



Agenda Date: 6/21/13
Agenda Item: 8H

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	ORDER APPROVING
L. 2012, C.24, THE SOLAR ACT OF 2012; AND)	SUPPLEMENT TO ESCROW
)	AGREEMENT
IN THE MATTER OF THE IMPLEMENTATION OF)	
L. 2012, C. 24, <u>N.J.S.A. 48:3-87(Q)</u> (R) AND (S) –)	
PROCEEDINGS TO ESTABLISH THE PROCESSES)	
FOR DESIGNATING CERTAIN GRID-SUPPLY)	
PROJECTS AS CONNECTED TO THE DISTRIBUTION)	
SYSTEM – SUBSECTION (Q) APPLICATION AND)	DOCKET NOS. EO12090832V
ESCROW AGREEMENT)	& EO12090880V

Parties of Record:

- Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel
- Mark Noyes**, Frenchtown III Solar
- Charles H. Shotmeyer**, Beaver Run Solar
- Brandon Murdock**, WC Landfill Energy, LLC
- Kevin Skudera**, Brickyard LLC
- Keissler Wong**, Rock Solid Reality
- Toni Avnery**, ITA, Inc.
- Mark Randall**, Midflare
- Hesser McBride, Esq.**, Solartricity
- Tony Favorito**, Pittsgrove Solar LLC
- James Maddonni**, Pennoni Associates, Inc.
- George Kotzias**, Alethea Solar II, LLC
- Richard Meurer**, Meurer Development, LLC
- Brent Beerley**, Community Energy Solar, West Pemberton Solar LLC, North Run Solar LLC, Monmouth East Solar LLC, Cedar Branch Solar LLC, Jacobstown Solar LLC
- Eddie Zeng**, Zongyi Solar America Co. Ltd
- Jim Spano**, North Park Solar Energy
- Nicholas Hiza**, Orion Solar Northeast, LLC
- Steven Gouin**, EAI Investment, LLC
- Earl Stahl Jr.**, Reeves Station South
- Joy Chao**, Lumberton Solar, LLC

BY THE BOARD:

At its April 29, 2013 Agenda meeting, the New Jersey Board of Public Utilities (“BPU” or “Board”) voted to approve a form of escrow agreement in the above-captioned matter (“Escrow Agreement”) to be used in connection with applications under N.J.S.A. 48:3-87(q) (“Subsection

(q)"). Subsection (q) was enacted as part of the July 2012 Solar Act, L. 2012, c. 24 ("Solar Act"), which charges the BPU with accepting and approving qualifying applications from certain proposed grid supply solar facilities for designation as "connected to the distribution system" during energy years 2014, 2015 and 2016¹. Subsection (q) provides, in pertinent part, that "[a]n application filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility."

Subsection (q) further provides that "[t]he notice escrow shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection." ibid. To implement this provision, the Escrow Agreement contains the following language:

The Depositor and the Escrow Agent agree that withdrawals from the fund shall not be made without the written approval or directive of the BPU. Written approval will be given only upon submission and approval of a written request identifying the specific provision(s) of N.J.S.A. 48:3-87(q) supporting the withdrawal. Written directive may be issued to the Escrow Agent by BPU upon a written request or in the absence of a written request upon a determination by BPU, in its discretion, that a) the Depositor is entitled to return of the funds because designation of the Solar Facility as connected to the distribution system is denied, b) the Depositor is entitled to return of the funds because the Solar Facility has achieved commercial operation within two (2) years of the date of designation or c) the State is entitled to the funds because the Solar Facility has failed to achieve commercial operation within two (2) years from the date of designation as connected to the distribution system. Upon the issuance and delivery to the Escrow Agent of such written approval or directive by BPU, the Escrow Agent shall immediately disburse the funds called for by said approval or directive, for use solely for the purposes and in the manner specified in said written approval or directive.

Escrow Agreement at para. 10.

Following the issuance of the Board's Order, an initial application period for projects seeking designation as "connected to the distribution system" pursuant to Subsection (q) was opened from May 15, 2013 to May 31, 2013. Over the course of this application period, a question was raised regarding the ability of an applicant/Depositor to seek to withdraw funds prior to designation of a project as "connected to the distribution system." This possibility was not addressed by the Escrow Agreement which does not specifically provide for such a withdrawal. This question must be considered in the context of the legislative purpose for requiring an escrow fund in connection with an application under Subsection (q). As noted above, the funds deposited in the escrow account are to be returned to the applicant/Depositor if the associated solar facility commences operations within two years of its designation by the BPU as "connected to the distribution system," and are to be forfeited to the State if commercial operations are not commenced within that time frame. It thus appears that the Legislature intended the escrow account to act as a type of surety that an applicant which received designation by the BPU would complete its proposed project. The Solar Act does not expressly require forfeiture of the escrow prior to the time the designation has been approved. In other

¹ As defined in N.J.S.A. 48:3-51, an energy year is the 12-month period from June 1 through May 31, numbered according to the calendar year in which it ends.

words, the Legislature has not made application under Subsection (q) the triggering event for the two years within which a proposed solar facility must either be completed or the escrowed funds forfeited; rather, the Solar Act expressly designates approval by the BPU as "connected to the distribution system" as the triggering event.

In keeping with the intent of this language, the Escrow Agreement states that funds deposited shall be "set aside and kept available in the event that the Solar Facility is designated by the BPU as connected to the distribution system[.]" Escrow Agreement at para. 1 (emphasis added). The Board therefore **FINDS** that release of the escrowed funds prior to designation of the proposed solar facility is consistent with the legislative intent as expressed in Subsection (q).

As quoted above, the Escrow Agreement permits withdrawals only upon a written directive from the BPU. The BPU continues to find this requirement appropriate when an applicant is seeking reimbursement of the escrowed funds because it is alleging that its solar facility has been rejected or has commenced operations within the two-year period or the BPU is directing that the funds be forfeit to the State. However, in the situation discussed above, where the Board has not yet acted upon an application, the BPU does not believe that its involvement serves a useful purpose and might in fact result in undue and unnecessary delay. The Board **FINDS** that when an applicant/ Depositor seeks to withdraw funds because it has withdrawn its application prior to designation by the BPU, confirmation in writing of termination of the application by BPU staff is sufficient authorization for withdrawal of the funds from the escrow account.

Accordingly, the Board **HEREBY MODIFIES** paragraph (10) of the Escrow Agreement as follows (new language is underlined):

[W]ithdrawals from the escrow account will not be made or permitted without the written approval or directive of the BPU, except as hereinafter provided. Written approval will be given only upon submission and approval of a written request identifying the specific provision(s) of N.J.S.A. 48:3-87 (q) supporting the withdrawal. Written directive may be issued to the Escrow Agent by BPU upon a written request or in the absence of a written request upon a determination by BPU, in its discretion, that a) the Depositor is entitled to return of the funds because designation of the Solar Facility as connected to the distribution system is denied, b) the Depositor is entitled to return of the funds because the Solar Facility has achieved commercial operation within two (2) years of the date of designation or c) the State is entitled to the funds because the Solar Facility has failed to achieve commercial operation within two (2) years from the date of designation as connected to the distribution system. Upon the issuance and delivery to the Escrow Agent of such written approval or directive by BPU, the Escrow Agent shall immediately disburse the funds called for by said approval or directive, for use solely for the purposes and in the manner specified in said written approval or directive.

Withdrawals from the escrow account may be made without the written approval or directive of the BPU when


- 1) the Depositor provides written notice to the Escrow Agent and to the BPU that the Depositor no longer seeks designation of the Solar Facility as connected to the distribution system, and
- 2) the Depositor provides written confirmation from BPU staff that the application for which the funds were deposited has been withdrawn prior to designation of the Solar Facility by the Board.


The Escrow Agreement as modified by this Order shall be used in any further application period under Subsection (q) should the Board open a further application period.

DATED: 6/21/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA 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



IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012;
 AND 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 –
 SUBSECTION (Q) APPLICATION AND ESCROW AGREEMENT

DOCKET NOS. EO12090832V & EO12090880V

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