COMMENTS

Second Straw on Subsection ‘s’ Deferred Applications

MILLENNIUM LAND DEVELOPMENT
By: Justin Michael Murphy, Esq.
By: Bruce Martin – Managing Member

JUSTIN MICHAEL MURPHY, ESQ.

20 Worrell Road
Tabernacle, New Jersey 08088
609-969-0959
JUSTINMICHAELMURPHY@VERIZON.NET

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To: New Jersey Board of Public Utilities
Fm: Justin Michael Murphy, Esq.
Re: Comments, Second Straw – Solar Act subsection (s) Deferred Projects

I believe it more than appropriate that a quote from an overregulating Senator, George McGovern, preface these comments.

"*In retrospect, I wish I had known more about the hazards and difficulties of such a business, especially during a recession of the kind that hit New England just as I was acquiring the inn's 43-year leasehold.* ***I also wish that during the years I was in public office, I had had this firsthand experience about the difficulties business people face every day. That knowledge would have made me a better U.S. senator and a more understanding presidential contender."***[1]

George McGovern was speaking directly about the impact of incoherent and wreckless regulation on business. Mr. McGovern announced these sentiments when explaining that the business venture he engaged, a hotel operation, after he retired from serving in the U.S. Senate, failed. Mr. McGovern contritely emphasized that the disastrous impact of overregulation on business was in fact damaging to business, and that he wished he would have been cognizant of what he was doing to business through the regulatory process.

Since we are discussing energy, I trust the Board is aware that China brings two new coal-fired plants for electricity production on-line every week.[2] Many of the Deferred (s) projects began their long journey back in 2009, only to continue waiting for 'approval', from a state that boasts an environment conducive to solar development. I truly hope that the front page story of the Wall Street Journal on Wednesday April 30, 2014 is not an omen for Deferred (s) projects. What was the story? An entrepreneur in Italy, at age 45, attempted to obtain permits to open a grocery store; he received them at age 88. True story.

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[1] https://www.techdirt.com/articles/20121022/13153120790/george-mcgovern-why-politicians-who-havent-built-business-are-bad-regulating.shtm. This is a quote from former liberal Senator, George McGovern, from an article he wrote for the Wall Street Journal in 1992.

[2] http://www.wired.com/2008/02/chinas-2030-co2/ Alexis Madrgal

Issue: Farmland & Open Space

The issue of 'farmland' needs to be addressed. The Board needs to incorporate into their processes a distinction between, 'farmland assessed' and 'agricultural zoning'. A property may be assessed as 'farmland' for municipal property tax purposes, but the underlying zoning may be one of Residential Growth, Commercial Development, or in some cases, Industrial Zoning. The Board's reference to 'farm-land' may incorporate parcels of property that are temporarily being farmed, but will be utilized for another purpose, should a solar facility not be constructed. The balancing is clear. Structures resulting from residential, industrial, or commercial development, will not be removed – therefore, the open space is lost forever. Contrast that result with solar facilities. Solar does allow for the reversion to farming activity after the life-cycle of the PV project. In addition, the footprint of the solar facility will have the opportunity to experience reduction throughout the life cycle, as more efficient panels can replace the original panels. Conclusion: The concern the Board may have that farmland is being lost if a deferred section (s) project is permitted on a parcel currently farmed, is misguided, and not applicable. The underlying zoning should be recognized by the board as the more critical metric to use for a determination on deferred 's' eligibility for SREC registration.

Issue: "[W]ill the construction of an individual solar facility pursuant to Subsection s. disturb crops or the local ecosystem in anyway?"

These concerns, albeit already addressed, need emphasis. This is an area wherein the NJ BPU should have no interest. The process at the municipal level to obtain Use Variances, Site Plan Approval, Soil Conservation District Approval, and Wetlands Delineation, is thorough, comprehensive, and omnipotent. This is an added layer of unnecessary regulatory burden,

adding to the difficulty of attracting investors to engage in these deferred (s) projects. In addition, project developers' can be assured that the local Environmental Commission will participate in the Use Variance and Site Plan approval process, along with the engineers, and planners that serve on local zoning and planning boards.

Proposed Supplementary Data on Project Characteristics

Issue: Can the proposed project demonstrate significant progress or investment before enactment of the Solar Act?

The Solar Act was signed into law by Governor Christie in June 2012. Each project in the deferred 's' stack was at varying stages of development. The focus moving forward should emphasize that it is impossible to attract any capital for project development when it is unknown as to whether or not the project will be permitted to register for SREC's. This criterion is accurately viewed as a castigation inflicted by the Board on the deferred 's' projects. Gauging the level of investment committed to each individual project prior to the enactment of the Solar Act can be viewed as nothing more than a reason wherein the Board can unjustly deny a 'designated to the distribution system' designation. The very implementation of the Solar Act effectively shut off capital flows into the projects as a result of the requirement for approval before SREC registration is permitted. Retrospective scrutiny as to project status prior to the enactment of the Solar Act is misguided at best, and can become a tool for denial, at worst.

Issue: Were power purchase agreements or PJM wholesale market participation agreements executed before July 23, 2012?

Using this as a criterion for approval is contradictory. If the Board is seeking projects that had executed a PJM WMPA, that WMPA contained milestones that developers were required to meet, or be removed from the PJM Queue. Having executed a WMPA, then incurring the delays imposed by the Solar Act, is what caused the projects to be removed from the PJM Queue for missing milestone (Interconnection) deadlines. This logic is not only contradictory, but lacks any coherent objective.

As indicated above, establishing PPA's and the PJM WMPA prior to July 2012 sets an unduly high hurdle for projects to clear. The immediate result of implementing the Solar Act was to curtail, or completely stop, project development, which included attracting investors. The Board needs to understand that retrospectively gauging where projects were in the development process prior to the Solar Act becoming law is extremely prejudicial to the deferred 's' applicants. What the projects need is for the Board to determine if they are permitted to register for SREC's. Until that determination is made, continued development is virtually impossible. PPA's and the PJM WMPA will contain various milestones for the project developers'. In fact, many deferred 's' projects were removed from the PJM Active Queue because they were not able to meet the milestone requirements. This, the direct result from the Solar Act requirement for Board approval for SREC registration. The delay imposed by the Solar Act has proven fatal to many deferred 's' projects.

Issue: Did PJM express an intent to issue an interconnection permit before July 23, 2012?

I would request Staff clarify this criterion. The Interconnection Agreement (IA) is executed by the Local Distribution Company-LDC- (ACE, PSE&G, JCP&L). I am not aware of any notice 'intent' issued by PJM in regards to the IA being executed between developers' and

the LDC. PJM's involvement is limited to the WMPA milestone of IA execution.

Issue: 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?

If a PPA and WMPA has been executed, the status of the PJM Feasibility, Impact, and Facilities Studies is irrelevant. These phases of the PJM process would have already been completed. Absent completion, a WMPA will not be presented to the developer from PJM.

As discussed above, keeping the WMPA 'active' while waiting for Board designation of, 'connected to the distribution system', is futile. Milestones will, and have in fact, been missed, resulting in the WMPA being declared void and no longer enforceable between PJM and the deferred 's' developer.

PPA's will in all likelihood not even be executed, as the power purchaser will not execute an agreement until they see tangible development, with a power delivery date established. Power purchasers usually require a finite power delivery date, which cannot be guaranteed by the deferred 's' project developer without a determination by the Board as to SREC registration.

Issue: The facility study should include upgrades required before Interconnection can be approved.

All PJM Facilities Studies will include the interconnection requirements for each particular project. These interconnect costs are substantial, especially in the Atlantic City Electric territory. To emphasize, attempting to attract capital for these upgrades, without a determination made as to being able to register for SREC's, is not reasonable, and cannot be

attained. No investor entity will commit the amount of capital for upgrades for a project that may be denied the right to register for SRECs.

Issue: Information that will allow Staff to determine if the project has been put into suspension at PJM

Staff should be aware that projects' placed into suspension are still required to pay for the interconnection work. It is wholly unreasonable to expect an investor entity to commit the amount of capital required for upgrades when their project may be denied SREC registration rights.

Issue: The total project scope and the cost to upgrade EDC systems have been identified and quantified

This criterion is critical. I request the Board weigh heavily the cost of Interconnection upgrades. The more cost to interconnect to the LDC infrastructure, the more investment in New Jersey's, and the Country's, critical infrastructure. This cost for upgrades is coming from a private investor, thereby, relieving the electric rate-payers from incurring the cost. The Board should promote infrastructure upgrades, more so when the rate-payers are shielded from the cost.

Issue: Expenditures and amount of work completed with respect to the host site

The Board should duly note that Site Plan approval and work (e.g. Access Roads, Vegetative Cap, Fencing, etc.) cannot commence, or cannot progress, while waiting for the Board designation, 'connected to the Distribution System.' Therefore, it would constitute undue prejudice if certain projects were 'penalized' for not attaining certain benchmarks with regard to

project progress especially when Site Plan and Soil Conservation District Approval activities are engaged in later stages of development. To emphasize, the Site Plan component is capital intensive, not to mention the $10,000 Soil Conservation District application fee. Without knowing the status of SREC registration ability, no investor, or developer, is likely to invest capital into the project.

Issue: Demonstrate compliance with state, regional and local land use policies or provide a justification for any deviation from defined land use policies

This criterion is completely identical to, and only serves to duplicate, the Land Use process at the municipal level; with emphasis on obtaining Use Variances and Site Plan Approvals. Obtaining a Use Variance is an exhaustive and thorough process. In my own experience, not only did the Use Variance take over one year to obtain, but the matter had to be settled before an Appellate Court (to the applicant's favor). The applicant satisfies all Land Use requirements in order to obtain a Use Variance. Adding to this already cumbersome stage of the development process serves no constructive purpose. Local Zoning Boards comprise attorneys, engineers, planners, and the board members themselves. There are numerous opportunities for public input, which includes, invariably, Environmental Commissions, citizens groups, watershed groups, and other environmental organizations. The Land Use issue is covered ad nauseam. Applicant's should not be required to carry additional regulatory burdens.

Issue: 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

The appropriate forum for the Mayor, Agricultural Board, Zoning Board, etc. to provide input on particular projects is at the Use Variance and Site Plan approval stages. The local boards are competent to administer the approval process; there is absolutely no need for 'evidence' of support to be utilized as specific criterion for deferred 's' project approval by the Board. Municipal Mayors' have a designated seat on Zoning/Planning Boards, therefore, their input is directly received and involved in the municipal approval process. Environmental Commissions regularly provide input throughout the Use Variance and Site Plan approval process. There is no identifiable need for the Board to be in receipt of 'evidence' of support from the above groups. If the Use Variance is issued by a Zoning Board, then we must make the safe presumption that support was pervasive enough to substantiate an approval issued to applicant.

Issues: Ensure project is within the intent of the municipalities' master plan and planning objectives ☐ Community support letters– is there approval from local residents?

These issues are adequately addressed at the municipal level. In addition, these factors are weighed heavily by municipal officials and are well incorporated into their decision-making process. The Board need not concern itself with matters such as these. If issues arise in regards to Master Plans, the Master Plan will guide accordingly the municipal decision-making process. The Board need not burden itself with the task of 'ensuring' that a municipal Master Plan is being adhered to. Local residents should voice their concerns closest to the issue, in a forum at the local level. Local residents are afforded enormous amounts of time and opportunity to speak on development applications. These concerns are best channeled at the municipal level, and incorporated into the decision-making process at the municipal level.

Issues: 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

These components of project development are invariably later-stage elements of the development process. Used as criterion for deferred 's' approval would in essence penalize most projects. Again, the reason being that capital inflow to the projects' has stopped; this the result of the uncertainty of SREC registration.

Issue: Project decommissioning plans – issues may arise from abandoned/obsolete parcels of land, as technologies evolve quickly sites may be decommissioned.

Decommissioning is thoroughly vetted at the municipal level, where the impact is felt the greatest. Zoning and planning boards, along with their planner and engineer professionals, thoroughly examine the decommissioning process. Invariably, Developer's Agreements between the developer and municipality are executed, and they contain decommissioning provisions. In addition, land-use-leases between the land owner and PV generation asset owner also contain decommissioning and removal provisions. These issues would serve no purpose as criterion for Board review, and should be removed from any criterion subject matter.

Issue: Expected number of newly created jobs- long term and short term

The issue of job creation is paramount to all stakeholders. However, this should not be a

Board consideration for deferred ‘s’ approval. All parties should rest assured that jobs are created by installing PV grid-connected projects in New Jersey. There should be no threshold established by the Board for use as approval criterion. Any honest examination of a project will conclude the following jobs are created: panel production, inverter production, electrical installation, PV system installation, site work-fencing, vegetative capping, landscaping, electrical engineering (electrical plans submitted to PJM), legal/attorney-contractual arrangements. Additional employment benefit is the professionals that serve municipal boards.

If the Board utilizes ‘job-creation’ as a criterion, then the danger arises that a threshold may be established for deferred ‘s’ approval. It should not be incumbent upon the applicant to ensure a certain number of jobs are created; the process will result in the jobs delineated above being created.

Proposed Supplementary Data on Site Characteristics

Issue: No detrimental impact on an EDC’s ability to provide safe, adequate and proper service

The Board should have an enormous amount of confidence in the Feasibility, Impact, and Facilities Studies that govern and direct the interconnection process. In addition, the Wholesale Market Participation Agreement and the Interconnect Agreement add to the thoroughness of the entire interconnection process. The fact that a project has successfully navigated the PJM process should more than satisfy the Board that the PV injection of power into the grid has no detrimental impact on the EDC’s ability to provide safe and adequate power and service.

Issue: Current and past zoning classifications, with dates

The issue of current and past zoning is one of 'home-rule'. The project developer is required to satisfy all municipal concerns regarding the land's zoning classification, to include Master Plan guidance. This matter should be of no concern to the Board. Projects will not be able to proceed to interconnection without these local concerns being vetted and addressed by the appropriate entity: municipal zoning and planning boards. Zoning classifications should not be used by the Board as criterion for project approval.

Issue: Local land use history ☐ Were abandoned as a condition of the solar use variance or Site Plan Approval

This criterion is a constructive one for the Board's consideration of project approval. Abandonment of prior approvals demonstrate the commitment of the solar developer to bringing much needed in-state power generation to New Jersey. It also demonstrates the economic harm a project developer, or land owner, would incur should the solar facility be denied, thereby leaving the property unusable until the owner can have the zoning modified. Rezoning takes more time and money expended by the developer in order to secure an economically viable use for their land.

Issue: Soil composition ☐ Secured soil Conservation District Ap

This approval, required for project approval at the municipal level, usually is secured in the later stages of the development process. The fact that the Solar Act has resulted in restricted flows of capital to each project, makes this a penalizing criterion. Investor entities need to secure knowledge as to whether or not they can register their projects for SREC's. Without this economic component secured, capital will not be available to secure Soil Conservation District

approval (and other approvals). The Board should be aware that the Soil District application Fee is $10,000.

Issue: Habitat classifications – existing wildlife, wetlands, forest transition zones o 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) -water run off control o Impact on storm ☒ 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.

These issues are thoroughly vetted at the municipal level during the Use Variance and Site Plan approval stages, as addressed in above issues.

Issues: 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

Proximity to the nearest preserved farm has absolutely no relevance to the viability of any photovoltaic project. Any concern should be directed, and limited, to the parcel wherein the solar facility is proposed. Involving the input of the Agricultural Board simply because a piece of land currently being farmed is close in proximity to a proposed solar site. The Board, and the entire state government and regulatory apparatus should attempt making New Jersey a better place to do business. Adding unnecessary and burdensome regulations onto the backs of New Jersey businesses is the wrong regulatory objective, and is counterproductive to job creation and economic growth. In addition, the underlying zoning could also greatly impact the use of the

land in addition to, or in lieu of a solar facility. As mentioned above, property may be actively farmed, but the underlying zoning may be residential development, or commercial growth. Finally, the Board should have little interest in whether or not a private property owner seeks to apply for Farmland Preservation. Using this as a criterion for project approval exposes the solar developer to an arbitrary assessment, and possibly erroneous assessment, by the Board of a perceived impact on parcels of land in proximity to a proposed site, or the Board's estimation of a private land owner's interest in applying for Farmland Preservation.

Issue: Projects may not be located upon any area are within one half mile of a preserved farm

This criterion, addressed above, is an arbitrary and completely unreasonable use of Board power and authority. Why limit the objective to one-half mile? What metrics and parameters were used to determine a one-half mile boundary? What rational purpose would this serve? It is well established in Constitutional Jurisprudence that state and local government entities run afoul of their acknowledged police and regulatory powers when they act in unreasonable, arbitrary, and capricious manners. Using parcels of farmland up to one-half mile away from the proposed solar site exposes the solar developer to arbitrary punishment by the Board when considering deferred 's' applications.

Issue: Demonstration of generation need within the area- is there a real need for the project in the area?

The Board should more than aware that New Jersey imports approximately 25% of its electric power needs; some estimates range higher. The bottom line is that New Jersey needs in-state generation. Promoting the grid-supply of electricity from photovoltaic sources should be

encouraged, not discouraged by adding unnecessary and burdensome regulations on the backs of businesses.

Issue: 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?

Any concern the Board has in regard to other grid supply projects should be relieved by the fact that all grid supply projects are subjected to a very rigorous PJM and LDC Interconnection process. All electric circuits effected by any proposed grid-supply project are more than considered in the PJM Feasibility, Impact, and Facilities Studies. PJM and the LDC are the appropriate stewards for grid-supply electric production projects. The Board should completely defer to PJM and the LDC when it involves measuring the impact of proposed projects on a particular areas infrastructure. If PJM says it is fine, that is as far as the issue needs to go. Board involvement here is not necessary and is duplicative.

Issue: Proximity to historic districts

The burden rests with the Board to demonstrate the relevance of, 'proximity to historic districts'. Districts, as a criterion, is entirely too broad in scope. Any concern for impact on historic districts is addressed at the municipal level while the applicant is navigating the Use Variance and Site Plan approval process. Any concern on aesthetics is very easily remedied by a sufficient landscaped buffer. My personal experience has been that all zoning and planning boards require a landscaped buffer to shield the public from being able to view the solar facility. In addition, solar facilities emit zero air emissions, and zero groundwater discharge. There is no

conceivable physical impact that a solar project could have on a historic site. There are numerous historic sites located in urban environments all across America; they are in proximity to a variety of commercial and residential structures with absolutely no adverse impact.

Issue: Proposed Reporting Milestone Requirements

There should be no reporting milestone requirements imposed by the Board. The Interconnection Agreement required for facility commercial operation imposes the necessary milestone requirements the project must meet. The milestone requirements as proposed placed unreasonable constraints on project development. To emphasize, the delay imposed by the Solar Act has made any progress impossible until the SREC registration question is determined. Issuing a Board Order, then expecting the project to move at a rate of progress that is not possible, is a defacto way of denying the application for development. Each project requires varying amounts of time to secure off-take agreements, begin construction, etc. This is another penalizing and arbitrary imposition by The Board. The PJM Facility Study, and the EDC Interconnection Agreement already contain all required milestones for project development.

Issue: Proposed Supplementary Data on Solar Marketplace

o 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 o 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?

Deferred ‘s’ projects should not be saddled with the burden of proving, or forecasting, a projected impact on the SREC market. This would require the project developer to obtain knowledge of all projects, and potential projects, that affect the SREC market. This is completely onerous, and would saddle the developer with a mountain of additional research and work. This criterion is one of the more burdensome proposals, and should be dismissed in its entirety as ridiculous and bordering on insanity.

Issue: Projects may not be located upon Farms of 100 acres or more

The threshold of ‘100 acres’ is an arbitrary designation. If 100 acres is utilized as criterion for approval, it should be incumbent upon the Board to incorporate all set-back provisions issued by municipal ordinance or Zoning Board Conditional Approval. Set-Back requirements are usually substantial, and greatly affect the amount of usable acres for a PV ground-mounted system. A more realistic approach would be for the Board to establish parameters wherein ‘Net Acres’ of panels is the objective. This would more accurately reflect the amount of land the panels utilize.

The Board should also be mindful that New Jersey has passed a law wherein solar panels are not calculated for impervious surface coverage. This would seem to contradict the policy objective of promoting solar development, and also is arbitrary action by The Board.

Finally, If the Board begins to utilize ‘Farm-Land’ as criterion for project approval, it is more than conceivable that such a move would have a deterrent effect to land owners placing land into farming operations. The example above is illustrative. If a land-owner is weighing whether to commit land to farming operations, or construct a PV system, and the land has an underlying zoning designation different from that of Farmland Assessed for municipal property

tax purposes, it is more than conceivable that the land owner decline to commit the land to farming operations because of the potential of being penalized by the Board for using the land for farming. This the result of the public policy objective to preserve farm-land. This is premised on the land owner seeking to use land for PV or farming until the underlying zoning designation can manifest itself.

CLOSING COMMENTS

It is with an enormous amount of disappointment these comments are submitted to The Board/Staff. The amount of difficulty developers' have experienced is almost beyond description. Few states in America have a more complex, duplicitous, and incoherent regulatory structure than New Jersey. Trying to enlist investor support for these deferred 's' projects has been difficult to impossible. I admonish The Board to implement ways in which businesses look forward to doing business in New Jersey, rather than finding it a miserable experience.

Respectfully submitted,

S/Justin Michael Murphy, Esq.

ASSOCIATION OF NEW JERSEY ENVIRONMENTAL COMMISSIONS

Second Straw on Subsection s Deferred Applications

The Association of New Jersey Environmental Commissions (ANJEC) is pleased to present the following comments in regard to the Board's efforts to develop policies to implement provisions of the Solar Act of 2012, in particular section 48:87(s).

ANJEC is gratified to see that the Board and staff have used its White Paper, "Solar Siting and Sustainable Land Use" in its deliberations. ANJEC looks forward to continued cooperation with the Board on the subjects of renewable generation development, micro-gridding , efficiency programs and distributed generation.

ANJEC believes that the renewable energy goals established in the NJ Energy Master Plan are achievable without creating conflicts with other desired societal objectives, including farmland preservation, maintenance of a vital agricultural industry, preservation of preserved lands and wildlife habitats and critical natural resources. This can be accomplished by the development of policy that incentivizes the use of brownfields, capped and remediated landfills, former surface mined areas, roof tops and existing impervious surfaces rather than a system that exposes valuable agricultural lands and natural areas to speculative projects.

In fact, the performance of other jurisdictions (Denmark, Germany, Great Britain and the Netherlands) may indicate that our current goals are not only achievable but may be too conservative. ANJEC urges the Board to study successful efforts to transition from fossil fuels to renewables wherever they are being implemented. ANJEC also feels that the private sector can make meaningful contributions to this desired transition given the proper policy framework.

ANJEC also recommends that the Board investigate the City University of New York's (CUNY) policies and mapping tool with an eye toward implementing a similar program in New Jersey, at least at a "demonstration" scale. Information of the CUNY program may be found at http://www.cuny.edu/about/resources/sustainability/solar-america/map.html

Specific Comments on the Second Straw Proposal

ANJEC is limiting its comments to those areas of the proposal that deal primarily with environmental impacts and those that deal with environmental and land use planning rather than electrical technology and business concerns. However, we urge the Board to consider new policies in the most holistic manner possible.

1) Proposed Supplementary Data on Project Characteristics

ANJEC supports requiring a full disclosure of expenditures and site work completed on candidate sites (Straw, p.6). We would add that, in the event that a former landfill is being used, details of any proposed capping or remediation plan be provided and that prior to panel installation, a declaration of environmental compliance with a sign-off from the NJ DEP be obtained.

We strongly support the proposal to require a demonstration of compliance with state, regional and local land use policies. However, we caution the Board that, as yet, few municipalities have included large utility scale solar facilities in their Master Plans and land development ordinances. The majority of projects are being processed as zoning variances. ***A more structured planning process is highly desirable.*** ANJEC strongly recommends that the Board provide technical assistance to municipalities in the development of planning and land use regulatory ordinances dealing with renewable energy. In cases where a project falls within the jurisdiction of a regional planning body (Pinelands, Highlands, and Meadowlands), ANJEC also recommends public consultation with the regional planning entity. It is vital that these consultations include ample opportunities for public participation.

Similarly, requiring evidence of local government support is desirable. However, Mayors' support statements should not be accepted unless accompanied by a resolution of the governing body, planning board and environmental commission.

ANJEC supports the requirement for decommissioning plans and commends the Staff for recognizing the pressure of changing technologies on project configuration. In some cases applicants have proposed to "return" the area to agricultural uses after decommissioning. The Board should develop specific standards in concert with the Department of Agriculture to be applied if this option is to be employed. Any requirements developed should also recognize that keeping open the option of a return to agriculture may alter the initial design itself, specifically with regard to soil compaction, installation of impervious surfaces and concrete footing structures. The SADC already has guidance on this issue for installations on preserved farms.

Job creation may be considered; however solar facilities produce few local jobs as compared to local agriculture. Most jobs created are off site and reside with equipment manufacturers and transportation providers. However, if the facility is being proposed with an equipment manufacturer or other linked job creating actions, credit should be given.

2) Proposed Supplementary Data on Site Characteristics

ANJEC strongly supports the inclusion of local land use history and an alternative land use analysis (Straw, p.7).

Soils information can readily be provided in more detail, including information from the NRCS Soil Survey (or better, on-site determinations). Such engineering related factors as depth to groundwater, depth to bedrock, run-off and erosion potential, and suitability ratings from

"foundations without basements", roads, and lawns and landscaping should always be provided for any construction project, including solar facilities. The value of the surface soils as agricultural lands and their capabilities to support vegetation should be included.

ANJEC strongly supports the recommendation to obey NJ DEP rules with regard to c-1 waters and "Highlands Open Waters" to which setbacks of 300' apply. In addition, NJ DEP's Flood Hazard Area Rules also protect riparian zones of varying widths along other water bodies. All applicable NJ DEP rules should be followed.

ANJEC supports the requirement for obtaining an LOI from NJ DEP's Freshwater Wetlands Program prior to construction or land clearing.

ANJEC strongly supports requiring the inclusion of data from the local environmental resource inventory (ERI).

ANJEC also strongly supports conditioning and precluding installations from farms (Straw p.7). However we would prefer a percentage of 'prime' or 'statewide' be used rather than the more subjective "high degree of tillable soil". While proximity to preserved farms is an important consideration, we do not see that this criterion alone is meaningful. Perhaps proximity ***and*** inclusion in an ADA or Master Plan defined agricultural area or inclusion in the Green Acres PIG Program might be of more utility.

ANJEC is confused about the inclusion of "real need in the area" for a grid connected system. However this demonstration is of critical concern for a distribution system connected system where solar systems can provide important "peaking "relief. In fact, systems that provide distribution system stabilization within "load pockets" should be prioritized (see CUNY's "Solar Empowerment Zones http://www.cuny.edu/about/resources/sustainability/solar-america/sez.html).

ANJEC supports the requirement for disclosure of proximity to historic districts but suggests that a discussion of visual impacts and proposed mitigation be included.

ANJEC believes that large solar facilities should ***not*** be located in sewer service areas unless located on rooftops or over impervious surfaces. Sewer service areas are "scarce resources" and large solar facilities are land-consumptive and have little or no need for sewer service. In addition the Board should consider similar disclosures (and develop prohibitions) against locating such facilities in areas designated as sites designated for affordable housing and in parks, preserves, and other preserved open spaces.

Proximity to substations is an important criterion and projects should be considered in their totality, not segmented. Connecting lines, pole configuration and visual impacts should be considered.

ANJEC supports the idea of evaluating educational potential but suggests that once such facilities become “normal” such requirements may be lifted.

ANJEC has no comments on #4 and #5.

Respectfully submitted

David Peifer
Project Director
Association of New Jersey Environmental Commissions (ANJEC)
973-539-7547
dpeifer@anjec.org

New Jersey Conservation
FOUNDATION

May 15, 2014

Kristi Izzo, Secretary of the Board
New Jersey Board of Public Utilities
44 S Clinton Avenue
Trenton NJ 08625

Re: Second Straw on Subsection s Deferred Applications

Dear Secretary Izzo,

On behalf of New Jersey Conservation Foundation, I am writing to comment on the New Jersey Board of Public Utilities' (BPU) Second Straw (the Straw) on Subsection s Deferred Applications. We greatly appreciate the BPU staff's careful work developing the Straw.

New Jersey Conservation Foundation has been preserving land and natural resources throughout the state for over 50 years. We support the growth of the solar industry in appropriate locations in New Jersey, including brownfields, rooftops, parking lots and garages, and other previously developed sites rather than on open space and farmland. This is an important issue for land use policy and natural resource protection in our state.

In general, we strongly support the Straw, which contains important elements of protection from the impacts of large-scale solar development on farmland and other natural resources. We appreciate the BPU's inclusion of criteria recommended by the Association of New Jersey Environmental Commissions (ANJEC) when reviewing applications. The State Agriculture Development Committee provided important guidelines as well, and we are pleased those guidelines are included in the Straw.

No solar development should create disturbances to soils, waterways, habitat, and local ecosystems in general, nor farm productivity. We hope the addition of criteria that measures concerns for local wildlife, vital food production and carbon sequestration, preservation of water quality, compaction of hydric soils and the loss of light for vegetation will allow the BPU to deny any further large-scale solar development on farmland or open space.

By denying approvals of such developments, the BPU will uphold the intent of the 2011 Energy Master Plan (EMP) and the Solar Act; both plans discourage the use of farmland and open space for solar development. It would seem that any large-scale solar development proposed for farmland or open space would discourage the use of brownfields, landfills, rooftops and other more appropriate locations, which would also go against the EMP and Solar Act.

We strongly support the BPU's inclusion of the following language:
"Projects may not be located upon:
- 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 within one half mile of a preserved farm."

We encourage the BPU to consider as an important review criterion those farmlands that are priorities of the Farmland Preservation Program – these should be discouraged for large-scale solar installations. We want to be sure New Jersey is not sacrificing important preservation priorities for large commercial solar installations.

The consideration of a project's proximity to historic districts is important as well.

We discourage the inclusion of a developer's intention to use a site for educational purposes, including tours, as criterion when reviewing large-scale solar development on farmland or open space.

Thank you for your consideration of our comments. Please do not hesitate to contact Amy Hansen, Policy Analyst, with any questions or concerns 908-234-1225, extension 108.

Sincerely,

Alison Mitchell
Policy Director

Cc: Scott Hunter, Renewable Energy Program Administrator, Office of Clean Energy
Elizabeth Ackerman, Acting Policy Director, Division of Economic Development and Energy Policy, BPU
Tricia Caliguire, Chief Counsel, BPU
Marybeth Brenner, Chief of Staff
Lt. Governor Kim Guadagno
Colin Newman, Governor's Counsel's Office
Michele S. Byers, Executive Director, New Jersey Conservation Foundation

PEARLMAN & MIRANDA, LLC

ATTORNEYS AT LAW

2 Broad Street, Suite 510
BLOOMFIELD, NEW JERSEY 07003
(T) (973) 707-3566
(FAX) (973) 893-5962

Stephen B. Pearlman
2 Broad Street, Suite 510
Bloomfield, NJ 07003
O: 973-707-3566
C: 973-223-4850
spearlman@pearlmanmiranda.com

May 22, 2014

Via Overnight Delivery and Electronic Mail
President Dianne Solomon
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625

Re: Comments on Second Straw on Subsection s Deferred Applications

Dear President Solomon,

I am writing on behalf of several clients, specifically Morris County and Somerset County (including their implementing agents, the county improvement authorities in Morris and Somerset, "the Counties"), in response to Board Staff's request for stakeholder comment with respect to Board Staff's revised straw for supplementary application criteria and milestone reporting requirements for stakeholder comment.

The Counties have been an active stakeholder in the discussion of SREC eligibility for solar grid projects on New Jersey farmland. Their involvement began with the letter submitted to former President Hanna, dated November 15, 2012. In this letter, we detailed the government financed PPA models under which over 100 public facilities including municipal buildings, schools, and local authorities hosted solar systems, saving taxpayers money, 23-60% off current and projected tariff rates. Using public bond debt to finance the systems, the PPA owners are obligated to pay back the bond debt service through a financing lease structure. As the municipal market place requires the Counties to offer their full faith and credit guarantees (County Guarantees) on the bond, in the event of a default by the PPA owner, the significant County Guarantees would have to be called upon.

The Counties therefore, have a significant investment in the stability of the solar market in New Jersey. With regard to the disposition of the remaining subsection s project, the Counties have stated their position previously: The Energy Master Plan (EMP) provides a legal

requirement and a policy basis to guide the BPU determinations in the area of evaluating grid supply projects on farmland and their impact on the net metering market, and "the BPU is legally required to implement the EMP to the maximum extent practicable and feasible," N.J.S.A. 52:27F-15. As a matter of law, the Counties conclude that none of the remaining subsection s projects should be granted SREC eligibility.

While we still stand by this position, we want to express our general support of BPU Staff's Second Straw on Subsection s Deferred Applications. We believe the additional criteria and proposed construction related timelines represent a reasonable attempt by the BPU to understand the impact of these projects on the SREC market, farmland in New Jersey and the development of grid projects on landfills, brownfields and areas of historic fill, encouraged in the EMP. We believe the criteria and timelines, if adopted by the Board, represents an appropriately high bar to pass in order for grid projects on farmland to receive SREC eligibility.

We want to commend the BPU staff for their work on this issue, which we recognize has taken much time, care and effort.

Please contact the undersigned should you wish to discuss the above.

Yours truly,

Stephen B. Pearlman

Ecc: John Bonanni
Michael Amorosa

KDC SOLAR
DEVELOP | OWN | OPERATE

June 5th, 2014

Office of Clean Energy
Division of Economic Development & Energy Policy
44 S. Clinton Ave.
Trenton, NJ 08625

Attn: Mr. B. Scott Hunter
Renewable Energy Administrator

Re: Comments on Staff's Second Straw on Additional Application Criteria and Milestone Reporting Requirements for Solar Act Subsection S Deferred

Mr. Hunter:

Please find KDC Solar's comments on the Staff Straw below.

Regarding the 'Proposed Supplementary Data on Project Characteristics'-

1) *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?*

   We feel that the words 'remains active' should be amended to include 'and has not received a notice of default or delinquency from PJM.' It would be a better standard for Staff assessment if developers were required to submit any default notices received from PJM, as it will help gauge whether or not the project is likely to move forward.

2) *Information that will allow Staff to determine if the project has been put into suspension at PJM*

   Similar to #1, we have an issue with use of the word 'suspension'. We believe that developers should have to submit all default notices from PJM.

3) *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*

   This section should be expanded to include a specific list of certain approvals that are inherent to all projects. We would propose that the list definitively include the items below as well as all evidence that fees have been posted for each where applicable –

- State DCA Civil/Structural Approval
- State DCA Electrical Approval
- Local Building Department Building Permit
- Local Building Department Electrical Permit
- Local Zoning Permit

4) *Project Decommissioning Plans – issues may arise from abandoned/obsolete parcels of land, as technologies evolve quickly sites may be decommissioned.*

   We would propose that Staff require developers to submit decommissioning plans and evidence of bonding, if plans or bonds were required by the municipality during the land use permitting process.

And regarding the 'Proposed Supplementary Data on Site Characteristics'-

5) *Projects may not be located upon: Farms of 100 acres or more.*

   We would propose that this restriction be expanded to clarify that the total farm tract cannot be more than 100 acres. For example, if there are two 50 acre lots being farmed contiguous to each other either (1) owned by the same entity or (2) operating in conjunction with each other, this should constitute a '100 acre' farm and thus be restricted from development.

Should you have any questions about our responses, please do not hesitate to contact us.