



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 L. 2012, C.24, THE SOLAR ACT OF 2012; AND)	DOCKET NOS. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, <u>N.J.S.A. 48:3-87(Q) (R) AND (S)</u> – PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM – ORDER RESCINDING THREE SUBSECTION (Q) APPLICATION CONDITIONAL APPROVALS)	EO12090880V
)	
MIDFLARE CORP. / 1101 QUINTON-ALLOWAY RD, MIDFLARE CORP. / 700 QUINTON-SALEM RD. ORION RENEWABLE ENERGY / ORION SOLAR NORTHEAST, LLC)	DOCKET NO. EO13060548V DOCKET NO. EO13060549V DOCKET NO. EO13060551V
)	

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Mark Randall, Midflare
Nicholas Hiza, Orion Solar Northeast, LLC.

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) (“October 4 Order”).

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 ("May 9 Order"), 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. 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

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.

commercial operation, or shall be forfeited to the State if the facility is designated pursuant to this subsection but does not enter commercial operation pursuant to paragraph (2) of this subsection." Ibid. To implement this provision, the Escrow Agreement adopted by the Board by Order dated June 21, 2013 (June 21 Order)² 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.

As approved by the Board in the May 9 Order, to obtain approval for EY 2014 or conditional approval for EY 2015 or 2016 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 SREC registration requirements must be fulfilled. To obtain final approval of a Subsection q application for EY 2015 or EY 2016 which has been granted conditional approval, 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 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 Solar Renewable Energy Certificate (SREC) registration and escrow requirements must have been maintained throughout the conditional approval period.

All applicants, including those seeking approval in EY 2015 and EY 2016, must demonstrate that the required amounts are currently held in escrow. Applicants seeking approval for designation in EY 2015 must acknowledge that the two year escrow forfeiture time period will not begin until June 1, 2014, and those seeking approval for designation in EY 2016 must acknowledge that the two year period begins June 1, 2015.

In the May 9 Order, the Board opened the initial application period beginning on May 15, 2013 and extending through May 31, 2013. The Board also stated that "additional application periods may be opened, if necessary."

² In re the Implementation of the Solar Act, Subsection (Q) Application and Escrow Agreement, Docket Nos. EO12090832V & EO12090880V.

The May 9 Order was posted on the Board and the New Jersey Clean Energy Program's ("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 it to the New Jersey Clean Energy Program (NJCEP) website. Applicants were advised in these materials that to qualify pursuant to Subsection q, applicants must file Notice according to the instructions³ to be considered for approval for a specific Energy Year:

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 a dedicated email address no earlier than 4 p.m. on May 15, 2013, and no later than 5 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 the 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 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 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. Applicants that failed to fulfill all Board approved application requirements such as filing the Notice, supplying an application within five days of filing the Notice, or executing an escrow agreement and funding an escrow by May 15, 2013, were addressed in a separate Order.

During the application period, from May 15, 2013 to May 31, 2013, a question had been 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.

At its June 21, 2013 agenda meeting, the Board found that release of the escrowed funds prior to designation of the proposed solar facility is consistent with the legislative intent as expressed

³ Updated Round 2 - Subsection q Application Materials, p. 1, (revised October 10, 2013).

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 termination of the application by BPU Staff is sufficient authorization for withdrawal of the funds from the escrow account. Accordingly, the Board approved modification of paragraph (10) of the Escrow Agreement to reflect this ruling.

By Order dated August 21, 2013, the Board approved eleven (11) applications for solar electric generating facilities seeking eligibility to be designated as "connected to the distribution system" in Energy Year 2014 and conditionally approved the applications for seven (7) projects seeking eligibility for designation in Energy Year 2015 and three (3) projects seeking eligibility for designation in Energy Year 2016 ("August 21 Order"). In making the conditional approvals, the Board modified the SREC registration requirements which exist within the Board's rules at N.J.A.C. 14:8-2.4, and directed the applicants to "submit or resubmit new, updated, and complete SREC Registration packages within two weeks of the effective date of the Order." August 21 Order at 9-10.

Energy Year 2015 Conditional Approvals

In the August 21 Order, the Board conditionally approved seven (7) applications, for a total of 31.2 MWdc of capacity seeking eligibility for designation within Energy Year 2015. Full approval of eligibility for designation would commence on the first day of Energy Year 2015, June 1, 2014, subject to several conditions including maintenance of the escrow account and registration in the SREC Registration program ("SRP") within two weeks of the effective date of the Order. The Renewable Energy Market Manager worked with each of the applicants to complete the directive, and five of the seven applicants seeking designation for EY 2015 were successful in submitting SREC registrations in substantially final form within two weeks as required by the August 21 Order.

Table 1. Subsection q Round One Conditional Approvals for EY 2015 Granted August 21, 2013

Rank by Time Notice Recv'd.	Time Notice Received (May 15)	Date Application Received	Notice / Application Submitted by	Applicant / Facility Name	Docket Number	Project/ Designation Address	Project Location Town	Project County	Energy Year Requested	Array Size* (MWdc)
4	15:59:40	5/16/2013	Kevin Skudera	Brickyard LLC	EO13060541V	Block 224, Lot 17, 17.01, 17.02, 10	100 Birdsall Rd Farmingdale, NJ 07727	Monmouth	EY15	2.000
7	15:59:46	5/20/2013	Mark Randall	Midflare Corp.	EO13060548V	Block 32, Lot 1101	1101 Quinton-Alloway Rd Quinton, NJ 08072	Salem	EY15	2.000
8	15:59:46	5/20/2013	Mark Randall	Midflare Corp.	EO13060549V	Block 00012, Lot 00034	700 Quinton-Salem Rd Quinton, NJ 08079	Salem	EY15	3.000
12	15:59:52	5/20/2013	Vasilios Karabatsos / George Kotzias	Alethea Cleantech / Alethea Solar II, LLC	EO13060554V	Block 3, Lot 1	219 John Ringo Road East Amwell Township, NJ 08551	Hunterdon	EY15	3.326
13	16:00:02	5/17/2013	Eric Dornfeld / Richard Meurer	Meurer Development, LLC	EO13060544V	Block 27, Lot 24	78 Junction Road Flemington, NJ 08822	Hunterdon	EY15	5.416
18	16:00:15	5/20/2013	Brent Beerley	Community Energy Inc. / Monmouth East II Solar LLC.	EO13060556V	Block 22.01, Lot 12.01	Sharon Station Rd & New Canton - Stone Tavern Rd Upper Freehold, NJ 08501	Monmouth	EY15	6.500
19	16:00:15	5/20/2013	Eddie Zeng	Zongyi Solar America Co. Ltd	EO13060552V	Block 42, Lot 36	829 Lakewood Farmingdale Rd Howell, NJ 07731	Monmouth	EY15	9.000

7

31.242

Midflare Corp. / 1101 Quinton-Alloway Rd. Midflare / Quinton
 EO13060548V (X2-027)

Staff was informed by the Renewable Energy Market Managers that Midflare Corporation failed to submit an SREC Registration for the solar generation facility proposed at PJM Queue position X2-027 within the required two weeks. The application was for an EY 2015 approval of a 2 MWdc grid supply solar facility on Block 32 at 1101 Quinton-Alloway Rd. in Quinton, NJ.

Midflare Corp. / 700 Quinton-Alloway Rd. Midflare / Quinton
 EO13060549V (X2-028)

Staff was informed by the Renewable Energy Market Managers that Midflare Corporation failed to submit an SREC Registration for the solar generation facility proposed at PJM Queue position X2-028 within the required two weeks. The application was for an EY 2015 approval of a 3 MWdc grid supply solar facility on Block 00012 at 700 Quinton-Alloway Rd. in Quinton, NJ.

Energy Year 2016 Conditional Approvals

The Board conditionally approved three (3) applications, for a total of 20.65 MWdc of capacity seeking eligibility for designation for Energy Year 2016. Full approval of eligibility for designation would commence on the first day of Energy Year 2016, June 1, 2015, subject to several conditions including maintenance of the escrow account and registration in the SREC Registration program within two weeks of the effective date of the Order. The Renewable Energy Market Manager worked with each of the applicants to complete the directive and two of the three applicants seeking designation in EY 2016 were successful in submitting SREC registrations in substantially final form within two weeks as required by the August 21 Order.

Table 2. Subsection q Round One Conditional Approvals for EY 2016 Granted August 21, 2013

Rank by Time Notice Recv'd.	Time Notice Received (May 15)	Date Application Received	Notice / Application Submitted by	Applicant / Facility Name	Docket Number	Project/ Designation Address	Project Location Town	Project County	Energy Year Requested	Array Size* (MWdc)
9	15:59:48	5/20/2013	Hesser McBride / George Wetteland	Solartricity LLC.	EO13060546V	Block 6, Lot 62	Spring Mills Rd, Milford, NJ 08848	Hunterdon	EY16	3.500
20	16:00:15	5/20/2013	Ben Terry / Brent Beerley	Community Energy Inc. / Cedar Branch Solar LLC.	EO13060557V	Block 7402, Lot 6 & 7	2867 Vine Rd Buena Vista, NJ 08360	Atlantic	EY16	7.150
22	16:00:19	5/20/2013	Nicholas Hiza	Orion Renewable Energy Group / Orion Solar Northeast, LLC	EO13060551V	Block 33, 35, 36 Lot 10.01, 10.02, 24, 25, 26, 32, 33, 62, 65, 66, 67, & 68	73 Ramah Rd. Bridgeton, NJ 08302	Cumberland	EY16	10.000

3

20.650

Orion Renewable Energy Group / Orion Solar Northeast, LLC. Orion, LLC. / Bridgeton
EO13060551V (W1-021)

Staff was informed by the Renewable Energy Market Managers that Orion Renewable Energy Group failed to submit an SREC Registration for the proposed solar generation facility within the required two weeks. The application was for an EY 2016 approval of a 10 MWdc grid supply solar facility at Block 13, 30, 33, 35, 36, Lot 1, 19, 20, 29, 10.1, 10.2, 24, 25, 26, 32, 33, 62, 65, 66, 67 & 68 on 73 Ramah Rd Bridgeton, NJ 08302, Burlington County.

Staff and the Market Managers encouraged each applicant to resubmit their applications in the Round Two Subsection q. application process.

STAFF RECOMMENDATION

Staff recommends that the Board rescind the conditional approvals granted to Midflare Corporation for two projects seeking designation in Energy Year 2015 for five megawatts of total capacity, and rescind the conditional approval made to Orion Renewable Energy Group for a ten MWdc project seeking designation for Energy Year 2016.

DISCUSSION AND FINDINGS


The Board has reviewed the recommendations of Staff and **HEREBY FINDS** that Staff conducted an application process for determining eligibility of 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 **HEREBY FINDS** that the process as executed was consistent with the Board's directives in the May 9 Order. Additionally, the Board **HEREBY FINDS** that notice of the process was provided in a manner intended to reach interested parties and provide adequate time for compliance with that process.

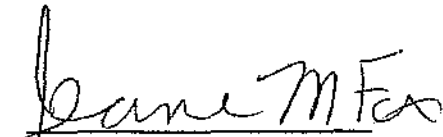
The Board **FINDS** that it had directed the applicants with conditional approvals seeking designation for EY 2015 and EY 2016 to submit or resubmit new, updated, and complete SREC Registration packages within two weeks of the effective date of the August 21 Order. The Board further **FINDS** that MidFlare Corporation failed to submit a complete SREC registration package for the two projects for which it received conditional approval, and that Orion Renewable Energy Group failed to submit a complete SREC registration package for the project for which it had received conditional approval after notice and opportunity to cure. Accordingly, the Board **HEREBY RESCINDS** the two conditional approvals granted to MidFlare Corporation⁴ and the conditional approval granted to Orion Renewable Energy Group in the August 21 Order.


The effective date of this Order is February 7, 2014.

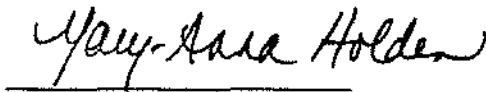
DATED: 1/29/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

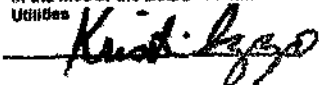

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ATTEST:

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


⁴ The Board notes that MidFlare and Orion reapplied in Round 2, and by a separate Order the Board considers those applications.

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) Application Approvals

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