. No. EO12121117V -- (PJM W2-082)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

Applicant stated its proposed project size is 20 MW dc and 17 MW dc with the project to be located in North Hanover, New Jersey. State, federal and local approvals have been secured; equipment was purchased, and the applicant has submitted an application to safe harbor a

Treasury Section 1603 Cash Grant. Also, the application indicates a CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$56,087,115. As of the date of submittal, \$621,500 had been expended, equivalent to 1.11% of the total. The project application indicates that construction will commence in 2013, with an anticipated completion date of 2014-15.

According to the information provided in the application, no action has been taken on project development regarding design or site clearing. The project has not been installed. Construction has not commenced and construction financing has not been secured. The system has not been authorized to energize; has not interconnected, and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Pemberton) Dkt. No. EO12121118V -- (PJM W1-120)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's 22.4MW dc, 20 MW ac project is located in Pemberton, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The application indicated that the applicant secured federal, state, regional and local approvals and equipment was purchased. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be \$63,312,336. As of the date of submittal, \$665,400 had been expended, equivalent to 1.05% of the total. The project application indicates that construction will commence in 2014, and that the anticipated completion date is 2015.

The applicant did not indicate whether a CSA and ISA have been executed or if interconnection facility costs have been funded. No action has been taken on project development regarding design or site clearing. The applicant also indicated that the project has not been installed; construction has not commenced; and construction financing has not been secured. The system has not been authorized to energize; has not interconnected, and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

EffiSolar Development -- (Pemberton) Dkt. No. EO12121119V -- (PJM W1-119)

On September 14, 2012, applicant EffiSolar Development submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 20.2MW dc, 18 MW ac project is located in Pemberton, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The application indicated that the applicant has secured federal, state, regional and local approvals, and equipment was purchased. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed, and interconnection facility costs have been funded.

The projected cost of the project was stated to be \$57,405,923. As of the date of submittal, \$523,900 had been expended, equivalent to 0.91% of the total. The project application indicates that construction will commence in 2013-14, and the anticipated completion date is 2015.

The applicant indicated no action has been taken on project development regarding design or site clearing. The applicant also indicated that the project has not been installed; construction has not commenced, and construction financing has not been secured. The system has not been authorized to energize; has not interconnected, and no material is on site. Further, an SREC off take contract has not been secured.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Spano Partners Holdings, LLC./Tetrattech -- (Millstone Township) Dkt. No. EO12121121V -- (PJM W1-113)

On September 18, 2012, applicant Spano Partners Holdings LLC. submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 7.6MW ac, 6.5 MW dc project is located in Millstone Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The applicant indicated that the project was designed and equipment was purchased and solar panels are on site. Applicant supplied in Appendix 5 a picture of modules within a warehouse. The application indicated that all federal, state, regional and local approvals have been secured. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed, and interconnection facility costs have been funded. Project construction financing has also been secured.

The projected cost of the project was stated to be \$20,253,837. As of the date of submittal, \$9,469,487 had been expended, equivalent to 46.75% of the total. The project application indicates that construction will commence in March 2013, and that there is an anticipated completion date of September 1, 2013. The applicant also indicated that the project has not been installed; and construction has not commenced. The system has not been authorized to

energize; and has not interconnected. Further, an SREC off take contract has not been secured.

On April 23, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated, as anticipated in the application, and if confirm materials were onsite. Staff found no part of the project had been installed and could not verify that any materials were onsite.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Spano Partners Holdings, LLC. / Tetrattech -- (Millstone Township) Dkt. No. EO12121122V -- (PJM W2-078)

On September 18, 2012, applicant Spano Partners Holdings LLC. submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 5.9 MW dc, 5.0 MW ac project is located in Millstone Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The applicant indicated that the project was designed and equipment was purchased, and solar panels are on site. The application indicated that all federal, state, regional and local approvals were secured. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed, and interconnection facility costs have been funded. Project construction financing has also been secured.

The projected cost of the project was stated to be \$15,579,874. As of the date of submittal, \$7,284,221 had been expended, equivalent to 46.75% of the total. The project application indicates that construction will commence in March 2013, with an anticipated completion date of September 1, 2013.

The applicant also indicated that the project has not been installed, the system has not been authorized to energize, and has not interconnected. Further, an SREC off take contract has not been secured.

On April 23, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated, as anticipated in the application, and confirm if materials were onsite. Staff found no part of the project had been installed and could not verify that any materials were onsite.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Spano Partners Holdings/Tetrattech – (Manalapan) Dkt. No. EO12121123V – (PJM W1-032)

On September 18, 2012, applicant Spano Partners Holding LLC. submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 1.7MWdc, 1.5 MW ac project is located in Manalapan Township, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The applicant indicated that the project was designed and equipment was purchased and that solar panels are on site. The application indicated that all federal, state, regional and local approvals have been secured. An application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed, and interconnection facility costs have been funded. Project construction financing has also been secured.

The projected cost of the project was stated to be \$ 4,417,531. As of the date of submittal, \$2,065,374 had been expended, equivalent to 46.75% of the total. The project application indicates that construction will commence in March 2013, and that it had an anticipated completion date of September 1, 2013.

The applicant also indicated that the project has not been installed; the system has not been authorized to energize, and has not interconnected. Further, an SREC off take contract has not been secured.

On April 5, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated, as anticipated in the application, and confirm materials were onsite. Staff found no part of the project had been installed and could not verify that any materials were onsite.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Community Energy -- (Wrightstown/North Hanover) Dkt. No. EO12121132V -- (PJM W1-129)

On September 21, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's proposed 6.0 MW dc, 5 MW ac project is located in North Hanover, New Jersey.

The applicant subsequently submitted an application by the cut-off date of December 17, 2012. The applicant indicated the project was designed and the site was cleared and construction initiated. Also, the applicant indicated that it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant. A CSA and ISA have been executed and interconnection facility costs have been funded.

The application indicated that the requisite federal, state, regional and local approvals have been secured. The application reflected that equipment was purchased and project

construction financing has been secured. The applicant also stated that interconnection equipment had been installed; construction has commenced; and there are materials on site, specifically "interconnection equipment for interconnection tap (3 phase 34.5kv circuit)." Further, applicant reports an SREC off take contract has been secured.

The projected cost of the project was stated to be "approximately" \$12,000,000. As of the date of submittal, "approximately" \$1,000,000 had been expended, equivalent to 8.33% of the total. While a full accounting of the project costs expended was not provided, as requested in Appendix 4, the applicant did supply an invoice schedule demonstrating that \$262,000 of interconnection material costs have been expended. In Appendix 7, applicant identified additional \$158,823 that has been paid for interconnection costs. The project application indicates that construction was initiated on June 30, 2011, and that the anticipated completion date is May 15, 2013. The system has not been authorized to energize, and has not interconnected.

On April 8, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated, as claimed in the application, and confirm materials were onsite. Staff found no additional, solar-specific materials onsite and presumes that the extent of construction since 2011 has been toward facilitating interconnection making the site's interconnection equipment ready for a solar installation.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

Community Energy -- (West Pemberton) Dkt. No. EO12121133V -- (PJM W2-102)

On September 21, 2012, applicant Community Energy submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECs. Applicant's proposed 8.4 MW dc, 7 MW ac project is located in West Pemberton, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

The applicant indicated the project was designed, the site was cleared, construction initiated, and interconnection completed. Also, the applicant indicated that it was not necessary to file an application to safe harbor a Treasury Section 1603 Cash Grant.

The projected cost of the project was stated to be "approximately" \$17,000,000. As of the date of submittal, "approximately" \$1,400,000 had been reported expended, equivalent to 8.24% of the total. While a full accounting of the project costs expended was not provided, as requested in Appendix 4, the applicant did supply documentation demonstrating an array of interconnection facility costs paid through February 2012: \$462,886 to PSE&G, \$624,629 to PJM, and with other costs anticipated to be paid to Verizon. The project application indicates that construction was initiated on June 16, 2011, and that the anticipated completion date is April 30, 2013.

The application states that the requisite federal, state, regional and local approvals have been secured. According to the information provided with the application, PJM's CSA and ISA have been executed and interconnection facility costs have been funded. The application reflected

that equipment was purchased and project construction financing has been secured. The applicant also stated that construction has commenced and there are materials on site consisting of thirty three (33) utility poles installed and 0.8 miles of 3 phase 26.4kv line extensions. Further, an SREC off take contract has been secured. The system has not constructed and therefore no solar system exists to have been authorized to energize or interconnected.

On April 30, 2013, Staff conducted a site visit at the proposed location for the facility to determine if construction had been initiated, as claimed in the application, and confirm materials were onsite. Staff found no solar-specific materials onsite aside from the thirty three telephone poles, and presumes that the extent of construction since initiated in 2011 has been toward facilitating interconnection making the site's distribution system ready for a solar installation.

Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review.

STAFF RECOMMENDATION

Board Staff has thoroughly reviewed the applications described herein. Staff found that based on the application materials submitted that none of the projects described above is at an advanced stage of completion. Based on that review, Board Staff recommends that each application described above either be denied approval as "connected to the distribution system" by the Board pursuant to Subsection s(2) or be deferred for further consideration after submission of additional information.

Board Staff interprets the Solar Act as providing the Board the authority to approve or deny applications pursuant to Subsection s when approval or denial would be consistent with the statutory intent to limit solar developed on farmland. Staff does not view limiting solar developed on farmland as a goal in itself, but rather as an action to be taken in the context of the overall intent of the Solar Act, the intent of its related sections, and the State's policy goals as expressed in the Energy Master Plan and the Renewable Portfolio Standard proceedings:

The Solar Act generally is commonly understood, based on stakeholder comments provided to the Board, as well as through the statutory provision directing the Board to study and report on measures to mitigate solar development volatility, N.J.S.A. 48:3-87 d. 3. (b), to have been passed to provide stability to the New Jersey SREC market. Stakeholders in these proceedings have stressed to Staff the need for transparent market pipeline data to help mitigate solar development volatility. The Solar Act's individual sections N.J.S.A. 48:3-87(q),(r),(s) and (t), provide the Board with tools to make the SREC market less volatile while implementing the policy goals expressed in the Energy Master Plan. (2011 New Jersey EMP, Section 7.2.6, December 6, 2011). Staff found in its review of the applications submitted under Subsection s that a clear separation in the state of project development exists between the three facilities recommended for approval⁵ and the fifty four other applications under consideration in this Order.

⁵ By Order dated May 8, 2013, I/M/O Implementation of L.2012, C. 24 – Docket No. EO12080832V, I/M/O the Implementation of L.2012, C. 24 N.J.S.A. 48:3-87 (Q)(R)(S) – Proceedings to Establish the Processes

Staff has concluded that the fifty four applications described above for proposed facilities recommended for denial or deferral have not advanced significantly beyond the design or site clearing stage of completion. Many of the projects have not progressed to a point sufficient enough to enable market participants to accurately forecast the facilities' likelihood of contributing SRECs to the New Jersey SREC market. The lack of progress in constructing each facility makes it impossible for market participants to gauge the likelihood of completion and of the resulting potential impact of the construction of these additional projects with regards to the market supply of SRECs.

The fifty four applications recommended for denial or deferral are much less advanced than the three applications recommended for approval, and all remain speculative with considerable uncertainty as to the prospects of whether or when the projects can be completed. The uncertainty present in the development prospects for the fifty four proposed projects, and in the forecast for new capacity joining the market and its potential contribution of new SRECs to an already oversupplied SREC market, is too great, to support a recommendation for approval of those projects that otherwise appear to satisfy the first two prongs of Subsection s. The Solar Act's Subsection q provides an alternative and, in Staff's belief, more appropriate means for developers of the more speculative projects on farmland to seek approval to participate in the SREC market.

Staff recommends that the Board direct Staff to work with stakeholders to develop project status reporting and milestone achievement requirements for the projects deferred from an immediate decision by the Board, seeking to demonstrate by the submission of the required information the continued viability and prospects for near term completion. Staff recommends that the deferment process be rigorous, requiring the submission of additional documentation proving the going forward status of the proposed project such as an update of the Subsection s application package supplemented by any executed contracts for engineering, procurement and construction ("EPC") and completion milestones achievable by specific dates to provide the Board clarity in planning requirements for establishing a Subsection r application process.

Staff further recommends that the Board, in a separate action, authorize Staff to open an application period for developers to submit applications seeking approval under Subsection q for designation in specific Energy Years: 2014, 2015 or 2016. Staff recommends that the Board direct Staff to send each applicant whose project is denied or deferred under Subsection s a cover letter noticing the Board's action, along with the copy of this Order and the Order under Subsection q.

DISCUSSION AND FINDINGS

In assessing applications under Subsection s, the Board is obligated to follow the terms and objectives of the statute. "[A]dministrative agencies are part of the executive branch of government, charged under the State constitution with the responsibility of faithfully executing the laws." In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 93 (1982) (citing N.J.Const. (1947), Art. 5, § 1, para. 11)). The Board "may not under the

for Designating Certain Grid Supply Projects as Connected to the Distribution System – Docket No. EO12090880V, I/M/O Approval of Application for Sun Perfect Solar, Inc., W1-112 – Docket No. EO12121101V, I/M/O Approval of Application for OCI Solar Power, LLC., W1-112 – Docket No. EO12121106V, I/M/O Approval of Application for NJ Clean Energy Ventures, W2-056.

guise of interpretation . . . give the statute any greater effect than its language allows." In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004). See also T.H. v. Division of Developmental Disabilities, 189 N.J. 478, 491 (2007) (an administrative agency may not "alter the terms of a legislative enactment or frustrate the policy embodied in the statute.").

In considering the construction and applicability of Subsection s, we note that the goal of statutory construction is to effectuate legislative intent in light of the language used and the object sought to be achieved. McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001). As a state agency, in matters of statutory interpretation, the Board is guided by the decisions of the courts. In discerning legislative intent, the courts look first to the plain terms of the statute. Dep't of Children & Families, Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 301 (2011); State v. Hupka, 203 N.J. 222, 231 (2010); Nobrega v. Edison Glen Assocs., 167 N.J. 520, 536 (2001). An act's language is, in most instances, the "surest indicator" of the Legislature's intent. McCann, supra, 167 N.J. at 320. Additionally, N.J.S.A. 1:1-1 provides that in statutory construction, "words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning...." N.J.S.A. 1:1-1 "To that end, 'statutes must be read in their entirety; each part of section should be construed in connection with every other part or section to provide a harmonious whole.'" Burnett v. Cnty. of Bergen, 198 N.J. 408, 421 (2009). Statutory construction that would render any part of a statute inoperative, superfluous, or meaningless is to be avoided. N.J. Carpenters Apprentice Training & Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 179-180 (1996).

If a statute "is clear and unambiguous on its face and admits of only one interpretation," effect should be given to the statute's plain meaning. Thomsen v. Mercer-Charles, 187 N.J. 197, 206 (2006) (quoting State v. Butler, 89 N.J. 220, 226 (1982)). Where literal words give rise to an unclear or ambiguous statutory meaning, with more than one plausible interpretation, courts look to extrinsic evidence, including legislative history and contemporaneous construction to guide interpretation. Burnett, supra, 198 N.J. at 421; Clymer v. Summit Bancorp., 171 N.J. 57, 66 (2002); Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000). Extrinsic evidence also may be resorted to if a plain reading leads to an absurd result. Burnett, supra, 198 N.J. at 421.

Given these basic principles, we turn to the statute at issue, Subsection s. Subsection s(2) sets forth three requirements that a solar electric power generation facility must meet to obtain the Board's approval as "connected to the distribution system." First, PJM must have issued a System Impact Study for the facility on or before June 30, 2011. Second, the applicant must have filed a notice with the Board within 60 days of the effective date of the Solar Act, indicating its intent to qualify under Subsection s. Finally, the facility must be approved as "connected to the distribution system" by the Board.

In construing the first requirement, the Board looks to the plain meaning of the term "issued." Webster's Dictionary defines the verb "issue" as "to publish." Webster's II, New Riverside University Dictionary (1984). See also, Black's Law Dictionary, 830 (6th ed. 1990) (defining the verb "issue" as "[t]o send forth; to emit; to promulgate"). PJM indicates the issue date of a System Impact Study by including the date on the study's cover page. In applying the first requirement, the Board assesses whether the date included on the cover page of the applicant's System Impact Study is June 30, 2011 or earlier.

Second, the applicant must have filed a notice of intent to qualify under Subsection s(2) within sixty days of the effective date of the Solar Act. The effective date of the Solar Act was July 23,

2012. See N.J.S.A. 48:3-87(s)(2)(b); L. 2012, c.24, s.3 ("This act shall take effect immediately"). The sixtieth day after July 23, 2012 fell on September 21, 2012.

In addition to these two requirements, Subsection s(2) contains a third requirement, that the facility must be "approved as 'connected to the distribution system' by the board." N.J.S.A. 48:3-87(s)(2)(c). Several commenters have argued that the third requirement should be satisfied so long as the applicant has obtained local permits and has complied with the SRP. See, for example, Comments of PVOne (third requirement should be satisfied so long as applicant "meets all previously required criteria in effect prior to passage of the Solar Act."); Comments of Pittsgrove Solar ("where solar developers . . . 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"). These commenters correctly conclude that Subsection s requires compliance with local permits and the SRP, as the requirements under Subsection s(2) are "[i]n addition to any other requirements of P.L. 1999, c.23 or any other law, rule, regulation or order." N.J.S.A. 48:3-87(s). However, in light of the Board's duty to construe each part of Subsection s "in connection with every other part . . . to provide a harmonious whole," Burnett, supra, 198 N.J. at 421, the Board declines to construe Subsection s(2)(c) as only requiring compliance with local permits and the SRP. For similar reasons, the Board rejects the statutory construction proposed by Day Four Solar, LLC. -- that "if . . . a project as [sic] 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.'" To approve all projects that meet Subsection s(2)(a) and (b) - as Day Four suggests - would effectively read Subsection s(2)(c) out of the statute, something the Board declines to do. See Carpenters, supra, 147 N.J. at 179-180 ("Statutory construction that would render any part of a statute inoperative, superfluous, or meaningless is to be avoided.").

In construing this third requirement, the Board notes that there are no specific criteria included for this Board approval, in contrast with N.J.S.A. 48:3-87(r). Subsection s commits this review process to the Board's discretion, as Subsection s(2)(c) is immediately followed by the statement that "[n]othing 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." It is well established that "[t]he grant of authority to an administrative agency is to be liberally construed to enable the agency to accomplish the Legislature's goals." Gloucester Cty. Welfare Bd. v. State Civil Serv. Comm'n, 93 N.J. 384, 390 (1983). This is especially so where, as here, the agency must construe and implement a new statute, In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 452 (1992), "or when the agency has been delegated discretion to determine the specialized and technical procedures for its tasks." In re Adopted Amendments to N.J.A.C. 7:7A-2.4, 365 N.J. Super. 255, 264 (App. Div. 2003). Thus, in determining whether an applicant satisfies Subsection s(2)(c), the Board must exercise its discretion and assess whether approval of the applicant's facility as "connected to the distribution system" is consistent with the policies underlying the Solar Act.

The Board finds two distinct policies underlying the Solar Act to be particularly instructive. First, in enacting Subsection s, the Legislature sought to limit the development of solar facilities on farmland. This policy is clearly reflected in a press release announcing Governor Christie's signing of the Solar Act, which identified one of the Solar Act's objectives as "discouraging large-scale solar projects on farmland and open space." Office of the Governor, News Release for S-1925 (July 23, 2012). See State v. Drury, 190 N.J. 197, 212 (2007) (noting that press

releases from the Executive Branch upon the signing of a bill into law offer a reliable aid in determining legislative intent). Consistent with this policy, Subsection s, which applies specifically to solar development on farmland, provides that a solar facility "shall only be considered "connected to the distribution system" if it meets the enumerated criteria. N.J.S.A. 48:3-87(s) (emphasis added). See McComb v. Hanly, 132 N.J. Eq. 182, 185 (E. & A. 1942) ("only" is a word of limitation); 3 Sutherland Statutory Construction § 57:9 (7th ed. 2007) (the use of the word "only" indicates that the particular course of action is intended to be exclusive).

The Board has received a number of letters from legislators, as discussed below, intended to aid the Board in its interpretation of Subsection s. In general, "[p]ost-enactment statements of legislators on legislative intent are of limited value in understanding the meaning of a statute." Selective Ins. Co. of Am. v. Rothman, 414 N.J. Super. 331, 340 (App. Div.) aff'd 208 N.J. 580 (2012). See also, N.J. Coalition of Healthcare Professionals, Inc. v. N.J. Dep't of Banking and Ins., 323 N.J. Super. 207, 256 (App. Div.), certif. denied, 162 N.J. 485 (1999).

By separate letters to Board President Hanna dated April 8, 2013, Assemblymen Upendra Chivukula, Robert Clifton and David Rible, explained that the Solar Act "intended to implement" the preference of the Administration, as expressed in the Energy Master Plan, for solar projects on landfills and brownfields over those located on farmland. Further, they stated that the purpose of Subsection s "was to recognize the significant investment made by the development community in Farmland Grid Projects . . . in advanced stages." The legislators argue against the use by the Board of any "subjective approval process" for projects which meet the other criteria of Subsection s, namely a PJM SIS dated on or before June 30, 2011, notice to the Board of intent to qualify on or before September 21, 2012, and Board approval as "connected to the distribution system." As described above, Board Staff has recommended approval of only those farmland projects that are at or near commercial operation—in an advanced stage of development, and by that, implementing the criteria advocated by these legislators.

In contrast to the position of the legislators summarized above, Senate President Stephen Sweeney, in a letter to President Hanna dated April 9, 2013, recognized that Subsection s is a "fail safe provision that allows the BPU to limit some grandfathering if necessary to protect the broader solar industry." Although Senator Sweeney cautions that the legislature intended for the Board to use such discretion only at a time of "market crisis," the Board expects that approving 580 MW of solar projects, the overwhelming majority of which are far from operational, would exacerbate the market crisis which led to the enactment of the Solar Act and would directly conflict with the second policy objective, to mitigate volatility in the solar market.

Second, N.J.S.A. 48:3-87(d)(3)(b), provides that "[n]o more than 24 months following the date of enactment of P.L.2012, c.24, the board shall complete a proceeding to investigate approaches to mitigate solar development volatility." Taken together, these two policies - limiting solar development on farmland and mitigating volatility - indicate that the Board's approval of projects as "connected to the distribution system," pursuant to Subsection s(2)(c) should be limited to projects whose approval would not cause further volatility in the New Jersey solar market at this time.

Therefore, the Board **HEREBY APPROVES** the criteria adopted by Board Staff which accord preference to advanced projects, evaluating projects for approval under Subsection s(2) based on the following: completion status, anticipated completion date, pictures of any completed construction, securing of all necessary state, local and federal approvals, and percentage of funding expended. These criteria are designed to exclude projects that have not made progress in construction, and which therefore, remain speculative at this time. Approval of such

speculative projects would leave other market participants unnecessarily uncertain about the future of a significant amount of potential solar capacity and about future SREC market conditions thereby contributing to continued solar market volatility.

Additionally, the Board must address the arguments raised by EAI Investments that its proposed solar project must be approved by the Board, notwithstanding its failure to satisfy the requirements of Subsection s(2) as described above and the criteria adopted by the Board for evaluating proposed projects under this section. EAI argues that if Subsection s does not permit the Board to designate its proposed facility as "connected to the distribution system," then the Solar Act is unconstitutional as applied to EAI under the Mt. Laurel doctrine. See S. Burlington County NAACP v. Mt. Laurel, 67 N.J. 151, 174 (1975) (Mt. Laurel I) (a developing municipality cannot foreclose the opportunity for low and moderate income housing, and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the need). Thus, EAI argues, the Board must either construe Subsection s in a way that allows for the designation of EAI's facility as "connected to the distribution system," or alternatively, declare Subsection s to be unconstitutional under the Mt. Laurel doctrine.⁶

EAI relies on the doctrine of constitutional avoidance which holds that "[c]ourts should not reach a constitutional question unless its resolution is imperative to the disposition of litigation." Committee to Recall Robert Menendez from the Office of U.S. Senator v. Wells, 204 N.J. 79, 96 (2010) (quoting Randolph Town Ctr., L.P. v. City of Morris, 186 N.J. 78, 80 (2006)). "[W]here a statute is capable of two constructions, one of which would render it unconstitutional and the other valid, that which will uphold its validity must be adopted." Ahto v. Weaver, 39 N.J. 418, 428 (1963). EAI admits that construing N.J.S.A. 48:3-87(s)(2)(a) as requiring that PJM must have published the applicant's SIS on or before June 30, 2011 would result in the denial of EAI's application, because EAI's SIS was published in October 2011. Such a result would be unconstitutional, EAI argues, because it would prevent the completion of the low-income housing that Pohatcong is required to provide under the Mt. Laurel doctrine by depriving EAI of financing through the use of SRECs from the proposed facility and compensation for its surrendered development rights. EAI Brief at 39⁷, EAI Comments at 2.

EAI maintains that the Board can avoid addressing this constitutional issue by adopting an alternative construction of Subsection s(2)(a). That is, the Board should construe the term "issued" to refer to the point at which "the developer enters into an agreement with PJM for the production of an SIS," as opposed to the point at which PJM publishes the SIS. EAI entered into an agreement with PJM for the production of an SIS on April 17, 2011. Therefore, construing Subsection s(2)(a) as only requiring that PJM and the applicant enter into the agreement for the SIS would not preclude the Board from approving EAI's facility as "connected to the distribution system," and it would be unnecessary for the Board to resolve the constitutional question of whether Mt. Laurel requires that EAI's facility be approved.

The Board **FINDS** EAI's proposed construction of the statute to be unsupportable. EAI has not provided any definition of the term "issue" that encompasses two parties agreeing to prepare a

⁶EAI sought to join the Board to its ongoing Mt. Laurel litigation in Superior Court, EAI Investments, LLC v. Township of Pohatcong (Law Division Dkt. SOM-L-625-04). The Board takes notice of the documents filed in that litigation. The court denied that motion by order dated 2/18/2013 on jurisdictional grounds. The Board has considered both the comments filed by EAI with the Board on November 22, 2012, and the papers filed in the Superior Court action.

⁷References are to the brief filed by EAI in the Superior Court proceeding.

study, report, or other document. In contrast, the Board's interpretation of the term "issued," as referring to the date on which PJM publishes an SIS, finds clear support in Webster's Dictionary's definition of the verb "issue" as "to publish." Webster's II, New Riverside University Dictionary (1984). Indeed, EAI itself acknowledges that the agreement date cannot be characterized as the issuance date, as it states in its brief that "[t]he agreement date is typically several months before the SIS is issued." EAI Brief at 40. This is not a case where the statute-Subsection s(2)- is "capable of two constructions." Ahto, supra, 39 N.J. at 428. Thus, the doctrine of constitutional avoidance is inapplicable here.

Because the Board finds no merit in EAI's constitutional avoidance argument, it is necessary to address EAI's alternative argument that if Subsection s(2), as applied to the EAI facility results in denial of the application to be approved as "connected to the distribution system," making it ineligible to earn SRECs, the statute is unconstitutional under the Mt. Laurel doctrine. "Administrative agencies are clearly empowered to determine issues within their jurisdiction even through the resolution of those issues implicates constitutional claims." Desilets v. Clearview Reg'l Bd. of Educ., 137 N.J. 585, 595 (1994).

In Mt. Laurel I, the New Jersey Supreme Court held that the New Jersey Constitution prohibits a developing municipality from foreclosing "the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor." 67 N.J. at 174. The Court supported this conclusion with the constitutional principle that "a zoning regulation, like any police power enactment, must promote public health, safety, morals or the general welfare." Id. at 175. In S. Burlington County NAACP v. Mt. Laurel, 92 N.J. 158(1983) (Mt. Laurel II), the Court clarified the holding of Mt. Laurel I, and stated that

Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it.

[Mt. Laurel II, supra, 92 N.J. at 221.]

In arguing that Subsection s(2) is unconstitutional if it results in the denial of EAI's facility as "connected to the distribution system," EAI cites Mt. Laurel I for the proposition that "no municipality, by a system of land use regulation, [may] make it physically and economically impossible to provide low and moderate income housing in the municipality for . . . persons who need and want it." EAI Brief at 39 (alternations in original) (quoting Mt. Laurel I, 67 N.J. at 173). EAI argues that if its Subsection s application is denied, it will be unable to generate enough revenue from its solar facility to finance the construction of low and moderate income housing. This, in turn, will cause the Township of Pohatcong to "remain deficient in its constitutional obligation to provide affordable housing." Id. at 42.

In addressing EAI's argument, the Board is guided by the principle that "every possible presumption favors the validity of an act of the Legislature." New Jersey Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972). The "power to invalidate a legislative act 'has always been exercised with extreme self restraint, and with a deep awareness that the challenged enactment represents the considered action of a body composed of popularly elected representatives.'" State v. Trump Hotels & Casino Resorts, 160 N.J. 505, 526-527 (1999)

(quoting McCrane, 61 N.J. at 8). Accordingly, the Board cannot find that Subsection s violates the Mt. Laurel doctrine unless "its repugnancy to the Constitution is clear beyond a reasonable doubt." Harvey v. Essex County Bd. of Freeholders, 30 N.J. 381, 388 (1959); Gangemi v. Berry, 25 N.J. 1, 10 (1957).

EAI has not carried this heavy burden. In contrast with the ordinances invalidated in the cases cited in EAI's brief, Subsection s(2) does not apply to the construction of housing. Nor does it have the predominant impact of limiting the development of low-cost housing. In Mt. Laurel I, the Court invalidated municipal ordinances that prohibited the construction of multi-family dwellings, and imposed "minimum lot area, lot frontage and building size requirements . . . as to preclude single-family housing for even moderate income families." 67 N.J. at 183. In Mt. Laurel II, the Court invalidated zoning ordinances from several townships, including, for example, an ordinance that imposed "excessive cost exactions" on the construction of multi-family housing by requiring performance and maintenance bonds. 92 N.J. at 223-26. The Court also invalidated ordinances of multiple townships that imposed prohibitions on multi-family housing and mobile homes, bedroom restrictions, and requirements governing lot-sizes, densities per acre, frontages, and square footage of buildings. Id. at 258-260. In Toll Bros. v. Twp. of W. Windsor, 173 N.J. 502, 533 (2002), the Court invalidated a Township of West Windsor ordinance that required developers to provide a gravity fed system that was more expensive than a pumped system, and required them to absorb all of the costs associated with the system.

In each of these cases, the challenged ordinances imposed criteria on the housing a developer was permitted to construct. The predominant impact of each ordinance was to limit the construction of low and moderate income family housing through the adoption of exclusionary zoning practices or cost policies that acted as a disincentive to the development of the housing. While EAI alleges that Subsection s(2) will have the effect- in this particular case- of "rendering Pohatcong deficient in its Mt. Laurel obligations" because EAI looks to the proposed solar facility as a means of financing the housing project and as a source of compensation, this is a product of EAI's chosen financing arrangements, and does not reflect any constitutional infirmities inherent in the Solar Act.

The Legislature determined that to preserve farmland and open space for the benefit of citizens of this State and at the same time help stabilize solar development which is funded, at least in part, by ratepayer money, it was necessary to limit the eligibility of certain grid supply solar projects to earn SRECs. As implemented through Subsection s(2), a cut-off date for the issuance of the SIS was adopted as part of the criteria for approval. The Board is not persuaded that this decision is not rationally related to the legitimate public purposes described above. According to Staff, the SIS is an early milestone in the interconnection approval process. A project that received its SIS by June 30, 2011, almost a year before the effective date of the Solar Act, was already under development at that time. Additionally, even if the Board were persuaded that the Mount Laurel doctrine applies, which it is not, the Mount Laurel cases recognize that the competing interests of preservation and development must be balanced, and that due account must be given to ecological or environmental factors or problems. See, Heritage at Independence, LLC v. Dep't of Env'tl. Prot., A-4645-08 (App. Div. Aug. 18, 2010), certif. denied, 205 N.J. 16 (2010).

Therefore, the Board **FINDS** that Subsection s is not unconstitutional as applied to EAI's proposed solar facility. The denial of eligibility under this section does not foreclose development or eligibility of the proposed facility to generate SRECs as EAI can apply under Subsection q pursuant to the terms of Subsection s(1).

Therefore, after careful review of the comments and of Staff's recommendations, the Board **HEREBY FINDS** that fifty four of the proposed solar facilities on farmland described above do not warrant approval under Subsection s(2). The Board **FINDS** that seven proposed solar facilities on farmland are not compliant with the statutory requirement of a PJM System Impact Study issued by June 30 2011. The Board **FURTHER FINDS** that twenty seven proposed solar facilities on farmland described above had not secured all final unappealable federal, state, and local approvals by the application deadline needed to ensure their completion, and therefore do not warrant approval under Subsection (s). The Board **FURTHER FINDS** that the uncertain development prospects for these thirty four facilities adversely impacts other market participants warranting the denial of the applications of these proposed facilities to be approved as "connected to the distribution system" for purposes of SREC eligibility under N.J.S.A. 48:3-87(s)(2).

The Board **FINDS** that based on the information provided by the applicants, twenty applications for solar generation facilities proposed on farmland have secured all unappealable federal, state, and local approvals. The Board **FURTHER FINDS** that these projects may be sufficiently far along in their development to warrant deferral of a decision on whether to deny approval, and the collection of more information is appropriate before a final decision is made.

The Board is mindful of the investment made by the developers of these proposed projects. However, the public interest in achieving the Solar Act's goals must be weighed against any detriment which may be claimed by owners of proposed solar facilities that are subject to this designation process. The public interest in bringing solar development into balance, with its attendant impact on continued solar development and on the value of SRECs used to support that development, outweighs any single project developer's reliance on the SRP as the sole means to have a project become eligible to earn SRECS, especially since the statute presents alternative means of achieving that eligibility. As requested by Staff, by a separate Order^a the Board will be opening the application period for approval of solar projects under Subsection q, the alternate route for projects located on farmland.

The Board **FINDS** that Staff has abstained from SREC Registration Program (SRP) processing activities such as cancelling expired registrations for grid supply facilities pending the Board's anticipated actions in designation or approval under the Solar Act. The Board **FINDS** many of these projects were registered prematurely before the SREC Registration Program was codified in the RPS rules at N.J.A.C.14:8-2.4, and before the adoption of the requirement to submit a signed contract between owner and installer of the solar facility. Therefore these applicants have yet to provide reasonable assurance to market participants that the solar facility will be constructed and "advance notice to the public and the renewable energy markets when increases in solar electric generation capacity in New Jersey are planned."

Accordingly, the Board **HEREBY DENIES** the above described thirty four applications for proposed solar electric generation facilities seeking approval as "connected to the distribution system" under N.J.S.A. 48:3-87(s)(2).

^a By Order dated May 9, 2013, I/M/O of the Implementation of L. 2012, C.24, The Solar Act of 2012; and I/M/O 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 and Escrow Agreement – Docket Nos. EO12090832V & EO12090880V.

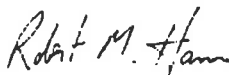
The Board **HEREBY DEFERS** a decision on the twenty applications for proposed solar electric generation facilities seeking designation which indicated that all unappealable federal state and local approvals had been secured by the date the applications were submitted.

The Board **DIRECTS** Staff to work with stakeholders to develop a recommendation to the Board for additional information and milestone reporting requirements to enable further consideration of the deferred applications.

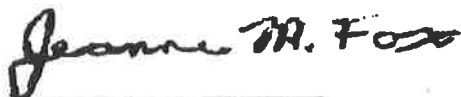
Finally, the Board **ORDERS** that, in addition to providing each applicant with a copy of this Order as required by N.J.S.A. 48:2-40, Staff issues a letter to each of the developers of these fifty four proposed facilities notifying them of the Board's denial or deferral of their applications, the projects' removal from the SREC Registration Program if and when applicable, and the Board's opening of the application period under N.J.S.A. 48:3-87(q).

DATED: 5/10/13

BOARD OF PUBLIC UTILITIES
BY:



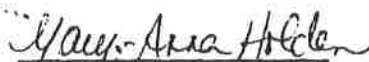
ROBERT M. HANNA
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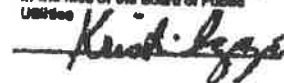
MARYANNA HOLDEN
COMMISSIONER

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 NO. EO12090832V – IN THE MATTER OF IMPLEMENTATION OF L.2012, C. 24,
THE SOLAR ACT OF 2012; AND

DOCKET NOS. EO12090832V & EO12090880V – IN THE MATTER OF THE
IMPLEMENTATION OF L.2012, C. 24 N.J.S.A. 48:3-87 (Q)(R)(S) PROCEEDINGS TO
ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID SUPPLY PROJECTS
AS CONNECTED TO THE DISTRIBUTION SYSTEM – REQUEST FOR APPROVAL OF GRID
SUPPLY SOLAR ELECTRIC POWER GENERATION PURSUANT TO SUBSECTION (S)

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