



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u>)	
2012, <u>C.</u> 24, THE SOLAR ACT OF 2012;)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u>)	
2012, <u>C.</u> 24, THE SOLAR ACT OF 2012, <u>N.J.S.A.</u> 48:3-)	
87(Q)(R) AND (S) – PROCEEDINGS TO ESTABLISH)	
THE PROCESSES FOR DESIGNATING CERTAIN)	
GRID-SUPPLY PROJECTS AS CONNECTED TO THE)	
DISTRIBUTION SYSTEM; AND)	DOCKET NO. EO12090880V
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
<u>N.J.S.A.</u> 48:3-87(R), DESIGNATING GRID-SUPPLY)	
PROJECTS AS CONNECTED TO THE DISTRIBUTION)	
SYSTEM - ORDER IMPLEMENTING CERTAIN)	
PROVISIONS OF <u>N.J.A.C.</u> 14:8-2.4(G) FOR ENERGY)	
YEAR 2018)	DOCKET NO. QO16020130

Party of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this Order, the Board of Public Utilities (“Board”) considers Board staff (“Staff”) recommendations on the implementation of provisions of N.J.A.C. 14:8-2.4(g), which concerns eligibility for Solar Renewable Energy Certificates (“SREC”) in the Renewable Portfolio Standards (“RPS”). Staff’s recommendations result from directives issued in a Board Order on April 21, 2017.¹

¹ IM/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System – Order Modifying February 22, 2017 Order and Waiving Certain Provisions of N.J.A.C. 14:8-2.4 (G), BPU Dkt. No. QO16020130, Order dated April 21, 2017 (“April 21 Order”).

BACKGROUND

On July 23, 2012, P.L. 2012, c. 24 ("Solar Act") was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the Board to conduct proceedings to establish new standards and to develop new programs to implement its directives. By Order dated October 10, 2012, the Board directed Staff to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act including those under N.J.S.A. 48:3-87(r) (Docket. No. EO12090832V, et al.) ("October 10 Order").

Subsection r of the Solar Act provides that:

r. (1) For all proposed solar electric power generation facility projects except for those solar electric power generation facility projects approved pursuant to subsection q. of this section and for all projects proposed in each energy year following energy year 2016, a proposed solar electric power generation facility, may be considered "connected to the distribution system" only upon designation as such by the board, after notice to the public and opportunity for public comment or hearing. A proposed solar power electric generation facility seeking board designation as "connected to the distribution system" shall submit an application to the board that includes for the proposed facility: the nameplate capacity; the estimated energy and number of SRECs to be produced and sold per year; the estimated annual rate impact on ratepayers; the estimated capacity of the generator as defined by PJM for sale in the PJM capacity market; the point of interconnection; the total project acreage and location; the current land use designation of the property; the type of solar technology to be used; and such other information as the board shall require.

(2) The board shall approve the designation of the proposed solar power electric generation facility as "connected to the distribution system" if the board determines that:

(a) the SRECs forecasted to be produced by the facility do not have a detrimental impact on the SREC market or on the appropriate development of solar power in the State;

(b) the approval of the designation of the proposed facility would not significantly impact the preservation of open space in this State;

(c) the impact of the designation on electric rates and economic development is beneficial; and

(d) there will be no impingement on the ability of an electric public utility to maintain its property and equipment in such a condition as to enable it to provide safe, adequate, and proper service to each of its customers.

(3) The board shall act within 90 days of its receipt of a completed application for designation of a solar power electric generation facility as "connected to the distribution system," to either approve, conditionally approve, or disapprove the application. If the proposed solar electric power generation

facility does not commence commercial operations within two years following the date of the designation by the board pursuant to this subsection, the designation of the facility as "connected to the distribution system" shall be deemed to be null and void, and the facility shall thereafter be considered not "connected to the distribution system."

[N.J.S.A. 48:3-87(r).]

The Board approved a Rule Proposal to implement the criteria set forth in the statute at its January 27, 2016 agenda meeting under Docket No. QX15091096.² The proposal was published in the New Jersey Register on March 7, 2016, and the Board accepted comments on the Rules for a period of 60 days as required by the Administrative Procedures Act. By order dated May 25, 2016, the Board recognized that the Rules would not take effect prior to the start of Energy Year ("EY17") – June 1, 2016 – and established an interim process to "implement Subsection r from June 1, 2016 until such time as a final rule is promulgated and an application window can be opened."³ May 25 Order at p. 4.

In part, the interim process allowed interested parties seeking approval of projects in EY17 to submit Expressions of Interest ("EOI"). The May 25 Order prohibited Staff from accepting applications prior to the effective date of the Rules.

On February 22, 2017, the Board issued an Order modifying the May 25 Order by approving an extended and amended administrative process to implement Subsection r until such time as the first application window opened.⁴ The February 22 Order instructed all entities that were considering filing an application in the coming energy year to file an EOI, using the EOI form to be posted on the NJCEP webpage, by April 1, 2017. Applicants who had submitted an EOI during the summer of 2016 pursuant to the May 25 Order were not required to resubmit an EOI unless the earlier EOI had been rejected; did not contain a PJM interconnection queue number; or was no longer accurate because of changes to the project. February 22 Order at p. 4. In addition, the Board ordered that a public stakeholder process be initiated as soon as practicable to request comments on the optimal number of megawatts that the Board should not exceed for grid supply projects in EY18. Ibid. Finally, the Board stated that it would approve a specific number of megawatts as the upper limit which it might approve for designation as "connected to the distribution system" in EY18. Ibid.

On February 22, 2017, the Board also approved Adoption of the Rule Proposal. At that time, the Rules were anticipated to take effect in late March 2017 upon publication in the New Jersey Register. However, the publication did not actually occur until April 17, 2017, and the Rules only became effective on that date. The relative lateness of the effective date of the Rule adoption in relation to the annual cycle of milestones in the Subsection r application process motivated the Board to modify the February 22 Order and to waive certain provisions of the Rules for EY18, as further described below.

² I/M/O the Renewable Energy and Energy Efficiency Rules - N.J.A.C. 14:8 Amendments to Subchapter 8 – Rule Proposal, BPU Dkt. No. QX15091096.

³ I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System, BPU Dkt. No. QO16020130, Order dated May 25, 2016 ("May 25 Order").

⁴ I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System, BPU Dkt. No. QO16020130, Order dated February 22, 2017 ("February 22 Order").

Subsection r mandates that the Board evaluate all proposed projects for which applications are submitted on or after June 1, 2016 according to the four criteria quoted above. See N.J.S.A. 48:3-87(r). Since the Rules took effect without sufficient time to implement the necessary provisions prior to the opening of an application window, the Board's April 21 Order modified the administrative process to implement Subsection r approved in the February 22 Order.

To allow adequate time to consider public stakeholder input on the maximum amount of capacity to make available pursuant to Subsection r for EY18 and to best achieve a fair and efficient process for addressing potential grid supply applicants that have submitted Expressions of Interest, the Board:

1. Deferred the opening of the first application window from June 1, 2017 to September 1, 2017.
2. Directed Staff to initiate a public process to accept comment on the capacity that the Board make available for designation as "connected to the distribution system" in EY18.
3. Announced its intention to establish a capacity cap following the close of the comment submittal period, and no less than 30 days prior to opening the first application window for EY18 on September 1, 2017.

This process approved by the Board in the April 21 Order superseded the procedure set forth in the February 22, 2017 Order. The Board also waived certain provisions of N.J.A.C. 14:8-2.4(g)(1)-(5) as the Board found full compliance would adversely affect the public interest.

Pursuant to the April 21 Order, on June 15, 2017, Staff issued a Request for Comments on Subsection r with a deadline for submission by close of business on June 29, 2017. The Request for Comments was distributed via the RE Stakeholder email distribution list and posted to the NJCleanenergy.com website. Staff sought public input on three questions: 1. the total maximum amount of aggregate capacity the Board should make available via Subsection r in EY18; 2. an individual system size limit, if the Board makes capacity available in EY18; and 3. other application or additional information requirements to address criteria such as land use impacts and EDC interconnection impacts.

Nine entities submitted comments in response to Staff's Request: KDC Solar ("KDC"), Conti Solar ("Conti"), Lakehurst Solar ("Lakehurst"), Millennium Land Development ("Millennium"), Holocene Clean Energy ("Holocene"), Jersey Central Power & Light ("JCP&L"), New Jersey Resources ("NJR"), South Jersey Industries ("SJI"), and Solar Energy Industries Association ("SEIA"). Concerning the first two questions - maximum capacity cap and system size limit - a summary of responses follows:

Five entities suggested that no capacity should be made available in Subsection r due to the current state of the SREC market and potential for adverse impacts from an approval of any Subsection r capacity (SEIA, KDC, NJR, SJI, and Millennium). SEIA stated that "we do not believe that - absent a major change in the SREC market - circumstances warrant the Board to conditionally approve any additional Subsection r capacity for EY18." SEIA cited the criteria established in the Solar Act for Board approval of Subsection r capacity and the current SREC market conditions in support of their position. SEIA noted that "utility scale solar" or "grid supply projects" comprise 144 MW or 35% of the NJ solar pipeline. SEIA urged "the BPU to find that the maximum amount of aggregated capacity to make available under Subsection r in EY18 is zero."

KDC also recommended that the Board make no capacity available to Subsection r projects and cited current SREC market conditions. KDC noted the robust pipeline of more than 400 MW and advised the Board: "Allowing any additional capacity through Subsection r in EY18 would result in the BPU creating additional supply of MWs to the solar/SREC market thereby creating volatility which is counter to the obligation to ensure an orderly market." NJR and SJI also presented observations on the current state of the SREC market and recommended no capacity be made available for Subsection r in EY18. Millennium suggested a feed-in tariff would be more appropriate for this type of project, "at least regarding the large-scale grid connect projects" and referenced the FERC Docket Nos. EL10-64-001 and EL10-66-001 as relevant to this position.

Lakehurst, a cooperative venture of Starwood Energy Group and Energy Management Inc., with an EOI for a 13 MW project under development, suggested that 100 MW should be made available for Subsection r capacity in EY18. Conti, a developer with an EOI for 28 MWdc, suggested that 120 MW should be made available to Subsection r applicants in EY18. Holocene, a developer that owns four projects with EOIs advised that "a cap that results in some projects not receiving SRECs will disappoint the expectations of developers." JCP&L took no position on the aggregate amount of capacity that should be made available via Subsection r.

Six respondents addressed Staff's question on an individual system size cap even though the majority of respondents advised that no Subsection r capacity should be made available. Five entities opposed a limit on individual system size (KDC, Conti, Lakehurst, Millennium, and Holocene). Holocene, the owner of the first four projects that submitted EOIs in May 2016 suggested that in lieu of ranking by system size, projects should be ranked by date of receipt of the EOI. SJI advised that the Solar Act was meant to reduce volatility, as such Subsection q limited projects to 10 MW, and the CEEEP report on Solar Market Development Volatility cited 2 MWs as contributing most significantly to volatility. SJI further pointed out that seven EOIs were for projects greater than 10 MW and only three were for projects less than 2 MW.

STAFF RECOMMENDATION

The wide variation in recommendations from commenters demonstrates the lack of consensus among market participants on what additional capacity the market can tolerate. Five comments recommended 0 MWs of capacity; two comments recommended 100 MWs or more; and one commenter recommended no limit on the capacity available for designation. These positions cannot be easily reconciled.

Although it is within the Board's discretion to set the capacity cap, Staff suggests that under the circumstances it would be reasonable to undertake additional analysis so that the impact of a range of possibilities may be weighed. Specifically, the Board should direct Staff to analyze whether the capacity caps proposed by the commenters will have an adverse impact on the SREC market. Staff's analysis should consider the impact of new capacity under Subsection r, particularly when combined with forecasted installation growth based on historic trends.

Since December 2015, new installations have been coming online at a rate averaging more than 30 MWdc per month. On June 21, 2017, the latest Solar Installation Report showed that over 76,000 solar photovoltaic installations for over 2,168 MWdc (2.17 GWdc) had been installed as of May 31, 2017. Nearly 25% or 500 MWdc of the state's total installed capacity is

comprised of "grid supply" or "utility scale" solar. The Solar Pipeline Report showed over 13,000 projects totaling over 414 MWdc is currently under development including 17 projects totaling 144 MW of grid supply capacity.

Based on the comments received and the benefit which may be derived from additional analysis, Staff recommends that the Board defer action on establishing a capacity cap and delay opening an application window until December 1, 2017. That date is the next scheduled opening of an application window under the Rules. Expressions of Interest for EY18 that were submitted in accordance with the Board's prior Orders should remain valid. In sum, Staff recommends that the Board:

1. Defer the opening of the first application window from September 1, 2017 to December 1, 2017.
2. Direct Staff to conduct analysis concerning the market potential for new solar capacity.
3. Announce a specific number of megawatts as the upper limit which the Board may approve for designation as "connected to the distribution system" in EY18, after the market research has been completed and no less than 30 days prior to opening the first application window for EY18 on December 1, 2017.
4. Direct Staff not to accept applications prior to December 1, 2017. Following that date, Staff may accept applications according to the schedule set forth in the Rules.

This process would supersede the procedure set forth in the April 21, 2017 Order.

Staff further recommends that the Board waive certain provisions of N.J.A.C. 14:8-2.4(g)(1)-(5) to implement this schedule. N.J.A.C. 14:8-2.4(g)(1) provides the application criteria and states that applications must be filed according to the periods specified in N.J.A.C. 14:8-2.4(g)(4). Staff recommends modification to the filing period set forth in N.J.A.C. 2.4(g)(4).

N.J.A.C. 14:8-2.4(g)(3) provides that the Board will conditionally approve a specific number of megawatts dc as the upper limit for which designation as "connected to the distribution system" may be approved in the Energy Year no later than 30 days prior to the start of the Energy Year. Staff recommends that the Board waive this provision for EY18 and conditionally approve a specific number of megawatts dc as the upper limit no later than 30 days prior to the start of the first application period on December 1, 2017.

N.J.A.C. 48:8-2.4(g)(4) provides that applications may be filed beginning on and for 14 calendar days after the following dates: June 1, September 1, December 1, and March 1. Staff recommends that the Board waive this provision and eliminate the application period beginning on June 1, 2017 and September 1, 2017. The application periods for December 1, 2017, and March 1, 2018, should remain unchanged.

N.J.A.C. 48:8-2.4(g)(5) provides timelines related to Staff review and Board action on an application filed under this subsection. Staff recommends that the Board suspend the timelines until such time as it begins to accept applications.

DISCUSSION AND FINDINGS

In considering whether to waive N.J.A.C. 14:8-2.4(g)(1), -(3) to -(5), the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1): first, whether the request is in accord with the general purposes and intent of the Rules; and second, whether full compliance with the Rules would adversely affect ratepayers, the utilities, or the public interest.

To determine the general purpose and intent of its Rules, the Board looks to the policy underlying the Rule(s) in question. The policy underlying the amendments to N.J.A.C. 14:8-2.4(g)(1) through -2.4(g)(5) is the implementation of the new statutory requirements for review of grid supply solar projects in an efficient, orderly, and equitable fashion. However, the input from the stakeholders suggests that additional analysis of the proposed impact on the solar market is necessary. In addition, waiving the Rules will give the Board sufficient time to consider and reconcile the extreme variance in the public comments related to the status of the SREC market and establishing a capacity cap for EY18. For these reasons, the Board **FINDS** that waiver of these Rules and the timelines set forth therein is in accord with the general purposes and intent of the Rules.

The Board next considers whether strict adherence to N.J.A.C. 14:8-2.4(g)(1), -(3) to -(5) would adversely affect the public interest. As noted above, while the Board has initiated a public stakeholder process on the appropriate upper limit of megawatts of energy from grid supply solar energy facilities to be designated "connected to the distribution system" in EY18, the responses were on opposite spectrums as five comments proposed 0 MWs of capacity; two comments proposed 100 MWs or more; and one commenter proposed no limits. An attempt to make a capacity cap determination in the absence of additional analysis on the stakeholder feedback would deprive the Board of an adequate record to consider in reaching a decision. Thus, the Board **FINDS** that full compliance with the Rules would adversely affect the interest of the public.

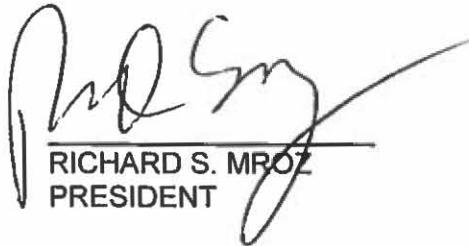
The Board **FINDS** that the modified interim process described herein is reasonable and follows the Rule Adoption approved by the Board as closely as possible given the date the adopted Rules took effect. In addition, the Board **REAFFIRMS** its finding that it is reasonable to limit the acceptance of EOs to those which have PJM interconnection queue numbers previously submitted for EY17 between June 1, 2016 and July 15, 2016 and for EY18 by April 1, 2017. The administrative steps laid out above, namely conducting additional research on the appropriate aggregate megawatt cap for EY18, will facilitate the consideration of applications once the full analysis on the capacity cap have been conducted.

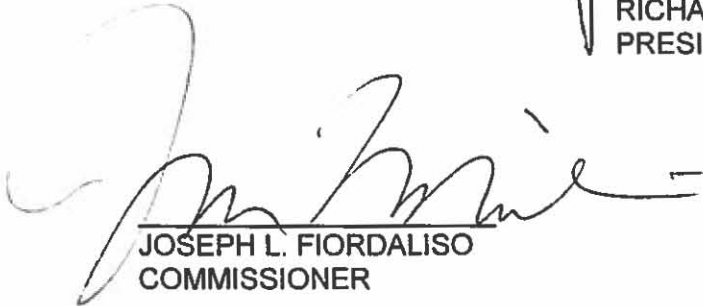
Therefore, the Board **HEREBY APPROVES** the process recommended by Staff. Specifically, the Board **HEREBY DIRECTS** Staff to conduct further analysis concerning the market impacts of designating new solar capacity as "connected to the distribution system." The Board will establish a capacity cap no later than 30 days prior to December 1, 2017. The process set forth herein shall supersede the April 21, 2017 Order. The process also ensures that the Board has sufficient time to consider, and incorporate as appropriate, the comments received concerning the capacity cap.

This Order will take effect on August 5, 2017.

DATED: 7/26/17

BOARD OF PUBLIC UTILITIES
BY:

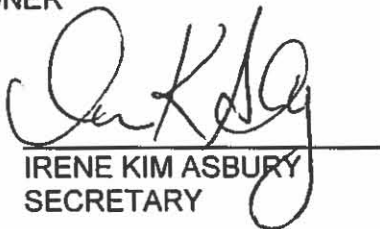

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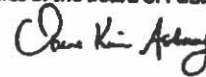

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DIANNE SOLOMON
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COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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

DOCKET NO. EO12090880V – IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, N.J.S.A. 48:3-87(Q)(R)(S) – PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM; AND

DOCKET NO. QO16020130 – IN THE MATTER OF THE IMPLEMENTATION OF N.J.S.A. 48:3-87(R) – DESIGNATING GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM - ORDER IMPLEMENTING CERTAIN PROVISIONS OF N.J.A.C. 14:8-2.4(G) FOR ENERGY YEAR 2018

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