



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

)	MODIFIED AMENDED ORDER
)	AND WAIVER OF <u>N.J.A.C. 14:8-</u>
)	2.4(G)
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u>)	
2012, <u>C. 24</u> , THE SOLAR ACT OF 2012;)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u>)	
2012, <u>C. 24</u> , THE SOLAR ACT OF 2012, <u>N.J.S.A. 48:3-</u>)	
87(Q)(R) AND (S) – PROCEEDINGS TO ESTABLISH)	
THE PROCESSES FOR DESIGNATING CERTAIN)	
GRID-SUPPLY PROJECTS AS CONNECTED TO THE)	
DISTRIBUTION SYSTEM; AND)	DOCKET NO. EO12090880V
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
<u>N.J.S.A. 48:3-87(R)</u> , DESIGNATING GRID-SUPPLY)	
PROJECTS AS CONNECTED TO THE DISTRIBUTION)	
SYSTEM - ORDER MODIFYING FEBRUARY 22, 2017)	
ORDER AND WAIVING CERTAIN PROVISIONS OF)	
<u>N.J.A.C. 14:8-2.4(G)</u>)	DOCKET NO. QO16020130

Party of Record:

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

BY THE BOARD:

In this Order, the Board of Public Utilities ("Board") modifies the interim implementation process for N.J.S.A. 48:3-87(r) ("Subsection r") which it authorized on May 25, 2016 and amended on February 22, 2017.

BACKGROUND

On July 23, 2012, P.L. 2012, c. 24 ("Solar Act") was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and

financing of renewable energy. Among other actions, the Solar Act requires the Board to conduct proceedings to establish new standards and to develop new programs to implement its directives. By Order on October 10, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act including those under N.J.S.A. 48:3-87(r) (Docket. No. EO12090832V, et al.) ("October 10, 2012 Order").

Subsection r of the Solar Act provides that:

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

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

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

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

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

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

(3) The board shall act within 90 days of its receipt of a completed application for designation of a solar power electric generation facility as "connected to the distribution system," to either approve, conditionally approve, or disapprove the application. If the proposed solar electric power generation facility does not commence commercial operations within two years following the date of the designation by the board pursuant to this subsection, the designation of the facility as "connected to the distribution system" shall be deemed to be null

and void, and the facility shall thereafter be considered not "connected to the distribution system."

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

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

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

On February 22, 2017, the Board issued an Order modifying the May 25 Order by approving an extended and amended administrative process to implement Subsection r until such time as the first application window opened.³ The February 22 Order instructed all entities that were considering filing an application in the coming energy year to file an EOI, using the EOI form to be posted on the NJCEP webpage, by April 1, 2017. Applicants who had submitted an EOI during the summer of 2016 pursuant to the May 25 Order were not required to resubmit an EOI unless the earlier EOI had been rejected; did not contain a PJM interconnection queue number; or was no longer accurate because of changes to the project. (February 22 Order at p. 4.) In addition, the Board ordered that a public stakeholder process be initiated as soon as practicable to request comments on the optimal number of megawatts that the Board should not exceed for grid supply projects in EY18. Ibid. Finally, the Board stated that it would approve a specific number of megawatts as the upper limit which it might approve for designation as "connected to the distribution system" in EY18. Ibid.

On February 22, 2017, the Board also approved Adoption of the Rule Proposal. At that time, the Rules were anticipated to take effect in late March 2017 upon publication in the New Jersey Register. However, the publication did not actually occur until April 17, 2017, and the Rules only became effective on that date.

The Board's February 22 Order must therefore be modified and certain provisions of the Rules waived for EY18, as further described below.

¹ I/M/O the Renewable Energy and Energy Efficiency Rules - N.J.A.C. 14:8 Amendments to Subchapter 8 – Rule Proposal, BPU Dkt. No. QX15091096.

² I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System, BPU Dkt. No. QO16020130, Order dated May 25, 2016 ("May 25 Order").

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

STAFF RECOMMENDATION

Subsection r mandates that the Board evaluate all proposed projects for which applications are submitted on or after June 1, 2016 according to the four criteria quoted above. See N.J.S.A. 48:3-87(r). Since the Rules are now anticipated to take effect without sufficient time to implement the necessary provisions prior to the opening of an application window, Staff recommends modifications to the administrative process to implement Subsection r which was approved on February 22, 2017. Staff believes that the process set out below will allow adequate time for the Board to consider Staff's straw proposal and the public comments and best achieve a fair and efficient process for grid supply applications submitted pursuant to Subsection r for EY18.

To facilitate the implementation of the rule under its new timeline, Staff proposes the following process:

1. Defer the opening of the first application window from June 1, 2017 to September 1, 2017.
2. Issue a request for comment on the capacity that the Board makes available for designation as "connected to the distribution system" in EY18.
3. Following the close of the comment submittal period, and no less than 30 days prior to opening the first application window for EY18 on September 1, 2017, the Board should announce a specific number of megawatts as the upper limit for which the Board may approve for designation as "connected to the distribution system" in EY18.
4. Staff shall not accept applications prior to September 1, 2017. Following that date, Staff may accept applications according to the schedule set forth in the Rules.

This process is designed to supersede the procedure set forth in the February 22, 2017 Order. Staff further recommends that the Board waive certain provisions of N.J.A.C. 14:8-2.4(g)(1)-(5).

N.J.A.C. 14:8-2.4(g)(1) provides the application criteria and states that applications must be filed according to the periods specified in N.J.A.C. 14:8-2.4(g)(4). Staff recommends modification to the filing period set forth in N.J.A.C. 14:8-2.4(g)(4).

N.J.A.C. 14:8-2.4(g)(2)(i) provides that EOs must be filed between January 1 and April 1 prior to the commencement of the coming energy year. Staff recommends that the Board waive this provision for EY18 and allow consideration of the EOs submitted between June 1, 2016 and July 15, 2016, as well as EOs submitted between February 22, 2017 and April 1, 2017.

N.J.A.C. 14:8-2.4(g)(2)(ii) provides that Staff will issue a request for public comment on the capacity that the Board will make available prior to the beginning of the energy year. Staff recommends that the Board waive this provision for EY18 and direct Staff to issue a straw proposal and request for public comment as soon as practicable.

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

specific number of megawatts dc as the upper limit no later than 30 days prior to the start of the first application period on September 1, 2017.

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

N.J.A.C. 14:8-2.4(g)(5) provides timelines related to Staff review and Board action on an application filed under this subsection. Staff recommends that the Board suspend the timelines until such time as it begins to accept applications.

DISCUSSION AND FINDINGS

In considering whether to waive N.J.A.C. 14:8-2.4(g)(2) through -2.4(g)(5) the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1): first, whether the request is in accord with the general purposes and intent of the rules; and second, whether full compliance with the rules would adversely affect ratepayers, the utilities, or the public interest.

To determine the general purpose and intent of its Rules, the Board looks to the policy underlying the Rule(s) in question. The policy underlying the amendments to N.J.A.C. 14:8-2.4(g)(2) through -2.4(g)(5) is the implementation of the new statutory requirements for review of grid supply solar projects in an efficient, orderly, and equitable fashion. However, a delay in the promulgation of these Rules has resulted in a compression of the time between the date the Rules will take effect and the first day of EY18. In addition, waiving the Rules will give the Board sufficient time to implement all of the pre-EY18 processes that the Rules contain, namely, consideration of public comments related to the status of the SREC market and establishing a capacity cap for EY18. For these reasons, the Board **FINDS** that waiver of these Rules and the timelines set forth therein is in accord with the general purposes and intent of the Rules.

The Board also considers whether full compliance with the Rules would adversely affect the interest of the public. See N.J.A.C. 14:1-1.2(b)(1). As noted above, full compliance with the timelines set out in the Rules is no longer possible for the coming energy year, EY18. The Board has not been able to initiate a public stakeholder process on the appropriate upper limit of megawatts of energy from grid supply solar energy facilities to be designated "connected to the distribution system" in EY18, as set out in N.J.A.C. 14:8-2.4(g)(2)(ii) and -(g)(3). An attempt to make that determination prior to June 1, 2017 in the absence of that stakeholder process would deprive the Board of an adequate record to consider in reaching a decision. As a result, any determination made would not reflect the full range of information and analysis by the stakeholders and Staff. Thus, the Board **FINDS** that full compliance with the Rules would adversely affect the interest of the public.

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

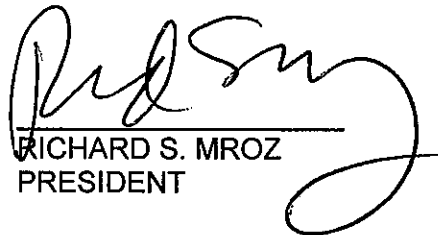
once the final Rules are promulgated and comments on the capacity cap have been received. The process also ensures that the Board has sufficient time to consider, and incorporate as appropriate, the comments received concerning the capacity cap.

Therefore, the Board **HEREBY APPROVES** the process recommended by Staff. Specifically, the Board **HEREBY DIRECTS** Staff to initiate a public process to accept comments on a capacity cap for EY18 and return to the Board with a recommendation. The Board will establish a capacity cap no later than 30 days prior to September 1, 2017. The process set forth herein shall supersede the February 22, 2017 Order.

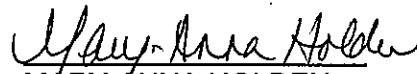
This Order will take effect on April 21, 2017.

DATED: 4/21/17

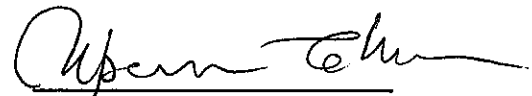
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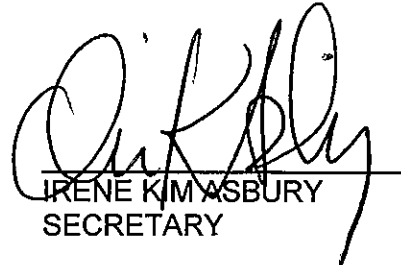

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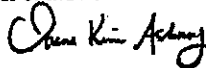

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ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



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

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

DOCKET NO. QO16020130 – IN THE MATTER OF THE IMPLEMENTATION OF N.J.S.A. 48:3-87(R) – DESIGNATING GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM - ORDER MODIFYING FEBRUARY 22, 2017 ORDER AND WAIVING CERTAIN PROVISIONS OF N.J.A.C. 14:8-2.4(g)

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