



Agenda Date: 12/19/17
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24, THE SOLAR ACT OF 2012; AND</u>)	AMENDED ORDER UPON
)	REMAND FROM THE SUPERIOR
)	COURT, APPELLATE DIVISION ¹
)	
)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24, N.J.S.A. 48:3-87(Q), (R) AND (S) –</u> <u>PROCEEDINGS TO ESTABLISH THE PROCESSES</u> <u>FOR DESIGNATING CERTAIN GRID-SUPPLY</u> <u>PROJECTS AS CONNECTED TO THE DISTRIBUTION</u> <u>SYSTEM;</u>)	
)	DOCKET NO. EO12090880V
)	
)	
BRICKYARD, LLC)	DOCKET NO. QO13101020

Party of Record:

Steven W. Griegel, Esq., for Brickyard, LLC

BY THE BOARD:²

BACKGROUND AND APPLICATION PROCESS

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 Board to conduct proceedings to establish new standards and to develop new programs to implement its directions. On October 4, 2012, under Docket No. EO12090832V, 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").

¹ This Order reflects Board's action, following the Appellate Decision on October 20, 2017, which remanded the matter to the Board on a limited issue.
² Commissioner Upendra J. Chivukula did not participate.

Subsection q of the Solar Act, in relevant part, provides:

(1) During the Energy Years³ 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 of 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 of 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 of escrow shall be reimbursed to the facility in full upon either rejection by the board or the facility entering 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).]

³ 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.

Following a public hearing in November 2012, and after considering voluminous stakeholder comments, Staff created an application procedure, developed an application form, and a form of escrow agreement to implement the Subsection q requirements. By Order dated May 9, 2013, the Board approved an application process, the form of application, and the form of escrow agreement to be used in the Board's review of projects seeking designation as "connected to the distribution system" under Subsection q.⁴ The May 9 Order also opened the initial application period ("Round One") to begin on May 15, 2013, and continue through May 31 2013.

As described in the May 9 Order, the developer of a proposed facility must file a Subsection q application with the Board for one (1) energy year – EY 2014, 2015 or 2016 – with a copy provided to Rate Counsel, the proposed system must be 10 MWdc or less, the appropriate escrow amount must be noticed as properly funded, and all appropriate Solar Renewable Energy Certificates ("SRECs") 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. (May 9 Order at 9.) 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 and 2016 would be effective on the first day of the respective energy year subject to the conditions described below. (Ibid.)

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 be the only facility interconnected at a distinct interconnection point; the facility must have completed construction and received authorization to energize; and the completed system must be 10 MWdc or less. Additionally, applicants are required to register with the SREC Registration program ("SRP"). (Ibid.)

Brickyard, LLC ("Brickyard") filed a Notice and application in Round One for approval in EY 2015 of a 2 MWdc grid supply solar facility proposed for 100 Birdsall Road in Farmingdale, New Jersey ("Phase I"). After review and consideration, by Order dated August 21, 2013, the Board conditionally approved the Brickyard application for EY 2015.⁵

The August 21 Order also opened an additional application process under Subsection q beginning on October 15, 2013 ("Round Two"). Brickyard filed a Notice and application in

⁴ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 and Escrow Agreement, Docket Nos. EO12090832V & EO12090880V (May 9, 2013); 2013 N.J. PUC LEXIS 112, ("May 9 Order").

⁵ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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, Docket Nos. EO12090832V & EO12090880V (August 21, 2013); 2013 N.J. PUC LEXIS 269, ("August 21 Order").

Round Two for approval in EY 2015 of an additional .362 MWdc grid supply solar facility ("Phase II") to be built at the same location as Phase I. After review and consideration, and based on the time of receipt as indicated by the Board's server, by Order dated February 4, 2014, the Board denied Brickyard's application for Phase II along with nine (9) other applications for EY 2015.⁶ In a separate Order dated February 4, 2014, the Board approved seventeen (17) applications for the remaining capacity in each of the three (3) Energy Years.⁷

On or about March 3, 2014, Brickyard filed a motion for reconsideration of the February 4 Order and of the February 4 Approvals Order. By Order dated July 23, 2014, the Board denied Brickyard's motion for reconsideration.⁸ On or about August 12, 2014, Brickyard appealed the February 4 Order, the February 4 Approvals Order, and the July 23 Order. This appeal was docketed under Docket No. A-5811-13T3 ("Subsection q Appeal").⁹

Subsequently, Brickyard and Board Staff executed a settlement agreement on April 6, 2015 ("Settlement"), resolving the Subsection s and q appeals. Paragraph 1 of the Settlement provides in relevant part that:

1. Staff would recommend the Board approve the Settlement and thereby approve the Round Two Project for designation as connected to the distribution system under Subsection q for EY 2015 under the same terms and conditions approved by the Board's February 4 Approvals Order.
2. Within two weeks of the effective date of Board approval, Brickyard would file a new SRP registration package to reflect the additional .362 MWdc as a Phase II to the 2 MWdc solar Phase I project at the same location previously approved by Board Order

⁶ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 2 Application Denials and Withdrawals, Docket Nos. EO12090832V & EO12090880V et al. (February 4, 2014); 2014 N.J. PUC LEXIS 20, ("February 4 Order").

⁷ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 2 Application Approvals, Docket Nos. EO12090832V & EO12090880V et al. (February 4, 2014); 2014 N.J. PUC LEXIS 19, ("February 4 Approvals Order").

⁸ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 – Motion for Reconsideration, Docket Nos. EO12090832V, EO12090880V & QO13101020 (July 23, 2014); 2014 N.J. PUC LEXIS 205, ("July 23 Order").

⁹ On or about November 26, 2014, Brickyard also 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 applications under Subsection q. This appeal was docketed under Docket No. A-1579-14T3 ("Subsection s Appeal"). See I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 & EO12090880V et al. (October 31, 2014); 2014 N.J. PUC LEXIS 321.

dated August 21, 2013, and assigned SRP number 21356. The combined Phase I and Phase II would each comply with the EY 2015 requirements, and be independently completed using the same interconnection point as previously approved for Phase I. Brickyard would 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 orders.

On April 15, 2015, the Board approved the Settlement, finding the terms to be fair and reasonable.¹⁰ The Board found that allowing Brickyard "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." (April 15 Order at 5.) Accordingly, the Board adopted the Settlement in its entirety, incorporating its terms, and directed the parties to comply with the Settlement. *Id.* at 6. Additionally, the Board directed Staff to promptly process the SRP registration package for Phase II upon Brickyard's submission of documentation demonstrating the dismissal with prejudice of Brickyard's Subsection q and Subsection s appeals. (*Ibid.*)

Thereafter, Brickyard registered its Phase II project with the SRP. On June 23, 2015, approximately two months after the Settlement was adopted by the Board and referencing the April 15 Order, the RE Market Manager issued Brickyard an SRP Acceptance Letter, notifying Brickyard that its Phase II project was assigned SRP number 38812, acknowledging that the project had been accepted for EY 2015, and advising Brickyard that it must complete construction and submit a Final-As-Built Packet no later than May 31, 2016.

Approximately one (1) year after the settlement, on April 4, 2016, Brickyard filed a Notice of Motion/Application for Relief ("Application") and a Supporting Brief and Attachments ("Supporting Brief") with the Board, requesting an extension of time to finish construction of Phase II. Although Brickyard had not requested a different designation date in the prior settlement, Brickyard now requested that the Board modify the designation date for its EY 2015 Phase II project from June 1, 2014 to April 15, 2015, the date the Board approved the Settlement. Alternatively, Brickyard asked that the Board extend by six (6) months the date by which it must commence commercial operation, that is, from May 31, 2016 to approximately November 30, 2016. (Supporting Brief at 5.) On May 24, 2016, Brickyard supplemented its Application ("supplemental submission") by attaching a copy of an Order entered by the Board in February 2016.¹¹ Brickyard alleged that its circumstances are similar to the circumstances in the True Green Order; therefore, the Board should similarly grant Brickyard's request to extend its designation date.

¹⁰ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 – Brickyard, LLC, Docket Nos. EO12090832V, EO12090880V & QO13101020 (April 15, 2015); 2015 N.J. PUC LEXIS 118, ("April 15 Order").

¹¹ I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O the Petition of True Green Capital Management LLC for an Extension of the Designation Date Set Forth in the Matter of August Solar Farms (Docket No. QO13101014) Pursuant to N.J.S.A. 48:3-87(q), Docket Nos. EO12090832V & QO16020108 (February 24, 2016); 2016 N.J. PUC LEXIS 58, ("True Green Order").

In support of its request, Brickyard made two claims regarding the status of its project. First, Brickyard explained that this was a unique situation as its commercial operator advised that it could not construct the project by the deadline, and would not install the project unless granted more time by the Board. Brickyard advised the Board that it had invested a lot of time and money to complete its Phase II project. Brickyard further noted that the only items not installed were the extra .362 MWdc of racks and panels, and one inline meter to track the .362 MWdc production. However, the only explanation Brickyard provided in its Supporting Brief as to why it could not install the missing racks, panels and inline meter was that its commercial operator "stated that it needs more time and will not install the project unless more time is granted by the Board." (Supporting Brief at 1.)

Second, Brickyard asserted that the Settlement, which approved the Phase II project, is silent as to the completion deadline for Phase II. Supporting Brief at 2-3. Brickyard argued that because the Settlement is ambiguous as to the completion date, the Board can interpret the Settlement to allow additional time for completion of the project. (Support Brief at 4-5.)

After considering Brickyard's Application, including the supplemental submission, by Order dated May 25, 2016, the Board denied Brickyard's Application for an extension beyond the May 31, 2016 deadline.¹² First, in denying Brickyard's Application, the Board rejected Brickyard's assertion that the Settlement did not specify a deadline for completion of its Phase II project. May 2016 Order at 10. The Board found that the Settlement, the April 15 Order, as well as other Subsection q documents were clear that the designation date for EY 2015 projects, including Phase II, was June 1, 2014. (*Ibid.*) The Board reasoned that the Settlement – where Brickyard, as represented by counsel, had the benefit of the bargain – was a binding contract which required Brickyard to comply with the requirements of Subsection q, unless there was evidence of fraud, other compelling circumstance, deception or lack of independent advice. *Ibid.* The Board found that Brickyard did not establish or allege that there was fraud or that it lacked independent advice when it voluntarily executed the Settlement Agreement. (*Ibid.*) Finally, the Board distinguished Brickyard from the True Green matter, noting that Brickyard had voluntarily executed a Settlement with Staff, while True Green had not. (*Ibid.*)

On June 29, 2016, Brickyard filed an appeal of the May 2016 Order. This appeal was docketed under Docket No. A-4666-15T3. On October 20, 2017, the Appellate Division issued a decision, agreeing with the Board that the Settlement was unambiguous and that Brickyard was required to complete its Phase II solar project by the May 31, 2016, which was the deadline applied to all projects approved for EY 2015. I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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; Brickyard, LLC, No. A-4666-15T3 (App. Div. Oct. 20, 2017) (slip op. at 2). However, the Appellate Division found that the Board did "not meaningfully consider or sufficiently explain why, having placed Brickyard in the same position as any other EY 2015 applicants, it did not then apply the same considerations to Brickyard that it applied to True Green, another applicant that previously sought an extension." *Ibid.* In remanding, the

¹² I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012 and I/M/O 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 – Brickyard, LLC, Docket Nos. EO12090832V, EO12090880V & QO13101020 (May 25, 2016); 2016 N.J. PUC LEXIS 137, ("May 2016 Order").

Appellate Division stated that its decision inferred no view as to the outcome on remand and that the court did not retain jurisdiction.

On November 8, 2017, Brickyard's counsel sent a letter to the Board, requesting information on how this matter was going to proceed in light of the Appellate Division's remand. Brickyard's counsel also advised that, due to the passage of time, significant issues exist that need to be presented and/or discussed before the Board takes action on this matter. On that same date, the Board's counsel sent a responding letter via email and regular mail. The letter advised that, in conformity with the Appellate Division's decision, the Board will reconsider Brickyard's application for an extension based upon the original moving papers submitted in March and May 2016. The letter also advised Brickyard that any concerns should be submitted, in writing, no later than November 22, 2017. To date, nothing has been received by the Board.

DISCUSSION AND FINDINGS

Based upon the above, and in conformity with the Appellate Division's decision, on remand, the Board **HEREBY** provides a more detailed analysis denying Brickyard's Application for an extension of its designation date for its EY 2015 Phase II project.

The Board notes that pursuant to the May 2016 Order and as found by the Appellate Division, the Settlement and April 15 Order were unambiguous. Pursuant to those Orders, Brickyard was required to complete construction of its Phase II project by May 31, 2016 – the deadline that applied to all solar projects approved under Subsection q for EY 2015.

As the dispute over the completion deadline was settled by the Appellate Division's October 20, 2016 decision, the Board must next determine under the circumstances of this case and in considering the supporting documentation provided by Brickyard in March and May 2016, whether it is appropriate for the Board to amend the designation date applicable to Brickyard as set forth in the May 2016 Order, the Settlement and the prior Subsection q Orders. The Board acknowledges that pursuant to N.J.S.A. 48:2-40(e), the Board may modify its prior decision. In exercising its discretionary authority under N.J.S.A. 48:2-40(e) to determine whether a modification is appropriate in this case, the Board considers the plain language of the legislation, as well as the Solar Act's overarching goal of stabilizing and strengthening the SREC market, including the promotion of solar development on certain types of properties while also limiting such development on specific types of solar projects that can qualify to earn SRECs to ensure compatibility with New Jersey's land use, environmental and energy policies.¹³

Subsection q requires a proposed solar facility to achieve commercial operations within two (2) years of the date the Board has designated as "connected to the distribution system" or forfeit its escrow. N.J.S.A. 48:3-87(q)(1). In addition, if the statutory deadline is missed, the facility's designation becomes null and void and the facility is no longer considered connected to the distribution system. N.J.S.A. 48:3-87(q)(2). Consistent with its delegated authority, the Board

¹³ See Office of the Governor, News Release for S-1925 (July 23, 2012) at <http://nj.gov/governor/news/news/552012/approved/20120723a.html>; Hearing on Senate Committee Substitute for Senate Bill No. 1925, Senate Environmental and Energy Committee, May 17, 2012, available at http://njleg.state.nj.us/media/archive_audio2.asp?KEY=SEN&SESSION=2012; 2011 New Jersey Energy Master Plan, 107, http://nj.gov/emp/docs/pdf/2011_Final_Energy_Master_Plan.pdf.

exercised its discretion in designating dates for each energy year covered by the statute. For EY 2015 projects, applicants had until May 31, 2016 to achieve commercial operations.

Brickyard requests that the Board "grant an outright extension of six months or more" of its deadline to fully construct its Phase II solar project due to the uniqueness of circumstances of this case and in the interests of justice.¹⁴ Brickyard further contends that the purpose of the statute will be furthered by allowing this project to be built; that Brickyard has invested in the project in good faith; and that no other party will be prejudiced by this extension. Brickyard also relies upon the Board's grant of an extension in February 2016 to True Green for its EY 2014 project, claiming that its application and situation is virtually identical to True Green's, and thus, the Board's analysis should produce the same outcome.

The Board disagrees with Brickyard's position and analysis. First, while the purpose of the Solar Act is to encourage the development of solar energy and stabilize the SREC market, the provisions of the Solar Act are not without limitations. Subsection q of the Solar Act set specific criteria by which all projects must meet in order to be designated as connected to the distribution system and to earn SRECs. If a project fails to meet the explicit criteria in Subsection q, then the statute mandates that the project's designation becomes null and void, the escrow is forfeited, and the project loses its eligibility to earn SRECs. See N.J.S.A. 48:3-87(q). Thus, Brickyard's argument that the Board should grant this extension to further the goals of the Solar Act is not persuasive.

Second, the Board is also not persuaded by Brickyard's argument that it had less time to complete its project as other EY 2015 projects. Brickyard's Phase II project was approved by Order dated April 15, 2015 after settlement negotiations had occurred. As noted supra, the completion deadline for this Phase II project was May 31, 2016 – approximately thirteen (13) months after the Order was signed by the Board. The Appellate Division rejected Brickyard's construction of the Settlement and found that Brickyard was required to complete construction of its Phase II project by May 31, 2016 as the Settlement was unambiguous. Additionally, the fact that Phase I of the project's modules and racking system were installed and the balance of system equipment were operational as of June 2015 should have demonstrated a clear path to completion for Phase II by May 31, 2016. Indeed, Brickyard's own admission that its solar project was always intended to produce 2.362 MW and that its solar facility was prepared with that sizing in mind undermines the argument that Brickyard had less time to complete Phase II, especially without Brickyard providing any specific information regarding its inability to install the extra .362 MW of racks and panels and the one inline meter to track the .362 MW production, which Brickyard claims are the only items not installed.

And third, the Board disagrees that the situation in Brickyard is virtually identical to the True Green matter. In the True Green Order, the Board granted True Green's petition for an extension of the completion deadline of its EY 2014 solar project as a matter of equity, noting the unusual and unforeseen circumstances, which caused delays in the construction of the

¹⁴ Brickyard, in the alternative, also requested that it be given a two (2) year extension from the date of its approval in the April 15 Order. Brickyard argued that the completion date was silent in the Settlement and subsequent Board Order, and as such, the Board could interpret those documents to grant Brickyard the same amount of time received by other EY 2015 projects – namely, two (2) years from approval. However, the Appellate Division clearly settled this issue, finding that the Settlement was unambiguous and that Brickyard was required to complete its Phase II solar project by the May 31, 2016.

project. The Board was also persuaded to provide True Green with a short 3 month extension due to the timing of its approval of the EY 2014 project.

Specifically, True Green's EY 2014 solar project was approved in February 4, 2014. February 4 Approvals Order at 11. Due to the timing of that Order, more than eight (8) months of EY 2014 had already passed; therefore, the Board gave EY 2014 projects approved under that Order two years from the date of the Order to complete construction instead of applying the same statutory framework used in Round One. See True Green Order at 6. While the Board recognizes that Brickyard's Phase II project was not approved in the normal course of the Subsection q proceedings, as noted supra, Brickyard's approval for its Phase II project was not beyond its control, as the approval resulted from a settlement in which the reduced timeline to complete construction was a clear requirement of which Brickyard was clearly aware. Brickyard's failure to negotiate a different completion date at the time it settled its appeal in 2015 does not now create a basis to amend that term now. There is a difference between True Green's request for extension of a date imposed by a Board Order, as opposed to Brickyard's request to set aside a settlement agreement to change a date that it negotiated in exchange for dismissing its first appeal.

Additionally, unlike in True Green, Brickyard's request for an extension is imprecise and conclusory. True Green provided a clear and detailed timeline explaining its construction delays. (See True Green Petition.)¹⁵ Specifically, True Green represented that it "spent approximately \$7,000,000 on the Project, including purchasing the land, completing the civil site work, ordering all major equipment including panels, switchgear, inverters, and racking, and mobilizing construction efforts." (True Green Petition at 3.) True Green explained that it had made a 50% payment of \$252,000 for its racking, which was scheduled to be delivered around October 2015; however, in November 2015, True Green was informed that the racking could not be delivered in time due to a "toxic spill that caused an emergency shutdown of its manufacturing plant." (Id. at 4.) True Green further stated that there was significantly lower manpower at the manufacturing plant in October and November 2015 due to a severe hurricane season, which delayed the processing of steel orders. (Ibid.) In its Petition, True Green also represented that as a result of these delays, it located another manufacturer to deliver its racking system. (Ibid.) True Green paid this new manufacturer a 20% deposit of \$93,000, and at the time of its extension request, delivery of the racking had already begun. (True Green Petition at 5.)

True Green also explained that in January 2016, the area where the Project was being constructed was hit by a severe winter storm, which "dumped over 3 feet of snow on the Project site." (Ibid.) As a result, True Green's construction contractor was unable to work for approximately ten (10) days in January 2016, which impacted True Green's ability to commence commercial operation by its deadline of February 16, 2016. (Ibid.) Additionally, True Green claimed that due to the severe winter storm, JCP&L, who was responsible for facilitating

¹⁵ On February 10, 2016, True Green filed a verified petition, with exhibits A through D., which was docketed as In the Matter of the Petition of True Green Capital Management LLC For An Extension of the Designation Date Set Forth in the Matter of Augusta Solar Farms, LLC (Docket No. QO13101014) Pursuant to N.J.S.A. 48:3-87(g) ("True Green Petition"). Exhibits A through D included (1) the February 4 Approvals Order; (2) a November 2015 letter from True Green's original manufacturer explaining its delivery delays; (3) a January 2016 Sales Order from True Green's new racking manufacturer; and (4) a January 2016 letter from True Green's construction contractor.

interconnection at the Project site, was unable to make crews available for the interconnection work. (True Green Petition at 6.)

As a result of these delays, True Green requested that its designation date be changed by three (3) short months – from February 16, 2016 to May 31, 2016. (Ibid.)

In considering True Green's Petition, the Board noted that True Green provided extensive details of reasons behind the delays in construction and an explanation of the steps taken to resolve its issues. The Board found that the prolonged, unforeseen circumstances itemized by True Green, and the subsequent efforts taken to resolve the issues and limit the delays, warranted granting True Green a short three (3) month extension. True Green Order at 6.

Unlike the specificity of True Green's request, Brickyard merely states that its commercial operator could not complete the project within the timeframe and would not continue construction unless given a Board approved extension. The Board notes that Brickyard provides information as to the steps taken to prepare its farm for the solar facility, including but not limited to, removing livestock and horse leases, fencing the area, installing and engineering 380 conservation markets, and stoning over 1000 feet of farm roads; Brickyard also generally claims that it has spent significant time and money in preparation for this project. However, it is unclear from Brickyard's motion papers whether this effort and money spent was solely related to the construction of Phase II or if it was also related to Phase I, which was up and running by the time of Brickyard's Application for an extension. (See Supplemental Submission at 1.) Indeed, Brickyard's motion papers further claim that the project was always intended to produce a total of 2.362 MW of power, and explains that the solar facility was prepared with this project sizing in mind. Supporting Brief at 3.

Additionally, unlike in True Green, Brickyard neither provides specific information as to the cause of its delayed construction nor efforts it made to resolve the issues which caused the delay. Specifically, Brickyard fails to provide any reason for why its commercial operator cannot complete construction other than to say that the commercial operator needs more time. Brickyard has not substantiated its claim that its situation is unique and unforeseen like the circumstances in True Green. Accordingly, the Board finds no prolonged, unique or unforeseen circumstances, beyond Brickyard's control, which in the matter of equity, warrant an extension.

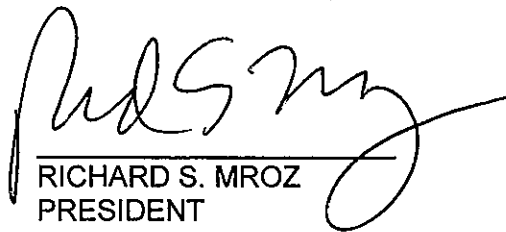
As stated previously, the Legislature imposed requirements for Subsection q projects, such as commercial operation dates, and the Legislature identified the consequences if those projects failed to satisfy the requirements - specifically, those projects would risk SREC eligibility and forfeiture of the escrow. The Board must keep this legislative scheme in mind when considering requests to extend the construction completion dates. The Board also notes that at least one other EY 2015 project forfeited part of its escrow when it failed to meet the terms of its approval. While the Board recognizes that EY 2015 is closed, the Board does not find this to be a sufficient reason on its own to grant Brickyard's extension request. In short, neither equity nor the legislation support Brickyard's request to extend its completion date beyond May 31, 2016.

Upon careful review and consideration of the entire record, the Board **HEREBY DENIES** Brickyard's request for an extension of time beyond the May 31, 2016 to complete construction of Phase II.

This order shall be effective December 29, 2017.

DATED: 12/19/17

BOARD OF PUBLIC UTILITIES
BY:


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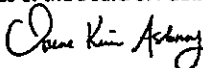

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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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

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;

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DOCKET NO. EO12090832V, DOCKET NO. EO12090880V and DOCKET NO. QO13101020

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