



Agenda Date: 1/10/24
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE NEW JERSEY SOLAR) ORDER
TRANSITION PURSUANT TO P.L. 2018, C. 17 –)
APPLICATION FOR CERTIFICATION OF SOLAR)
FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO)
SUBSECTION (T) OF THE SOLAR ACT OF 2012 –) DOCKET NO. QO22060410
MILLER BROS. GLASSBORO BORO SLF)
)

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Peter DeFazio, Miller Bros.

BY THE BOARD:¹

This Order concerns an application by Summit City Solar, LLC (“Miller Bros.” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. Summit City Solar seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for a proposed solar electric generation facility to be located on approximately 14 acres at the Glassboro Boro Sanitary Landfill Facility (“SLF”) site, Block 335, Lot 1; Block 356, Lot 1; Block 357, Lot 1; and Block 358, Lot 1, at the intersection of Lehigh Road S. and Deptford Road, Borough of Glassboro, Gloucester County, New Jersey (“Project”). The Applicant alleges that the proposed site is located on a “properly closed sanitary landfill facility” as that term is defined in the Solar Act.

BACKGROUND

On July 23, 2012, the Solar Act was signed into law. 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 the statute’s directives.

¹ Commissioner Michael Bange abstained from voting on this matter.

By Order dated 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.²

The Solar Act – specifically, Subsection (t) – provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered “connected to the distribution system” [and] shall not require such designation by the board[.]

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

The Solar Act defines the terms “brownfield,” “area of historic fill,” and “properly closed sanitary landfill facility.” A “brownfield” is “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.” N.J.S.A. 48:3-51. “Historic fill” is “generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site”³ A “properly closed sanitary landfill facility” means “a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection”⁴

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection (“NJDEP” or “Department”). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by then-Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

² In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; In re the Implementation of L.2012, c. 24, N.J.S.A 48:3-87(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; In re 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; In re the Implementation of L. 2012, c.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

³ Ibid.

⁴ Ibid.

By Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.⁵ The certification process for projects seeking approval pursuant to Subsection (t) provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which NJDEP has determined no further remedial or protective action is necessary. The process incorporates the expertise of NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site.⁶

The January 24, 2013 Order states that certification would be limited to those areas delineated by NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited, and NJDEP reviews this material in making its recommendation.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfill facilities was necessary to initiate the certification process and directed Staff to work with NJDEP to develop an application.⁷

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certificate ("SREC") program by no later than June 2021, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated that the Board close the SREC Registration Program ("SRP") once it determined that 5.1% of the kilowatt-hours sold in the State had been generated by solar electric power generators connected to the distribution system ("5.1% Milestone") or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.⁸ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

⁵ In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(U) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27, Order dated January 24, 2013 ("January 24, 2013 Order").

⁶ January 24, 2013 Order at 31–33.

⁷ Id. at 33.

⁸ 51 N.J.R. 138(e) (Jan. 22, 2019).

On December 6, 2019, the Board established a Transition Incentive (“TI”) Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.⁹ The TI Program provides eligible projects with TRECs for each megawatt hour of electricity produced. Incentives are tailored to specific project types by the use of factors, which are applied to a base incentive rate to provide a particular project type with the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection (t) receive a factor of 1.0 and thus the full amount of the base incentive.

At a Special Agenda Meeting held on April 27, 2020, the Board approved a TI rule proposal¹⁰ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.¹¹ On September 10, 2020, the Board adopted the rule proposal, and the rules became effective on October 5, 2020 when published in the New Jersey Register.¹² The rule provides that the transition incentive “shall be available to projects that submitted a complete SREC Registration Program registration or a complete Subsection (t) application after October 29, 2018” (emphasis added) but that have not received a Permission to Operate at the time that the 5.1% Milestone is achieved.¹³ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Order and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁴ Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.¹⁵

On August 17, 2022, the Board provided the opportunity for a conditional extension of the TI deadline to Subsection (t) projects registered in the TI Program or with applications pending review with NJDEP.¹⁶ The Board waived its rules and modified prior orders to allow up to a 12-month extension to all Subsection (t) solar projects with current registrations as well as those that receive conditional certification by the Board in the future, provided these projects can meet specified criteria. In addition, the Board granted the same relief to Subsection (t) applicants with applications pending review at the Board or NJDEP that received conditional certification. Such applicants thus received an automatic additional six (6) months to the registration expiration date that would otherwise be set in the Board order granting the project’s conditional certification pursuant to N.J.A.C. 14:8-10.4(e) or (f).

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI rules; the statutory language exempts such projects from the need for further Board designation as

⁹ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“December 2019 Order”).

¹⁰ In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253, April 27, 2020 (“TI Rule Proposal”).

¹¹ 52 N.J.R. 1048(a) (May 18, 2020).

¹² 52 N.J.R. 1850(a) (October 5, 2020).

¹³ N.J.A.C. 14:8-10.4(a).

¹⁴ N.J.A.C. 14:8-10.4(h).

¹⁵ N.J.A.C. 14:8-10.4(i).

¹⁶ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, Order Granting an up to 12-Month Extension for Projects Seeking an Incentive Pursuant to Subsection (t) in the Solar Transition Incentive Program, BPU Docket No. QO19010068, Order dated August 17, 2022 (“TI Extension Order”).

“connected to the distribution system” but does not remove any of the Board’s oversight authority. For example, projects seeking TREC eligibility must comply with the TI rules at N.J.A.C. 14:8-10 and applicable Board orders concerning registration with the TI Program.¹⁷ The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

STAFF RECOMMENDATIONS

Project Description

At issue is the request by Miller Bros. that its proposed Summit City Solar, LLC solar facility, to be located in the Borough of Glassboro, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). According to its petition, Miller Bros. submitted the Summit City Solar, LLC application for inclusion in the TI Program on August 26, 2021. In January 2022, the application was rejected by Staff due to noncompliance with electronic filing procedures laid out in Executive Order 103 regarding the COVID-19 public health emergency. On June 24, 2022, the Applicant filed a petition for an extension of the TI Program filing deadline date, claiming the application was filed in timely fashion in hard copy format, via hand delivery as directed by the instructions set forth in the application form. The Applicant requested that the application be filed and considered for inclusion in the TI Program, and have project completion and operational deadlines extended. Staff agreed to consider the application as submitted.¹⁸

On July 19, 2022, the Applicant was informed that the application did not include supporting documentation or tax maps and was deemed administratively incomplete. An amended application was submitted on August 4, 2022, including supporting documentation for the site. In a letter addressing the submission of supporting documentation, the Applicant states:

“The site plan includes a survey and the relevant tax maps for the property... the solar array is proposed to be located only on Lot 1 in Block 357, Lot 1 in Block 358, and Lot 1 in Block 335.”¹⁹

Staff transmitted a copy of the application to NJDEP for review on August 25, 2022.

The Minimum Qualification Requirements, as detailed in Section I on page 1 of the Subsection (t) application, state, in part, that: “Projects that are proposed to be located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (N.J.S.A. 54:4-23.1 et seq.) at any time within the ten (10) year period prior to July 24, 2012 will not be eligible for designation as being located on a brownfield, an area of historic fill, or a properly closed sanitary landfill facility for purposes of qualifying for SRECs under Subsection t.”

Tax records obtained by the Division of Law from Gloucester County show that the portion of the property located on Block 357, Lot 1 and Block 358, Lot 1 was taxed as 3B Qualified farmland pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.)

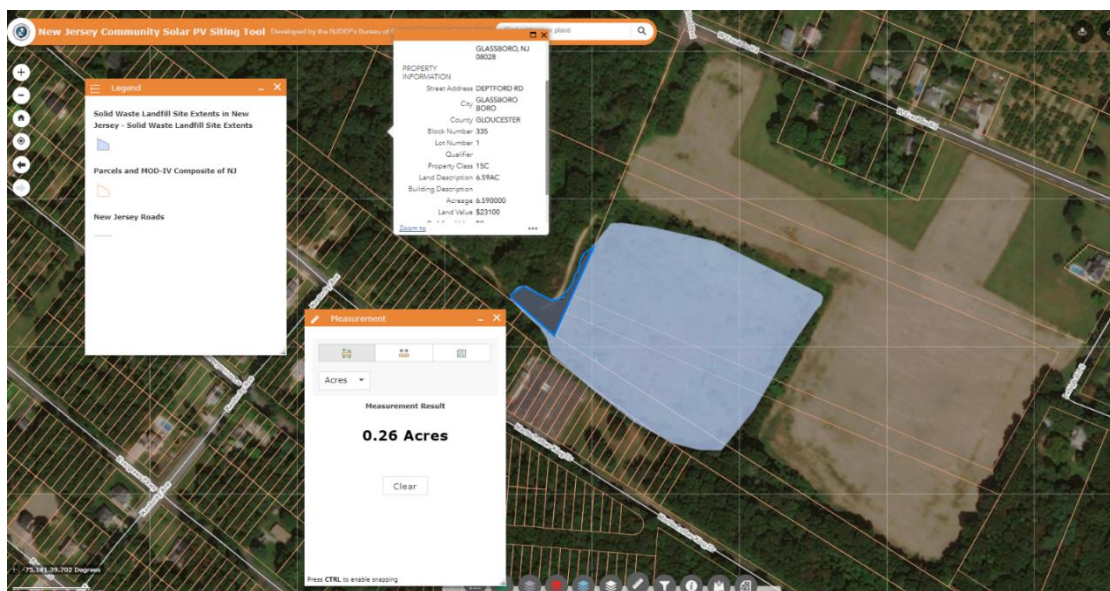
¹⁷ December 2019 Order at 33.

¹⁸ The Applicant’s extension was docketed under QO22060406 but has been administratively closed and consolidated into this docket.

¹⁹ Miller Bros. correspondence dated August 4, 2022.

during the period from 2002 to 2012.²⁰ These parcels total 14.28 acres. Since the proposed Project is located on property that has been actively devoted to agricultural or horticultural use, specifically Block 357, Lot 1 and Block 358, Lot 1, which had been valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, within the 10 year period prior to July 24, 2012, the development proposed on these parcels are not eligible for inclusion in this solar subsidy program. Staff transmitted a copy of the application to NJDEP for review on August 25, 2022; NJDEP advised that due to the taxation status, it would not review the application for land classification as a properly closed sanitary landfill.

The remaining parcel at Block 335, Lot 1, was not valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, within the 10 year period prior to July 24, 2012. Block 335, Lot 1 totals 6.59 acres; approximately 0.26 acres of the landfill exist on the parcel (opaque blue, below).²¹ The Applicant's proposed Project is 2.45 MWdc and 14 acres in size. The Applicant's Site Plans depict the majority of the Project to be sited on Block 357, Lot 1 and 358, Lot 1, which are ineligible due to the farmland taxation. The Applicant's Site Plans depict a minimal portion of the Project to be sited on Block 335, Lot 1, however, as detailed in the image below, only approximately 0.26 acres of landfill is located on Block 335, Lot 1, which may or may not be a properly closed sanitary landfill. Due to the minimal size of the landfill area in relation to the 14 acres of the proposed Project Site, NJDEP declined to review the area.



²⁰ The Division of Law, on behalf of BPU Staff, obtained property tax records for Block 335, Lot 1; Block 357 Lot 1; and Block 358, Lots 1 and 2, for the years 2002-2012 showing the property tax classification. The records were obtained in September 2022 from the Gloucester County Tax Assessor and the Gloucester County Tax Collector. The tax records show that from the years 2002-2012, the entirety of Block 357, Lot 1 and Block 358, Lot 1, were taxed as 3B Qualified farmland. These documents can be found on the Board's Public Document search, located at the following link: <https://publicaccess.bpu.state.nj.us/>

²¹ New Jersey Community Solar PV Siting Tool, Web Mapping Application from NJDEP Bureau of GIS; Managed by NJDEPBGIS. Published Dec. 18, 2018; Updated Aug. 22, 2023.

<https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=c3a9466eb7e54badbb41a90794bd0349>

Summit City Solar, LLC – Docket No. QO22060410

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Summit City Solar, LLC (Miller Bros.)	QO22060410	Glassboro Boro SLF	Block 335, Lot 1; Block 357, Lot 1; & Block 358 Lot 1 Intersection of Lehigh Rd. S and Deptford Rd. Glassboro Borough, 08028	Gloucester	Landfill	2.45	ACE

Based on the information certified by Summit City Solar, LLC in its application and supporting documents, records obtained by the Division of Law, NJDEP’s findings, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board deny conditional certification to the solar array proposed by Miller Bros. for Block 357, Lot 1 and Block 358, Lot 1 as documented in the Applicant’s Electrical Site Plan map, as not being located on land eligible for participation in the TI Program.

Additionally, in light of the tax status of the larger blocks and lots, Block 357, Lot 1 and Block 358, Lot 1, NJDEP declined to evaluate the approximately 0.26 acres located on Block 335, Lot 1, for land classification as a “properly closed sanitary landfill.” The Applicant requested development of a solar array 14 acres in size, however, only a minimal area approximately 0.26 acres may or may not be eligible for development upon a land use determination by NJDEP. Due to the Applicant’s proposed Project 14 acres in size, NJDEP has not conducted a land use determination of the 0.26 acres. In the absence of an NJDEP evaluation, and given the documentation of assessment of the majority of the Project site as 3B Qualified Farmland, the record contains sufficient evidence to support a finding of ineligibility for Subsection (t) status. Therefore, Staff recommends that the Board deny the application.

DISCUSSION AND FINDINGS

Based on information provided by the Applicant, NJDEP, and records obtained by the Division of Law, the Board **FINDS** that the portion of the Property located on Block 357, Lot 1 and Block 358, Lot 1 have been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.) within the 10 year period prior to July 24, 2012, and thus is ineligible for solar development under the Solar Act of 2012. The Board **FINDS** that the portion of the property on Block 357, Lot 1 and Block 358, Lot 1 does not meet the criteria for inclusion in the TI Program and thus **DENIES** conditional certification on this portion of the property.

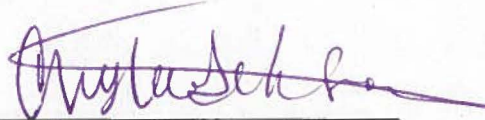
The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the

proposed site. The Board further **FINDS** that of the Applicant's proposed 2.45 MWdc Project, 14 acres in size, only approximately 0.26 acres may or may not be considered a "properly closed sanitary landfill" which is a fraction of the Applicant's proposed Project size. NJDEP declined to review the approximate 0.26 acres of landfill on Block 335, Lot 1. The Board **FINDS** that there is sufficient information to deny conditional certification for the Property proposed for the Summit City Solar, LLC Project located within Block 335, Lot 1 as a "properly closed sanitary landfill" and therefore **DENIES** conditional certification on this portion of the property.

The effective date of this Order is January 17, 2024.

DATED: January 10, 2024

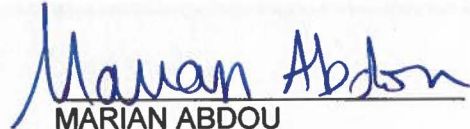
BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL-SADOVY
PRESIDENT

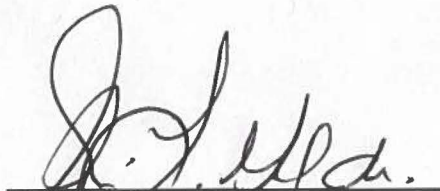


DR. ZENON CHRISTODOULOU
COMMISSIONER



MARIAN ABDOU
COMMISSIONER

ATTEST:


SHERRIL L. GOLDEN
SECRETARY

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

IN THE MATTER OF THE NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C. 17 – APPLICATION
FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF
THE SOLAR ACT OF 2012 – MILLER BROS. GLASSBORO BORO SLF

DOCKET NO. QO22060410

SERVICE LIST

Summit City Solar, LLC

301 Alan Wood Road
Conshohocken, PA 19428

Peter DeFazio, Miller Brothers
pdefazio@millerbros.us

Steven S. Goldenberg, Esq.
sgoldenberg@ghclaw.com

Borough of Glassboro

1 South Main Street
Glassboro, NJ 08028

John E. Wallace III, Mayor
jwallace@glassboro.org

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel
ssteinde@rpa.nj.gov

New Jersey Division of Law

Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Steven Chaplar, DAG
steven.chaplar@law.njoag.gov

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Sherri Golden, Board Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Henry Gajda, Deputy Chief of Staff
henry.gajda@bpu.nj.gov

Division of Clean Energy

Stacy Ho Richardson, Esq., Deputy Director
stacy.richardson@bpu.nj.gov

Veronique Oomen, Deputy Director
veronique.oomen@bpu.nj.gov

B. Scott Hunter
benjamin.hunter@bpu.nj.gov

Diane M Watson
diane.watson@bpu.nj.gov

Earl Thomas Pierce
earl.pierce@bpu.nj.gov

General Counsel's Office

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Rachel Boylan
rachel.boylan@bpu.nj.gov

Alexander Cary
alexander.cary@bpu.nj.gov