

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

April 10, 2014

### **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 grid supply solar projects located on certain farmland, denied thirty seven applications and deferred twenty others, pursuant to Subsection (s) (2). The Board has also approved or conditionally approved thirty eight (38) grid supply solar facilities for nearly 240 MWdc pursuant to Subsection q. in two rounds of applications and has certified or conditionally certified seven (7) projects for approximately 74 MWdc in an open application process for solar on brownfields and landfills pursuant to the Solar Act's Subsection t .

This document further implements the Board directive made to Board staff (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 regarding the twenty Subsection (s) deferrals<sup>1</sup>. Staff's goal is to develop a recommendation for a second application process and completion milestones in the construction process by which these deferred projects can be evaluated by the Board.

Staff first circulated a straw proposal on August 5, 2013. That straw proposal was discussed at the August 13, 2013, RE Stakeholder meeting with the submission of written comments due by close of business August 30, 2013. Areas for possible additional criteria and milestones such as the property zoning; soil composition; proximity to nearest farm and evidence of community support for the potential solar site were discussed more fully within that straw. Staff requested 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 within the review of the Subsection (s) deferred projects.

This document includes a summary of the Subsection (s) proceedings, public hearings, application process, stakeholder comments received upon the August 5, 2013 Staff straw, and a second Staff straw proposal revised after careful review of those comments. This Staff straw proposal and request for comments includes several additional potential criteria and milestones for the deferred projects with respect to the following: Project Characteristics and Site Characteristics

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- 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.

## **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 in 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](http://nj.gov/emp/docs/pdf/2011_Final_Energy_Master_Plan.pdf))

Pursuant to N.J.S.A. 48:3-87(s), the Board was authorized to approve solar projects located on farmland that are not net metered or an onsite generation facilities, as "connected to the distribution system", in order to receive SRECs, if the project 1.) is approved by the Board under subsection q. or 2.) a.) received a PJM System Impact Study on or before June 20, 2011, b.) 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.

The notices of intent to file under Subsection (s) had to have been 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 9<sup>th</sup>. (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](http://www.njcleanenergy.com/files/file/Renewable_Programs/SolarAct/Nov%209%20Solar%20Act%20Notice%20-%20Stakeholder%20MeetingFINAL10-25-12.pdf)) On November 9<sup>th</sup>, 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](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 Subsection (s) applications, fifty-six of which were officially received before the December 17<sup>th</sup> deadline. The fifty-seven solar projects represented about 640 MW dc of solar capacity. Staff reviewed the application for each of the fifty seven projects, and ranked the projects by progress toward completion based on the data submitted. Field inspections of the top ten 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 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 additional capacity located on farmland being eligible to produce SRECs for use in complying with NJ's RPS. Seven projects were denied because they did not meet the "threshold requirements" laid out in Subsection (s). Twenty- seven 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 29<sup>th</sup> Board Agenda meeting, the Board deferred decision on twenty projects that had reportedly obtained all of federal, state, and local approvals, and were further along in completion. However, the twenty projects deferred for a final decision had varying degrees of uncertainty regarding each project's ability to finalize construction and upon further review several were found to have yet secured or met all building and construction permit requirements. Staff believes that this uncertainty leads to an inability to properly forecast new capacity coming into the market; therefore, approving projects which are overly speculative would negatively affect the already oversupplied SREC market and contribute to solar market volatility. To ensure that only projects sufficiently advanced to make their completion likely are ultimately approved, the Board directed Staff to work with stakeholders to develop additional application criteria and milestones for the Board's consideration.

### **Staff Findings & Straw Proposals**

As directed by the Board, Staff initiated a process to re-evaluate the Subsection (s) projects deferred for further consideration. Prior to the May 14 RE meeting, 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 for development of a straw proposal for stakeholder comment.

Stakeholder comments were received from Justin Michael Murphy, Esq. on May 20, 2013 in response to the May 14<sup>th</sup> RE Committee 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 State League of Municipalities (NJLM). On August 5<sup>th</sup>, 2013 Staff received preliminary comments from the New Jersey League of Municipalities 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 requested comments on the NJLM preliminary responses and on Justin Michael Murphy’s comments, both of which were included at the end of the first Staff straw.

From this initial activity in drafting a straw proposal, Staff identified several environmental, agricultural, logistical, and social risks in developing solar on active farmlands. Staff continues to believe 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.

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

- Expected impact on the solar development on landfills, brownfields and historic fills- would additional approvals of solar facilities pursuant to Subsection s. crowd out solar facility development on these sites which have a stated preference as a location for solar expressed in the EMP? If so, how should this potential impact be measured and evaluated?
- Potential disturbance to soil, waterway, habitat, and farm productivity – will the construction of an individual solar facility pursuant to Subsection s. disturb crops or the local ecosystem in anyway?
  - Concern for impact to an active farm – would approval of a solar facility pursuant to Subsection s. be a detriment to the quality, yield or economic contribution of crops from that farm to the farm, local farming community, or the State?
  - Concern for local wildlife destruction, vital carbon sequestration areas, preservation of water quality, permanent compaction of hydric soils, loss of light for vegetation etc., Would individual solar facility approvals degrade these ecosystem benefits locally or cumulatively with other solar facilities located in the same area and, if so, how should these impacts be measured?
  - The benefit of the solar facility to the local community- particularly rural areas and economically depressed areas. Would individual solar facility approvals provide a net economic benefit to the local community and how should this accounting be accomplished?
- Potential competition between farmers and solar developers for leased acreage – solar developers are generally willing to pay more for land than

- farmers may receive from the farmland preservation program. How should this potential conflict be evaluated to implement the intent of the EMP and the Solar Act?
- Potential benefits of in-state generation and the effect on the congestion side on LMP in the wholesale market for NJ (net metered capacity vs. grid supply capacity). Would additional approvals under Subsection s. have an impact on investment in net metered solar capacity? Would this result in a loss of value to the New Jersey ratepayer, i.e., reduced contribution to the local distribution system, reduced losses in transmission of energy from generation to load, reduced economic development potential, etc.? If so, how can this potential loss in value be measured?
  - Potential relative impacts on job markets – net solar installation jobs vs. agricultural jobs (packing, farming, shipping etc.) (net metered capacity vs. grid supply capacity). Would additional approvals under Subsection s have an impact on investment in net metered solar capacity and how can this potential loss in value to the New Jersey economy be measured?

After careful review of the comments submitted on the first Staff straw, Staff has posed additional questions and revised the straw to include several additional application criteria for further stakeholder comment as to their value in assisting the Board to render a decision on the deferred projects. The revised potential project criteria and reporting milestones are set out below.

### **Proposed Supplementary Application Criteria and Information for Deferred Subsection s**

#### **1) Proposed Supplementary Data on Project Characteristics**

- Can the proposed project must demonstrate significant progress or investment before enactment of the Solar Act?.
- Were power purchase agreements or PJM wholesale market participation agreements executed before July 23, 2012?
- Did PJM express an intent to issue an interconnection permit before July 23, 2012?
- Can the proposed project document all costs expended prior to July 23, 2012 and differentiate from costs expended subsequent to July 23, 2012?
- Power Purchase Agreement or PJM wholesale market participation agreement has been completed and remains active. What is status of the PJM-RTO feasibility, impact and facilities studies?
  - The facility study should include upgrades required before Interconnection can be approved

- Information that will allow Staff to determine if the project has been put into suspension at PJM,
- Description/evidence of EDC interconnection status
  - Signed/ Executed EDC interconnection agreement
  - The total project scope and the cost to upgrade EDC systems have been identified and quantified;
- Expenditures and amount of work completed with respect to the host site—siting and approval of each of the following needed:
  - Access roads
  - Electrical substations
  - Small administrative buildings
  - Vegetative cap
  - Tree removal
  - Fencing
  - Updated anticipated completion date
  - Updated project construction commencement date
  - Updated description/documents of all state-related approvals such as, for example, DEP permits
    - Secured DEP Letter-of-Interpretation for Wetlands Delineation
    - Must have received Soil Conservation District approvals
- Demonstrate compliance with state, regional and local land use policies or provide a justification for any deviation from defined land use policies:
  - All necessary permits must have been obtained
- Evidence of local government support from the Mayor, the Agricultural Board, the Zoning Board, the Environmental Commission, or any other local body that has provided support for the project
  - Ensure project is within the intent of the municipalities’ master plan and planning objectives
  - Community support letters – is there approval from local residents?
- EPC contractor selection - Executed final contracts for solar system engineering procurement and construction (EPC)
- Documentation of status of finance entity participation: Letter of Intent, contract, or any other documents of which applicant is in possession
- Updated forecast of annual MWhs of production facility and commissioning date
- Project decommissioning plans – issues may arise from abandoned/obsolete parcels of land, as technologies evolve quickly sites may be decommissioned
- Expected number of newly created jobs- long term and short term

## 2) Proposed Supplementary Data on Site Characteristics

- No detrimental impact on an EDC's ability to provide safe, adequate and proper service
- Property zoning classification
  - Current and past zoning classifications, with dates
- Local land use history
  - Whether any prior approvals were abandoned as a condition of the solar use variance or Site Plan Approval
  - Documentation of any alternative land use if solar use were not approved
- 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 stormwater 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.
- Must have received NJDEP Letter-of-Interpretation for wetlands delineation
  - Proximity to nearest preserved farms – get input from agriculture board on the value of the farm to county preservation efforts  
Demonstration that the project has not resulted in development on land that otherwise might have gone into the farmland preservation program,
  - Whether the project is located with an Agricultural Development Area or a Farmland Preservation Program ‘Project Area,’
    - Associated impact of any utility infrastructure
    - Extent of concentration within one area
  - Projects may not be located upon:
    - Farms of 100 acres or more,
    - Farms possessing a high degree of ‘tillable soil’,
    - Farms including at least 50 acres of soil rated as ‘prime’ or of ‘statewide importance’, or
    - Any area are within one half mile of a preserved farm
- 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 those projects with the amount of MWs and millage from applicant's proposed facility
- Proximity to historic districts
- Proximity to vacant land in sewer service areas- this area should be preserved for local growth of residential, industrial and commercial development.
- What is the proximity to existing power lines and substations?
  - How much line running will be needed as a result of project?
- Local electricity consumption patterns
- Intention to use site for renewable energy and environmental community education- will there be tours of the site for public education proposes?
- Benefit in terms of power consumption provided to local community, particularly in rural and/or low-income communities.

### **3) Proposed Reporting Milestone Requirements**

- Application supplement due 30 days from Board Order release
- Project designs submitted within 60 days from Board Order release
- EPC Contract and SREC Offtake contract 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, 2016
- Authorization to energize by June 1<sup>st</sup> 2016 (EY17) – gives market ample time to know the installed capacity going into federal investment tax credit revision.

### **4) Proposed Supplementary Data on Solar Marketplace**

- How can developers of deferred Subsection s. projects demonstrate that that the SRECs created on basis of forecasted energy generation will not have a detrimental impact on SREC market
- How can developers of deferred Subsection s. projects demonstrate SRECs created on basis of forecasted energy generation will not have a detrimental impact on “dual use project” development (defined in the Energy Master Plan as net metered solar or solar located on brownfields, landfills or areas of historic fill) in the State.

## **Conclusion and Next Steps**

The Board found that twenty projects were sufficiently far along in their development to warrant a deferral on a decision to deny or approve. The Board found that the collection of additional, more detailed information on project status, project description, site information, and potential project milestones is essential in order to ensure that final decisions on the deferred projects take all relevant objectives into consideration.

Next steps:

1. Discuss the Staff straw at the May 2014 RE Stakeholder meeting,
2. Accept written public comment through 30 calendar days of the release of the Staff straw (i.e., if straw released April 14, then written public comments due by close of business on Monday, May 15, 2014.
3. Compile and consider stakeholder comments on second staff straw on application criteria and milestones for Subsection s deferrals toward making a recommendation to the Board by June Agenda meeting, and
4. Draft second Subsection s application for deferred projects and milestone reporting requirements for the Board's release by July 15, 2014.

All written comments must be submitted in Word format to: [publiccomments@njcleanenergy.com](mailto:publiccomments@njcleanenergy.com) with the subject heading "Second Straw on Subsection s Deferred Applications." The comment period will end at 5:00 p.m. on **May 15, 2014**. All comments will be posted to the NJCEP website at the end of the comment period.