August 22, 2013

Mr. Scott Hunter
Office of Clean Energy
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, NJ 08625

RE: Comments – Staff Straw Proposal for Additional Application Criteria and Milestone Reporting Requirements for Solar Act Subsection S Deferrals

Dear Scott:

The guiding vision for directing solar energy policy can be circumscribed by the Solar Act, Energy Master Plan and governing agencies having jurisdiction over land use and permits. The approach delineated in the OCE Straw Proposal is more complex than is needed. All of the pertinent issues identified in the straw proposal can be separated into those that must be addressed at the local or state agency level and those issues that must be addressed by the BPU. Separating these issues into these two categories simplifies decision making.

Issues addressed in sections 1 and 3 of the OCE Straw Proposal are the purview of the BPU. Issues cited in section 2 are the purview of those local and state agencies having jurisdiction for land use, building permits, environmental compliance, coastal integrity compliance, etc. Approval of grid-connected projects on farmland through subsection S provided a mechanism to recognize projects that had received all necessary governmental permits and approvals, were proceeding through the interconnection permit process with PJM and had incurred significant project investment to warrant safeguarding that investment outside of a total annual capacity limit as prescribed in subsection Q. Presumably all 20 projects for which a deferral decision has been made had irrevocably acquired all relevant municipal, county and state approvals and permits so only confirmation that these approvals and permits are still valid is necessary. Rationale for deferring a decision was due to insufficient evidence of major progress towards completion.

Even subsection Q which offers another channel for any proposed grid-connected farmland-based solar project to apply for Board approval of its connection to the distribution system does not impose any criteria with respect to the Farmland Preservation Program or benefits of job creation. These topics ought to be addressed at the local level when discussing land use, zoning allowances and community acceptance before approvals are granted.

The New Jersey State League of Municipalities correctly sites the Energy Master Plan as opposing the conversion of farmland to solar generation sites. However, the purpose of subsection S was to offer a pathway for project developers who had already invested a considerable amount of money and time in advancing these projects prior to the passage of the Solar Act to protect their investments by completing the projects. NJSLM's last two recommendations to limit the solar capacity eligible to earn SRECS and to defer commencement of SREC monetization until 2017 are unwarranted interferences in the free market setting SREC pricing. The project developer must be capable of assessing his/her own risks and financial cash flow requirements.

We agree with many of Justin Michael Murphy's comments regarding the documentation of key agency approval and permit dates. The supplemental information being proposed with regards to the economic benefits incurred by the public as a result of the private investment for upgrading the electrical distribution system and providing solar generated electricity is noteworthy but exceeds the boundaries of defining project development status and trajectory towards completion. The examination of site overview and land use is superfluous as these items needed to have been favorably resolved already at the local or state agency level having the proper jurisdiction.

The State Agricultural Development Committee can advise on what agricultural acreage might be candidates for inclusion in a Farmland Preservation Plan but it has no standing to dictate land use in the municipality. The recommendations need to be directed to the local planning boards. Therefore, the local planning and zoning boards have the jurisdiction to approve or deny requests for siting solar installations on agricultural land. It is the responsibility of these authorities, with input from the elected officials and resident citizens, to make decisions that are in the best interests of the community. These decisions are manifested in the approval or denial of the requests to install solar systems on individual agricultural properties.

The criteria and milestone reporting which need to be satisfied in order to conclude with a more definitive project status of approved or denied are the following:

- **Approvals and Permits –** Reconfirmation that all necessary final, unappealable approvals and permits have been issued by supplying the approval dates from each relevant agency; Planning Board, Zoning Board, DEP, Building Department, etc.

- **PJM Interconnection** - Total project scope and cost to upgrade the EDC distribution system have been identified and quantified from the facility upgrade study and to which the project developer has consented. Schedule for completion has been defined. Intent by PJM to issue an interconnection permit pending completion of the described distribution system upgrade.

- **Electricity Sales** - Power purchase agreement or PJM wholesale market participation agreement completed.

- **Project Schedule** – Defined with key milestones including any interim reporting. Proposed interim reporting are selection and contract with an EPC company with updated projections for all subsequent milestones, procurement of major solar equipment with updated projections for all subsequent milestones, construction start date with updated projections for all subsequent milestones, PJM interconnection permit with updated projections for all subsequent milestones, construction completion date with updated projections for all subsequent milestones, authorization to energize.

- **Project Risks** - Identification of major project risks that could result in project delay or cancellation. Measures to mitigate these risks are to be specified.

- **Project Completion** – Deadline date imposed by BPU based on a reasonable period after the official date certifying that the project is recognized as being connected to the electric distribution system.

Sincerely,

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KDC SOLAR

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September 5, 2013

TO: Scott Hunter, Renewable Program Energy Administrator
FR: Thomas Lynch, KDC Solar LLC

RE: Staff Straw Proposal for Supplementary Application Criteria and Milestone Reporting Requirements for Deferred Subsection (s) Applications - Comments

At the August 2013 Renewable Energy Committee Meeting, staff requested comments on its Straw Proposal for Supplementary Application Criteria and Milestone Reporting Requirements for Deferred Subsection (s) Applications (Straw Proposal), and on preliminary responses to the Straw Proposal shared by the New Jersey League of Municipalities (NJLM) and Justin Michael Murphy, Esq.

KDC Solar is a developer of large (1 MW+) dual benefit, net metered projects. A New Jersey based company, KDC has been active in the State since 2009, providing stably priced, renewable electricity to many of New Jersey's largest employers. Since its inception, KDC, keenly aware of evolving NJ solar policy has chosen to focus on projects which deliver multiple benefits. At KDC, we provide some of the largest companies in the State incentive to remain in New Jersey by fixing costs of electricity over the long term, realizing significant savings for these companies, while delivering clean, renewable electricity to New Jersey, and helping the State efficiently reach its' clean energy goals.

Please accept the following comments on behalf of KDC Solar.

We agree with the position put forward by the NJLM for the following reasons:

Balance of Interests: By allowing no greater than 20 MW in aggregate of Subsection (s) projects to qualify for SREC eligibility, there is a reasonable balance with regard to the oversupplied SREC market and consideration of developers' stranded costs. It is widely understood in the market and by BPU staff that the SREC market will likely not attain demand/supply balance until sometime during EY2016. Given this fact, and the broad authority granted to the BPU by the Solar Act, the BPU has a responsibility to encourage orderly market development. Put another way, given the last several years of explosive solar growth that resulted in oversupply, the BPU should not take actions that would exacerbate solar market volatility through development of grid projects on farmland that are antithetical to the Governor's Energy Master Plan. We believe the 20 MW number is a reasonable balancing of interests.

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Appropriate application of grandfathering considerations: The NJLM appropriately calls out the proper treatment for grandfathering considerations which should only be applicable for expense incurred BEFORE the passing of the Solar Act. Grandfathering as a policy attempts to honor investments made that were consistent with law in place at that time. It would not be appropriate to apply grandfathering policy to any expenses incurred after passage of the Solar Act when Developers were on notice regarding the explicit discouragement of grid supply solar on NJ farmlands. In addition to explicit language in the Solar Act, such explicit discouragement was also emphasized in the Energy Master Plan, released 7 months prior to the passing of the Solar Act.

Distinguish "shovel ready" projects: We agree with the NJLM in narrowing the field for consideration for SREC eligibility to projects that have all necessary unappealable permits in hand and have spent more than half the estimated project costs – where the project costs that are counted are consistent with our previous point above that only costs incurred prior to passage of the Solar Act should be considered. Many of the projects that filed to receive consideration under Subsection (s) were highly speculative and in very early stages of development. The BPU should not consider such projects for SREC eligibility and we encourage the BPU to follow through the logic applied with respect to its' previous decisions in April 2013 that denied SREC eligibility for 33 Subsection (s) projects.

Protecting the SREC Market: We agree with the NJLM that in addition to limiting the number of MWs that should be eligible to receive SRECs, an additional safeguard should be in place in order to limit market volatility. SREC generation for any Subsection (s) projects receiving approval should not commence until Energy Year 2017. This is a reasonable tool available to the BPU that should be applied in this case to encourage orderly market development in the face of the current oversupplied market.

We appreciate the opportunity to comment on this matter and look forward to our continued involvement as an active stakeholder in the implantation of the Solar Act.

Sincerely,

Thomas P. Lynch

Thomas P. Lynch
Executive Vice President

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September 5, 2013

Via email to: publiccomments@njcleanenergy.com

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor (PO Box 350)
Trenton, NJ 08625-0350

RE: Comments on the recommendation for additional criteria and milestones for the evaluation of the Deferred S projects under N.J.S.A. 48:3-87 (s)

Dear Secretary Izzo,

The purpose of this letter is to set forth our comments to that certain "Request for Public Comment on Staff Straw Proposal for Additional Application Criteria and Milestone Reporting Requirements for Solar Act Subsection (s) Deferrals" (hereafter the "Straw Proposal").

This letter is submitted on behalf of the New Jersey Solar Grid Supply Association (the "Association"), an organization created to represent New Jersey's grid supply solar developers and related land owners, engineers, contractors, electricians, etc. The Association counts within its membership 18 of the 20 applicants and developers presently designated as Deferred S projects. Our comments are as follows:

1. **The entire process and dialogue concerning criteria and the Straw Proposal appears inapplicable to any Deferred S projects, and should not continue.**

On July 19, 2013, the BPU Commissioners decided a motion for reconsideration brought by Community Energy whose stated purpose was to move its project (#W1-127) from Denied S to Deferred S based on the fact that it possessed all final unappealable approvals at the time of its December, 2012 Subsection S Application. The Board denied the Community Energy motion on the basis that the project had not achieved an advanced stage of completion due to lack of construction building permits and the placement of site improvement surety bonds with the municipality. The Board went on to state that it had been made aware of four other projects in that category and that Secretary's letters would be sent to those project developers with the advice that if the construction permit had not been issued, those projects would be moved from Deferred to Denied.

At the August Renewable Energy Committee Meeting, Scott Hunter indicated that the Board's investigation was continuing and that a total of 10 Secretary's letters had been sent on the subject. Those letters provided applicants with notice that the Board intends to re-open the May 10 Order on its own motion for the purpose of denying those deferred applications based the non-issuance of building applications or construction permits. At the same meeting, Mr. Hunter was asked if he could imagine any S project being deemed connected under any circumstance notwithstanding the submission of any other evidence pursuant to any of the criteria contemplated in the Straw Proposal, if in fact the Project did not have issued building permits and posted performance bonds. Mr. Hunter answered that he could not imagine any such approval.

The Association represents 18 of the 20 Deferred S projects (94.8% of MW possessing Deferred S status). Of those 18 Deferred S projects, 11 are the subject of appeals before the Appellate Division at the Superior Court of New Jersey (and, according to the Straw Proposal, not part of its review). In any case, they did not possess building permits. Of the remaining 7, 5 have obtained approval via Subsection Q and the other 2 do not possess building permits (and also would not be subject to this Straw Proposal). . Of those 2 projects that are not represented by the Association, 1 has confirmed that it too does not possess building permits and the other has been approved via Subsection Q (making it highly unlikely that it would choose to continue seeking approval via Subsection S since it has already spent $14 million on equipment – logic says Subsection Q is the path it will take). Simply stated, there aren't any projects currently designated Deferred S (that is not already approved pursuant to Subsection Q) that have an outstanding building permit or posted surety performance bonds.

This should not be surprising. It would be financially irresponsible and entirely foolish for any builder or developer to pull an *"of right"* building permit before he was ready to construct (which would not occur under any reasonable commercial circumstance until BPU approval to connect to the distribution system has been secured). Ironically, building permits are not appealable. Rather, they are granted through an administrative process prior to groundbreaking and no reasonable developer would proceed to groundbreaking until they receive BPU approval to connect to the distribution system. For the three projects that were approved pursuant to Subsection S, they completed their project finance and building permits process *well* before the Solar Act was even drafted (at a time when BPU approval was an administrative step, as it is today for net-metered projects). The same is true of the surety site performance bonds. In fact, one would be totally irresponsible in posting a bond in the present BPU approval environment since the town could call the bond causing unacceptable financial loss if the improvements had not been constructed timely. In other words, the suggestion that the Deferred S projects should have possessed building permits in advance of BPU approval is the equivalent of "rolling the dice" with the "hope" that BPU approval is granted, which is neither reasonable nor feasible, and is a hurdle that no project can or should be required to meet.

Based on the Community Energy decision and on the Board's stated intent to deny those projects without building applications or construction permits, we do not anticipate that the Straw Proposal could be applicable to any Deferred S projects.

2. The entire dialogue, the creation of additional Deferred S criteria and this debate is an abhorrent, misguided and intentional misinterpretation of Subsection S of the Solar Act.

The Statute clearly provides that projects are to be deemed connected to the distribution system pursuant to Subsection S if they (a) possess a PJM issued System Impact Study on or before June 30, 2011, (b) they file the requisite notice, and (c) the facility has been approved as "connected to the distribution system" by the board.

We submit that these criteria were intended to be straightforward, objective and capable of being easily decided and implemented in a timely manner, the purpose being to protect the significant investments of those grid supply developers that were invited and incentivized to participate in this market. We strongly protest on no uncertain terms any effort by the BPU in the implementation of this Subsection to take this Subsection or any section contained therein as license to create new criteria or subjective decision making not expressly set forth in the Statute. What has happened and is happening with this process, past and present, is that the BPU has and is distorting the purpose and meaning of Subsection S

and thoroughly and deplorably defeating its intent with the result that 13 months after the adoption of the Solar Act, the BPU has only approved 1.8% of the capacity that validly applied under Subsection S, with the resultant destruction of tens of millions of dollars of investment capital, loss of income, and the loss of thousands of jobs and employment.

This point was specifically addressed by the Primary Sponsor of the Solar Act, Senate President Stephen M. Sweeney, in his April 9, 2013 letter to Board President Robert Hanna, Esq. in which he expressly stated the legislative intent of Subsection S(2) as:

> **"Clearly the statute does not authorize the BPU to create any further criteria for approval of these projects."**

In fact his letter closes with the advice that absent a market crisis (a finding that would be hard to make given the installation of more than 500MW of capacity in the past 18 months, and the recent approval of an extension to PSE&G's Solar-4-All grid-supply development plans), the Legislature intended the BPU ***"would actually approve these grandfathered farmland grid projects, provided notice was timely filed to the BPU and all other previously required criteria regarding eligibility to be deemed connected to the distribution system had been satisfied."***

It is our contention that this stakeholder process is in direct contravention of a plain meaning and reading of the Statute and in complete derogation of the express legislative intent articulated by the sponsors of the Solar Act. Senator Sweeney's letter was supported by independent letters from Assemblymen Chivukula, Rible, Clifton and Senator Smith.

We view this process as a thin and misguided attempt to misappropriate the Subsection R criteria and to impose them on Subsection S applicants. We take a dim view of this effort and object to same.

We want to go on record as objecting to this process and the decisions past and present, which are supporting same. We also want to point out that our members have filed 7 appeals (for 17 denied or deferred projects) at the Appellate Division disputing the very premises that are the subject of this debate and that we are hopeful that the Appellate Division will agree with us.

3. We submit that it would not be a productive use of anyone's time to debate the various recommendations set forth in the Straw Proposal.

Everything that an objective observer would want to know about the Deferred S projects has been previously submitted in support of the December 2012 S Applications (which were *already* subject to a stakeholder input processes that created 27 questions and, where relevant, the attachment of 10 appendices among 4 general categories). The average S Application and supporting appendices was hundreds of pages long and submitted to the BPU with five original copies. We have no idea why 5 original copies were required or to whom they were submitted. Admittedly the BPU staff has advised us that there was too much information submitted in the applications to review in full. It seems particularly odious to us to require additional information when the Agency never fully considered the extensive materials supplied in the first go-around. Clearly, had they done so, they would have recognized that these projects did not possess building permits in the first place as noted above.

If one were to seriously consider the "new criteria" suggested by Staff, one should ask the question as to how any developer could have satisfied that requirement empirically. At the August Renewable Energy

Committee Meeting, Scott Hunter was specifically asked how one could ever satisfy any of the suggested requirements. His response was, in his view, that the developer should have never pursued their projects after having read the 2011 Energy Master Plan. This was an odd but compellingly clear response seeing as though each project meeting the cutoff criteria in Subsection S(2)(a) began their development process in the fall of 2010 at the latest (based on PJM submission dates required to obtain a System Impact Study by June 30, 2011), more than a year before the 2011 Energy Master Plan was even published in December 2011. By that time, millions of dollars were already spent on development costs (and tens of millions of dollars more were spent on the acquisition of equipment to qualify for the Cash Grant Safe-Harbor). In fact, the letters submitted by the Legislative Sponsors of the Solar Act specifically state that Subsection S was created for this very reason – so that unfair retroactive limitations (i.e. requiring approval via Subsections Q or R) would not be applied to those developers that made significant investment in good faith based upon statutes, rules and regulations in existence at the time encouraging such investment.

With that response in mind, we do not believe that we need to comment on the additional criteria suggested by Staff. They do not belong in the implementation of the projects validly seeking approval pursuant to Subsection S.

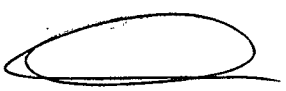
4. We want to lodge a strong protest to the destruction of the Renewable Energy Committee Meeting tapes.

When asked for permission to transcribe the meetings from last September to this June, after which we have provided our own court reporter, we were astonished to be advised that the tapes of the public meetings had been destroyed. We strongly protest this action and want to publicize it as we cannot imagine any State Agency under any circumstance destroying its public records preventing members of the public the ability to review the proceedings. This is especially true given the intensity of the dialogue regarding all of the stated issues. It is absolutely unbelievable to us that such an action, and blatant violation of the Administrative Procedure Act (APA), was permitted or even contemplated, let alone implemented. We ask that all future tapes be preserved in accordance with all applicable statutes.

5. Final Note

Our final note is that rather than trying to contrive fatal conditions and criteria under the guise of due process for projects that have already been denied the designation, why not meet with the remaining affected developers and try to work out a development schedule that would be market neutral, serve the purposes of the Solar Act and allow the developers to recoup their investment at the same time as they further the stated goals of meeting the RPS and the Statute? Representatives of the Association are ready to discuss this and all thoughts with the Staff.

Respectfully submitted by:
New Jersey Solar Grid Supply Association



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September 5, 2013

Via Email
Honorable Kristi Izzo, Secretary
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RE: Comments on the Implementation of Subsection P.L. 2012 c. 24 (Solar Act)

Dear Secretary Izzo:

Staff requested comments on the Staff Straw Proposal for Supplementary Application Criteria and Milestone Reporting Requirements for Deferred Subsection S. Applications (Straw). Staff has also requested comments on the preliminary responses offered by the NJ League of Municipalities (LOM) and Justin Michael Murphy which were released with the Straw proposal.

Morris and Somerset Counties, including their implementing agencies, the county improvement authorities (the Counties), have a significant interest maintaining a healthy New Jersey solar market. Over the past three years, the Counties have undertaken several government-financed pooled programs for financing, constructing, installing and operation of 26 MW of solar projects for their constituent local governments. These popular programs provide for 15 year fixed PPA pricing savings from 23-60% below current and projected utility rates. These programs provide significant savings to local government units in furtherance of the Governor's plan to reduce or stabilize property taxes. The stabilization of the SREC market is a key factor in the continued success of these programs. On behalf of the Counties, we submit the following comments.

First, the Counties wish to make clear that the positions expressed in this letter are without prejudice to the Counties' position expressed in their letter to President Hanna, dated November 15, 2012, where the Counties stated that the BPU was legally required to reject the remaining Subsection s projects based on the policies in the Energy Master Plan (EMP) and the statutory mandate that the Board follow the guidance of the EMP to the maximum extent practicable and feasible (N.J.S.A. 52:27F-15). The Counties' position was emphasized in the Counties' Motion for Reconsideration of the Board Orders dated May 8 and May 10, 2013.

With regard to comments on the Staff Straw proposal, our comments are offered in the three categories described in the Staff Straw:

- Proposed Supplementary Data on Project Characteristics
- Proposed Supplementary Data on Site Characteristics
- Proposed Milestone Reporting Requirements

Proposed Supplementary Data on Project Characteristics

Consistent with the BPU's prior reasoning, the data proposed to be collected and reviewed is an attempt by the BPU to document progress towards project completion, and the associated expenditures incurred. Regarding additional expenses incurred, and in agreement with the LOM's preliminary responses, we do not believe that any monies expended after the passage of the Solar Act should be considered. Therefore, we don't believe documentation of project expenditures incurred after the passage of the Solar Act should be reviewed in the context of deciding SREC eligibility.

Any expenses incurred after the point at which the Solar Act was passed should not be considered in calculating whether a proposed project meets the requirements for grandfathering under Subsection s. Grandfathering, as a matter of policy, is intended to recognize decisions and the related expenditures that were made based on the understanding of the rules in play at the time such expenditures were made; i.e., that it would be unfair to penalize someone who made expenditures based on existing policy. An expenditure made after policy unambiguously changes, in this case the passing of the Solar Act, with its' explicit discouragement of grid supply projects on farmland (when developers were aware of the change) should not be counted toward consideration of grandfathering .

This is in contrast to expenditures incurred before change of law which may be considered eligible for grandfathering treatment. By allowing recovery of expenditures made after the passing of the Solar Act a dangerous precedent is established. The State would be encouraging grandfathering treatment for exactly the type of investments which do not deserve this type of treatment, sending a clear signal to developers that reward this behavior. Creating facts on the ground after law has been passed that runs contrary to that law is not the type of investment behavior that ought to be encouraged by the State.

Additionally, with regard to supplementary data, we believe that BPU should request information from the Developer to determine if the project has been put into suspension at PJM and if so, indicate the adjusted in-service date.

While developers have claimed their investments have been stranded, we understand that PJM and the interconnection utility have the option of putting projects into suspension once the

ISA/CSA is executed. Such suspensions may extend the timeline of the project for three additional years from the original In Service date offered in the ISA and CSA. In many cases, developers may avoid any progress payment associated with interconnection construction until suspensions are lifted. This gives developers of projects more time - an opportunity to apply under Subsection q during the recently announced October 2012 solicitation, where significant capacity remains for EY15 and EY16, and possibly Subsection r, which is available for projects beginning in EY17. Even if these PJM dollars have been expended before the passage of the Solar Act, and therefore considered eligible for grandfathering treatment as discussed previously, the BPU can balance the concern of the currently oversubscribed SREC market against legitimately incurred project expenses by denying these projects under Subsection s, and encouraging them to apply under Subsection q and r. In this way, if the projects have been put into suspension, the PJM investment may not be stranded.

Proposed Supplementary Data on Site Characteristics

We applaud the BPU for considerations of data related to state, regional and local land use policies that has been largely absent thus far from the public discussions around SREC eligibility for Subsection s projects. We agree with the Comments provided by the SADC that suggest consideration of impacts of solar facilities on the on-going Farmland Preservation Program (FPP) with regard to locational and farmland quality considerations.

Proposed Milestone Reporting Requirements

We agree with the Milestone reporting requirements in the Straw proposal, with one condition: In agreement with the LOM, any Subsection s projects that qualify for SRECs should not be allowed to generate SRECs until EY17 (June 1, 2016). Given the oversupply in the market today, the forecast for oversupply over the next several years, and the potential release of the EDC Securitization program's SRECs in 2016, where ratepayers will bear the carrying costs, these projects should not be permitted to add fuel to the oversupply fire and hurt New Jersey's solar market.

With regard to the LOM's preliminary responses , we agree with the four particular suggestions in LOM's letter dated August 5, 2013 which comment on 1) the relevance of timing of project expenditures - this suggestion by the LOM is in agreement with our position on the inappropriateness of grandfathering treatment for high risk expenditures; 2) a minimum threshold of over half of estimated project costs spent before the passage of the Solar Act in order to be considered for eligibility; 3) not greater than 20 MW in aggregate of projects granted SREC eligibility and 4) any projects granted SREC eligibility should not be allowed to generate SRECs until commencement of EY17.

With regard to this last point 4, we believe this is a reasonable way to balance the current oversupplied SREC market with granting a small portion of Subsection s projects SREC eligibility.

We appreciate that Staff has put significant effort and time into investigation of the Section s projects, thank the Board and Staff for the opportunity to comment and will continue to stay engaged in this matter, of utmost importance to the Counties.

Very truly yours,

Stephen B. Pearlman

SBP:lap

cc: Scott Hunter

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September 4, 2013

New Jersey Board of Public Utilities
c/o Board Secretary Kristi Izzo
44 S. Clinton Avenue
Trenton, NJ 08625

Re: Straw Proposal for Solar Act Subsection Deferrals

Dear Board Commissioners:

The Sierra Club policy nationally is that farmland is considered a developed site and a more preferable location for solar than green fields, forests, or public lands. However we believe that while we should not prevent solar on farmlands, it should be regulated and done in a way that will help New Jersey meet its renewable energy goals. It is important for New Jersey to have utility scale solar projects, and we believe they can be built on farmlands in an appropriate manner. There are many projects that are important to the state when it comes to solar and distributive generation that will not happen if we do not allow for some solar on unpreserved farmland.

In a perfect world solar should go on brownfields, landfills, parking lots, and rooftops. But there are many obstacles and that is why for some projects, especially large scale projects, we may need to use some farmland. We should not preclude the use of farmland, but rather tightly control and regulate it. If you can build box stores and office parks on farmland, why not solar instead? We cannot have stricter rules for solar than we have for gas lines, gas-fired power plants, electric transmission lines, and nuclear power plants.

There are many important projects that have either local approvals or financing in place that should be allowed to go forward even though they are located on farm fields. We cannot and should not prevent some development of solar on farm fields, especially if those projects are well on the way. There has been a lot of investment of time and money for many worthy projects and they should go forward. Instead we should have criteria for filtering these and future projects.

Solar should be regulated, especially where and how they are installed on the ground. It can be done in a way that has a benefit on water quality versus other uses such as lawnscapes and golf courses. The State Agriculture Development Committee (SADC) currently has very good rules on the construction of solar ground-mounted systems and those rules could be used as a template.

Any attempt to put solar on farms should be regulated, limited, and in some cases even banned depending on local conditions- such as areas with tiles, stream and wetland buffers, forested areas, and endangered species habitat. You have to look at local conditions and local zoning.

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Merrill Lynch in Hopewell has soybean fields between buildings that actually have development approvals for 2 million square feet of additional office space. In areas such as these installing solar is much more environmentally beneficial than constructing more parking lots or office space.

Under current rules farms can cover the entire farm from wall to wall with greenhouses. Farms can also have gift shops, wineries and breweries with bars, wedding chapels, and catering halls, and bed and breakfasts. There can also be waste lagoons and large factory farm buildings the size of warehouses. We allow many uses on our farms that are only indirectly related to agriculture.

There are actual water quality benefits if a solar system is designed correctly. The area around the panels can be vegetated with meadow and stabilizing grasses to handle most stormwater issues. This will decrease runoff and sedimentation while increasing recharge. This also decreases the use of fertilizers, pesticides, and fungicides. Many farms have contamination from historic pesticide use.

If a small portion of a farm is used for solar, it will help keep the farmer in business by creating additional income. The average farmer only makes about $15,000 on 50 acres. Solar can be done in a way through clustering that your 100 acre farm can have 10 acres of solar panels avoiding prime agricultural soils and other sensitive features. This will create income to keep the other 90 acres in active agriculture. The SADC rules will take away farmland assessment if more than 10% or over 2 MW of the farm goes to solar. We oppose, and SADC rules do not allow for putting solar on preserved farms, except for the use by the farmer to run his or her home and farm equipment.

For larger projects you could require clustering or mitigation such as they must preserve other farmland at a 4:1 ratio.

The BPU should also require solar installations be located near existing power lines and substations so that we are not running lines into the middle of nowhere.

There are 800,000 acres in farmland. 200,000 acres are fake farms, where wealthy interests and/or developers are doing limited farming activities to receive a tax break. A little over 600,000 acres are in active farming. Of that about 300,000 acres are preserved through acquisition of development rights, the Pinelands, and the Highlands Preservation area regulations. Of the lands that are left, more than half are owned by land speculators and development companies. For example Toll Brothers is the largest farmer in Hunterdon County and Thompson is the largest in Central New Jersey. Most of these farms will get developed, it's only a matter of real estate market conditions. These lands would better serve the people of New Jersey as land for solar installations than new developments.

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NEW JERSEY CHAPTER
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www.SierraClub.org/NJ

Issues with Solar Development on Brownfields and Landfills

In order to put panels on a brownfield or landfill, the site has to be remediated. This can often be cost prohibitive for solar projects. If the site has been remediated by the responsible party or property owner, the money the property owner would get from solar is far less than they would get from selling it to a commercial developer. In many cases the property owner would not get enough money from solar to pay for cleanup.

Taking up large brownfields for solar would increase development pressure on green fields to accommodate more development

PSEG has put some solar on brownfields, but they are on sites PSEG owns and the ratepayers have paid for the cleanup and the solar installation.

Landfills are even more expensive and cost more to clean up than brownfields. Governor Christie has diverted funding dedicated landfill remediation to close budget gaps, so there is less public money available to prepare these sites for solar. Just this year $5 million was taken from the Landfill Closure Fund.

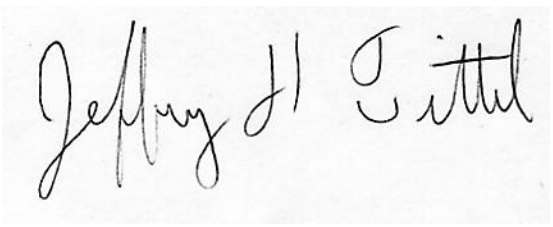
We have seen major problems with the recent solar project at the Fenimore Landfill in Roxbury, New Jersey. The solar developer reopened the closed landfill to prepare the site for the solar installation, creating an environmental hazard.

We urge the BPU to develop standards that would allow some projects located on farmland to move ahead. This development can be done in a way that protects or most environmentally sensitive farmland and most important agricultural soils while still helping New Jersey achieve our solar energy goals.

It is critical after Hurricane Sandy to reduce greenhouse gases and to invest in distributive generation such as solar. That is why we believe we should allow some solar on unpreserved farmlands, as long as it is done in an appropriate way. Not allowing for any solar on farmlands will hurt jobs and our economy and we think is more of an excuse by some to oppose renewable energy and take the side of the fossil fuel industry.

Thank you for considering these comments.

Sincerely,



Sierra Club: For Our Families, For Our Future

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Jeff Tittel
Director, New Jersey Chapter of the Sierra Club

Deborah Petrisko

From: Amy Hansen [amy@njconservation.org]
Sent: Thursday, September 05, 2013 4:57 PM
To: publiccomments@njcleanenergy.com
Cc: Amy Hansen; B.Hunter@bpu.state.nj.us
Subject: Comments on the Staff Straw Proposal For Additional Application Criteria and Milestone Reporting Requirements for Solar Act Subsection (s) Deferrals

Dear Secretary Izzo,

New Jersey Conservation Foundation appreciates the opportunity to comment on the Staff Straw Proposal for Supplementary Application Criteria for Deferred Subsection (s) Applications (Straw).

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

We greatly appreciate the New Jersey Board of Public Utilities' (BPU) inclusion of site characteristics related to state, regional and local land use policies in the Straw. Public discussions must include this data when SREC eligibility for Subsection (s) projects is being considered. We agree with the State Agriculture Development Committee (SADC) that solar facilities should not negatively impact the Farmland Preservation Program, or other important farmland resources, including prime soils and soils of statewide importance within our state.

The Straw accurately states: "One of the goals of the Energy Master Plan is to ensure the protection of open space and farmland by moving away from development of solar grid supply projects on active farmlands." (Energy Master Plan 2011 http://nj.gov/emp/docs/pdf/2011_Final_Energy_Master_Plan.pdf). Therefore, applications for solar grid supply projects that are targeted for farmland in New Jersey should be denied by the BPU.

New Jersey Conservation Foundation would like to thank the staff and board of the NJBPU for all the time and effort you have invested in this important land and natural resource issue. If you have any questions, please contact me at 908-234-1225, ext. 108.

Sincerely,

Amy

--

Amy Hansen

Policy Analyst

New Jersey Conservation Foundation

Bamboo Brook

170 Longview Rd

Far Hills NJ 07931

908-234-1225

B. Scott Hunter September 5, 2013

Office of Clean Energy

New Jersey Board of Public Utilities

44 S. Clinton Avenue

Trenton, NJ 08625

RE: Staff Straw Proposal for Supplementary Application Criteria and Milestone Reporting Requirements for Deferred Subsection S. Applications

We would like to start by commending the Board of Public Utilities on the S1925 Solar Act implementation efforts put forth thus far, especially with Hurricane Sandy in the mix. We would also like to use this opportunity to highlight some specifics related to two large Subsection s. solar project proposals local to Florence Township, Burlington County, and put them into some context.

A study of the PJM Interconnection active project queue last year indicated that Burlington County has the highest number of potential grid supply projects at 34 totaling 291 megawatts (MW). More specifically, Florence Township has been facing the prospect of two of these significant grid-supply solar projects on active farmland totaling more than 35 MW. These projects include EffiSolar Development Dkt. No. EO12121107V (PJM W3-080) and RenewTricity Dkt. No. EO12121094V (PJM W2-060). In summation, these projects would comprise three parcels totaling almost 250 acres or ~23% of remaining farmland in the township. This would have significant detriment to Florence's Master Plan which clearly aims to preserve the limited remaining agricultural district. This effect is many times greater than the farmland impact on other locales that were studied around the state where major grid-supply installations have been proposed and/or approved.

Thankfully the RenewTricity W2-060 project was withdrawn by the company from the Zoning Board in January 2013 and recently denied SREC's by the BPU, but the EffiSolar project remains deferred. Not surprisingly, we understand that several solar developers already have pending litigation in Superior Court regarding the Subsection s. denials and deferrals, including EffiSolar W3-080, but we don't believe it relieves the BPU from reviewing any public comment related to these projects. Calculations show that this single 109 acre EffiSolar W3-080 project would impact ~10% of Florence's already limited cropland harvested acreage. While we acknowledge that land use decisions lie primarily with the local Planning and Zoning Boards, it is also noted that the Energy Master Plan (EMP) indicates that the BPU have the ability to review and approve subsidies for grid-supply projects to ensure compatibility with land use, environmental and energy policies. It is an unfortunate circumstance that many of these large applications have been presented as type (d) Use Variances to Zoning Boards that are typically not experienced enough to correctly handle these applications and/or are made to believe that approval must be granted to an "inherently beneficial use" as defined in 2009 by the NJ Legislature. Even the

2011 NJ Energy Master Plan (EMP) acknowledges that “many of these projects were purely investor-driven, grid-supply projects, proposed and installed without regard for appropriate land use or energy policy concerns.” Through state and federal subsidies these projects have been encouraged. I believe it is telling that Florence Township recently passed a Renewable Energy Ordinance on August 7th, 2013 that now protects the remaining agricultural district by prohibiting exactly these types of large grid-supply solar projects.

When located near residential or on or adjacent to other sensitive areas, exploitation of the “inherently beneficial” designation to obtain use variances for farmland solar projects as primary uses is undermining the exact point of planning and zoning. The Florence Township Master Plan clearly states “…Florence must provide for the preservation of the entire agricultural district so that it can be devoted to such long-term use”. A professional planner hired at our expense during the RenewTricity Zoning Board hearings indicated in testimony in August 2012 that the township has many industrial sites of 20 contiguous acres or greater under sole ownership where solar PV could be done “by right” pursuant to section 40:55D-66.11 of the Municipal Land Use Law. It is our assertion that these areas should be developed first.

Although the EffiSolar project had secured local approval in 2011 it has indicated on its BPU Subsection S. application that an estimated completion date is not until “2015-2016”. We don’t believe that this constitutes demonstration of ultimate viability and a prospect for near term completion. It is clear that the BPU’s intent was to approve only “advanced projects”. As of the December 17th, 2012 filing deadline this particular project had no construction contracts in place, construction financing had not been secured and only 1.3% of total projected costs have been spent. This project, EffiSolar Development Dkt. No. EO12121107V (PJM W3-080), as well as others on the deferred Subsection s. list should be denied SREC eligibility. This particular Effisolar project is located in Rural Planning Area 4 as defined by the State Development and Redevelopment Plan (SDRP) adopted by the State Planning Commission and is in an Agricultural Development Area (ADA) as defined by the Burlington County Agricultural Development Board. The property also is comprised of primarily prime farmland, ~25 acres of wetlands, and is part of the Bustleton Creek corridor. See Figure 1 below. Other concerns are the removal of 700 trees and the fact that the parcel size, soil classifications, and location within one half mile of preserved farmland should make it an ideal candidate for county preservation efforts.

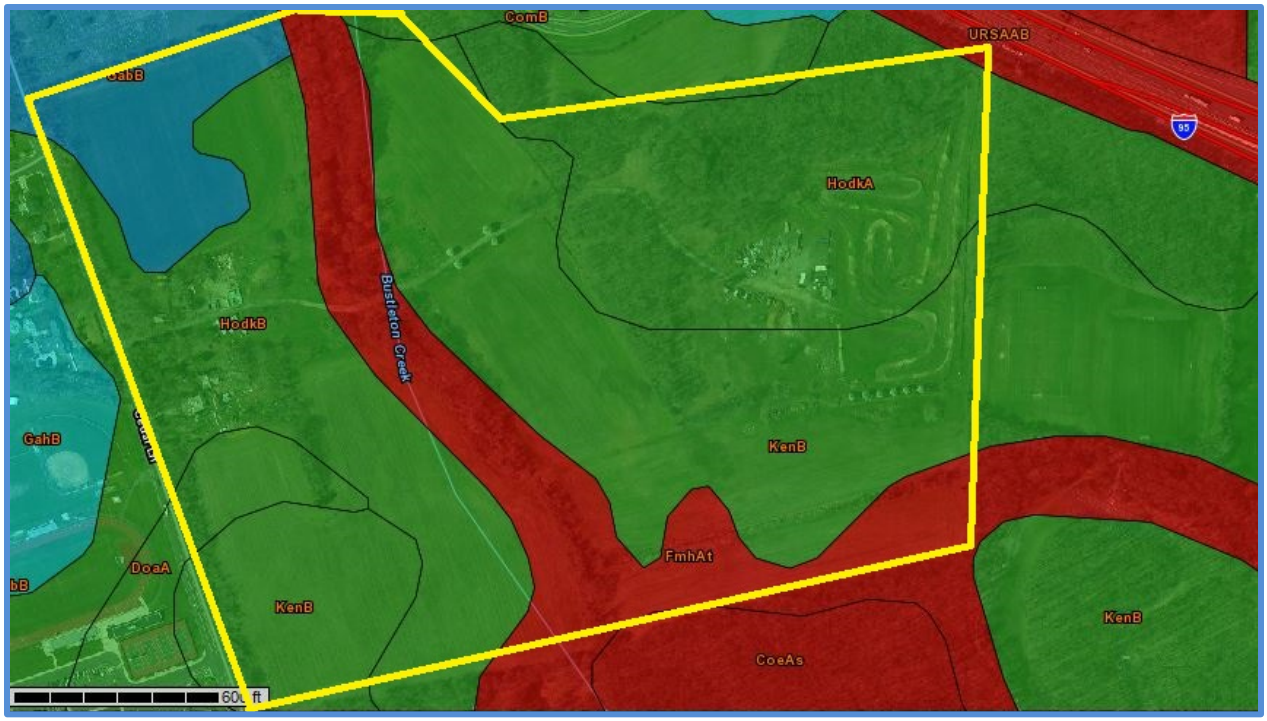

Figure 1: Proposed EffiSolar W3-080 Site at 1019 Cedar Lane with yellow project outline with soil classifications superimposed; green is prime farmland and blue is farmland of unique importance
Source: USDA National Resource Conservation Service
www.nrcs.usda.gov/wps/portal/nrcs/main/national/soils/

Comparing Figures 2 and 3 below, it is easy to see that other states in the PJM Interconnection territory have equivalent or better solar resources and yet, large solar investment is minimal to non-existent. It clearly indicates that NJ's SREC market, while commendable in certain respects, has become a crutch to the industry. Even as the prices of photovoltaic panels have experienced a significant decline, investment in this technology remains light without the advantage of state and federal subsidies. Looking at the map in Figure 3 more broadly it is obvious that states such as Nevada, Arizona, New Mexico, Utah and Colorado with the best solar resources should be outpacing NJ in solar installations. They are not however, because this assumes that the goal is actually about making and selling clean power versus large profits from available state and federal incentives. California is the only state with more solar capacity than NJ and not by much. It also has almost 19 times the landmass and much better solar resources. While congratulations may seem in order, the NJ ratepayers are also drowning in some of the highest utility rates in the country according to data from the Energy Information Administration (EIA). While increased renewable energy production is praiseworthy, so are electric rates that don't drown ratepayers and will allow sustainable business investment to continue in NJ. I'm sure it is no surprise to the BPU that EIA data from 2011 indicates that PSE&G ranks 13th, JCP&L 23rd and Atlantic City Electric 53rd in most revenue generated out of over 3,100 utility entities nationwide. Additionally, other states need to share the burden of emissions reduction. For example, EIA data shows that our neighbor, Pennsylvania, has carbon dioxide emissions 7 times higher, sulfur dioxide 64 times higher and nitrogen oxides 11 times higher than NJ.

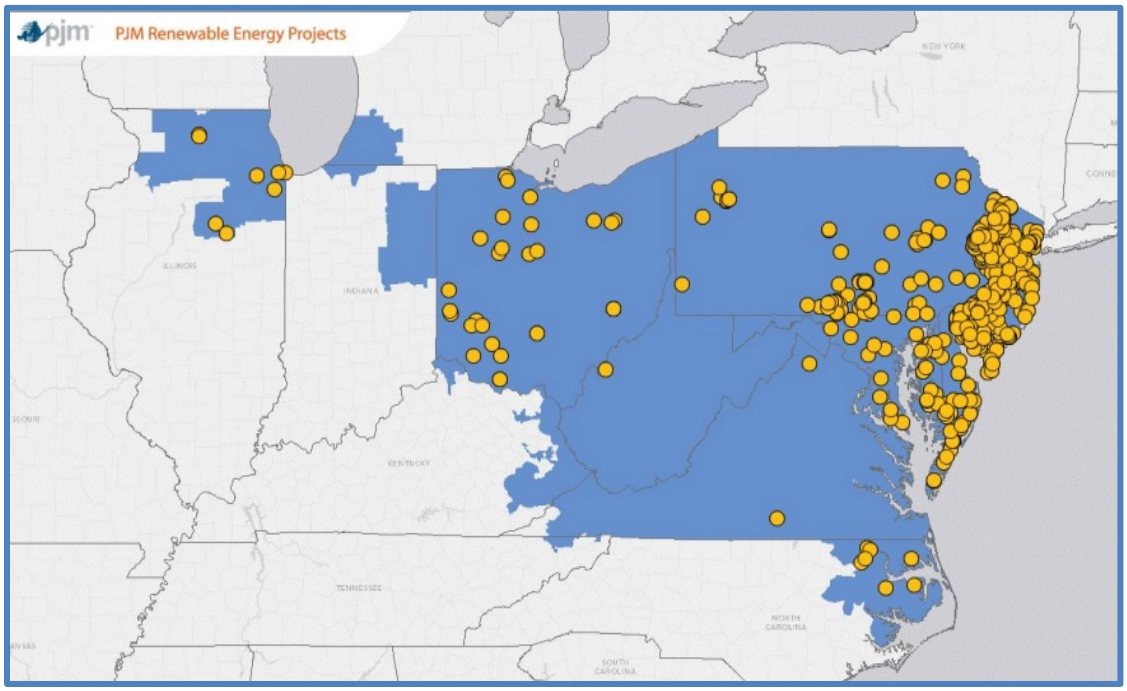

Figure 2: Snapshot of PJM Queue solar projects as of 8/02/13

Source: www.pjm.com

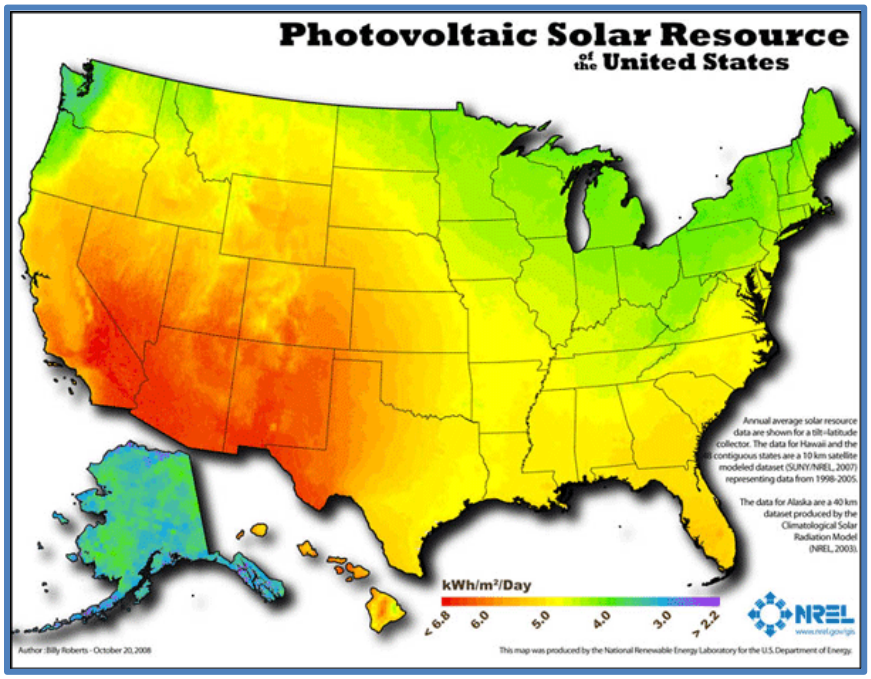

Figure 3: Photovoltaic Solar Resource of the United States Source: www.nrel.gov

As far as economic development, these solar installations are a "flash-in-the-pan" for electrical contractors. Actual testimony given on July 26th, 2011 for the EffiSolar project indicated that no jobs could be promised when this was questioned by a member of the public. There are very few long term jobs associated with these "unmanned" facilities whereas farming is a vitally important component of NJ's economy, especially in South Jersey. Farm equipment, seed, harvesting, and distribution provide thousands of jobs. All the while, the demand for local food is at an all-time high as residents discover the multitude of benefits including freshness, reduced vehicle miles traveled, and support of the local economy. The NJ EMP has thoughtfully indicated that "although a number of utility-scale solar installations have been proposed for, and installed on, what were previously working farms, the Christie Administration does not support the use of ratepayer subsidies to turn productive farmland into grid-supply solar facilities". In contrast with the rhetoric from attorneys for these developers, these large grid-supply solar projects cannot be reasonably considered protection of farmland. The supposed "decommissioning" plans presented by the applicants at land use hearings are merely a way to appease board members.

To respond to the recent recession, the American Recovery and Reinvestment Act (ARRA) of 2009 was signed which led to the creation of the 1603 grants for specified energy projects. The ARRA's primary objective was to save and create American jobs. This is hardly the case when a Chinese-based company like EffiSolar is also buying millions of dollars in Chinese solar panels. To safe harbor their 30% cash grants they contracted to buy over $24M in panels (as per subsection s. applications) from Astronergy and Gintech Energy (both Chinese manufacturers) just to satisfy the 5% spend requirement by the end of 2011, even though no actual work had started on any of their projects. They have safe harbored these grants on 8 projects in NJ which would garner this company over $130M in federal money. Clearly abuse of yet another government program put on the backs of American taxpayers.

The BPU has made a strong statement by denying 34 speculative farmland projects that were creating uncertainty in an already oversupplied and volatile SREC market. The BPU has the reasoning and legal authority via the Solar Act to deny the other 20 deferred projects which constitute about 235 MW. This volume will produce a significant number of SREC's if constructed and if the BPU is strung along by these developers awaiting financing they will continue to create uncertainty in the market. The BPU was given broad authority and discretion in the legislation regarding review and oversight of facilities and to determine eligibility as "connected to the distribution system". As noted in your Board Order, these projects after denial via subsection s. still retain the ability to participate in the SREC market via the provisions of Subsection q., notwithstanding the 10MW per project cap.

There is no question that responsible installations of solar and other renewables should continue to be a part of our energy portfolio. Through various articles on the topic by professional planners, statements from prominent conservation organizations, as well as, the legislative intent of Subsection t. of the Solar Act, it is clear that brownfields, landfills and areas of historic fill are the location of choice for large grid-supply projects. These areas have their development challenges but they are not insurmountable. In addition, rooftops and parking lot canopies or other areas of already impervious coverage are obvious choices for large net-metered installations.

We respectfully request the BPU deny the EffiSolar Development Dkt. No. EO12121107V (PJM W3-080) project the eligibility for SREC's and any others that have not shown significant progress or investment after further Board scrutiny. Although it is recognized that the BPU needed an objective measurement of progress while evaluating the Subsection s. applications, it is not evident that even unappealable approvals are enough to constitute acceptable progress. Fourteen of the twenty deferred projects (70%) had not secured financing by the filing date and this is likely to remain the case. This gives these developers an opportunity to string the BPU along unless enforceable milestones are put in place. In denying these projects any stranded costs are insignificant compared to the overall benefit afforded to NJ citizens of a stable SREC market, and consequently, some continued opportunity for the preservation of open space and farmland. A perfect summation of this issue can be found in the Association of NJ Environmental Commissions (ANJEC) whitepaper titled "Solar Siting and Sustainable Land Use" which we were glad to see was distributed to your RE Stakeholder group. "Sacrificing thousands of acres of productive, open land to vast, ground-mounted solar arrays is neither necessary nor prudent in America's most densely populated state." Thank you very much for your time and consideration of these comments.

Respectfully,

David Van Camp, P.E.

Burlington Twp., NJ

Patti DiMassa

Florence Twp., NJ