

Request for Public Comment on Staff Straw Proposal For Additional Application Criteria and Milestone Reporting Requirements for Solar Act Subsection (s) Deferrals

August 5, 2013

Executive Summary

The Board has made significant progress in implementing L. 2012, c. 24, the Solar Act of 2012 (Solar Act) including Subsection (s). N.J.S.A. 48:3-87(s) The Board has approved three (3) grid-supply solar projects located on certain farmland, denied thirty seven (37) applications and deferred twenty (20) others, pursuant to Subsection (s). This document implements the Board directive to Staff on April 29, 2013 to work with stakeholders to recommend additional application criteria and milestone requirements with associated reporting for the Board's further consideration of the twenty (20) Subsection (s) deferrals¹. Staff's goal is to develop a recommendation for a second application and completion milestones in the construction process by which these projects can be further evaluated by the Board.

With public input, Staff will develop a recommendation for additional application criteria and milestones in this Staff straw proposal. The straw proposal will be discussed at the August 13, 2013, RE Stakeholder meeting, and written comments will be due by close of business on August 30, 2013. Possible additional criteria and milestones, such as the property zoning; soil composition; proximity to nearest farm; and community support for the potential solar site, etc., are discussed more fully within this straw. Staff requests that stakeholders submit comments addressing the merits of the proposed criteria as well as the identification of other potential criteria and milestones to be incorporated with the review of the Subsection (s) deferred projects.

This document includes a summary of the Subsection (s) proceedings, public hearings, application process, and a Staff straw proposal. The Staff straw proposal includes several potential criteria and milestones for the deferred projects with respect to the following:

- 1) Supplementary application and data requirements on the project characteristics of deferred Subsection (s) applications
- 2) Supplementary application and data requirements on the site characteristics of deferred Subsection (s) applications, and
- 3) Milestone requirements and reporting for deferred Subsection (s) applications.

¹ The Board's decision to defer ten of the twenty Subsection (s) projects on April 29 is the subject of appeals before the Superior Court of New Jersey and will not be part of this review.

History and Background

On July 23, 2012, Governor Chris Christie signed the Solar Act which was effective immediately. The Solar Act addresses and amends various aspects of the statute that governs generation, interconnection, and financing of renewable energy. Within the parameters of the State's Renewable Portfolio Standard (RPS) and Net Metering and Interconnection rules, the legislation looked to stabilize the SREC market and accomplish goals of the State Energy Master Plan. One of the goals of the Energy Master Plan is to ensure the protection of open space and farmland by moving away from development of solar grid supply projects on active farmlands. (Energy Master Plan 2011 http://nj.gov/emp/docs/pdf/2011_Final_Energy_Master_Plan.pdf)

The Board was authorized to approve solar projects located on farmland that are not net metered or an onsite generation facility, as "connected to the distribution system", in order to receive SRECs 1.) Under subsection q. or 2.) a.) if the project received a PJM System Impact Study on or before June 20, 2011, b.) if the project provided notice to the Board within 60 days of the effective date of the Solar Act of its intent to qualify under this subsection, and c.) is approved as "connected to the distribution system" by the Board.

Notices of intent to file under Subsection (s) had to be received by September 21, 2012. Public notice was given on October 25, 2012 for a stakeholder meeting on the Solar Act to be held on November 9th. (Public notice can be seen at http://www.njcleanenergy.com/files/file/Renewable_Programs/SolarAct/Nov%209%20Solar%20Act%20Notice%20-%20Stakeholder%20MeetingFINAL10-25-12.pdf) On November 9th, 2012, Staff held a public hearing where stakeholders submitted verbal and written comments on the implementation of all sections of the Solar Act. At this meeting Staff requested public comments on the implementation of Subsections (q), (r), and (s), by November 23, 2012. Based on these comments from stakeholders, Staff drafted the application for Subsection (s).

On November 30, 2012, Staff distributed the Subsection (s) application form via mass email to renewable energy stakeholders, and posted it on the NJCEP website (this application can be found at: http://www.njcleanenergy.com/files/file/Solar%20Transition/Solar%20Act%20Subsection%20s%20_Application_form_113012%20final.pdf). The application instructions indicated that project developers who wished to file under Subsection (s) were obligated to submit a completed application by December 17, 2012. The application required information on permits and qualifications of the project, PJM Interconnection Queue Documentation (System Impact Study), current status of project development, and project financial data.

The Board received fifty seven (57) Subsection (s) applications, fifty-six (56) of which were officially received before the December 17th deadline. The fifty-seven (57) solar projects represented about 640 MW dc of solar capacity. Staff reviewed the application for each of the fifty seven (57) projects, and ranked the projects by progress toward

completion based on the data submitted. Field inspections of the top ten (10) most advanced projects were conducted to determine accuracy of the applicant's reported completion status.

At the April 29, 2013 Board Agenda meeting, the Board made a decision on the solar projects that applied under Subsection (s). I/M/O the Solar Act, Implementation of Subsection s, Docket No. EO12090832V & EO12090880V. The Board approved three (3) projects which were at advanced stages of completion as "connected to the distribution system": Sun Perfect Solar (Pittstown), OCI Solar Power (Holmdel), and NJ Clean Energy Ventures Corporation (Medford). This approval resulted in 13.79 MW dc of capacity located on farmland to be eligible to produce SRECs for use in complying with NJ's RPS. Seven (7) projects were denied because they did not meet the "threshold requirements" laid out in the Solar Act, Subsection (s). Twenty- seven (27) projects were also denied because of their inability to obtain all final state, federal and local approvals needed as of the application date.

Additionally, at the April 29th Board Agenda meeting, the Board deferred decision on twenty (20) projects that had obtained all of federal, state, and local approvals, and were further along in completion. However, the twenty (20) projects deferred for a final decision had varying degrees of uncertainty regarding each project's ability to finalize construction. Staff believes that this uncertainty leads to an inability to properly forecast new capacity coming into the market, and that approving projects which are overly speculative will negatively affect the already oversupplied SREC market and contribute to solar market volatility. To ensure that only those projects that are sufficiently advanced to achieve completion are ultimately approved, the Board directed Staff to work with stakeholders to develop additional application criteria and milestones for the Board's consideration of the deferred projects.

Staff Findings & Straw Proposal

As directed by the Board, Staff has initiated a process to re-evaluate the Subsection (s) projects deferred for further consideration. Prior to the May 14 RE Stakeholder meeting, in order to offer ideas and concepts for stakeholder consideration, Staff circulated the Association of New Jersey Environmental Commissions' Solar Siting and Sustainable Land Use White Paper via email to the RE distribution list. <http://www.anjec.org/pdfs/SolarWhitePaper2012.pdf> . At the May 14 RE Stakeholder meeting, Staff invited initial public comment on the process and potential scope of additional requirements, to incorporate into a straw proposal for stakeholder comment.

On May 20, 2013, Staff received comments from Justin Michael Murphy, Esq. in response to the May 14th RE Stakeholder meeting discussion. Staff also invited initial comments on the development of a straw proposal from the staff of the State Agricultural Development Committee and the New Jersey League of Municipalities. On August 5th, 2013 Staff received preliminary comments from the NJLM indicating that there should be "three yard sticks" to which Staff should use to evaluate applications – PL 2012, c. 24 (The Solar Act), the State Energy Master Plan (EMP), and the local

zoning/planning ordinances. In addition to comments on the Staff Straw, Staff requests comments on the NJLM preliminary responses and Justin Michael Murphy's comments included at the end of this document.

From these initial responses, Staff has identified several environmental, agricultural, logistical and social risks associated with developing solar on active farmlands. Staff believes that assessing the deferred projects in light of these important risks will be beneficial in recommending to the Board the approval or denial of Subsection (s) projects that were initially deferred a final decision.

Considerations for additional application criteria/milestones which may be useful in evaluating deferred Subsection (s) projects include:

- Expected impact on SREC Market,
- Expected impact on the solar development on landfills, brownfields and historic fill: Will it divert development away from these sites, which the EMP cites as preferred locations for solar development? If so, how should this potential impact be measured and evaluated?
- Potential disturbance to soil, waterway, habitat, and farm productivity: Will the construction of this project disturb the crops and local ecosystem in any way?
 - Concern for impact to an active farm: Will the project be a detriment to quality of and yield of crops?
 - Concern for local wildlife destruction, vital carbon sequestration areas, preservation of water quality, permanent compaction of hydric soils, loss of light for vegetation etc.,
- The benefit of the solar facility to the local community- particularly rural areas and economically depressed areas,
- Potential competition between farmers and solar developers for leased acreage: Solar developers are generally willing to pay more for land than farmers typically receive from the farmland preservation program.
- Potential relative benefits of in-state generation and the opportunity to relieve congestion costs on LMP in the wholesale market for NJ (net metered capacity vs. grid supply capacity),
- Potential relative impacts on job markets – net solar installation jobs vs. agricultural jobs (packing, farming, shipping etc.) (net metered capacity vs. grid supply capacity),

Staff has developed several application criteria and milestones for stakeholder comment and their value in assisting the Board to render a decision on the deferred projects. The potential project criteria and reporting milestones are set out below.

Proposed Supplementary Application Criteria and Milestone/Reporting Requirements

- 1) Proposed Supplementary Data on Project Characteristics
 - Documentation of progress (since December 17, 2012) on PJM feasibility study, the requirements of the system impact study, and on the facility that would improve likelihood of completion.

- Updated anticipated completion date
- Updated project construction commencement date
- Updated status of all state-related approvals, such as DEP permits
 - Secured DEP Letter-of-Interpretation for Wetlands Delineation
 - With DEP, clarify what constitutes land clearing
- Updated status of all municipal land-use approvals
- Evidence of local government support (Mayor, Ag. Board, Zoning Board, Env. Commission)
 - Ensure project is within the intent of the municipality's master plan and planning objectives
- EPC contractor selection - Executed final contracts for solar system engineering/procurement/construction (EPC)
- Updated forecast of annual MWhs of production facility and commissioning date
- Additional disclosure of all capital costs and expenditures incurred – siting and approval of each needed
 - Access roads
 - Electrical substations
 - Small administrative buildings
 - Vegetative cap
 - Tree removal
 - Fencing
- Description/evidence of interconnection status
 - Signed/ Executed EDC interconnection agreement
 - Interconnection Cost and the upgrade to the EDC's infrastructure
 - Savings to Ratepayers as a result of the EDC infrastructure receiving upgrades from the private investment dollar as opposed to an EDC recovery through the rate case process
- Project decommissioning plans – As technologies evolve quickly, issues may arise from abandoned/obsolete parcels of land
- Expected number of newly created jobs- Long term and short term and the types and quality of the jobs created

2) Proposed Supplementary Data on Site Characteristics

- Property zoning classification
 - Current and past zoning classifications, with dates
- Local land use history
- Soil composition
 - Secured soil Conservation District Approvals
- Habitat classifications – existing wildlife, wetlands, forest transition zones
- Identification of local water ways- not to “place solar arrays within the 300 ft. riparian buffers required for Category -1 (C-1) waterways and Highland Open Waters” (Association of New Jersey Environmental Commissions)
 - Impact on storm water runoff

- Provide and reference the local Environmental Resource Inventory for the area- maps of the location with regard to prime agricultural soils, streams, floodplains, and forests.
- Proximity to nearest preserved farms: Get local agricultural board input on the value of the farm to county preservation efforts
- Demonstration of generation need within the area: Is there a real need for the project in the area?
 - What is the proximity to other grid-supply projects? Research and identify other grid-supply projects in the area; specify the capacity (MW) of those projects and the distance from applicant's proposed facility
- Proximity to historic districts
- Proximity to undeveloped land in sewer service areas: The idea is to reserve this area for growth of residential, industrial and commercial development.
- Local electricity consumption patterns
- Intent to use site for renewable energy and environmental community education: Will there be tours of the site for public education proposes?
- Community support: Is there approval from local residents?

3) Proposed Milestone Reporting Requirements

- Application supplement due 30 days after Board Order release
- Project designs submitted within 60 days after Board Order release
- EPC Contract and SREC Offtake contact secured- SRP registration secured within 90 days of Board Order release
- Project construction commencement/materials on site by December 1, 2013
- Project construction completion by January 1, 2015
- Authorization to energize by June 1st 2015 (EY16) – gives market ample time to know the installed capacity seeking federal investment tax credit

Conclusion and Next Steps

The Board found that the twenty (20) projects were sufficiently far along in their development to warrant a deferral, rather than to deny or approve. The Board found that additional, more detailed information on project status, project description, site information, and potential project milestones is essential in order to ensure that the final decision on the deferred projects considers all relevant objectives.

Next steps:

1. Discuss the Staff straw proposal at the August 13 RE Stakeholder meeting.
2. Accept written public comment for 30 days after the release of the Staff straw proposal (i.e., if proposal is released August 2, then written public comments are due by close of business on Monday, September 2, 2013).
3. Incorporate stakeholder feedback and recommend application criteria, milestones and reporting requirements to the Board by October Agenda meeting.
4. Issue second application for deferred Subsection (s) projects by November 1, 2013.

August 5, 2013

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: Comments on the implementation of subsection (s),
PL 2012, c. 24 (“Solar Act”)

Dear Secretary Izzo :

Please accept these preliminary comments on the straw proposal being prepared by the Board of Public Utilities (BPU) staff, intended for public distribution and comment, for the Board’s consideration of 20 applications deferred at its April meeting. It is our understanding that these applications are for solar projects on farmland and were submitted for considering under subsection s of the “Solar Act.”

Generally speaking, there should be three “yardsticks” to evaluate any such applications from a public policy standpoint. Any applications should be considered for consistency with PL 2012, c. 24 (the “Solar Act”), the State Energy Master Plan (“EMP”) as well as local zoning and planning ordinances.

The “Solar Act” discourages grid-connected projects on farmland and instead encourages such projects at suitable sites, including but not limited to brownfields, parking lots, rooftops and landfills. Subsection s of the Act provides great latitude to the BPU over the review and oversight of these facilities.

Further, the State’s EMP likewise discourages grid-connected projects on farmland in favor of net-metered projects and grid-connected projects in suitable locations. In particular, the EMP discourages public subsidies to turn productive farmland into industrial solar facilities. On page 107 of the EMP, it states,

“Although a number of utility-scale solar installations have been proposed for, and installed on, what were previously working farms, the Christie Administration does not support the use of ratepayer subsidies to turn productive farmland into grid-supply solar facilities.”

Lastly, any solar application, including those subject to subsection s, should also be evaluated for consistency with local zoning and planning prerogatives, particularly when a municipality has zoned appropriately for renewable energy in the community. Approval of a solar farm that is

inconsistent with local planning fundamentally undermines the very purpose of planning. Any such applications should be consistent with the policy espoused in the municipal master plan, the local zoning ordinance as well as receive all other necessary local approvals. The Board review process should allow for active participation of the municipality.

Thus, any solar application, including those subject to subsection s, should require municipal site plan review and approval, together with any other necessary local approvals, including but not limited to a “c” variance or a “d” variance, as may be needed.

The applicant should demonstrate that the application complies with all applicable State, county and municipal regulations, including but not limited to the uniform construction code, required approvals from the Department of Environmental Protection and regional soil conservation approvals.

The Board should carefully assure the consistency of the application with municipal zoning and planning goals. The Board review process must allow for active participation of the municipality in an open and transparent process.

The Board should also take into account Statewide as well as municipal planning goals and objectives. These efforts are consistent with long-standing State policies, including the basic principles of the State Plan, the preservation of farmland and open space and the State energy master plan. These policies are also consistent with local planning priorities, particularly municipalities who have zoned to accommodate both the preservation of farmland and renewable energy sites where appropriate.

In addition to the above concerns, any consideration of any solar application should apply strict compliance with the relevant laws and regulations and rigorous standards to assure stability in the SREC market. At a minimum, we suggest the following:

- In evaluating “construction completion” measured by the receipt of all necessary permits in hand and expended funds, only funding expended before the passage of the Solar Act should be considered. With the approval of the law, applicants were aware of the change in the law and any dollars spent were understood to be at risk;
- Only projects that have all the necessary unappealable permits in hand and have spent more than half the estimated project costs should be considered to be eligible to earn SRECs;
- To limit volatility in the marketplace, we suggest that in aggregate, no greater than 20 MW of section s projects should be allowed to become eligible for SRECs.
- Likewise, to limit volatility in the market, any SRECs granted should not commence until energy year 2017.

We appreciate the opportunity to comment and welcome the opportunity to comment further on the proposal when it is publicly released.

Very truly yours,
Michael Cerra
Director of Government Affairs
New Jersey State League of Municipalities

A handwritten signature in cursive script, appearing to read "Michael Cerra".

JUSTIN MICHAEL MURPHY, ESQ.
20 WORRELL ROAD
TABERNACLE, NEW JERSEY 08088
609 – 268 2005

May 20, 2013

Scott Hunter
Office of Clean Energy
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, New Jersey 08625

Re: Comments - Solar Act Subsection (s) Deferred Applications Criterion
Docket No.: EO 1212 1089 V – Green Power Development

Scott,

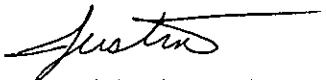
As was promulgated by you at the May 14th meeting, please incorporate the following comments/suggestions into the decision-making process for determining the feasibility of deferred subsection (s) projects. In addition, please note that Green Power Development is no longer the project developer; Comet Land Development replaced Green Power in the summer of 2012 as the project owner and developer.

Our development team believes it would serve the purposes of equity and prudence to examine the following for deferred (s) projects:

1. Completion of the PJM-RTO Feasibility, Impact, and Facilities Studies.
2. Signed/Executed Wholesale Market Participation Agreement, or a signed/executed Power Purchase Agreement
3. Signed/Executed EDC Interconnection Agreement
 - a) Interconnection Cost and the upgrade to the EDC's infrastructure
 - b) Savings to Rate-Payers as a result of the EDC infrastructure receiving upgrades from a private-investment dollar as opposed to an EDC recovery through the rate-case process
 - c) The PJM Facilities Study will contain the upgrades the project is required to perform before Interconnection can be completed

4. The date applicant secured un-appealable Use Variance Approval from Municipal Zoning-Planning Board
5. The date applicant secured un-appealable Site Plan Approval from Municipal Zoning-Planning Board.
6. The date applicant secured un-appealable County Planning Board Approvals
7. Secured Soil Conservation District Approvals
- 7(a). Secured NJ DEP Letter-of-Interpretation for Wetlands Delineation
8. Expenditures for Site Plan phase – vegetative cap; tree removal, fencing, etc. – amount of work commenced, amount of work remaining.
9. Depth of documentation for Finance Entity participation – e.g. Letters-of-Intent; Contractual Arrangements, etc.
10. Site Overview
 - a) Prior zoning of the parcel
 - b) Current zoning of the parcel
 - c) Were there abandonment of prior approvals as a condition for Solar use Variance and Site Plan approval.
 - d) Use of Land if section (s) approval is not obtained
11. The benefit the PV system provides to the local community for power consumption, given the system's electric production will be consumed locally via the EDC switching/circuits, particularly in rural areas and/or economically depressed areas.
12. Some acknowledgement of the benefit of in-state generation, and the positive effect on the congestion side of LMP in the wholesale market for New Jersey electric consumers. This should be viewed by the BPU/OCE through the prism of the PJM designation for NJ being located in the EMAAC. Facilities that have approximately 10 mW of production capacity would have the greatest constructive impact on New Jersey's transmission congestion problem.

Thank you for the opportunity to propose comments to the OCE and BPU,



Justin Michael Murphy, Esq.

Hunter, B

From: Payne, Susan <susan.payne@ag.state.nj.us>
Sent: Monday, August 05, 2013 4:08 PM
To: Hunter, B
Cc: Payne, Susan; Gruzlovic, Hope; Brill, Timothy; Purcell, Monique
Subject: FW: SADC Comments on Solar Projects Criteria

Importance: High

Scott –

Based on the information you provided, we met to discuss what factors SADC believes should be considered by BPU in approving solar facility projects on farmland. Most of these preliminary recommendations are related to the impacts of a solar facility on the on-going Farmland Preservation Program (FPP) efforts in a given area. We assume that these criteria would apply only to projects that exceed the Farmland Assessment Act limit of 2 MW.

1. Locational Considerations:

- a. Within an ADA - Under the NJ Agriculture Retention and Development Act (“ARDA”; NJSA 4:1C-11 et seq) county agriculture development boards (CADBs) and the SADC are empowered to designate areas where agriculture is the “preferred but not exclusive” use of the land, and where agricultural lands have a “strong potential for future production in agriculture” (4:1C-18). Designation in an ADA allows a farm to be eligible for farmland preservation programs and is evidence of a substantial degree of consistency between the retention of agricultural land and local and regional land use plans.
- b. Within a FPP “Project Area” – In order to qualify for a block-grant type of funding known as the Planning Incentive Grant (PIG) Program, counties and municipalities submit to the SADC comprehensive Farmland Preservation plans. Within those plans, the local government entity identifies “Project Areas” which are “discrete areas...that constitute separate, significant areas of reasonably contiguous farmland that will promote the long-term viability of agriculture as an industry...”.
- c. Is a “Targeted” Farm within a FPP plan – Within the project areas outlined in b. above, the county/town then identifies specific properties that are targeted for preservation due to a number of factors such as size, quality, proximity to other preserved farms, opportunity, etc. These farms are specifically solicited and pursued for entry into the farmland preservation program. Counties/towns can update and amend their targeted farms list each year as conditions change; for example, a targeted farm may be eliminated from the list if it was lost to development, or a farm may be added upon the death of the owner and the heirs demonstrate interest in the program...etc.
- d. Associated impacts of utility infrastructure – Another factor we believe should be considered is whether the solar project will cause substantial impacts to surrounding farmland due to the need to construct substations, acquire additional transmission easements and/or otherwise impact nearby farmland with newly expanded solar infrastructure. This is particularly important if the proposed solar facility will cause a need to acquire/expand electric utility easements/infrastructure on nearby farmland that has been preserved.
- e. Concentration within any single area – We believe BPU should consider the impacts of concentrating solar facilities within one municipality or region. For example, it may be possible to locate several large solar facilities in one municipality or area of a county, but if construction of such facilities has a significant impact on the overall balance of land use within the area, alternative locations should be considered. Municipal master plans

and zoning ordinance should be referenced to ensure placement of solar facilities does not substantially defeat local land use planning. This is particularly applicable in historic districts.

We believe any farm that is targeted by a county or municipality for farmland preservation in a county or municipal comprehensive Farmland Preservation plan or in a municipal master plan should not be permitted to support solar development. Other farms that are located in the ADA and are located within an adopted FPP plan “Project Area” should be avoided.

2. Farmland Quality Considerations – large expanses of high quality agricultural land are an important and increasingly rare natural resource. Primary factors that contribute to a farm being considered a highly important agricultural resource include:
 - a. presence of high quality of the soil (considered “prime” or of “statewide importance” under NRCS soil classifications)
 - b. presence of a high degree of “tillable” soil (already in productive open-field agricultural use)
 - c. farm size
 - d. proximity to already preserved farmland (due to the fact that the FPP aims to protect large, contiguous blocks of farmland, thereby avoiding conflicting land uses in between preserved farms).

In combining these quality factors, we would suggest farms that meet the following criteria are critical agricultural resources that should not be used to support grid-scale solar projects:

Parcel size: 100 acres or greater (parcel is considered a tax lot, or the combination of contiguous tax lots under the same ownership); and

Tillable soils: 50 acres or greater of contiguous tillable land; and

Soil quality: Tillable soils contain at least 50 acres of soil rated as “prime” or of “statewide importance”.

Proximity : Location within ½ a mile of preserved farmland should be avoided.

Farms targeted for solar projects that meet the size, tillable and soil quality factors noted above AND are within ½ mile of a preserved farm, should not be permitted to support solar development

3. Review of BPU Provided List – SADC staff is in the process of mapping all of the projects identified on the list you sent to us. Based on the above criteria and recommendations, we think several are going to fall within the categories outlined above. When our review is complete, we will send the findings over to you.

We note that aerial photos for the project identified as the Stahl Farm, Block 302, Lot 7 in Medford Twp., Burlington County reveal that the solar facility has already been constructed.

Thank you for the opportunity to provide input.

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