



Agenda Date: 4/15/15
Agenda Item: 8F

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
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;)	DOCKET NO. EO12090832V
)	
)	
IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24 <u>N.J.S.A.</u> (Q) (R) AND (S) – PROCEEDINGS TO ESTABLISH THE PROCESSES FOR DESIGNATING CERTAIN GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM;)	DOCKET NO. EO12090880V
)	
)	
BRICKYARD, LLC.)	DOCKET NO. QO13101020

Party of Record:

Steven W. Griegel, Esq., for Brickyard, 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”) 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”) and N.J.S.A. 48:3-87(s) (“Subsection s”) (“October 4 Order”).

Subsection q of the Solar Act provides as follows:

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. The public was invited to submit written comments through November 23, 2012. Over one hundred stakeholders representing the electric distribution companies, solar market participants, landfill developers, environmentalists, municipalities, and ratepayers participated in the public hearing and submitted comments. Based upon the comments received, 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 the 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 2016 within 90 days of receipt of a completed application¹. 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).

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.

As provided 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 for one energy year -- EY 2014, 2015 or 2016 -- with a copy provided to New Jersey Division of Rate Counsel, the proposed system must be 10 MW or less, the appropriate escrow amount must be noticed as properly funded, and all appropriate SREC registration requirements must be fulfilled. Applications for EY 2014 that fulfilled these procedures would be approved on a first-in-time basis until as much as 80 MWdc of capacity was approved for EY 2014.

Applicants for EY 2015 and EY 2016 that fulfilled the Board's application procedures would be conditionally approved on a first-in-time basis until up to 80 MWdc capacity was conditionally approved for the respective energy year. Full approval of a Subsection q application for EY 2015 or EY 2016 would be effective on the first day of the respective energy year subject to the conditions described below.

To obtain final approval as "connected to the distribution system" and eligibility for SRECs for a Subsection q application for EY 2014, EY 2015 or EY 2016, the developer of a proposed facility must have submitted a Subsection q application and received approval or conditional approval from the Board; 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 approval or conditional approval process.

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 did 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 to begin on May 15, 2013 and extend through May 31, 2013. The Board further provided that "additional application periods may be opened, if necessary."

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 NJCEP website. Applicants were advised that to qualify pursuant to Subsection q, they must file a specifically Notice according to the instructions 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 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 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 of the twenty eight projects which filed the Notice also submitted an application.

A timely Notice was filed and an application was submitted on behalf of Brickyard, LLC. ("Brickyard") for an EY 2015 approval of a 2 MWdc grid supply solar facility proposed for 100 Birdsall Road in Farmingdale, New Jersey. After review, Staff recommended granting Brickyard's application be granted. By Order dated August 21, 2013 ("August 21 Order"), the Board adopted Staff's recommendation and conditionally approved the Brickyard application and six others for EY 2015. The August 21 Order also opened an additional application process under Subsection q beginning on October 15, 2013 ("Round Two").

As directed by the Board, Staff notified stakeholders and circulated instructions for participation in Round Two. The Round Two process essentially repeated the process used in the first application period as described above with some clarifying updates. Brickyard filed a Notice and an application in Round Two for approval for in EY 2015 of an additional .362 MWdc grid supply solar facility (the "Project") to be built at the same location in Farmingdale, New Jersey as the previously approved project. Based on the time of receipt as indicated by the Board's server, Staff recommended that the application be denied to avoid oversubscribing the capacity remaining available for EY 2015. After review of the Round Two process and Staff's recommendations, by Order dated February 4, 2014, the Board denied Brickyard's application for the Project along with the applications for nine other projects ("February 4 Order").

On or about March 3, 2014, Brickyard filed a motion for reconsideration of the February 4 Order, challenging the process used in Round Two and challenging approval of two other applications: G&S Wantage Solar, LLC ("Wantage") and Hanover Solar, LLC ("Hanover").² By Order dated July 23, 2014, the Board denied Brickyard's motion. On or about April 12, 2014, Brickyard filed an appeal of the February 4 and July 23 Orders which is currently pending before the Appellate Division under Docket No. A-5811-13T3 ("Subsection q Appeal").

² Hanover is now owned by NJR Clean Energy Ventures II Corp.

On or about November 26, 2014, Brickyard filed an appeal of the Board's Order dated October 31, 2014 setting the criteria and timing for a supplemental filing for applications which had been deferred for further consideration under Subsection s, contending that the Subsection s process was prejudicial to applicants under Subsection q. That appeal is currently pending before the Appellate Division under Docket No. A-1579-14T3 ("Subsection s Appeal").

Subsequently, Brickyard and the Division of Law on behalf of Staff entered into negotiations, and on April 6, 2015, entered into the attached settlement agreement ("Settlement"). In relevant part, the Settlement provides that:

1. Staff will recommend that the Board approve the Settlement and thereby approve the Project for designation as connected to the distribution system under Subsection q for EY 2015 under the same terms and conditions as applied to projects approved by the Board's February 4 Order.
2. Within two weeks of the effective date of Board approval, Brickyard will file a new SRP registration package to reflect the additional .362 MWdc as a Phase II to the 2 MWdc solar project at the same location which was previously approved by the Board under Docket No. E013060541V by Order dated August 21, 2013, and assigned SRP number 21356 ("Phase I"). The combined Phase I and Phase II (with an SRP number to be assigned) will total 2.362 MWdc. Phase I and Phase II will each comply with the EY 15 requirements, and be independently completed using the same interconnection point as previously approved for Phase I. Brickyard will also provide evidence of the funding of a recalculated escrow reflecting both Phase I and Phase II and the total 2.362 MWdc capacity of the solar project.
3. Brickyard shall comply with all of the requirements of Subsection q.
4. No later than 46 days after the effective date of Board approval, Brickyard shall cause the Subsection q and Subsection s Appeals to be dismissed with prejudice.

DISCUSSION AND FINDING

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

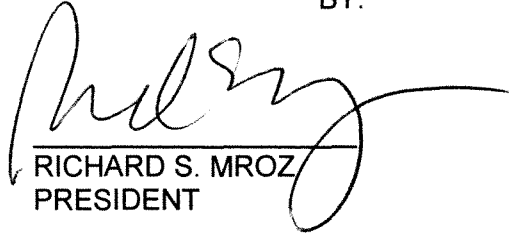
After review, the Board **HEREBY FINDS** that the terms of the settlement are fair and reasonable. With the agreed upon adjustment, the Project will utilize capacity which remains open in EY 2015. Allowing the Project to move forward at a revised capacity (including Phase I and Phase II) comports with the requirements of Subsection q, and eliminates the need for additional litigation over the Subsection q process and the projects approved under that process.

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

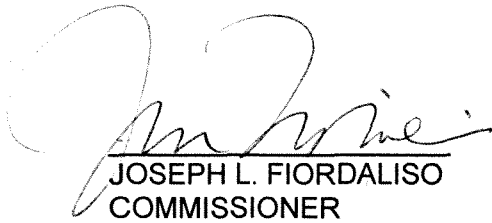
Additionally, the Board **HEREBY DIRECTS** Staff to promptly process the SRP registration package for Phase II upon Brickyard's submission to Staff evidence of the dismissal with prejudice of the Subsection q and Subsection s Appeals.

DATED: 4/13/15

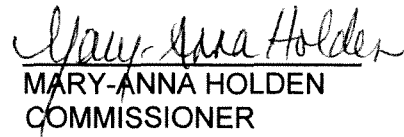
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



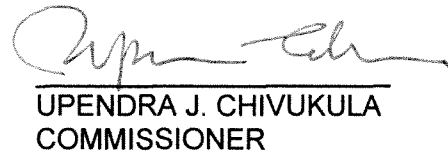
JOSEPH L. FIORDALISO
COMMISSIONER



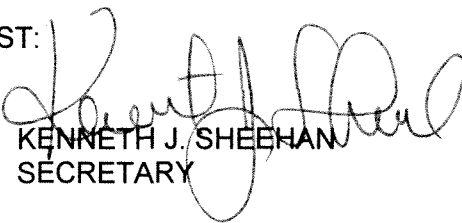
MARY-ANNA HOLDEN
COMMISSIONER



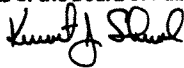
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
KENNETH J. SHEEHAN
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. (Q) (R) AND (S) – PROCEEDINGS TO ESTABLISH THE PROCESSES FOR
DESIGNATING CERTAIN GRID-SUPPLY PROJECTS AS CONNECTED TO THE
DISTRIBUTION SYSTEM; AND

DOCKET NO. QO13101020 – IN THE MATTER OF BRICKYARD, LLC.

SERVICE LIST

Cynthia L.M. Holland, Esq.
Genova Burns LLC
494 Broad Street
Newark, NJ 07102
cholland@genovaburns.com

Patrick J. McAuley
Connell Foley LLP
85 Livingston Ave.
Roseland, NJ 07068
pmcauley@connellfoley.com

Kevin Skudera
Brickyard, LLC.
566A State Hwy 35
Red Bank, NJ 07701
skuderakg@aol.com

Steven W. Greigel, Esq.
Roselli Griegel Lozier & Lazzaro, PC
1337 Highway 33
Hamilton Square, NJ 08690
sgriegel@roselligriegel.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street 4th Floor
Post Office Bo 003
Trenton, N.J. 08625-0003
sbrand@rpa.state.nj.us

Kenneth J. Sheehan, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Kenneth.sheehan@bpu.state.nj.us

Betsy Ackerman, Acting Director
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
elizabeth.ackerman@bpu.state.nj.us

Marisa Slaten, Esq.
Assistant Director
Office of Clean Energy
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
marisa.slaten@bpu.state.nj.us

Benjamin S. Hunter
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
benjamin.hunter@bpu.state.nj.us

Caroline Vachier, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
Caroline.Vachier@dol.lps.state.nj.us

Babette Tenzer, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
Babette.Tenzer@dol.lps.state.nj.us

Allison E. Mitchell, AA1
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
allison.mitchell@bpu.state.nj.us

Cynthia E. Covie, Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
Cynthia.Covie@bpu.state.nj.us

Rachel Boylan, Esq., Legal Specialist
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
rachel.boylan@bpu.state.nj.us

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

Docket No. EO12090832V

AND

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

Docket No. EO12090880V

BRICKYARD, LLC.

Docket No. QO13101020

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered into on this 6th day of April, 2015, by Brickyard, LLC ("Brickyard") and the Staff of the New Jersey Board of Public Utilities ("Board Staff") (Brickyard and Board Staff shall be referred to each as a "Party" and collectively as the "Parties").

WHEREAS, on or about October 15, 2013, Brickyard filed an application ("Application") with the New Jersey Board of Public Utilities ("Board") for approval of a .362 MWdc grid supply solar generating project to be located at 100 Birdsall Road in Farmingdale, New Jersey ("Project") as "connected to the distribution system" pursuant to N.J.S.A. 48:3-87(q) ("Subsection q") and therefore eligible to generate solar renewable energy certificates ("SRECs") beginning on June 1, 2014 ("EY 2015") subject to completion of the Project and satisfaction of all requirements of Subsection q, the SREC Registration Program ("SRP") and of the Board's rules; and

WHEREAS, by Order dated February 4, 2014, the Board denied the Application in the matter entitled "In the Matter of the Implementation of L. 2012, C. 24, The Solar Act of 2012; and In the Matter of the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q) (R) 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" (Docket Nos. EO12090832V and EO12090880V); and

WHEREAS, on or about March 3, 2014, Brickyard filed a motion for reconsideration of the Board's denial of the Application, which motion the Board denied by Order dated July 23, 2014; and

WHEREAS, on or about April 12, 2014, Brickyard filed an appeal of the Board's February 4, 2014 and July 23, 2014 Orders, which appeal is currently pending before the Superior Court, Appellate Division under Docket No. A-5811-13T3 (the "Subsection Q Appeal"); and

WHEREAS, on or about November 26, 2014, Brickyard filed an appeal of the Board's Order dated October 31, 2014, in the matter entitled "In the Matter of the Implementation of L.2012, C.24, The Solar Act of 2012; and In the Matter of the Implementation of L. 2012, C.24, N.J.S.A. 48:3-87(Q) (R) and (S) - Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as Connected to the Distribution System - Request for Approval of Grid Supply Solar Electric Power Generation Pursuant to Subsection (S)—Additional Application Criteria" (Docket Nos. EO12090832V and EO12090880V), which appeal is currently pending before the Superior Court, Appellate Division under Docket No. A-1579-14T3 (the "Subsection S Appeal"); and

WHEREAS, the Parties to this Agreement desire to resolve the outstanding disputes, or potential disputes, as between them, by settlement and agreement, and without the expense and inconvenience of further litigation, and without the admission of liability or wrongdoing by any party.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises hereinafter set forth, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Board Approval

At the first regularly scheduled Board agenda meeting after execution of this Agreement, subject to scheduling considerations, Board Staff shall recommend that the Board approve this Agreement, and thereby approve the Project under Subsection q for EY 2015 on terms substantially similar to those set forth in the February 4, 2014 Order described above ("Board Approval").

Subject to Board Approval, within two weeks of the effective date of Board Approval, Brickyard shall do the following:

a) File a new SRP registration package to reflect the additional .362 MW as a Phase II to the 2 MWdc solar project at the same location which was previously approved by the Board under Docket No. E013060541V by Order dated August 21, 2013, and assigned SRP number 21356 ("Phase I"). The combined Phase I and Phase II (with an SRP number to be assigned) will total 2.362 MWdc. Phase I and Phase II will each comply with the EY 15 requirements, and be independently completed using the same interconnection point as previously approved for Phase I.

b) Provide evidence of an escrow account funded with the statutory requirement of \$40,000 per MW adjusted to reflect the additional capacity, and

c) Agree to comply with the remaining provisions of the Subsection q orders.

2. Dismissal of the Appeals.

No later than 46 days after Board Approval, Brickyard shall cause the Subsection Q Appeal and the Subsection S Appeal to be dismissed with prejudice, with each Party to bear its own attorneys' fees, expenses and costs. The Parties agree to execute and Brickyard agrees to file any

and all other documents as may be necessary to cause the Subsection Q and Subsection S Appeals to be dismissed with prejudice.

3. Mutual Release.

Except with respect to any rights pursuant to this Agreement which the Parties acknowledge is subject to Board Approval, each of the Parties hereby waives, releases, relinquishes, and discharges each other Party and its and their affiliates, subsidiaries, predecessors, successors, and assigns, and its and their present and former directors, officers, employees, members, representatives, counsel and agents and its and their heirs, successors, and assigns from any and all claims, liabilities, suits, damages, actions, or manner of actions, whether in contract, tort, or otherwise which either Party ever had, or now has or hereafter may have against the other Party or any of them, whether the same be in administrative proceedings, in arbitration, in law, at equity, or mixed, arising from or relating to any act or omission, or thing or matter of any kind whatsoever, by or on behalf of the other party or any of them prior to the date hereof which arise out of, underlie or are related to the Project.

4. No Admission.

No Party admits having engaged in any wrongful conduct or having violated the rights of any other Party hereto. The Parties agree that nothing in this Agreement constitutes or shall be deemed to constitute any admission of wrongdoing.

5. Waiver of Breach.

The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of this Agreement. Further, no Party shall be deemed to have waived any provision of or right under this Agreement unless such waiver is set forth in writing signed by the Party against whom waiver is asserted.

6. Construction.

This Agreement shall not be construed more strictly against any Party hereto merely by the virtue of the fact that the Agreement may have been drafted or prepared by such Party or its counsel, it being recognized that all of the Parties hereto have contributed substantially and materially to the preparation of such document and that this Agreement has been the subject of negotiations between the Parties and as a product of that negotiation.

7. Headings.

The headings, captions, and titles appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the Agreement or any paragraph or provision therein.

8. Effectuation.

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

9. Entire Agreement.

This Agreement contains the entire agreement and understanding between the Parties with respect to the Project, and no representations, promises, or agreement, oral or written, relating hereto not herein contained shall be of any force or effect. No change or modification of this Agreement shall be valid or binding upon the Parties unless and until the same is in writing and signed by the Party against whom enforcement of such change or modification is sought.

10. Applicable Law.

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

11. Counterparts.

This Agreement may be executed in one (1) or more counterparts, any of which, if originally executed, shall be binding upon the parties signing thereon, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Brickyard, LLC

By: _____

Name: Kevin G. Skudera
Title: Managing Member

John J. Hoffman, Acting Attorney General of New Jersey
Attorney for Staff of the New Jersey Board of Public Utilities

By: _____

Name: Babette Tenzer
Title: Deputy Attorney General