



Agenda Date: 2/22/17
Agenda Item: 8H

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE VERIFIED JOINT PETITION) ORDER
OF SOLOPS, LLC AND COLLEGE ROAD)
ASSOCIATES, LLC FOR A DECLARATORY)
JUDGMENT OR, IN THE ALTERNATIVE, FOR A)
WAIVER OF RULE) DOCKET NO. QO16060487

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Samuel A. Wolfe, Esq., on behalf of Public Service Electric and Gas Company
Steven S. Goldenberg, Esq., Fox Rothschild, LLP, on behalf of Solops, LLC and College Road Associates, LLC

BY THE BOARD:

This Order memorializes the New Jersey Board of Public Utilities' ("Board") decision regarding a declaratory judgment proceeding involving the Board's net metering rules.

BACKGROUND

A. Regulatory Framework

The Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq. ("EDECA") required the Board to promulgate net metering standards and limited net metering to customers "that generate electricity, on the customer's side of the meter, using a Class I renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period." N.J.S.A. 48:3-87(e)(1). In 2007, the Legislature also allowed the Board to define who is eligible to become a net metering customer: "large commercial, residential and small commercial customers." P.L. 2007, c. 300.¹ The statutory and regulatory authority for net-metering is codified at N.J.S.A. 48:3-87(e) and implemented through N.J.A.C. 14:8-4.1.

¹ Specifically, among other changes, the language "industrial, large commercial" and "as those customers are classified or defined by the board" was inserted into the first sentence of N.J.S.A. 48:3-87(e)(1).

The Solar Act of 2012, P.L. 2012, c. 24 ("Solar Act"), made several amendments to EDECA, including a new definition of the term "connected to the distribution system." The new definition provides six ways in which a solar generation facility may be considered so connected: (1) it is net metered and located on a customer's side of the meter; (2) it is an on-site generation facility; (3) it qualifies for net metering aggregation under N.J.S.A. 48:3-87(e)(4); (4) it is owned or operated by an electric public utility pursuant to N.J.S.A. 48:3-98.1; (5) it is directly connected to the distribution system at 69 kilovolts or less and has been certified by the Board pursuant to N.J.S.A. 48:3-87(q), (r), or (s); or (6) it has been certified by the Board, in consultation with the New Jersey Department of Environmental Protection, as being located on a brownfield, a properly closed sanitary landfill facility, or an area of historic fill pursuant to N.J.S.A. 48:3-87(t), N.J.S.A. 48:3-51 (definition of "connected to the distribution system").

If a solar generation facility does not fall into one of the categories described above, the facility is not "connected to the distribution system" and, as such, cannot generate energy upon which a Solar Renewable Energy Certificate ("SREC") may be created. N.J.A.C. 14:8-2.2. SRECs represent the environmental attributes of one megawatt hour of solar energy and under New Jersey's regulatory scheme, they have a monetary value. Ibid. SRECs are generally sold to recoup the costs of a solar development and eventually to earn a profit on the investment.

On August 25, 2013, the Board promulgated amendments to the net metering rules and expanded the criteria for determining whether a renewable generation facility is on the "customer's side of the meter" and therefore eligible for net metering. See N.J.A.C. 14:8-4.1.

The Board specified that to qualify for net metering:

(b) For the purposes of this subchapter, class I renewable energy that meets all of the following criteria shall be deemed to be generated on the customer's side of the meter:

1. The renewable energy generation facility is located either:

i. Within the legal boundaries of the property, as set forth within the official tax map, on which the energy is consumed; or

ii. Within the legal boundaries of a property, as set forth within the official tax map, that is contiguous to the property on which the energy is consumed. The property on which the energy is consumed and the property on which the renewable energy generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an existing easement, public thorough fare, or transportation or utility-owned right-of-way and, but for that separation, would share a common boundary.

[N.J.A.C. 14:8-4.1(b)(1) (emphasis added).]

In response to comments on amendments to the net metering rules, the Board added the language "as set forth within the official tax map" to clarify the rule. 45 N.J.R. 942(a) (April 15, 2013), Response to Comment 2, p. 942. In addition, the Board emphasized that because EDECA and the Solar Act specified that net metering shall be offered to those customers as "classified and defined by the board, . . . EDECA thereby contemplates that the Board may define classes of customers." See, 45 N.J.R. 942(a), Response to Comment 10, p. 943.

B. Procedural and Factual History

On June 9, 2016, SOLOPS, LLC (“SOLOPS”) and College Road Associates, LLC (“College Road”) (collectively, “Joint Petitioners”) filed a joint petition (“Petition”) with the Board for a declaratory ruling that the proposed solar installation will meet the net metering rules at N.J.A.C. 14:8-4.1; or, in the alternative, a waiver of N.J.A.C. 14:8-4.2, pursuant with the Board’s authority to under N.J.A.C. 14:1-1.2(b). (Petition at ¶ 43). Specifically, the Joint Petitioners ask that the proposed solar installation be considered “contiguous” to the property where the office buildings owned by College Road and various affiliates of College Road are located as the Board defines “contiguous” in its net metering rules. Ibid.

Petitioner SOLOPS develops net-metered and grid supply solar energy systems both in New Jersey and elsewhere in the United States. (Petition at ¶ 1). Petitioner College Road is a New Jersey company in the business of developing office buildings and office parks. Ibid. College Road and an unspecified number of related entities own property, including ten commercial office buildings, located “on or near” College Road in the Township of Plainsboro (“College Road Property”). Ibid. Joint Petitioners state that College Road and a related entity also own approximately 63 acres of undeveloped land located on the other side of a public thoroughfare in the Township of South Brunswick (“Site”). (Petition at ¶ 2, 3). The Joint Petitioners have executed a 15-year lease for this land and propose to construct a 14.543 MW dc solar generation facility upon it (“Solar Facility”). (Petition at ¶ 1, 2). The proposed Solar Facility would include two meters which, Petitioners represent, will constitute both the points of interconnection and the point of consumption. (Petition at ¶ 2). Both the College Road Property in Plainsboro and the Solar Facility in South Brunswick include multiple blocks and/or lots. (Petition at ¶ 3).

Joint Petitioners aver that College Road has developed and utilized the College Road Property in a single, integrated campus arrangement with a common property boundary. Ibid. College Road is currently the sole customer of record for the service provided by Public Service Electric and Gas Company (“PSE&G”), although each building is separately metered. (Petition at ¶ 6). Under the proposed arrangement, these separate meters would be merged into the two meters described above. Ibid. Joint Petitioners declare that PSE&G will remove all of its equipment “downstream” of the two proposed meters and that the Solar Facility, pursuant to a Power Purchase Agreement (“PPA”), will use SOLOPS’ equipment to supply the Solar Facility’s output exclusively to the College Road Property. (Petition at ¶ 4-5, 7).

SOLOPS will sell the solar energy to College Road at prices reflecting a discount off the otherwise applicable PSE&G tariff rates, while College Road and a related entity will lease the property upon which the Solar Facility is located to SOLOPS. (Petition at ¶ 7). College Road will assign portions of its interest in the PPA to each special purpose entity owning a building on the College Road Property, the portions to reflect each entity’s energy requirements. (Petition at ¶ 8). The special purpose entities will then sell the solar energy to their tenants at cost, without markup.² Ibid. Joint Petitioners represent that College Road will supply solar energy to the tenants on the College Road Property and that such sale is incidental to its primary business of developing and operating office buildings and parks. (Petition at ¶ 9).

² A number of tenants with larger energy use will be separately metered and be charged at cost. Any backup power taken from PSE&G by College Road will also be passed through at cost by the special purpose entities to all tenants, consistent with the arrangement already existing under College Road’s leases with its tenants. Ibid.

According to the Petition, PSE&G advised Joint Petitioners that it had received all necessary engineering and technical approvals and that the Solar Facility would allow PSE&G to delay construction of certain infrastructure upgrades for a period of years. (Petition at ¶ 10). PSE&G also accepted the proposed Solar Facility into its Solar Loan II Program. Ibid. However, PSE&G has refused Joint Petitioners' interconnection application because the utility does not believe that the Solar Facility complies with the Board's contiguity requirements at N.J.A.C. 14:8-4.1(b). (Petition at ¶ 11). Petitioners represent that PSE&G has informed them that its reason for this determination is the existence of multiple blocks and lots on both the College Road Property in Plainsboro and the site of the proposed Solar Facility in South Brunswick. (Petition at ¶ 11).

On July 5, 2016, PSE&G filed a motion to intervene. By letter dated July 8, 2016, Joint Petitioners expressed no objection to PSE&G's motion to intervene. On August 24, 2016, the Board granted PSE&G's motion to intervene.

On January 26, 2017, the Division of Rate Counsel ("Rate Counsel") filed comments ("Comments") regarding the Petition, arguing that the Solar Facility does not qualify for net metering because it would serve multiple customers and would not be located on a property contiguous to the end users. Rate Counsel contested Joint Petitioners' assertion that the "point of consumption" is at the Solar Facility, and asserted that the energy instead would be consumed by the office buildings on the College Road Property. Furthermore, Rate Counsel argues that the proposed system would create an unregulated electric distribution utility.

On February 7, 2017, Steven S. Goldenberg, Esq., on behalf of Petitioner SOLOPS, filed a letter in opposition to Rate Counsel's comments ("February 7, 2017 Letter"), arguing that the Board's incorporation of the municipal tax map in its net metering requirements contravened EDECA and should not form any part of the Board's analysis. The letter also contended that the end use customer would be contiguous to the Solar Facility because the customer would "consume" the energy generated by the Solar Facility at a "point of connection" to be located upon the "the solar generation site." SOLOPS also relied upon a letter from a legislative sponsor of the Solar Act in support of its argument that the project satisfies the statutory contiguity requirement.

On February 15, 2017, Rate Counsel provided additional comments ("February 15, 2017 Comments") emphasizing that the proposed project would be contrary to the purpose of net metering as contemplated by EDECA and the rules, specifically the continuing regulation of distribution. Rate Counsel argues that College Road would use SOLOPS as a distribution utility and sell energy to the separate entities that actually own the College Road Property and then to further distribute and sell the energy to the tenants in the various office buildings. In addition, Rate Counsel points out that the State's Energy Master Plan ("EMP") does not provide unqualified support for net metering for this type of project. Furthermore, Rate Counsel also alleges that the aforementioned legislative sponsor's letter is not indicative of legislative intent.

On February 16, 2017, SOLOPS' counsel filed a supplemental reply to Rate Counsel's February 16, 2017 comments ("February 16, 2017 Letter"). Therein, SOLOPS contends that College Road should be deemed a single customer and is not a public utility. In addition, SOLOPS alleges that the proposed project fits within the goals of the EMP.

DISCUSSION AND FINDINGS

Joint Petitioners request that the Board declare that the Solar Facility is compliant with the Board's net metering standards at N.J.A.C. 14:8-4.1. (Petition at ¶ 43). The Board has carefully reviewed the record and **FINDS** that the proposed project does not meet the net metering criteria under our rules.

N.J.S.A. 48:3-51 specifies that for a solar electric power generation facility to be "connected to the distribution system," it must be "connected to a net metering customer's side of a meter," among other classifications. N.J.S.A. 48:3-87(e)(1) specifically allows the Board to define and classify the types of customers that qualify for net metering. As noted above, N.J.A.C. 14:8-4.1(b) requires that for purposes of net metering and to "generate class I renewable energy . . . on the customer's side of the meter," the generation facility must be "as set forth within the official tax map, . . . contiguous to the property on which the energy is consumed." (emphasis added).

As indicated by the emphasized language, the plain language of the rule evidences the Board's intention that the contiguity of the generation facility to the end user be determined by the official tax map. The official tax map identifies properties through the use of lots and blocks. In that context, the Board takes note of a paragraph near the beginning of the Petition:

[College Road] and a related entity having common ownership with [College Road] also own approximately 63 acres of unimproved land that is situated within the Township of South Brunswick and is immediately adjacent to the College Road Property, which is located within the Township of Plainsboro."

[Petition at ¶ 2. (emphasis added).]

Although the Solar [Facility] and the College Road Property, together with the buildings located on the College Road Property, have common ownership and common usage, the properties are depicted as segmented into multiple lots on the official tax maps of the Townships of Plainsboro and South Brunswick.

[Petition at ¶ 3 (emphasis added).]

The Petition thus establishes that the generator and the end use customers are located not only upon multiple blocks and lots apiece but within separate townships. The Petition's language is illustrated by the map attached to the Petition as Exhibit A. In addition, it appears that the properties that actually are contiguous to the Solar Facility do not contain any of the office buildings that would receive the energy. (Petition, Exhibit A). Therefore, by Petitioners' own admission, their proposed project does not meet the requirements of N.J.A.C. 14:8-4.1(b).

The Petition does not acknowledge the inclusion of "an official tax map" to determine whether consumption must occur on a property that is "contiguous" to the property with generation. As noted by Rate Counsel, the lots within the College Road Property containing office buildings are not in fact contiguous to the Solar Facility even were the public thoroughfare to be disregarded per the Board's rule. (Comments at p.3, 8). Two lots (Block 80, Lot 5.01 in South Brunswick and Block 702, Lot 11.01 in the same township) also separate the properties where the office buildings are located from the lots on which the proposed Solar Facility would be installed. Id. at p. 3; Petition at Exhibit A.

SOLOPS also argues that the reference to the “official tax map” is an added requirement that is not present in the statute’s definition of “on-site generation facility.” February 7, 2017 letter at p. 2-6. Joint Petitioners err in equating the statutory definition of “on-site generation facility” with eligibility for net metering. In fact, the statute specifies that the Board may promulgate net metering standards and define what that means. See N.J.S.A. 48:3-87(e)(1). For purposes of being “connected to the distribution system,” a facility could be “on-site” or net metered. N.J.S.A. 48:3-51. To qualify for net metering, the generation facility must be contiguous “as set forth within the official tax map” to the point of consumption. N.J.A.C. 14:8-4.1(b)(ii). This is not inconsistent with the statute. The Board accepts Rate Counsel’s position that a legislative sponsor’s letter which is not contemporaneous with the enactment of EDECA or its amendments is not a part of the legislative history of a statute. February 15, 2017 Comments at p. 7; see also, Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 390 (2016). As such, nothing in the statute, including the amendments added by the Solar Act, prohibits the Board from clarifying the net metering requirements.

In support of its position, Joint Petitioners also point to the two meters into which they propose to consolidate the existing ten meters through which the usage of College Road’s “related entities” is currently measured. According to Joint Petitioners, these two meters will act as both the points of interconnection and the locations of the energy’s “consumption.” (Petition at ¶ 16). The Joint Petitioners support this proposition by noting that a utility disclaims liability “behind the meter” because its control stops at the point of interconnection. Joint Petitioners state that a utility is “indifferent to how and where energy is actually used by a customer[.]” (Petition at ¶ 17). Joint Petitioners’ argument regarding a utility’s liability, however, is not relevant to the Board’s determination of whether the proposed solar facility meets the requirements of net metering.

In addition, the Board concurs with Rate Counsel that the suggestion that “consumption” occurs at the meter does not comport with the plain meaning of the word “consume.” Comments at p. 8. Specifically, the Joint Petitioners submit that the point of connection will be the two meters located on the Solar Facility in South Brunswick and the energy will be “consumed” there. Petition, Exhibit A. Joint Petitioners rely on Atlantic City Showboat, Inc. v. Director, Div. of Taxation, 26 N.J. Tax 234 (2013), to argue that the point of consumption is calculated at the meter. February 7, 2017 Letter at p. 7. The Court in Showboat, as Rate Counsel points out, merely observed that the amount of electricity distributed is measured at the meter. 26 N.J. Tax at 240, 260. In this case, since energy will be delivered to the office buildings at the College Road Property, the energy is “consumed” there and not at the Solar Facility. Furthermore, as discussed above, the office buildings that will be using the solar energy are actually separated from the Solar Facility by two intervening blocks and lots. Infra at p. 5; Comments at p. 8.

As noted on page 6 of Rate Counsel’s Comments, Joint Petitioners’ claim that the College Road Property is “a single, integrated campus-type property . . . that has a single common property boundary[.]” is not supported by Joint Petitioners’ own description of the proposed arrangement. (Petition at ¶ 18). The separate buildings to be served are owned by “[College Road] special purpose entities.” (Petition at ¶ 1, 8). College Road presumably has valid business reasons for creating these special purpose entities and is entitled to whatever benefit this arrangement confers upon it. However, the existence of multiple legal entities nonetheless runs counter to the suggestion that the properties have one legal owner, and therefore contradicts the Board’s net metering rules. While Joint Petitioners emphasize that College Road is and will remain the sole “customer of record” with PSE&G, (Petition at ¶ 6, 25-26, 30), College Road would not be the end use customer of the solar generation as required by the plain language of the Board’s rule.

Joint Petitioners also contend that the location of the generation facility in one municipality while the end users are situated in another has no regulatory significance. Petition at ¶ 20. In support, Joint Petitioners note that “[t]he multi-municipality scenario is not prohibited by, nor even contemplated in, either EDECA or the net metering rules.” *Ibid.* As set out in the above discussion, the Board has determined that the Solar Facility would not meet the net metering standards regardless of the existence of a municipal boundary.³ The Board thus declines to reach this issue in this matter.

For the foregoing reasons, the Board **FINDS** that the Solar Facility does not meet the net metering standards at N.J.A.C. 14:8-4.1.

Joint Petitioners also request a waiver of its rules pursuant to N.J.A.C. 14:1-1.2(b). The rule provides that to waive one of its own rules the Board must determine both: (1) that the petitioner’s request is in accord with the general purposes and intent of the rules; and (2) that full compliance with the rule requirements would adversely affect the interest of the public.

Joint Petitioners argue that relaxation of the rule is appropriate because the facts they have presented “establish that the College Road Project complies with the contiguity requirement of the net metering rule.” (Petition at ¶ 33). Joint Petitioners contend that since the Solar Facility and the meters/points of interconnection with the utility are located on the same property, “the sole issue” is the division of the proposed generation site and the end use customer site into multiple blocks and lots on the tax maps of their respective municipalities. *Ibid.* As discussed above, however, the Board has found that the two proposed consolidated meters would not constitute the “point of consumption” and thus their location on the same side of the public thoroughfare as the Solar Facility does not satisfy the contiguity requirement.

With respect to the existence of multiple lots and blocks on both the customer’s location and that of the proposed Solar Facility, Joint Petitioners’ argument takes issue with the rules’ reference to “the official tax map,” stating that this reference was added at adoption. This language was added in response to a comment from utilities as a non-substantive clarification of the rule text. 45 N.J.R. 942(a), Response to Comment 2, p. 942. As discussed above, the statute gives the Board discretion to determine what kind of customer qualifies for net metering. Based on its expertise and experience with net metering, the Board sought to clarify the net metering rules by referring to the official tax map. In addition, as explained above, being an “on-site” facility does not necessarily mean that the facility qualifies for net metering.

Therefore, the Board **FINDS** that the Petition is not in accord with the general purposes and intent of the rule.

The Board next considers whether strict adherence to the net metering rule’s requirements would adversely affect the public interest. In the Petition, Joint Petitioners contend that approving the Solar Facility as “on-site” will further the five overarching goals of the 2015 Update of the New Jersey EMP. EMP at 3. The first overarching goal of the EMP is to “drive down the cost of energy for all customers.” *Ibid.* (emphasis added). According to the Joint

³ Joint Petitioners also allege that a pharmaceutical company operated “a Board-approved on-site generation facility” for a number of years and that this situation in some way acts as precedent for the arranged proposed in the Petition. Petition at ¶ 20. Although there is no citation provided to identify the Board approval referenced, the Board notes that Joint Petitioners do not allege that net metering was involved nor that the rule at issue had been promulgated at the un-specified time that this facility is alleged to have operated.

Petitioners, this goal would “clearly” be advanced by the approval of their project because “[College Road] and its tenants will benefit from solar energy priced below the cost of electricity that they would otherwise pay to PSE&G[.]” Petition at ¶ 38. However, in articulating the goal of driving down the cost of energy, the EMP sought to benefit all customers, as its language indicates, not just customers receiving incentives paid for by ratepayers as part of the Societal Benefits Charge. The Board also concurs with Rate Counsel’s argument that the EMP does not provide unqualified support for the expansion of the net metering rules as requested by Joint Petitioners. February 15, 2017 Comments at p. 8.

Joint Petitioners have stated that the approximately 14.5 MWdc Solar Facility would be one of the largest in the State and, therefore, will help to “promote a diverse portfolio of new, clean, in-state generation.” Petition at ¶ 38, citing EMP at 3. In addition, they assert that approval would “maintain support for the State’s Renewable Portfolio Standard.” Petition at ¶ 39 and 41, quoting EMP at 3. Generally, a solar facility of any size contributes to the State’s supply of clean in-state generation. More to the point, the Board’s Renewable Portfolio Standard reports, which are published monthly on the Board’s New Jersey Clean Energy website, demonstrate that the State’s Renewable Portfolio Standard is well supported even without the proposed Solar Facility. Therefore, the Board **FINDS** that the addition of the Solar Facility would not advance the interest of the public.

The Petition also alleges that its approval will “reward energy efficiency and energy conservation and reduce peak demand.” Petition at ¶ 40, citing EMP at 3, 33. While PSE&G has apparently informed the Joint Petitioners that the Solar Facility would reduce peak demand, the Board does not find that any assumed benefit would rise to a justification for waiving its rules. Finally, Joint Petitioners have provided no support for their statement that this photovoltaic facility would constitute an opportunity to “capitalize on emerging technologies.” Petition at ¶ 41. Solar photovoltaic panels are certainly new relative to, for instance, the internal combustion engine, but in a field marked by almost daily announcements of new technologies, there is nothing to indicate that the Solar Facility would constitute an emerging technology.

It does not appear that strict adherence to the net metering requirements will adversely affect the public interest. Accordingly, the Board **FINDS** that the Solar Facility does not meet the requirements for a waiver of the Board’s rules.

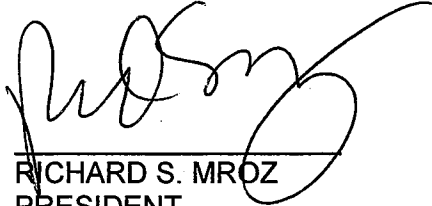
For the reasons expressed above, the Board **HEREBY DENIES** the Petition.⁴

⁴ Given its conclusion on this issue, the Board need not reach the question of whether the Solar Facility would constitute an unregulated utility. See Comments at p. 10-14, February 7, 2017 Letter at p. 11-14. Therefore, the Board will not address this issue in this Order.

The effective date of this Order is March 4, 2017.

DATED: 2/22/17


BOARD OF PUBLIC UTILITIES
BY:

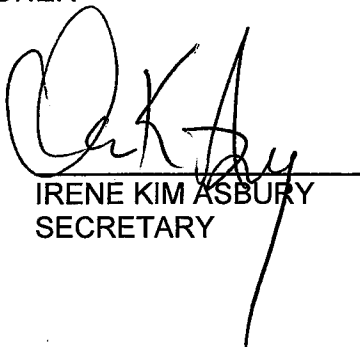

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

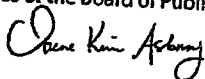

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



IN THE MATTER OF THE VERIFIED JOINT PETITION OF SOLOPS, LLC
AND COLLEGE ROAD ASSOCIATES, LLC FOR A DECLARATORY JUDGMENT
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DOCKET NO. QO16060487

SERVICE LIST

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Caroline Vachier, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
caroline.vachier@dol.lps.state.nj.us

Emma Yao Xiao, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
emma.xiao@dol.lps.state.nj.us

Steven S. Goldenberg, Esq.
Fox Rothschild, LLP
997 Lenox Drive, Building 3 Princeton Pike
Corporate Center
Lawrenceville, NJ 08648
sgoldenberg@foxrothschild.com

Ryan A. Marrone, Esq., Chief Legal Officer
SOLOPS, LLC
1 AAA Drive, Suite 205
Robbinsville, NJ 08691
rmarrone@onyxrenewables.com

Richard S. Goldman, Esq.
Drinker, Biddle & Reath, LLP
105 College Road East, P.O. Box 627
Princeton, NJ 08542-0627
richard.goldman@dbr.com

Marisa Slaten, Director
Division of Economic Development &
Emerging Issues
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite
Post Office Box 350
Trenton, NJ 08625-0350
marisa.slaten@bpu.nj.gov

Benjamin S. Hunter
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite
Post Office Box 350
Trenton, NJ 08625-0350
benajmin.hunter@bpu.nj.gov

Allison E. Mitchell, AA1
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite
Post Office Box 350
Trenton, NJ 08625-0350
allison.mitchell@bpu.nj.gov

Rachel Boylan, Esq., Legal Specialist
Counsel's Office
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite
Post Office Box 350
Trenton, NJ 08625-0350
rachel.boylan@bpu.nj.gov

Michelle Falcao
PSE&G Services Corp.
80 Park Plaza - T5, Post Office Box 570
Newark, NJ 07102
Michele.falcao@pseg.com

Samuel A. Wolfe
PSE&G Services Corp.
80 Park Plaza - T5
Post Office Box 570
Newark, NJ 07102
Samuel.Wolfe@pseg.com