



Agenda Date: 6/29/16
Agenda Item: 8F

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CLEAN ENERGY

ORDER

IN THE MATTER OF IMPLEMENTATION OF L. 2012,)
C. 24, THE SOLAR ACT OF 2012; AND)

DOCKET NO. EO12090832V

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 - REQUEST FOR APPROVAL OF GRID)
SUPPLY SOLAR ELECTRIC POWER GENERATION)
PURSUANT TO SUBSECTION (S))

DOCKET NO. EO12090880V

EFFISOLAR DEVELOPMENT, LLC)
QUAKERTOWN FARMS)
RENEWTRICITY)
EAI INVESTMENTS, LLC)

DOCKET NOS. EO12121108V,
EO12121138V, EO12121095V,
EO12121124V, EO12121112V,
EO12121120V

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Gerald W. Quinn, Esq., Cooper Levenson
Steven P. Gouin, Esq., Giordano, Halleran & Ciesla

BY THE BOARD:

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. 48:3-50(a)(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 New Jersey Board of Public Utilities ("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.

The Solar Act of 2012, a bi-partisan effort to stabilize the solar market, was signed into law by Governor Chris 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.

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 ten-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 create Solar Renewable Energy Certificates ("SRECs"). This review process is incremental to satisfaction of the SREC Registration Program ("SRP") process.

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 sixty (60) days of the effective date of the Act, (i.e., by September 21, 2012), and the Board approved the facility as "connected to the distribution system." N.J.S.A. 48:3-87(s)(2). 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 pursuant to [N.J.S.A. 48:3-87q]." N.J.S.A. 48:3-87(s).

By Order dated May 10, 2013, the Board denied or deferred final decision upon fifty-four (54) applications filed pursuant to Subsection (s). Thereafter, several appeals were filed. The Court dismissed the appeal of those matters on which the Board had deferred its decision as not ripe for appeal; in addition, a number of projects whose denial or deferral had been appealed were subsequently approved under a separate provision of the Solar Act.

Subsequently, four developers, whose appeals were still pending, and the Division of Law on behalf of Staff entered into negotiations. On June 6, 2016, Effisolar Development, LLC, Quakertown Farms, Renewricity, and EAI Investments, LLC, executed the attached settlement agreement with Staff ("Settlement"). In relevant part, the Settlement provides that:

1. Staff will recommend that the Board approve the Settlement Agreement and thereby approve the Projects designated as PJM W3-077, PJM W3-044, PJM W3-003, and PJM W4-073 under Subsection s so that the Projects can be deemed conditionally connected to the distribution system and eligible to earn SRECs under the terms set forth below.
2. Each Project shall be reduced to 10 MWs dc.
3. Each Developer shall have up to 24 months from the date of this Settlement Agreement to decide whether the Developer shall pursue the development of its Project.
4. If Developer wants to proceed with its Project, the Developer shall have the right to file a written statement with the BPU (the "Election"), which Election must be filed with the BPU before the expiration of the 24-month period. If the Developer does not

- file the Election before the expiration of the 24-month period, the right to file an Election: a) shall be deemed to have expired, b) shall be null and void, and c) shall be deemed forfeited.
5. With the timely filing of the Election, the Project shall be conditionally approved and deemed connected to the distribution system, subject to satisfaction of the SRP registration and milestone reporting requirements identified in the Settlement Agreement.
 6. Within fourteen (14) days of the effective date of the Board Order approving the Settlement Agreement, the Developer shall file an SRP registration package to reflect the 10 MW dc. If the Developer does not file the Election before the expiration of the 24-month period, the SRP: a) shall be cancelled; b) shall be null and void; and c) shall be deemed forfeited.
 7. Board Staff will recommend that the Board extend the current one-year SRP Registration length under the Renewable Portfolio Standards rules, N.J.A.C. 14:8-2.1 to -2.11 ("RPS rules"), to a three-year SRP Registration length consistent with the Settlement Agreement. Any enlargement of the SRP Registration length under the RPS rules will not further extend the three-year SRP Registration length for the Developers.
 8. The Developer shall construct and provide documentation of the Electric Distribution Company's ("EDC") authorization to energize the Project within twelve (12) months of the date the Election is filed with the Board. If the Developer constructs and provides documentation of authorization to energize before the twelve (12) months have elapsed, the Project shall continue to be deemed connected to the distribution system and therefore eligible to generate SRECs.
 9. In the event the Developer does not construct and provide documentation of authorization to energize before the twelve (12) months have elapsed, the Project: a) shall no longer be conditionally approved, b) shall no longer be deemed connected to the distribution system; and c) shall not be eligible to generate energy upon which SRECs may be based.
 10. Each Developer shall have the right to request one six-month extension to the aforesaid twelve (12) months and such extension may be granted by the SRP Manager upon a showing that the extension is necessitated by events beyond the Developer's control despite good faith efforts by the Developer to timely construct and energize the project. Such extension request must be filed with the SRP Manager prior to the expiration of the aforesaid twelve (12) months period.
 11. Within ten (10) days of the effective date of the Board Order approving the Settlement Agreement:
 - a. EffiSolar will file a Stipulation of Dismissal with Prejudice withdrawing its appeal of PJM W3-076 Stewartville/Greenwich (EO12121112V; A-004888-12T2) and of PJM W3-029 Ringoes/Raritan (EO12121120V; A-004888-12T2).
 - b. EffiSolar, Renewtricity, Quakertown and EAI will file a Stipulation of Dismissal with Prejudice withdrawing the Appeal, specifically the appeals of PJM W3-077 (EO12121108V; A-004888-12T2), PJM W3-044 (EO12121095V; A-004990-12T2), PJM W3-003 (EO12121138V; A-005143-12T2), and PJM W4-073 (EO12121124V; A-005013-12T2).

DISCUSSION AND FINDINGS

The Board is mindful of the State's public policy favoring reasonable and appropriate settlements. See Herrera v. Twp. of S. Orange Vill., 270 N.J. Super. 417, 424 (App. Div.1993). As recently summarized by the New Jersey Supreme Court, public policy favors the settlement of disputes because, among other things, settlement spares the parties the risk of an adverse outcome and the time and expense of protracted litigation, and also preserves overstretched judicial resources. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 253-254 (2013).

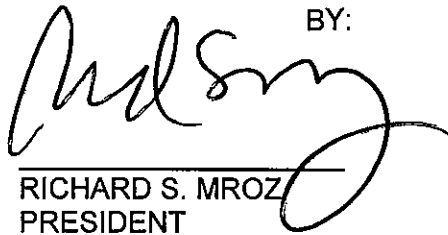
After review, the Board **FINDS** that the terms of the settlement are fair and reasonable. Under the terms of the Settlement Agreement, all Projects will reduce their size to ten (10) MWdc and no Project will necessarily exercise its Election. Thus, the Settlement Agreement minimizes the impact on the SREC market and eliminates the need for additional litigation over the Subsection (s) process.

Accordingly, the Board **HEREBY ADOPTS** the Settlement in its entirety, incorporating the terms thereof into this Order as if fully set forth herein, and **HEREBY DIRECTS** the parties to comply with the terms of the Settlement Agreement.

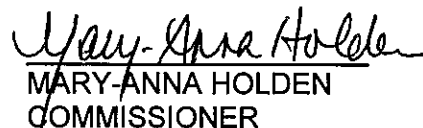
The effective date of this Order is July 9, 2016.

DATED: 6/29/16

BOARD OF PUBLIC UTILITIES
BY:

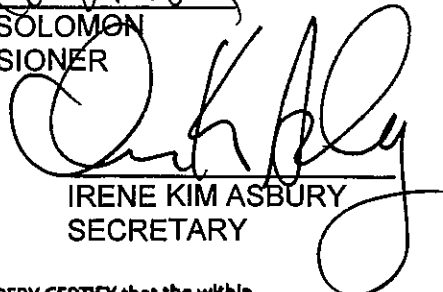

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

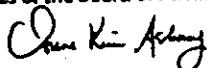

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
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 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)(S) -
PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID
SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM - REQUEST FOR
APPROVAL OF GRID SUPPLY SOLAR ELECTRIC POWER GENERATION PURSUANT TO
SUBSECTION (S)

EFFISOLAR DEVELOPMENT, LLC, QUAKERTOWN FARMS, RENEWTRICITY,
EAI INVESTMENTS, LLC

DOCKET NOS. EO12090832V, EO12090880V, EO12121108V, EO12121138V, EO12121095V,
EO12121124V, EO12121112V, EO12121120V

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 Attorney for Appellants EffiSolar Development, LLC,
 Quakertown Farms, and Renewtricity

IN THE MATTER OF IMPLEMENTATION	:	SUPERIOR COURT OF NEW JERSEY
OF L. 2012, C. 24, THE SOLAR ACT	:	APPELLATE DIVISION
OF 2012; and IN THE MATTER OF THE	:	
IMPLEMENTATION OF L. 2012, C. 24,	:	DOCKET NOS. A-004888-12T2
<u>N.J.S.A. 48:3-87(Q) (R) (S) -</u>	:	A-005143-12T2
PROCEEDINGS TO ESTABLISH THE	:	A-004990-12T2
PROCESSES FOR DESIGNATING CERTAIN	:	A-005013-12T2
GRID SUPPLY PROJECTS AS CONNECTED	:	
TO THE DISTRIBUTION SYSTEM -	:	ON APPEAL FROM:
REQUEST FOR APPROVAL OF GRID	:	
SUPPLY SOLAR ELECTRIC POWER	:	NEW JERSEY BOARD OF PUBLIC
GENERATION PURSUANT TO SUBSECTION	:	UTILITIES
(S).	:	
	:	DOCKET NOS.
APPELLANTS:	:	EO12090832V, EO12090880V,
	:	EO12121108V, EO12121138V,
EFFISOLAR DEVELOPMENT, LLC	:	EO12121095V, EO12121124V
	:	EO12121112V, EO12121120V
QUAKERTOWN FARMS	:	
	:	SAT BELOW:
RENEWTRICITY	:	Robert M. Hanna, BPU President
	:	
EAI INVESTMENTS, LLC	:	
	:	SETTLEMENT AGREEMENT
	:	
	:	
	:	

THIS SETTLEMENT AGREEMENT is entered into on 6th day
 of June, 2016, by EffiSolar Development, LLC
 ("EffiSolar"), Renewtricity, Quakertown Farms ("Quakertown"),
 EAI Investments, LLC ("EAI") and the Staff of the New Jersey
 Board of Public Utilities ("Board Staff").

BACKGROUND

1. EffiSolar is the developer of that certain grid supply solar farm designated as PJM W3-077. On September 14, 2012, EffiSolar submitted a Notice of Intent to apply under N.J.S.A. 48:3-87(s) ("Subsection S"), for designation as connected to the distribution system so that the proposed project would be eligible to generate solar renewable energy certificates ("SRECS"). EffiSolar subsequently submitted an application (the "Application") by the cutoff date of December 17, 2012. The proposed project size was 15 MW dc and 13.3 MW ac and was to be located in Franklin Township, New Jersey. The Application was denied by the Board of Public Utilities ("BPU" or "Board") in an Order dated May 10, 2013. On July 2, 2013, EffiSolar filed an Appeal to the Appellate Division from the Board Order by way of Docket No. A-004888-12T2.

2. Renewtricity is the developer of that certain grid supply solar farm designated as PJM W3-044. On August 10, 2012, Renewtricity submitted a Notice of Intent to apply under Subsection S of the Solar Act for designation as connected to the distribution system so that the project would be eligible to generate SRECS. Renewtricity's proposed 23.9 MW dc, 19 MW ac project is located in Washington Township, Warren County, New Jersey. Renewtricity subsequently submitted an application to

the BPU (the "Application") by the cut-off date of December 17, 2012. The Application was denied by Board in an Order dated May 10, 2013. On June 21, 2013, Renewtricity filed an appeal to the Appellate Division from the Board Order by way of Docket No. A-004990-12T2.

3. Quakertown is the developer of that certain grid supply solar farm designated as PJM W3-003. On December 14, 2012, Quakertown submitted an Application under Subsection S (the "Application") for designation as connected to the distribution system so that the proposed project would be eligible to generate SRECS. The Application proposed 10 MW dc, 8.5 MW ac. The project was to be located in Franklin Township, Hunterdon County, New Jersey. The Application was denied by the BPU in an Order dated May 10, 2013. On July 2, 2013, Quakertown filed an Appeal to the Appellate Division from the BPU Order by way of Docket No. A-005143-12T2.

4. EAI is the developer of that certain grid supply solar farm designated as PJM W4-073. On September 19, 2012, EAI 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. An application was filed on December 17, 2012 under Subsection S (the "Application"). The Applicant proposed 17 MW dc and 17 MW ac on lands located in Pohatcong, New Jersey. The Application was

denied by the BPU in an Order dated May 10, 2013. On June 21, 2013, EAI filed an Appeal to the Appellate Division from the BPU Order by way of Docket No. A-005013-12T2.

5. Renewtricity, Quakertown, EAI, and EffiSolar are hereinafter referred to collectively as the "Developers." Each of the Developers' solar farms are hereinafter referred to collectively as the "Projects" or "Project" in the singular.

6. The appeals filed by the Developers (the "Appeal") were consolidated with other appeals, bearing docket numbers A-005042-12T2, A-005267-12T2, and A-000060-13T3, for hearing by Order of the Appellate Division entered on December 13, 2013.

7. The Projects are the last remaining active and viable projects consolidated under the Appeal that remain in the Appeal for which SREC eligibility has not otherwise been established under Paragraph Q of the Solar Act.

NOW, THEREFORE, the Parties AGREE that:

1. At the next regularly scheduled Board agenda meeting after execution of this Settlement Agreement, subject to scheduling considerations, Board Staff shall recommend that the Board approve this Settlement Agreement and thereby approve the Projects under Subsection S so that the Projects can be deemed conditionally connected to the distribution system and eligible to earn SRECs under the terms set forth below.

2. Each Project shall be reduced to 10 MWs dc. Each Developer shall have up to 24 months from the date of this Settlement Agreement to decide whether or not the Developer shall pursue the development of its Project.
3. Once the Developer decides the Developer wants to proceed, the Developer shall have the right to file a written statement with the BPU that the Developer has elected to proceed (the "Election").
4. The Election must be filed with the BPU before the expiration of the 24 month period. If the Developer does not file the Election before the expiration of the 24-month period, the right to file an Election: a) shall be deemed to have expired, b) shall be null and void, and c) shall be deemed forfeited.
5. With the timely filing of the Election, the Project shall be conditionally approved and deemed connected to the distribution system, subject to satisfaction of the BPU SREC Registration Program ("SRP") registration and milestone reporting requirements set forth herein, so that the Project shall be eligible to generate SRECS if constructed in accordance with the terms of this Settlement Agreement and the herein mentioned requirements.

6. Within 14 days of the effective date of the Board Order approving the Settlement Agreement, the Developer shall file with the SRP. Specifically, the Developer shall file a SRP registration package to reflect the 10 MW dc. If the Developer does not file the Election before the expiration of the 24-month period, the SRP: a) shall be cancelled, b) shall be null and void, and c) shall be deemed forfeited.
7. Board Staff shall recommend that the Board extend the current 1 year SRP Registration length under the Renewable Portfolio Standards rules, N.J.A.C. 14:8-2.1 to -2.11 ("RPS rules"), to a 3 year SRP Registration length consistent with the Settlement Agreement. Any enlargement of the SRP Registration length under the RPS rules will not further extend the 3 year SRP Registration length for the Developers.
8. The Developer shall construct and provide documentation of the Electric Distribution Company's ("EDC") authorization to energize the Project within 12 months of the date the Election is filed with the Board. If the Developer constructs and provides documentation of authorization to energize before the 12 months have elapsed, the Project shall continue to be deemed

connected to the distribution system and therefore eligible to generate SRECS.

9. In the event the Developer does not construct and provide documentation of authorization to energize before the 12 months have elapsed, the Project: a) shall no longer be conditionally approved, b) shall no longer be deemed connected to the distribution system, and c) shall not be eligible to generate energy upon which SRECS may be based.
10. Each Developer shall have the right to request one six-month extension to the aforesaid 12 months and such extension may be granted by the SRP Manager upon a showing that the extension is necessitated by events beyond the Developer's control despite good faith efforts by the Developer to timely construct and energize the project. Such extension request must be filed with the SRP Manager prior to the expiration of the aforesaid 12 month period.
11. There will be no obligation for all of the Developers to file the Election. The right to file the Election belongs to each Developer and may or may not be filed by all Developers. The failure by any one Developer or Developers to file an Election will not affect the right of any other Developers to file the Election.

12. Those Developers which do file an Election shall file quarterly Milestone Reporting Forms with the SRP.
13. The consolidated matters - the Appeal - are to be deemed settled as of the effective date of the BPU Order approving the Settlement Agreement.
14. Within 10 days of the effective date of the Board Order approving this Settlement Agreement:
 - a. EffiSolar will file a Stipulation of Dismissal with Prejudice withdrawing its appeal of PJM W3-076 Stewartsville/Greenwich (EO12121112V; A-004888-12T2) and of PJM W3-029 Ringoes/Raritan (EO12121120V; A-004888-12T2). The application for PJM W3-029 was approved by the Board under N.J.S.A. 48:3-87(q) ("Subsection Q"). As such, that project is subject to Subsection Q and does not receive any benefits or burdens under Subsection S as a result of this Settlement Agreement. PJM W3-076 Stewartsville/Greenwich (EO12121112V) was abandoned by the developer.
 - b. EffiSolar, Renewtricity, Quakertown and EAI will file a Stipulation of Dismissal with Prejudice withdrawing the Appeal, specifically the appeals of PJM W3-077 (EO12121108V; A-004888-12T2), PJM W3-044 (EO12121095V; A-004990-12T2), PJM W3-003

(EO12121138V; A-005143-12T2), and PJM W4-073
(EO12121124V; A-005013-12T2).

15. This Settlement Agreement shall be binding on all parties, their respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
16. This Settlement Agreement represents the entire integrated agreement between the all parties and the resolution of all matters set forth in the Appeal.
17. This Settlement Agreement shall become effective upon the issuance of a Board Order approving same and the execution hereof by all parties.
18. By signing this Settlement Agreement, the signatories represent that they have the authority to bind the parties to this Settlement Agreement.
19. Except with respect to any rights pursuant to this Settlement Agreement which the Parties acknowledge is subject to Board approval, each of the Parties hereby waives, releases, relinquishes, and discharges each other Party and its and their affiliates, subsidiaries, predecessors, successors, and representatives, counsel and agents and its and their heirs, successors, and assigns from any and all claims, liabilities, suits, damages, actions, or manner of actions, whether in

contract, tort, or otherwise which either Party ever had, or now has or hereafter may have against the other Party or any of them, whether the same be in administrative proceedings, in arbitration, in law, at equity, or mixed, arising from or relating to any act or omission, or thing or matter of any kind whatsoever, by or on behalf of the other party or any of them prior to the date hereof which arise out of, underlie or are related to the Project.

20. No Party admits having engaged in any wrongful conduct or having violated the rights of any other Party hereto. The Parties agree that nothing in this Settlement Agreement constitutes or shall be deemed to constitute any admission of wrongdoing.
21. The waiver by any Party of a breach or violation of any provision of this Settlement Agreement shall not operate as or be construed to be a waiver of any subsequent breach of this Settlement Agreement. Further, no Party shall be deemed to have waived any provision of or right under this Settlement Agreement unless such waiver is set forth in writing signed by the Party against whom waiver is asserted.
22. This Settlement Agreement shall not be construed more strictly against any Party hereto merely by the virtue

of the fact that the Settlement Agreement may have been drafted or prepared by such Party or its counsel, it being recognized that all of the Parties hereto have contributed substantially and materially to the preparation of such document and that this Settlement Agreement has been the subject of negotiations between the Parties and as product of that negotiation.

23. Each of the Parties agrees to execute any and all additional documents necessary to effectuate the intent and purpose of this Settlement Agreement.

24. The construction, interpretation, and enforcement of this Settlement Agreement shall at all times and in all respects be governed by the laws of the State of New Jersey, without reference to the State of New Jersey's choice of law or conflict of law provisions or principles.

25. This Settlement Agreement may be executed in one or more counterparts, any of which, if originally executed, shall be binding upon the parties signing thereon, and all of which taken together shall constitute one and the same instrument.

STAFF OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES

DATED:

By: _____

EFFISOLAR DEVELOPMENT, LLC

DATED:

June 1, 2016

By: 

QUAKERTOWN FARMS, LLC

DATED:

By: _____

RENEWTRICITY

DATED:

By: _____

EAI INVESTMENTS, LLC

DATED:

By: _____

CLAC 3435660.1

STAFF OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES

DATED:

By: _____

EFFISOLAR DEVELOPMENT, LLC

DATED:

By: _____

QUAKERTOWN FARMS, LLC

DATED: 5-27-2016

By: David DeHollander

RENEWTRICITY

DATED:

By: _____

EAI INVESTMENTS, LLC

DATED:

By: _____

CLAC 3435660.1

STAFF OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES

DATED:

By: _____

EFFISOLAR DEVELOPMENT, LLC

DATED:

By: _____

QUAKERTOWN FARMS, LLC

DATED:

By: _____

RENEWTRICITY

DATED:

5.26.16

By: _____



Kenneth Bob

EAI INVESTMENTS, LLC

DATED:

By: _____

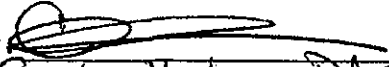
CLAC 3435660.1

STAFF OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES

DATED:

6/6/14

By:


Caroline Vachier, DAC

EFFISOLAR DEVELOPMENT, LLC

DATED:

By: _____

QUAKERTOWN FARMS, LLC

DATED:

By: _____

RENEWTRICITY

DATED:

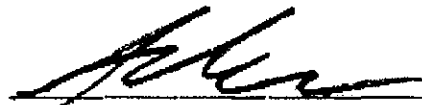
By: _____

EAI INVESTMENTS, LLC

DATED:

5-26-16

By:



CLAC 3435660.1

**STEVEN P. GOVIN
ATTORNEY AT LAW
OF NEW JERSEY**