



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	DOCKET NOS. EO12090832V
L. 2012, C.24, THE SOLAR ACT OF 2012; AND)	
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
L. 2012, C. 24, <u>N.J.S.A. 48:3-87(Q)</u> (R) AND (S) –)	
PROCEEDINGS TO ESTABLISH THE PROCESSES)	
FOR DESIGNATING CERTAIN GRID-SUPPLY)	
PROJECTS AS CONNECTED TO THE DISTRIBUTION)	
SYSTEM – SUBSECTION (Q) ROUND TWO	)	EO12090880V
APPLICATION DENIALS AND WITHDRAWAL)	
)	
CEP Solar Gen 10 - Kingwood	)	QO13101032
EAI Investments	)	QO13101029
Brickyard Solar	)	QO13101020
Cape Atlantic Energy	)	QO13101013
Mohawk Associates	)	QO13101012
Syncarpha Alethea II, LLC	)	QO13101011
SunDurance Energy	)	QO13101007
True Green Capital	)	QO13101006
Day Four Solar, LLC	)	QO13101005
Red Valley Solar	)	QO13101002
MidFlare Corporation – 700 Quinton-Salem Road	)	QO13101017
)	

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven P. Gouin, Esq., EAI Investments, LLC.
Kevin Skudera, Brickyard LLC.
Gregg Garagozzo, Cape Atlantic Energy, LLC.
Louis Weber, Mohawk Associates, LLC.
Clifford Chapman, Syncarpha Alethea II, LLC.
Allen Bucknam, SunDurance Energy, LLC.
Panos Ninios, True Green Capital (North Park Solar LLC.)
Jim Spano, North Park Solar Energy
Ralph Laks, Day Four Solar, LLC
Brent Beerley, Red Valley Solar, LLC. / Community Energy
Justin Sallusto, CEP Solar Gen10, LLC. / Gintech Energy Corporation
Mark Randall, Midflare Corporation

BY THE BOARD:

On July 23, 2012, 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 New Jersey Board of Public Utilities ("Board or BPU") to conduct proceedings to establish new standards and to develop new programs to implement its directives. On October 4, 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(q) ("Subsection q") (Docket. No. EO12090832V).

Subsection q of the Solar Act provides that:

During the energy years of 2014, 2015, and 2016, a solar electric power generation facility project that is not: (a) net metered; (b) an on-site generation facility; (c) qualified for net metering aggregation; or (d) certified as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility, as provided pursuant to subsection t. of this section may file an application with the board for approval of a designation pursuant to this subsection that the facility is connected to the distribution system. An application filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility. The Board shall approve the designation if: the facility has filed a notice in writing with the Board applying for designation pursuant to this subsection, together with the notice escrow; and the capacity of the facility, when added to the capacity of other facilities that have been previously approved for designation prior to the facility's filing under this subsection, does not exceed 80 megawatts in the aggregate for each year. The capacity of any one solar electric power supply project approved pursuant to this subsection shall not exceed 10 megawatts. No more than 90 days after its receipt of a completed application for designation pursuant to this subsection, the board shall approve, conditionally approve, or disapprove the application. The notice escrow shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection.

(2) 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 shall be deemed to be null and void, and the facility shall not be considered connected to the distribution system thereafter.

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

On November 9, 2012, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012. Over one hundred stakeholders representing the electric distribution companies ("EDCs"), solar market participants, landfill developers, environmentalists, municipalities, and ratepayers participated in the public hearing and submitted comments. Based in part upon the

comments received from the public, Staff developed an application and a form of escrow agreement to implement the requirements of Subsection q.

By Order dated May 9, 2013, the Board approved an application process, form of application and form of escrow agreement to be used in connection with the Board's review of projects seeking designation as "connected to the distribution system" under Subsection q ("May 9 Order"). As stated above, Subsection q charges the Board with denying, approving or conditionally approving qualifying applications from certain proposed grid supply solar facilities for designation as "connected to the distribution system" during energy years 2014, 2015 and 2016¹ within 90 days of receipt of a completed application.

Subsection q also provides that "[a]n application filed pursuant to this subsection shall include a notice escrow of \$40,000 per megawatt of the proposed capacity of the facility," which "shall be reimbursed to the facility in full upon either rejection by the board or the facility entering commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection." N.J.S.A. 48:3-87(q). To implement this provision, the Escrow Agreement adopted by the Board by Order dated June 21, 2013 contains the following language:

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

Escrow Agreement at para. 10.

Under the procedure approved by the Board in the May 9 Order, to obtain approval or conditional approval of a Subsection q application, the developer of a proposed facility must file a Subsection q application with the Board, with a copy provided to Rate Counsel, the proposed system must be 10 MW or less, be the only facility proposed for interconnection at a distinct interconnection point, the appropriate escrow amount must be noticed as properly deposited, and all appropriate Solar Renewable Energy Certificate (SREC) registration requirements must be fulfilled. To obtain final approval of a Subsection q application for EY 2015 or EY 2016, the developer of a proposed facility must have submitted a Subsection q application and received conditional approval from the Board; be the only facility interconnected at a distinct

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

interconnection point, the facility must have completed construction and received authorization to energize; the completed system must be 10 MW or less; and all applicable SREC registration requirements must have been maintained throughout the conditional approval period.

The May 9 Order was posted on the Board and New Jersey Clean Energy Program (NJCEP) websites and circulated via the renewable energy ("RE") stakeholder email distribution lists on or about that date. The application attached to the May 9 Order provided detailed instructions for applicants seeking to be considered eligible pursuant to Subsection q. On May 13, 2013, Staff distributed a copy of "Frequently Asked Questions regarding Subsection q" via the RE stakeholder email distribution list and posted to the NJCEP.com website. Applicants were advised in these materials that to qualify to be considered for approval under Subsection q for a specific Energy Year, applicants must file Notice according to the instructions.

Applications will be accepted by Staff...toward making recommendations for approval on a first-in-time basis for each energy year until complete applications for 80 MW dc of total capacity have been received. Time of receipt for purposes of ranking applications will be determined based upon initial receipt of this one-page Notice of Intent to Apply (Notice), provided that the applicant submits the full application as described....

The one-page "Notice" provided by Staff was to be completed by applicants and sent as an attachment to an email to a dedicated email address no earlier than 4:00 p.m. on May 15, 2013 and no later than 5:00 p.m. on May 31, 2013. Applicants were told that they had either five days following the submission of a Notice or until May 31, 2013, whichever was earlier, to submit a completed application. Applicants were instructed that an escrow agreement executed on or prior to May 15, 2013 using the form of agreement available on NJBPU and NJCEP websites must be included with the application. Furthermore, applicants were instructed that only one application would be accepted per project with a separate Notice submitted for each project. Unsuccessful applicants under Subsection s were informed of their eligibility to apply under Subsection q.

Staff discussed the Subsection q application process and forms with RE stakeholders at the regularly scheduled stakeholder meeting on May 14, 2013. On May 15, 2013, at 4:00 pm per the internal clock of the Board's email servers, the "Qnotice@bpu.state.nj.us" email address was activated by the Board's Information Technology staff. Twenty-eight (28) Notices were filed from 15:59:37 (3:59 p.m. on the internal clock of the Board's email server) through 19:50:37 (7:50 p.m.) on Wednesday May 15, 2013. Twenty-seven (27) of the twenty-eight (28) projects that filed the Notice also submitted an application. Additionally, Staff received one application on July 1, 2013 for which neither a Notice nor an escrow agreement was submitted. During the application period, from May 15, 2013 to May 31, 2013, a question was raised regarding the ability of an applicant/Depositor to seek to withdraw funds prior to designation of a project as "connected to the distribution system." The Escrow Agreement approved by the Board through the May 9 Order did not specifically provide for such a withdrawal.

By Order dated June 21, 2013, the Board found that release of the escrowed funds prior to actual designation of the proposed solar facility is consistent with the legislative intent as expressed in Subsection q. Therefore, the Board ruled that when an applicant/depositor seeks to withdraw funds because it has withdrawn its application prior to designation by the Board, confirmation in writing of withdrawal of the application by Board staff is sufficient authorization for withdrawal of the funds from the escrow account. Accordingly, the Board modified paragraph (10) of the Escrow Agreement to reflect this ruling.

By Order dated August 21, 2013, the Board approved twenty one (21) applications to qualify pursuant to Subsection q from the first application round ("Round One") held from May 15, 2013 to 31, 2013 ("August 21 Order"). The Board approved eleven (11) projects seeking designation in Energy Year 2014 for a total of 68.092 MWdc of capacity, conditionally approved seven (7) projects seeking designation for Energy Year 2015 for a total of 31.242 MWdc of capacity, and conditionally approved three (3) projects seeking designation for Energy Year 2016 for a total of 20.650 MWdc of capacity. The Board required the approved applicants to submit or resubmit SREC Registration packages within two (2) weeks of the effective date of the Order.

The Board also announced in the August 21 Order that "an additional application process under Subsection q will be opened beginning on October 15, 2013," and directed Staff to notify stakeholders of the process to be used. On October 1, 2013, Staff distributed, via the RE stakeholder email distribution list and posted to the NJCEP and Board websites, the instructions for participating in round two of the Subsection q application process ("Round Two"). The instructions included a one-page "Notice" to be completed by applicants and sent as an attachment to the dedicated "QNotice" email address no earlier than 4:00 p.m. on October 15, 2013, and no later than 4:00 p.m. on October 31, 2013. Applicants were advised that they had either five days following the submission of a Notice or until October 31, 2013, whichever was earlier, to submit a completed application. Applicants were further instructed that an escrow agreement executed on or prior to October 15, 2013 using the form of agreement available on the Board and NJCEP websites must be included with the application. Additionally, applicants were instructed that only one application would be accepted per project with a separate Notice submitted for each project.

Staff discussed the Subsection q application process and forms for Round Two with RE stakeholders at the regularly scheduled stakeholder meeting on October 9, 2013. On October 15, 2013, shortly before 4:00 p.m. per the internal clock of the Board's email servers, the "Qnotice@bpu.state.nj.us" email address was activated by the Board's Information Technology staff.

Twenty-eight (28) Notices were received from 15:59:52 (as indicated by the internal clock of the Board's email server and 15:59:51 p.m. on the world clock displayed by the US Naval Observatory) through 19:01:37 (5:01:36 p.m.) on Wednesday October 15, 2013. Twenty-seven (27) of the twenty-eight (28) projects that filed the Notice also submitted executed escrow agreements. Notice for one (1) project was received by the Board's email server prior to the Board approved opening of the Subsection q. application window at 4 p.m. on October 15, 2013. And one applicant, by letter dated January 13, 2014, withdrew one of its Subsection q. applications and sought approval for release from the amount held in escrow for this project. Staff will make a recommendation to the Board for approvals and conditional approvals of Subsection q applications submitted in Round Two in a separate Order. The recommendations for conditional approval of applications, including three (3) recommendations for the conditional approval of reduced allocations, seeking designation for Energy Year 2015 and Energy Year 2016, bring the total allocated capacity to 80 MW dc for each of those energy years.

STAFF RECOMMENDATION

Staff has thoroughly reviewed the applications described herein. Staff determined that, based on the application materials submitted, each of the applications described below either: 1) did not fulfill all the requirements established by the Board or by Subsection q; or 2) while submitting all required documentation, given the order of receipt, approval of the proposed

project would violate Subsection q by exceeding the permitted cumulative 80 MW maximum for the applicable EY or violated the procedures established for this application period.

Accordingly, Staff recommends that the Board deny all ten (10) of the following applications.

Table 1. Subsection q Round Two Recommended Denials

Rank by OCE Time Recv'd.	Time Notice Received OCE	Date Application Received OCE	Notice / Application Submitted by	Applicant / Facility Name	Docket Number	Contact Address	Energy Year Requested	Array Size* (MWdc)	PJM Queue No.
1	15:59:52	10/18/2013	Justin Sallusto	CEP Solar Gen10, LLC / Gintech Energy Corporation	QO13101032	20A South Beers Street Holmdel, NJ 07733	EY16	10 000	W2-083
4	16:00:02	10/21/2013	Steven P. Gouin	EAI Investments, LLC	QO13101029	125 Half Mile Rd. Suite 300 Red Bank, NJ 07701	EY15	10.000	W4-073
13	16:00:07	10/16/2013	Kevin Skudora	Brickyard LLC	QO13101020	566a Highway #35 Union Square Commons Red Bank, NJ 07701	EY15	0.362	X4-031
20	16:00:38	10/18/2013	Gregg Garagozzo	Cape Atlantic Energy, LLC.	QO13101013	7 Auther's Court Cape May, NJ 08204	EY15	2.000	X1-110
21	16:00:50	10/17/2013	Louis Weber	Mohawk Associates, LLC.	QO13101012	31 Fairview Hill Road Newton, NJ 07860	EY15	6.832	W3-140
22	16:00:53	10/17/2013	Clifford Chapman	Syncarpha Alethea II, LLC.	QO13101011	645 Madison Ave, 14th Floor New York, NY 10022	EY15	7.978	W1-076
23	16:07:19	10/18/2013	Allen Bucknam	SurDurance Energy, LLC Pohatcong	QO13101007	2045 Lincoln Way Edison, NJ 08817	EY15	9.990	X1-073
24	16:09:38	10/17/2013	Panos Ninos / Jim Spano	True Green Capital / Spano Partners Holding, LLC. / North Park Solar LLC.	QO13101006	516 RT 33 West BLDG 2 Suite 1 Millstone, NJ 08535	EY15	10.000	W1-113
25	16:10:21	10/18/2013	Ralph Iaks	Day Four Solar, LLC. / Aston Solar LLC	QO13101005	1487 Cedar Row Lakewood, NJ 08701	EY15	6 000	W2-019
28	17:01:37	10/17/2013	Brent Beerley	Red Valley Solar, LLC/ Community Energy	QO13101002	3 Radnor Corp. Ctr., Suite 300 100 Matsonford Rd Radnor, PA 19087	EY16	10.000	W4-045

CEP Solar Gen10, LLC. / Gintech Energy Corporation
QO13101032

CEP Solar Gen 10 / Kingwood
(W2-083)

The first Notice received by the Board's email servers was submitted by CEP Solar Gen10, LLC. at 15:59:52 as indicated by the internal clock of the Board's email server and 15:59:51 pm on the world clock displayed by the US Naval Observatory. The application was for an EY 2016 conditional approval of a 10 MWdc grid supply solar facility proposed for Block 23, Lot 11 on 796 County Road 519 in Kingwood, N.J. 08825, Hunterdon County. The application did indicate that funds had been deposited in escrow, and an escrow agreement was submitted with the application. Staff recommends that the application be denied since the Notice submitted by CEP Solar Gen10 LLC. was received by the Board's email servers before the 4:00 pm opening of this application round as described by the Board approved instructions for Subsection q and explained in the Frequently Asked Questions about the Subsection q. Application Process – Updated with Questions from Round 2 (“Updated FAQ”).

EAI Investments, LLC
QO13101029

EAI / Pohatcong
(W4-073)

The fourth Notice received by the Board's email servers was submitted by Steven Gouin, Esq., and an application was submitted on behalf of EAI Investments, LLC on October 21, 2013. The application was for an EY 2015 conditional approval of a 10 MWdc grid supply solar facility proposed for Block 93, Lot 4 & 5 on High Street & Carpentersville Rd. in Pohatcong, N.J. 08865, Warren County. The application did not indicate if funds had been deposited in escrow, and no escrow agreement was submitted with the application. Staff recommends that the application be denied for lack of escrow deposited by October 15, 2013, and the lack a properly executed escrow agreement as required by Subsection q.

Brickyard, LLC
QO13101020

Brickyard/Farmingdale
(X4-031)

The thirteenth Notice received by the Board's email servers was filed by Kevin Skudera, and an application was submitted on behalf Brickyard, LLC on October 16, 2013. The application was for an EY 2015 conditional approval of a 0.362 MWdc grid supply solar facility at Block 224, Lot 17, 17.01, 17.02 & 10 on 100 Birdsall Rd. Farmingdale, N.J. 07727, Monmouth County. The application indicates that \$14,480.94.00 was deposited in escrow at Investors Bank on October 3, 2013. Brickyard's Notice was received by the Board's email servers following six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to Subsection q requirements.

Cape Atlantic Energy, LLC
QO13101013

Cape Atlantic/ Lower Township
(X1-110)

The twentieth Notice received by the Board's email servers was filed by Gregg Garagozzo, and an application was submitted on behalf of Cape Atlantic Energy, LLC on October 18, 2013. The application was for an EY 2015 conditional approval of a 2.0 MWdc grid supply solar facility at Block 410.01, Lot 83 & 87.01 on 470 Shunpike Road Lower Township, N.J. 08204, Cape May County. The application indicates that \$80,000.00 was deposited in escrow at Sturdy Savings Bank on October 15, 2013. Cape Atlantic Energy's Notice was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to Subsection q requirements.

Mohawk Associates, LLC
QO13101012

Mohawk/ Wantage
(W3-140)

The twenty-first Notice received by the Board's email servers was filed by Louis Weber, and an application was submitted on behalf Mohawk Associates, LLC on October 17, 2013. The application was for an EY 2015 conditional approval of a 6.832 MWdc grid supply solar facility at Block 16 & 17, Lots 5.01, 5.02, 5.03, 5.04 & 38.01, 38.02 & 38.03 on Roy Road, Wantage, N.J. 07461, Sussex County. The application indicates that \$273,300.00 was deposited in escrow at Investors Bank on October 15, 2013. Mohawk Associates' Notice was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when

added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to Subsection q requirements.

Syncarpha Alethea II, LLC.
QO13101011

Syncarpha / Kingwood
(W1-076)

The twenty-second Notice received by the Board's email servers was filed by Clifford Chapman, and an application was submitted on behalf Syncarpha Alethea II, LLC on October 17, 2013. The application was for an EY 2015 conditional approval of a 7.978 MWdc grid supply solar facility at Block 21, Lot 1 on 550 Barbertown-Point Breeze Road, Kingwood, N.J. 08825, Hunterdon County. The application indicates that \$319,120.00 in escrow was deposited at PNC Bank on October 11, 2013. Syncarpha's Notice was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to the Solar Act's Subsection q requirements.

SunDurance Energy, LLC
QO13101007

SunDurance, LLC/ Pohatcong
(X1-073)

The twenty-third Notice received by the Board's email servers was filed by Clifford Chapman, and an application was submitted on behalf SunDurance Energy, LLC on October 17, 2013. The application was for an EY 2015 conditional approval of a 9.99 MWdc grid supply solar facility at Block 99, Lot 4 on 155 County Rt. 519 Phillipsburg, Pohatcong, N.J. 08865, Warren County. The application indicates that \$400,000.00 in escrow was deposited at The Bank of New York Mellon on October 15, 2013. SunDurance's Notice was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to Subsection q requirements.

True Green Capital / Spano Partners Holding LLC.
EO13060562V

North Park Solar LLC. / Millstone
(W1-113)

The twenty-fourth Notice received by the Board's email servers was filed by Panos Ninios of True Green Capital, and an application was submitted by Jim Spano, Spano Partners Holding LLC. for North Park Solar LLC on October 17, 2013. The application was for an EY 2015 conditional approval of a 10 MWdc grid supply solar facility at Block 16, Lot 2.01 & 9.05 on 700 Rike Drive in Millstone Township, N.J. 08535 Monmouth County. The application indicates that \$400,000.00 was deposited in escrow at Investors Bank on October 15, 2013. True Green Capital's Notice was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to Subsection q requirements.

Day Four Solar, LLC. / Aston Solar, LLC.
QO13101005

Aston Solar, LLC. / Wrightstown
(W2-019)

The twenty-fifth Notice received by the Board's email servers was filed by Ralph Laks, and an application was submitted on behalf of Day Four Solar, LLC on October 18, 2013. The application was for an EY 2015 conditional approval of a 6 MWdc grid supply solar facility at Block 905, Lot 29 on 100 Cookstown-New Egypt Road Wrightstown, N.J. 08562, Burlington County. The application indicates that \$240,000.00 was deposited in escrow at TD Bank on October 15, 2013. Day Four Solar's Notice was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2015. Staff recommends the application be denied to avoid oversubscribing EY 2015 pursuant to the Solar Act's Subsection q requirements.

Red Valley Solar, LLC. / Community Energy, LLC.
QO13101002

Community Energy / Millstone
(W4-045)

The twenty-eighth Notice received by the Board's email servers was filed by Brent Beerley, and an application was submitted on behalf Red Valley Solar, LLC on October 17, 2013. The application was for an EY 2016 conditional approval of a 10 MWdc grid supply solar facility at Block 55, Lot 2 on 165 Trenton Lakewood Road Millstone, N.J. 08510, Monmouth County. The application indicates that \$400,000.00 was deposited in escrow at U.S. Bank National Association on October 8, 2013. Community Energy's Notice for Red Valley Solar was received by the Board's email servers following more than six other applicant Notices with aggregate capacity that, when added to the capacity approved in Round One, would exceed the 80 MW authorized by the Solar Act for Energy Year 2016. Staff recommends the application be denied to avoid oversubscribing EY 2016 pursuant to Subsection q requirements.

MidFlare Corporation
QO13101017

Midflare / 700 Quinton-Salem Road
(X2-028)

The fifteenth Notice received by the Board's email servers was filed by Mark Randall on behalf of MidFlare Corporation, and an application was submitted for a solar electric generation facility at 700 Quinton-Salem Road on October 17, 2013. The application was for an EY 2016 conditional approval of a 3 MWdc grid supply solar facility at Block 00012 Lot 00034 on 700 Quinton-Salem Road in Quinton, N.J. 08079, Salem County. The application indicates that \$120,000.00 was deposited in escrow at Wells Fargo Bank on May 15, 2013. Midflares's Mark Randall submitted a letter dated January 13, 2014 requesting the withdrawal of the Subsection q. application for this project and further instruction in securing the release of the escrowed funds.

Table 2. Subsection q Round Two Withdrawn Application

Time Notice Received OCE	Date Application Received OCE	Notice / Application Submitted by	Applicant / Facility Name	Docket Number	Contact Address	Project/Designation Address	Project Location Town	Project County	Energy Year Requested	Array Size* (MWdc)	PJM Queue No.
16:00:13	12/17/2013	Mark Randall	Midflare Corp	QO13101017	303 Perimeter Center North, Suite 300 Atlanta, GA 30346	Block 00012, Lot 00034	700 Quinton-Salem Rd Quinton, NJ 08079	Salem	EY16	3,000	X2-028

DISCUSSION AND FINDINGS

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

If a statute "is clear and unambiguous on its face and admits of only one interpretation," effect should be given to the statute's plain meaning. Thomsen v. Mercer-Charles, 187 N.J. 197, 206 (2006) (quoting State v. Butler, 89 N.J. 220, 226 (1982)). Where literal words give rise to an unclear or ambiguous statutory meaning, with more than one plausible interpretation, courts look to extrinsic evidence, including legislative history and contemporaneous construction to guide interpretation. Burnett, supra, 198 N.J. at 421; Clymer v. Summit Bancorp., 171 N.J. 57, 66 (2002); Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000). Extrinsic evidence also may be resorted to if a plain reading leads to an absurd result. Burnett, supra, 198 N.J. at 421.

The Board **FINDS** that Subsection q is clear in its directives. As quoted above, Subsection q directs the Board to approve the designation as "connected to the distribution system" of up to 80 MW of proposed grid supply projects for each of the Energy Years 2014, 2015 and 2016 provided that each proposed project: 1) does not exceed ten (10) MW; 2) includes an application which is accompanied by notice of an escrow of \$40,000 per MW of proposed capacity, and 3) the proposed capacity of the project when added to the capacity previously approved for that EY does not exceed the 80 MW limit.

In the May 9 Order, the Board approved proposed documents and a procedure to implement the statutory intent in an open and even handed manner by adopting Staff's recommendation to review applications in the order that Notices were received by the Board, provided that the completed application including evidence of a funded escrow was received within five (5) days. Analogizing to the Court rules that guide us when there are no agency rules on point, the Board reaffirms that ranking applications based on the time received by the Board's email server -- not when they are e-mailed by the applicant -- is reasonable and appropriate. See Comments to R. 1:5-6[2]. "In contemplation of law, a paper or pleading is considered as filed when delivered to the proper custodian and received by him to be kept on file." Poetz v. Mix, 7 N.J. 436, 442 (1951). The Updated FAQ notified potential applicants that time of receipt by the Board's email server would be used for purposes of ranking the applications. The Board remains convinced that the resulting procedure embodies objectively verifiable standards for determining the priority of the proposed projects seeking approval of designation under Subsection q.

Accordingly, after review of the process and the recommendations of Staff, the Board **HEREBY FINDS** that Staff conducted an application process for determining eligibility of proposed grid supply solar electric generation facilities to be considered "connected to the distribution system serving New Jersey" pursuant to Subsection q of the Solar Act, and that the process followed was consistent with the Board's directives in the May 9 Order, the August 21 Order and with Subsection q. The Board **FINDS** that the ten (10) projects described above must be denied for either failing to satisfy the requirements for filing an application pursuant to Subsection q or for exceeding the statutory limit for the applicable Energy Year after considering the proposed projects previously approved in Round One or filed in Round Two before these applications.

Therefore, the Board **HEREBY DENIES** the ten (10) applications identified above seeking conditional approval for EY 2015 or EY 2016 pursuant to Subsection q for exceeding the statutory limitation on the amount of capacity which can be designated, or for failing to satisfy the application procedures adopted by the Board to implement the directives of Subsection q while ensuring that all applicants are treated openly and fairly.

The Board **HEREBY DIRECTS** Staff to monitor the Subsection q applications provided conditional approval and their progress in meeting their respective SREC registration and associated project milestone requirements, and advise the Board on or after June 1, 2014 whether an additional application process under Subsection q should be conducted for Energy Year 2015.

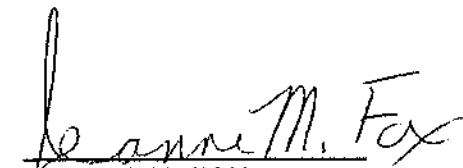
Projects denied designation by this Order and the withdrawn project may present this Order to the escrow agent as evidence supporting return of the escrow deposit.

The effective date of this Order is February 14, 2014.

DATED: 2/4/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

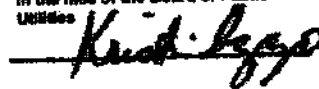

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
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MARY-ANNA HOLDEN
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

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



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

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

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