



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

	)	ORDER
IN THE MATTER OF IMPLEMENTATION OF	)	
L.2012, C. 24	)	Docket No. EO12080832V
IN THE MATTER OF THE IMPLEMENTATION	)	
OF L.2012, C. 24 <u>N.J.S.A. 48:3-87 (Q)(R)(S)</u> –	)	
PROCEEDINGS TO ESTABLISH THE	)	Docket No. EO12090880V
PROCESSES FOR DESIGNATING CERTAIN	)	
GRID SUPPLY PROJECTS AS CONNECTED	)	
TO THE DISTRIBUTION SYSTEM	)	
APPROVAL OF APPLICATION FOR	)	
SUN PERFECT SOLAR, INC., W1-132	)	Docket No. EO12121101V
APPROVAL OF APPLICATION FOR	)	
OCI SOLAR POWER, LLC., W1-112	)	Docket No. EO12121106V
APPROVAL OF APPLICATION FOR	)	
NJ CLEAN ENERGY VENTURES, W2-056	)	Docket No. EO12121142V

**Parties of Record:**

**Christopher Savastano**, for New Jersey Clean Energy Ventures

**Willy Chow**, for Sun Perfect Solar, Inc.

**Michael Bruno, Esq.**, on behalf of OCI Solar Holmdel

BY THE BOARD

By this Order, the New Jersey Board of Public Utilities ("Board") considers the applications filed as of December 17, 2012, by Sun Perfect Solar, Inc.; OCI Solar Power, LLC., and NJ Clean Energy Ventures Corporation under N.J.S.A. 48:3-87(s)(2) for approval of their proposed solar

electric generating facilities as "connected to the distribution system." For the reasons stated below, the Board grants these applications.

## **BACKGROUND**

The Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 to -107, was enacted on February 9, 1999. Among its purposes was to lower the high cost of energy and improve the quality and choices of service for all the State's consumers, N.J.S.A. 48:3-50a(1). EDECA established the framework for the deregulation and restructuring of the State's electric and natural gas utilities, and set certain directives and timetables regarding the implementation of electric retail choice. The Board was given broad authority and discretion, based on its expertise, to implement and oversee the transition from a regulated to a competitive power supply marketplace.

EDECA also mandated that the Board adopt renewable energy portfolio standards, N.J.S.A. 48:3-87, culminating in the adoption by the Board of Renewable Portfolio Standards regulations, N.J.A.C. 14:8-2.1 to -2.11 (the "RPS"). The RPS are designed to encourage, among other things, the development of renewable sources of electricity, N.J.A.C. 14:8-2.1(a). EDECA also mandated that the Board create a renewable energy trading program which led to the creation of renewable energy certificates that can be used to assist in meeting the RPS.

Under EDECA, retail sellers of energy in New Jersey must satisfy the RPS, which mandate, among other things, that a specified portion of the energy sold in this State be from solar electric power generators connected to the distribution system in the State. N.J.S.A. 48:3-87(d)(3). These sellers of energy can satisfy their obligations under the solar portion of the RPS by purchasing solar renewable energy certificates ("SRECs"), N.J.S.A. 48:3-87(d)(3)(c). Only solar electric power generating facilities that are connected to the distribution system in the State can qualify to be issued SRECs. See N.J.S.A. 48:3-51 (definition of "SREC").

Although the solar RPS was originally measured as percentage of electric sales, this was changed by the Solar Energy Advancement and Fair Competition Act of 2009, L. 2009, c. 289, to a fixed Gwh requirement. For this reason, as confirmed by RPS compliance reports submitted to Staff by the load serving entities with an RPS obligation, demand for SRECs has never fallen, even with reduced retail electric sales which accompanied the economic downturn in 2009-10. In fact, the Solar Advancement and Fair Competition Act of 2009 doubled the solar obligation from Energy Year<sup>1</sup> 2008 to EY 2009, and increased it again by more than 30% from EY 2009 to EY 2010, despite the decline in retail electric sales.

During 2010, and through the first six months of 2011, New Jersey saw a surge in the construction of solar energy facilities as a result of rapidly falling costs of solar technology, the broadening in eligibility of federal tax incentives as part of the national stimulus program, as well as the boost in demand from the Solar Energy Advancement and Fair Competition Act. SREC prices approached the ceiling established by the Solar Alternative Compliance Payment ("SACP"), and made investment in solar development very attractive. Many of these projects, as expressed in comments received by the Board and which are summarized below, were purely speculation driven, grid-supply projects, proposed and installed without regard for appropriate land use or energy policy concerns.

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<sup>1</sup> An energy year ("EY") is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

The SREC market for EY 2012 was supplied fully within the first two months and, as a result, SREC prices dropped from a spot market high of approximately \$600 to a low near \$160 as reflected in Staff's monthly SREC pricing reports. The Solar Act of 2012, a bi-partisan effort to stabilize the solar market, was signed into law by Governor Christie on July 23, 2012, and took effect immediately. L. 2012, c. 24, § 3 ("Solar Act"). The law amends N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87, which are provisions of EDECA.

The current estimates, generated by Staff on a monthly basis and critiqued by market participants in monthly open stakeholder meetings, appear to show that the market for SRECs will be long through EY 2016 despite the doubling of the solar RPS starting with EY 2014 by the Solar Act. New generation is still anticipated to come on line at a rate of 20 MW per month on average for at least the foreseeable future.

Prior to the Solar Act, whether solar generated electricity could be the basis for an SREC usable for RPS compliance, depended on meeting the requirements of N.J.A.C. 14:8-2, including but not limited to pre-registration through N.J.A.C. 14:8-2.4, which is commonly referred to as the SREC Registration Program ("SRP"). One of the SRP's requirements is that the energy be generated at a facility issued a Certification Number through the Board's registration process. See N.J.A.C. 14:8-2.4(a). The registration process includes an application and review process to determine whether a solar facility meets SREC eligibility requirements. N.J.A.C. 14:8-2.4(f). After review is completed, and provided that SREC eligibility requirements are satisfied, the facility is issued a conditional registration. The notice of conditional registration, which includes an expiration date twelve months from its issuance, states that if the solar facility is constructed as described in the initial registration package, a Certification Number will be issued for the solar facility upon completion of construction and inspection. N.J.A.C. 14:8-2.4(f)(4)(i) and (ii).

Following conditional registration, construction of the solar facility could begin, and the facility must be completed prior to the registration expiration date, although one extension is allowed. See N.J.A.C. 14:8-2.4(f)(5) and (g). It is not until after the facility owner submits a post-construction certification package that includes a copy of the approval from either the relevant electric distribution company ("EDC") or PJM Interconnection, L.L.C. ("PJM") to interconnect and energize the facility, and after inspection of the facility or waiver of inspection per N.J.A.C. 14:8-2.4(i) and (k), that a Certification Number is assigned to the facility for use in obtaining SRECs from PJM-Environmental Information Services Generation Attribute Tracking System ("PJM-EIS GATS"). N.J.A.C. 14:8-2.4(l). See N.J.A.C. 14:8-2.2 (definition of "Generation Attribute Tracking System").

The Solar Act adds requirements that are not in the SRP for Board approval or designation of certain projects as being "connected to the distribution system" in order to earn SRECs. "Connected to the distribution system" is defined by the Solar Act to mean a solar electric power generation facility that is:

- (1) connected to a net metering customer's side of a meter, regardless of the voltage at which that customer connects to the electric grid,
- (2) an on-site generation facility,
- (3) qualified for net metering aggregation as provided pursuant to ... [N.J.S.A. 48:3-87(e)(4)],
- (4) owned or operated by an electric public utility and approved by the board pursuant to ... [N.J.S.A. 48:3-98.1],
- (5) directly connected to the electric grid at 69 kilovolts or less, regardless of how an electric public utility classifies that portion of its electric grid, and is designated as

"connected to the distribution system" by the board pursuant to ... [N.J.S.A. 48:3-87(q) through (s)], or (6) is certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill, or on a properly closed sanitary landfill facility. Any solar electric power generation facility, other than that of a net metering customer on the customer's side of the meter, connected above 69 kilovolts shall not be considered connected to the distribution system.

[N.J.S.A. 48:3-51.]

N.J.S.A. 48:3-87 (s) ("Subsection s") applies to land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to -23.24, at any time within the 10 year period prior to the Solar Act's effective date ("farmland"). Under Subsection s, a solar electric power generation facility on qualifying land that is not net-metered or an onsite generation facility (that is, the electricity is not being used to satisfy the electrical needs of structures on or adjacent to the land where the solar facility is located) is subject to a review process by the Board to determine whether the proposed project should be approved as connected to the distribution system and therefore eligible to earn SRECs. This is incremental to satisfaction of the SRP process.

A proposed solar generating facility on farmland can be reviewed under either Subsection s(1) or s(2). The provision relevant here, Subsection s(2), provides that the Board can approve a proposed facility on farmland if "PJM issued a System Impact Study for the facility before June 30, 2011," the facility filed a notice of intent to qualify under Subsection s(2) with the Board within 60 days of the effective date of the Act, and the Board approves the facility as "connected to the distribution system." The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those approved under Subsection q as described above. N.J.S.A. 48:3-87(s).

By notice dated July 23, 2012, Board Staff notified stakeholders of the passage of the Solar Act; that the Board was creating processes to implement the provisions of the Solar Act; and directed that, as required by the provisions of the Solar Act, notices of intent be filed with the Board on or before September 21, 2012 by any proposed solar generating facility seeking to qualify under Subsection s(2).

After public notice, on November 9, 2012, Board Staff held a public hearing with stakeholders to discuss the various provisions of the Solar Act, and receive oral comments on implementation of the Board's various responsibilities under the Solar Act. This was followed by a request for written comments which were due by November 23, 2012.

### **COMMENTS AND STAFF RESPONSES**

At and following the November 9, 2012 public meeting, Board Staff received and reviewed verbal and written comments on implementation of all sections of the Solar Act. The summary below is limited to those comments made with reference to implementation of Subsection s. All other comments will be addressed in future Orders; all public comments can be found on the New Jersey Clean Energy Program website.

Comments: Justin Murphy requests that the Board read the requirement in Subsection s that a project have received a PJM System Impact Study ("SIS") by June 30, 2011, as a

"grandfathering" provision which entitles all facilities that received such an SIS by that date to be designated "connected to the distribution system." He also argues that New Jersey is not addressing "the main problem," the loss of generation, and states that the constraints imposed by the Solar Act make it more difficult for large-scale solar generation to be sited in-State.

Blue Sky Technologies proposes that if a project "meets all criteria" in Subsection s except that it has been assessed as farmland "for less than five years," such a project should be approved.

Response: In the Solar Act, the Legislature limited eligibility for approval under Subsection s to projects: (1) proposed to be located on agricultural land taxed pursuant to the "Farmland Assessment Act of 1964," (2) for which PJM issued a SIS on or before June 30, 2011; and (3) for which notice of intent to apply under Subsection s was filed with the Board within sixty days of the effective date of the legislation, *i.e.*, by September 21, 2012. N.J.S.A. 48:3-87 (s) 2 (b).

Comment: A.F.T. Associates, EffiSolar, Renewtricity, and PVOne, LLC ("PVOne"), submitted comments stating that "the remaining universe" of Subsection s projects would produce energy in the range of 500 MW, which they characterized as approximately 0.3 percent of the tilled farmland in New Jersey and approximately thirteen percent of the projected RPS (estimated at 3.6 gigawatts).

Response: Twenty-five (25) developers, or their agents, submitted Subsection s applications, representing fifty-seven (57) solar projects and approximately 640 MW dc, 580 MW ac of total solar capacity.

Comments: PVOne states that in order for a project to be approved under Subsection s the applicant need only have received a PJM SIS by June 30, 2011, and filed a Notice of Intent with the Board within the sixty days provided by the Solar Act. In support of its contention, the commenter argues that none of the criteria of Subsection r should be applied to projects applying under Subsection s. Consideration of the supply and demand for SRECs is not relevant because the market will regulate supply and demand, and the appropriate way for the Board to increase demand is to increase the solar RPS; that grid-supply developers have invested millions of dollars in reliance upon State law and regulation encouraging solar development and that these millions will be stranded if the Board does not designate as "connected to the distribution system" all developers that received a PJM SIS by June 30, 2011 and submitted a notice of intent to file within sixty days.

Scott Lewis states that the Solar Act has essentially put him out of business and that he now hopes to salvage only those projects for which he has already received municipal approvals, which he believes should be the most important criteria after receipt of the PJM SIS. Mr. Lewis also states that he has refrained from applying to the SRP on the advice of the Board's renewable energy market manager, and should not be penalized for not applying.

Response: Under the Solar Act, the Board can approve a proposed facility on farmland if: "PJM issued a System Impact Study for the facility before June 30, 2011;" the facility filed a notice of intent to qualify under Subsection s(2) with the Board by the end of September 2012; and the Board approves the facility as "connected to the distribution system." The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those approved under Subsection q as described above. N.J.S.A. 48:3-87(s). Staff notes that, if the intent of the Legislature were for the market alone to regulate supply and demand of SRECs, the Legislature would not have taken action via the

Solar Act to accelerate the RPS and to place restrictions on the amount of solar which can be located on farmland and open space. Staff acknowledges that applicants were referred to the Secretary's July 23, 2013 letter advising the public to refrain from filing any applications "related to the Solar Act" but does not believe that this constituted a recommendation to refrain from complying with the Board's rules regarding the SRP or any other existing rules.

Comments: Day Four Solar, LLC ("Day Four") states that in reliance on State law prior to the passage of the Solar Act, it had begun developing a 6 MW grid-connected project on land that had been assessed as farmland and has invested hundreds of thousands of dollars in design, equipment and making arrangements for interconnection. Day Four argues that its receipt of an SIS prior to June 30, 2011 and its filing of a Notice of Intent by September 21, 2012 entitles it to approval under Subsection s.

Pittsgrove Solar, LLC ("Pittsgrove Solar") contends that Subsection s requires only that a project have received a PJM SIS by June 30, 2011 and have submitted a notice of intent to file within sixty days of the Solar Act in order to be designated as "connected to the distribution system." In support of this position, Pittsgrove Solar argues that the Legislature intended that Subsection s(2) would provide a stream-lined path in addition to the q, or s (1), process. In addition, Pittsgrove Solar argues that, in reliance on State law prior to the passage of the Solar Act, it had begun developing a 2 MW grid-connected project on land that had been assessed as commercial, rather than preserved farmland.

Rock Solid Realty proposes that all solar projects be designated as eligible to generate SRECs if they meet the following criteria:

- Wholesale Market Participant Agreement
- Interconnection and Construction Agreement signed with EDC
- SRP registration before July 23, 2012
- Notice of Intent filed within 60 days of Solar Act
- Approval from local township to construct a solar facility
- Value and tax assessments pursuant to the Farmland Assessment Act of 1964
- Land has not "fallen into" preservation of open space, is in temporary relief from farmland assessments for less than five years or it isn't zoned as permanent farm land in the State

Response: Under the Solar Act, the Board can only approve a proposed facility on farmland if "PJM issued a System Impact Study for the facility before June 30, 2011," the applicant for the facility filed a notice of intent to qualify under Subsection (s)(2) with the Board by September 21, 2012, and the Board approves the facility as "connected to the distribution system." The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those approved under Subsection q as described above. N.J.S.A. 48:3-87s only applies to land that has benefitted from tax treatment under the Farmland Assessment Act of 1964 within the ten years prior to July 23, 2012.

Comment: Garden Solar asserts that grid-supply projects benefit all New Jersey ratepayers by reducing wholesale electric prices and bypassing local congestion, thus distributing marginal cost benefits to all ratepayers. The commenter states that "timely guidance" from Board Staff is necessary because many projects are in "critical stages" of development, "at or near construction." With respect to Subsection s, Garden Solar argues that all projects that have

received an SIS prior to June 30, 2011 and/or have received SREC Registration Program approvals prior to the effective date of the Solar Act should be considered for eligibility as "connected to the distribution system." Should the Board wish to further evaluate the status of a project, the commenter urges the following criteria:

- Description/documentation of status of all municipal land use approvals, including evidence of local government support
- Description/documentation of all State-related approvals such as DEP permits
- Description/status/evidence of financing, defined as "ability to construct within one year"
- Evidence of regional Soil Conservation approval
- Description/evidence of interconnection status
- Disclosure of all capital costs and expenditures incurred
- Estimated annual MWhs of production from the facility
- Description/status of engineering, procurement, construction (EPC) contracts

After evaluating these criteria, the Board should, if it determines that the project is likely to be constructed in the near future, issue a new SREC registration letter that provides "sufficient" time for construction. Projects that lack some of these criteria but "remain viable" should be "conditionally approved" under Subsection q. A narrower construction of Subsection s, Garden State argues, would be unfairly prejudicial to developers that invested hundreds of thousands of dollars in grid-supply projects.

Community Energy urges that projects be evaluated for eligibility to generate SRECs based on the following criteria:

- An SIS on or before June 30, 2011
- SRP acceptance issued prior to enactment of Solar Act
- Funding of interconnection facility costs prior to enactment of Solar Act, as demonstrated by:
  - Posting of security in the case of a signed three-party Interconnection Services Agreement between the developer, the EDC, and PJM; or
  - Issuance of initial payment of security for interconnection construction costs from the developer to the EDC in the case of a two-party Wholesale Market Participation Agreement and Interconnection Agreement(s) between the developer and the EDC
- To meet the criteria above, the commenter adds that a project would need to have received:
  - PJM Feasibility Study
  - PJM Impact Study
  - PJM Facility Study, if required
  - Executed Interconnection Services Agreement ("ISA") or Interconnection Agreement ("IA")
  - EDC letter or executed ISA confirming that the project's point of interconnection is on the EDC's distribution system.
- The commenter recommends that project size be capped at a maximum of 10 MW.

- The commenter believes its criteria should be applied to all projects, whether located on farmland or not.

MSEIA states that approximately 500 MW of grid supply projects are currently under development, and that only a system that ranks these projects based on merit will minimize litigation over the results of the selection process. MSEIA suggests a lengthy list of criteria, including a PJM SIS issued prior to June 30, 2011, an SRP acceptance issued prior to June 23, 2012, a maximum size of 10 MW, interconnection service agreements and construction service agreements signed by the developer, with these agreements ranked by date, local approvals in place, and a limitation on the total amount of MW approved to no more than 100 MW over two energy years. MSEIA argues on behalf of a competitive solicitation for securing fixed long term energy supply, and urges the Board to support new legislation which would direct the State's EDCs to secure up to 300 MW of grid supply solar capacity from the projects which meet MSEIA's criteria.

Stephen B. Pearlman, on behalf of Morris and Somerset Counties ("the Counties"), asks the Board to adopt a strict interpretation of Subsections q, r, and s, limiting grid supply projects to the maximum extent feasible in order to promote the stability of the SREC market. Noting that the Counties have pledged their full faith and credit on the improvement authority bonds which have underwritten numerous solar projects developed through public-private partnerships, Mr. Pearlman states that the Counties would be adversely affected if a plunge in SREC prices causes the solar developers involved to default on their financial obligations. The commenter states that such a plunge is inevitable if too many projects are designated "connected to the distribution system." To avoid such an occurrence, Mr. Pearlman urges the Board to review applications under Subsection s against the criteria laid out in Subsection r; to find that any project which has an SRP number but was not in commercial operation by July 23, 2012 is a "proposed" project subject to Subsection r review; and to require these projects to apply under Subsection q if the applicants wish to be designated "connected to the distribution system." Mr. Pearlman urges the Board to act expeditiously, arguing that until the Board has ruled, uncertainty will hang over the SREC market, depressing prices and freezing development.

Response: Staff has reviewed the criteria proposed by commenters and recommends that the Board award approvals under Subsection s based upon the most objective standard possible; progress toward construction completion.

Comment: EAI submits that its project should be designated as connected to the grid because it has received final municipal land use approval; received final unappealable approval from several state agencies with jurisdiction; has entered into an interconnection agreement; has entered into a construction agreement; has entered into a WMPA; and the project is registered with SRP. In addition, EAI argues that its project is unique in that its completion is essential to the successful resolution of long-standing Mt. Laurel litigation. According to EAI, the courts have held that the property on which it intends to place housing is the only location in the town suitable for Mt. Laurel housing. EAI has agreed to reduce the number of units to be constructed and to maintain 125 acres as open space, but it claims that in order to make the project viable, it must be allowed to place solar generation on these acres. According to the commenter, if the solar project is not built the residential development will not go forward, the Mt. Laurel housing will not be constructed, and the town will remain deficient in its constitutional obligation to provide this housing.



Response: See Staff response to previous comment, above. Staff makes no comment on the policy of promoting low- and moderate-income housing other than to state that Staff does not believe that the Solar Act in any way restricts the building of such housing.

Comment: Day Four Solar, Pittsgrove Solar, Rock Solid Realty, EffiSolar, Garden Solar, Community Energy Solar, Mohawk Associations, Renewtricity, and OCI Solar (all grid-supply solar developers) state that Subsection s requires only that a project have received a PJM SIS by June 30, 2011 and have submitted a notice of intent to file within sixty days of the Solar Act in order to be designated as "connected to the distribution system." In support of this position, these commenters argue that various grid supply developers have proposed alternative or additional criteria and rankings of their own, and the proposals are not consistent.

Response: Staff agrees with the commenters that all market participants will benefit from an objective standard for approval under Subsection s, and refers the commenters to its answer, above.

Comments: SEIA, a national trade association for the U.S. solar industry, advocates a "holistic" approach to Subsections q, r, and s, with special consideration or "grandfathering" given to "very advanced" projects which become operational during Energy Year 2013. SEIA contends that Subsection s is not meant to establish a third path for SREC eligibility but suggests that if the Board regards it as providing such a path, it limit that path to very advanced projects and provides a list of the criteria it believes should be met by such projects.

Rate Counsel offers interrelated comments on Subsections q, r, and s, suggesting that the criteria laid out in Subsection r be used to evaluate applications submitted under Subsection s and that filings under all three subsections should include a statement explaining why designating the applicant's project to be 'connected to the distribution system' would be in the public interest.

Response: Staff agrees with SEIA that the most objective criteria for approval under this section is the stage of completion of the proposed project. Staff believes that it has requested the appropriate information in the application process to gauge project status, and agrees that approving only these advanced projects is in the public interest at this time.

Comments: Quantum Solar contends that because of economies of scale, grid supply projects have very little need for SRECs to be economically viable. In support of its position, Quantum Solar points to Pennsylvania, where it alleges that SRECs are selling for below \$20 and yet solar installations have nearly doubled to 88 MW from 2010 to 2011.

KDC Solar, a New Jersey-based developer of large scale net metered solar facilities, argues that grid supply projects do not supply the "dual benefit" of net metered projects and that the hundreds of megawatts of grid supply solar currently under consideration would further suppress the SREC market. The commenter further contends that grid supply developers do not have a legitimate reliance argument because as far back as spring of 2009 the New Jersey Legislature was considering limitations on grid supply projects, and the Draft Energy Master Plan released in June 2011 also evidenced concern over the effect of these projects.

NextEra, LLC; NJSEC; and the League of Municipalities encourage the Board to hold firm on the Solar Act's limitations on grid supply solar and by so doing encourage long-term investment in the State.

The League of Municipalities urges that all municipal approvals be acquired, and that no "expedited" process be created for any class of projects.

David W. Van Camp states that criteria for Subsections q, r, and s projects should limit the impact on open space, eligible project size and detrimental impact on the SREC market, as well as consider impacts on the distribution system.

Land Resource Solutions asks the Board to consider that some projects for which notices of intent to seek approval under Subsection s have been filed may have a detrimental impact on the SREC market.

George Piper, David Reiss, and Jim McAleer state that given the plunge in SREC prices, they could not recommend to anyone that they install a solar system, and urge the Board to limit the size of installations or otherwise stabilize the SREC market to help homeowners and small businesses.

Response: It was commonly understood by market participants that the Solar Act was intended to provide the Board with tools to help "stabilize the solar market" and to implement provisions within the Energy Master Plan which gives preference to solar facilities located on brownfields, landfills, and other underutilized or "dual benefit" sites over facilities located on farmland and open space. Consistent with this intent, the Solar Act contains within its many provisions various requirements for Board action including new requirements for proposed facilities anticipating interconnection with the electric grid as a direct grid supply, wholesale power generator to be eligible for participation in the New Jersey SREC market. Staff makes recommendations for Board action as required under the Solar Act keeping in mind the provisions of the Energy Master Plan and the potential impact of additional development on the New Jersey solar market

Comment: Thomas and Mary Winderger state that their farm is not "prime farmland," and ask the Board to review all projects located on farmland that have received all necessary approvals on an individual basis.

Response: Staff has and will continue to review all applications for approval under the Solar Act on an individual basis.

### **SUBSECTION S APPLICATION PROCESS**

On November 30, 2012, Board Staff distributed the Subsection s(2) application via mass email to renewable energy stakeholders, and posted the application form on its webpage and on the webpage of the New Jersey Clean Energy Program. Any company applying for eligibility for SRECs under N.J.S.A. 48:3-87(s) was required to submit a completed application package by December 17, 2012.

Applicants were required to submit a completed application providing information in response to twenty seven questions and, where relevant, the attachment of ten appendices among four general categories, all designed specifically to aid Staff in making a recommendation to the Board as to which proposed projects should be approved under N.J.S.A. 48:3-87(s). The required information included the following:

1. PJM Interconnection Queue Documentation; System Impact Study ("SIS"); Construction Service agreement ("CSA") and Interconnection Service Agreement ("ISA")

PJM Interconnect, LLC, under the jurisdiction of the Federal Energy Regulatory Commission, manages the process for interconnection of wholesale electric power generators. The PJM SIS, as discussed above, is an early milestone in the interconnection approval process. It was required for Subsection s eligibility, as specified in the Solar Act, to be issued by PJM for the proposed facility by June 30, 2011. Applicants were required to submit the entire PJM SIS including the cover letter which contains the month and year of issuance.

2. Permits and Qualifications

Each applicant was asked if all final, unappealable federal, state and local approvals had been secured. Additionally, applicants were required to submit proof of local permits to demonstrate that the facility could be constructed and operational in a reasonable period of time. Such documents may include a local zoning resolution containing the municipality's approval, construction permits and/ or the Certificate of Occupancy for the prospective solar site.

3. Current Status of Project Development

The first question on the Subsection s application required the applicant to characterize the status of the project by designating which of seven project milestones could apply to a project, from "designed" to "authorized to energize." Applicants were asked a series of questions designed to provide insight into project development progress including whether equipment had been purchased, whether construction had begun, when construction was initiated, whether materials were onsite, if any part of the project was currently installed, what materials were onsite, whether the project was interconnected, and when the project was anticipated to be interconnected. Applicants that claimed construction was initiated or materials were onsite were required to attach photographs of the completed construction or materials onsite. Staff determined that by supplying photos of the location of the proposed solar facility, the applicants would be providing the most accurate real time accounts of the construction progress, which could serve as evidence of potential to begin operations as represented.

4. Project Financial Data

Applicants were asked several questions with regard to the financial status of their proposed facilities to further enable Staff to determine the likelihood of timely project completion. Applicants that claimed to have purchased equipment were required to provide, as an attachment to the application, proof of expenditures via purchase orders, invoices or other proof of payment. Applicants were asked to provide anticipated total installed facility cost, the amount invested in project development to date, documentation of an application to safe harbor the IRS Section 1603 cash grant, whether project finance had been secured, and whether an SREC off take contract had been secured.

This financial data provided Staff with the ratio of reported investments made by the prospective generation facility to the total cost of the project. This ratio, in conjunction with the construction start date and anticipated end date provided in the application, furthered Staff's understanding of the cost and time, required to complete the solar project.

## STAFF REVIEW AND RECOMMENDATIONS

A total of fifty seven (57) Subsection s applications were received and reviewed by Board Staff. Fifty five (55) applications were date stamped by the Board's mailroom staff as received by the December 17, 2012 deadline. Subsequent to the deadline, one applicant brought to the attention of Board Staff that its application was apparently lost in transit as delivery of the Subsection s application package was verified by a Fed Ex tracking slip. And, on April 9, 2013, one applicant submitted an application despite acknowledging missing the Subsection s minimum requirements for a PJM System Impact Study by June 30, 2011, the 60 day Board notice requirement, and the application deadline. This application was retained for review since the developer submitted a letter to the Board immediately preceding the application development process described above, but was not directly informed of the application requirement until February 12, 2013. Twenty-five (25) developers, or their agents, submitted Subsection s applications, representing fifty-seven (57) solar projects and approximately 640 MW dc, 580 MW ac of total solar capacity. <sup>2</sup>

As a preliminary matter, Staff concluded that, while the Legislature gave the Board wide discretion to implement several Solar Act provisions, the Legislature limited eligibility for approval under Subsection s(2) to projects: (1) proposed to be located on agricultural land taxed pursuant to the "Farmland Assessment Act of 1964"; (2) for which PJM issued a System Impact Study on or before June 30, 2011; and (3) for which notice of intent to apply under Subsection s was filed with the Board within sixty days of the effective date of the legislation, i.e., by September 21, 2012. N.J.S.A. 48:3-87 (s) 2 (b). Seven projects did not meet these threshold requirements but were reviewed by Staff nonetheless: Rocksolid Realty for X1-037, United Solar Works for W4-018 and W4-040, Blue Sky Technologies for W4-103, EA! Investments for W4-073; OCI Solar for W3-101, and finally Brickyard Solar for X4-031.

Staff reviewed the application for each of the fifty seven (57) projects described above, along with any additional correspondence or comments submitted by the applicant. Following the review of application materials, Staff ranked the projects by progress toward completion based on the data submitted.<sup>3</sup> The key criteria utilized by Staff to judge project progress included the application submissions regarding project completion status, anticipated completion date, pictures of any completed construction, and percentage of funding expended. The top ten projects ranked by these criteria reported expending more than 45% of estimated total installed costs, the top three of which have expended more than 60% of estimated costs. The remaining forty seven (47) projects reported spending 13% or less of estimated installation costs. Forty six (46) projects reported spending less than 9% of costs as of December 17, 2012. Over half of the Subsection s applicants (30 of 57) reported expending less than two percent of total costs. Staff conducted field visits of the top ten projects to determine accuracy of the applicant's reported completion status for the proposed facilities.

Based upon its field inspections of the top ten most advanced projects, Staff found one project was fully constructed and operational, one project was one third complete and operational with the remaining two thirds under construction expecting interconnection in May of 2013, and a

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<sup>2</sup> Among the 56 applications verified as received within the announced deadline of December 17, 2012, five applicants failed to meet the 60-day notice requirement. Rather than dispute the veracity of the applicants' excuses for missing the deadline, Staff chose to review these applications.

<sup>3</sup> "Completion" includes all the activities required in developing a project, including but not limited to construction.

third project was nearly complete and awaiting final interconnection. Staff found the remaining seven project sites among the top ten to be largely in the same state of progress; most had only been cleared of debris with no physical signs of solar specific installation activities having been initiated. At one project site, pilings were driven and remained in the same state as pictured in the application submitted on December 14, 2012.

### **PROJECT DESCRIPTIONS**

Below are brief descriptions of the three projects that Staff is recommending for approval as "connected to the distribution system" under Subsection s(2)<sup>4</sup>.

#### **Sun Perfect Solar – (Pittstown) Dkt. No. EO12121101V - (PJM W1-132)**

On August 21, 2012, applicant Sun Perfect Solar ("Sun Perfect") submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's 2.3 MW dc, 2.0 MW ac project is located in Pittstown, New Jersey. The applicant subsequently submitted an application by the cut-off date of December 17, 2012.

On its application, Sun Perfect represented that the facility was designed, the site cleared, construction initiated and a majority of materials were onsite. The applicant provided evidence that it had purchased materials and equipment such as panels, racking and BOS materials which were delivered on June 29, 2012, and that construction began on February 23, 2012. Sun Perfect represented that it had secured federal, state, regional or local approvals, and indicated that the CSA and ISA have been executed and interconnection facility costs had been funded. Additionally, applicant demonstrated that an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant, and that project construction financing was secured. The applicant forecasted that system interconnection was anticipated to be completed on January 25, 2013.

The projected cost of the project was stated to be \$ 7,050,228. As of the date of submittal, Sun Perfect showed that \$ 6,508,483 had been expended, equivalent to over 92% of the total anticipated facility costs. However, the applicant stated that an SREC off take contract had not been secured.

Since, based on the information provided, the project was in an advanced stage of completion, Staff performed a site visit to the construction site on February 12, 2013 and confirmed that the project is currently installed. In a follow up call with the project developer, Staff was advised that the project is awaiting final interconnection approval and inspections. Sun Perfect anticipates obtaining an authorization to energize the facility in May 2013.

#### **OCI Solar Power – (Holmdel) Dkt. No. EO12121106V (PJM W1-112)**

On September 14, 2012, applicant OCI Solar Power ("OCI") submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the

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<sup>4</sup> All three projects demonstrated that they had received their PJM System Impact Studies on or before June 30, 2011.

project would be eligible to generate SRECs. Applicant's proposed 4.8<sup>5</sup> MW dc, 4 MW ac project is located in Holmdel, New Jersey. OCI subsequently submitted an application by the cut-off date of December 17, 2012.

In its application, OCI represented that construction was initiated, site work was underway, materials and equipment were purchased, and materials were onsite including inverters, trackers, frames, cables and pipes. The application indicated that OCI had secured federal, state, regional or local approvals. Additionally, OCI represented that an application has been submitted to safe harbor a Treasury Section 1603 Cash Grant. The applicant indicated the CSA and ISA have been executed and interconnection facility costs have been funded. As detailed more fully below, the applicant also indicated that the project has been installed, construction has commenced, and construction financing was secured. An SREC off take contract has not been secured.

The project application indicates that construction was initiated on January 10, 2012, with materials delivered onsite on May 10, 2012, and that the facility had an anticipated completion date of January 18, 2013. The projected cost of the project was stated to be \$15,140,000. As of the date of submittal, OCI represented that \$9,140,000 had been expended, equivalent to 60.37% of the total anticipated costs.

Since, according to the application the project was in an advanced stage of completion, Staff performed a site visit to the construction site on February 12, 2013. During this visit, Staff was informed that the facility size was reduced to three (3) MW dc total, and the project was being completed in two phases or arrays based on different equipment and mounting types. During the site visit, phase one of the project, one (1) MW dc on a fixed access mounting structure was completed and awaiting interconnection. Phase two of the project had completed the installation of a mounting structure capable of accommodating a dual axis tracking system. Staff was advised that the construction and interconnection of phase two of the project would be completed by June 1, 2013. On a follow-up call with the project developer, Staff was advised that phase one of the project has been authorized to energize, and phase two of the project is awaiting final interconnection approval and inspections. OCI anticipates obtaining an authorization to energize the remaining portion of the facility, phase two, in May 2013.

#### **NJ Clean Energy Ventures Corporation (Medford) - Dkt. No. EO12121142V - (PJM W2-056)**

On September 19, 2012, applicant NJ Clean Energy Ventures Corporation ("NJCEV") submitted a Notice of Intent to apply under Subsection s for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's 6.69 MW dc, 5.5 MW ac project is located in Medford, New Jersey. The applicant submitted an application by the cut-off date of December 17, 2012.

On its application, NJCEV represented that the facility had achieved all stages of project development, was completely constructed and authorized to energize. The applicant demonstrated that it had purchased material and equipment such as panels, racking and BOS materials which were delivered on June 23, 2012, and that construction began on June 18,

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<sup>5</sup> OCI's Subsection s application proposed a 4.8 MW dc solar facility. However, Staff interviews with the project development team together with the site inspection indicate that the system would be developed in two phases with the first one megawatt phase completed and energized and the second phase under construction with the final facility size being 3 MW dc.

2012. NJCEV represented that it had secured all federal, state, regional or local approvals, and indicated that the CSA and ISA had been executed, and interconnection facility costs were fully funded. While the applicant reported that no application to safe harbor a Treasury Section 1603 Cash Grant had been submitted, project construction financing was secured. The applicant reported that system interconnection was completed, and authorization to energize was granted on October 11, 2012.

The anticipated total installed cost of the facility was estimated by the applicant to be \$20,000,000. The applicant submitted a notarized certificate from the project's general contractor demonstrating that \$12,821,674 of the installation contract work had been completed as of October 3, 2012, equivalent to 64% to the total anticipated costs. Further, NJCEV stated in its application that an SREC off take contract has been executed. Since the project was in an advanced stage of completion, Staff performed a site visit to the construction site in March of 2013, and confirmed that the project is currently installed and operational.

### **STAFF RECOMMENDATIONS**

Board Staff has thoroughly reviewed the applications described above. Staff found that, based on the application materials submitted, each of the projects described above is at an advanced stage of completion. Staff further confirmed, based on site visits to each facility, that these projects are either completed and authorized to energize, or substantially completed with only final interconnection work remaining before being authorized to energize. Based on that review, Board Staff recommends that each application described above be granted approval as "connected to the distribution system" by the Board pursuant to Subsection s(2).

Board Staff interprets the Solar Act as providing the Board with the authority to approve or deny applications pursuant to Subsection s(2) when approval or denial would be consistent with the statutory intent to limit solar developed on farmland. Staff does not view limiting solar developed on farmland as a goal in itself, but rather as an action to be taken in the context of the overall intent of the Solar Act, the intent of its related sections, and the State's policy goals as expressed in the Energy Master Plan and the Renewable Portfolio Standard proceedings.

The Solar Act is commonly understood to have been passed to provide stability to the New Jersey SREC market. Its individual sections provide the Board with tools to help make the market less volatile while implementing the policy guidance expressed in the Energy Master Plan (2011 New Jersey EMP, Section 7.2.6, December 6, 2011). Subsection s provides an opportunity to review the progress of projects proposed for development on farmland and to evaluate those projects in light of the goals articulated in the Energy Master Plan. Staff found in its review of the applications submitted under Subsection s(2) that a clear separation in the state of project development exists between the three facilities recommended for approval and the remaining applications.

The three facilities recommended for approval are at an advanced stage of completion and, therefore, market participants are able to accurately forecast each facility's potential contribution of SRECs to the New Jersey SREC market and its potential impact on SREC market supply. The remaining proposed facilities present varying degrees of uncertainty as to whether or when the projects could be finalized. Uncertain development prospects translate into uncertainty in the forecast for new capacity joining the market, and its potential contribution of new SRECs to what is currently an oversupplied SREC market. It is Staff's position that the Solar Act's

Subsection q provides an alternative and more appropriate means for developers of more speculative projects on farmland to seek approval to participate in the SREC market.

Approval of these three projects as "connected to the distribution system" would result in 11.69 MW dc of additional capacity located on farmland being eligible to produce SRECs. This amount of capacity is able to produce 14,000 megawatt hours and hence an equal number of SRECs annually starting with EY 2014. And since the NJ Clean Energy Ventures project was authorized to energize on October 11, 2012, this project would be capable of contributing almost 5,000 MWh worth of SRECs to the oversupplied EY 2013 market. The forecast for oversupply in the EY 2013 SREC market currently stands at 791,000 SRECs.

Under existing Board rules at N.J.A.C. 14:8-2.4 (b) 3, to be eligible to form the basis of an SREC, electricity must be generated during the solar facility's qualification life, as defined at N.J.A.C. 14:8-2.2. The rules define an eligible facility's qualification life for production of SRECs as "beginning on the date the facility was authorized to energize under N.J.A.C. 14:8-5.8." Staff recommends the Board clarify that the facility's qualification life begins on the date the facility was authorized to energize by the authority having jurisdiction, since these projects are not net metered projects with an authorization made pursuant to N.J.A.C. 14:8-5.8.

Staff further recommends that any project that is not in compliance with the SRP rules regarding the timelines following execution of a contract be subject to the regulatory penalty: no SRECs may be retired for 12 months following authorization to energize. N.J.A.C. 14:8-2.4(e). The records reviewed by Staff indicate that OCI did not register in the SRP for the Holmdel project, and should be directed to submit an SRP application. OCI should also be subject to the penalty described above and forego the ability to retire SRECs for one year from the date of authorization to energize.

## **DISCUSSION AND FINDINGS**

In considering the construction and applicability of Subsection s, we note first that the goal of statutory construction is to effectuate legislative intent in light of the language used and the object sought to be achieved. McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001). As a state agency, in matters of statutory interpretation, the Board is guided by the decisions of the courts. In discerning legislative intent, the courts look first to the plain terms of the statute. Dep't of Children & Families, Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 301 (2011); State v. Hupka, 203 N.J. 222, 231 (2010); Nobrega v. Edison Glen Assocs., 167 N.J. 520, 536 (2001). An act's language is, in most instances, the "surest indicator" of the Legislature's intent. McCann, *supra*, 167 N.J. at 320. Additionally, N.J.S.A. 1:1-1 provides that in statutory construction, "words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning..." "To that end, 'statutes must be read in their entirety; each part or section should be construed in connection with every other part or section to provide a harmonious whole.'" Burnett v. Cnty. of Bergen, 198 N.J. 408, 421 (2009). Statutory construction that would render any part of a statute inoperative, superfluous, or meaningless is to be avoided. N.J. Carpenters Apprentice Training & Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 179-180 (1996).

If a statute "is clear and unambiguous on its face and admits of only one interpretation," effect should be given to the statute's plain meaning. Thomsen v. Mercer-Charles, 187 N.J. 197, 206 (2006) (quoting State v. Butler, 89 N.J. 220, 226 (1982)). Where literal words give rise to an



unclear or ambiguous statutory meaning, with more than one plausible interpretation, courts look to extrinsic evidence, including legislative history and contemporaneous construction to guide interpretation. Burnett, supra, 198 N.J. at 421; Clymer v. Summit Bancorp., 171 N.J. 57, 66 (2002); Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000). Extrinsic evidence also may be resorted to if a plain reading leads to an absurd result. Burnett, supra, 198 N.J. at 421.

Given these basic principles, we turn to the statute at issue, N.J.S.A. 48:3-87s). Subsection s(2) sets forth three requirements that a solar electric power generation facility must meet to obtain the Board's approval as "connected to the distribution system." First, PJM must have issued a System Impact Study for the facility on or before June 30, 2011. Second, the applicant must have filed a notice with the Board within 60 days of the effective date of the Solar Act, indicating its intent to qualify under Subsection s. Finally, the facility must be approved as "connected to the distribution system" by the Board.

In construing the first requirement, the Board looks to the plain meaning of the term "issued." Webster's Dictionary defines the verb "issue" as "to publish." Webster's II, New Riverside University Dictionary (1984). See also, Black's Law Dictionary, 830 (6<sup>th</sup> ed. 1990) (defining the verb "issue" as "[t]o send forth; to emit; to promulgate"). PJM indicates the issue date of a System Impact Study by including the date on the study's cover page. In applying the first requirement, the Board assesses whether the date included on the cover page of the applicant's System Impact Study is June 30, 2011 or earlier.

Second, the applicant must have filed a notice of intent to qualify under Subsection s(2) within 60 days of the effective date of the Solar Act. The effective date of the Solar Act was July 23, 2012. See N.J.S.A. 48:3-87(s)(2)(b); L. 2012, c.24, s.3 ("This act shall take effect immediately"). The sixtieth day after July 23, 2012 fell on September 21, 2012.

In addition to these two requirements, Subsection(s(2) contains a third requirement, that the facility must be "approved as 'connected to the distribution system' by the board." Subsection s(2)(c). Several commenters have argued that the third requirement should be satisfied so long as the applicant has obtained local permits and has complied with the SRP. See Comments of PVOne (third requirement should be satisfied so long as applicant "meets all previously required criteria in effect prior to passage of the Solar Act."); Comments of Pittsgrove Solar ("where solar developers . . . have the appropriate PJM-issued System Impact Study and duly filed the notice of intent to interconnect, the Board should promptly approve the facilities as connected to the distribution system, subject only to the facilities' compliance with applicable permits, inspections, and regulations."). These commenters correctly conclude that Subsection s requires compliance with local permits and the SRP, as the requirements under Subsection s(2) are "[i]n addition to any other requirements of P.L. 1999, c.23 or any other law, rule, regulation or order." N.J.S.A. 48:3-87(s). However, in light of the Board's duty to construe each part of Subsection s "in connection with every other part . . . to provide a harmonious whole," Burnett, supra, 198 N.J. at 421, the Board declines to construe Subsection s(2)(c) as only requiring compliance with local permits and the SRP. For similar reasons, the Board rejects the statutory construction proposed by Day Four Solar, LLC. that "if . . . a project as [sic] a PJM System Impact Study dating from before June 30, 2011, then a submission within 60 days of July 23, 1012, whereby the project confirms its intent to interconnect, is to lead to the BPU confirming it as 'connected to the distribution system'." To approve all projects that meet Subsection s(2)(a) and (b) - as Day Four suggests - would effectively read Subsection s(2)(c) out of the statute, something the Board declines to do. See Carpenters, supra, 147 N.J. at 179-180 ("Statutory construction that would render any part of a statute inoperative, superfluous, or meaningless is to be avoided.").

In construing this third requirement, the Board notes that there are no specific criteria included for this Board approval, in contrast with N.J.S.A. 48:3-87(r). Subsection s commits this review process to the Board's discretion, as Subsection (s)(2)(c) is immediately followed by the statement that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities, unless such facilities are exempt from such review as a result of having been approved pursuant to subsection q. of this section." It is well established that "[t]he grant of authority to an administrative agency is to be liberally construed to enable the agency to accomplish the Legislature's goals." Gloucester Cty. Welfare Bd. v. State Civil Serv. Comm'n, 93 N.J. 384, 390 (1983). This is especially so where, as here, the agency must construe and implement a new statute, In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 452 (1992), "or when the agency has been delegated discretion to determine the specialized and technical procedures for its tasks." In re Adopted Amendments to N.J.A.C. 7:7A-2.4, 365 N.J. Super. 255, 264 (App.Div.2003). Thus, in determining whether an applicant satisfies Subsection s(2)(c), the Board must exercise its discretion and assess whether approval of the applicant's facility as "connected to the distribution system" is consistent with the policies underlying the Solar Act.

The Board finds two distinct policies underlying the Solar Act to be particularly instructive. First, in enacting Subsection s, the Legislature sought to limit the development of solar facilities on farmland. This policy is clearly reflected in a press release announcing Governor Christie's signing of the Solar Act, which identified one of the Solar Act's objectives as "discouraging large-scale solar projects on farmland and open space." Office of the Governor, News Release for S-1925 (July 23, 2012). See State v. Drury, 190 N.J. 197, 212 (2007)(noting that press releases from the Executive Branch upon the signing of a bill into law offer a reliable aid in determining legislative intent). Consistent with this policy, Subsection s, which applies specifically to solar development on farmland, provides that a solar facility "shall only be considered "connected to the distribution system" if it meets the enumerated criteria." N.J.S.A. 48:3-87(s) (emphasis added). See McComb v. Hanly, 132 N.J. Eq. 182, 185 (E. & A. 1942) ("only" is a word of limitation); 3 Sutherland Statutory Construction § 57:9 (7<sup>th</sup> ed. 2007) (the use of the word "only" indicates that the particular course of action is intended to be exclusive).

The Board has received a number of letters from legislators, as discussed below, intended to aid the Board in its interpretation of Subsection s. In general, "[p]ost-enactment statements of legislators on legislative intent are of limited value in understanding the meaning of a statute." Selective Ins. Co. of Am. v. Rothman, 414 N.J. Super. 331, 340 (App.Div.) aff'd 208 N.J. 580 (2012). See also, N.J. Coalition of Healthcare Professionals, Inc. v. N.J. Dep't of Banking and Ins., 323 N.J. Super. 207, 256 (App.Div.), certif. denied, 162 N.J. 485 (1999).

By separate letters to Board President Hanna dated April 8, 2013, Assemblymen Upendra Chivukula, Robert Clifton and David Rible explained that the Solar Act "intended to implement" the preference of the Administration, as expressed in the Energy Master Plan, for solar projects on landfills and brownfields over those located on farmland. Further, they stated that the purpose of Subsection s "was to recognize the significant investment made by the development community in Farmland Grid Projects . . . in advanced stages." The legislators argue against the use by the Board of any "subjective approval process" for projects which meet the other criteria of Subsection s, namely a PJM SIS dated on or before June 30, 2011, notice to the Board of intent to qualify on or before September 21, 2012, and Board approval as "connected to the distribution system." As described above, Board Staff has recommended approval of only those farmland projects that are at or near commercial operation—in an advanced stage of

development -- and by adopting that recommendation, the Board would implement the criteria advocated by these legislators.

In contrast to the position of the legislators summarized above, Senate President Stephen Sweeney, in a letter to President Hanna dated April 9, 2013, recognized that Subsection s is a "fail safe provision that allows the BPU to limit some grandfathering if necessary to protect the broader solar industry." Although Senator Sweeney cautions that the legislature intended for the Board to use such discretion only at a time of "market crisis," the Board expects that approving 580 MW of solar projects, the overwhelming majority of which are far from operational, would exacerbate the market crisis which led to the enactment of the Solar Act and would directly conflict with the second policy objective, to mitigate volatility in the solar market.

Second, N.J.S.A. 48:3-87(d)(3)(b), provides that "[n]o more than 24 months following the date of enactment of P.L.2012, c.24, the board shall complete a proceeding to investigate approaches to mitigate solar development volatility." Taken together, these two policies - limiting solar development on farmland and mitigating volatility - indicate that the Board's approval of projects as "connected to the distribution system," pursuant to Subsection (s)(2)(c) should be limited to projects whose approval would not cause further volatility in the New Jersey solar market at this time.

Therefore, the Board **HEREBY APPROVES** the criteria adopted by Board Staff which accord preference to advanced projects, evaluating projects for approval under Subsection s(2) based on the following: completion status, anticipated completion date, pictures of any completed construction and percentage of funding expended. These criteria are designed to exclude projects that have not made progress in construction, and which therefore, remain speculative at this time. Approval of such speculative projects would leave other market participants unnecessarily uncertain about the future of a significant amount of potential solar capacity and about future SREC market conditions, thereby contributing to continued solar market volatility.

Therefore, the Board **HEREBY FINDS** that the three proposed facilities on farmland described above; Sun Perfect Solar, Inc.'s 2 MW dc facility in Pittstown interconnected at W1-132, OCI Solar Power, LLC.'s 3 MW dc facility in Holmdel interconnected at W1-112, and NJ Clean Energy Ventures Corporation's 6.69 MW dc facility in Medford at W2-056 have proceeded to an advanced stage of completion. The Board **FURTHER FINDS** that these three facilities have met the statutory requirements pursuant to the Solar Act's Subsection s warranting the approval of the facilities as "connected to the distribution system" for purposes of SREC eligibility under N.J.S.A. 48:3-87(s)(2).

The Board has been informed that Staff has refrained from SREC Registration Program ("SRP") processing activities for grid supply facilities that are subject to Board approval procedures under the Solar Act. Those deferred activities include issuance of a NJ Certification number, processing SRP extension requests or cancelling registrations for grid supply facilities that have exceeded the 12 month commitment period. As a result, these projects may require additional time to become compliant with the SREC registration process. If the project applicant has not filed an SRP package, it must do so now.

Accordingly, the Board **HEREBY APPROVES** the three solar electric generation facilities as "connected to the distribution system" under N.J.S.A. 48:3-87(s)(2): Sun Perfect Solar, Inc.'s 2 MW dc facility in Pittstown interconnected at W1-132; OCI Solar Power, LLC.'s 3 MW dc facility

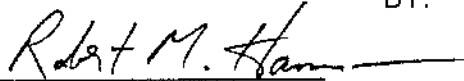
in Holmdel interconnected at W1-112; and NJ Clean Energy Ventures Corporation's 6.69 MW dc facility in Medford at W2-056.

The Board **HEREBY DIRECTS** Staff to continue processing each of the three approved facility's registration within the SREC Registration Program, granting an extension of the SRP where necessary to enable the facility developers to complete the SRP registration process. The Board **FINDS** that OCI did not register in the SRP for the Holmdel project, and **DIRECTS** OCI to submit an application. The Board further **FINDS** that OCI is subject to the penalties found at N.J.A.C. 14:8-2.4(e) and may not retire SRECs from its project for one year from the date of its authorization to energize.

Finally, the Board **HEREBY DIRECTS** that Staff issues a New Jersey Certification Number for purposes of SREC creation to each facility, provided that all remaining requirements at N.J.A.C. 14:8-2.4 are met.

DATED: 5/8/13

BOARD OF PUBLIC UTILITIES  
BY:


  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

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


Docket No. EO12090832V – In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012; and

Docket No. EO12090880V – In the Matter of the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(q), (r) and (s) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System –

Docket No. EO12121101V - Approval of Application for Sun Perfect Solar, Inc., W1-132,  
Docket No. EO12121106V - Approval of Application for OCI Solar Power, LLC., W1-112, Docket No. EO12121142V - Approval of Application for NJ Clean Energy Ventures, W2-056

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