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**Farmland Solar Out to Pasture:
BPU Approves SRECs for only 3 out of 57 New Grid-Supply Solar Farmland Projects**
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At its April 29, 2013 public agenda meeting in Trenton, the Board of Public Utilities (BPU) approved only 3 out of 57 new grid-supply solar farmland projects pending approval for solar renewable energy certificates (SRECs). The BPU issued its Order memorializing the fate of the remaining 54 projects yesterday, May 13, 2013. The BPU's detailed Order represents final agency action denying SREC eligibility to 34 projects and deferring decision on SREC eligibility for 20 projects.

The BPU denied seven (7) projects for failure to have a PJM System Impact Study. The BPU also denied 27 applications because they "lack[ed] sufficient progress" and had "not secured all final unappealable approvals." The BPU then found that 20 applications were not "sufficiently advanced to support [Staff's] recommendation for approval," but had "timely PJM issued SIS and had secured all final unappealable federal, state, and local approvals by the application deadline." For those 20 deferred projects, the BPU found that more information was required and "additional milestones must be achieved to enable a recommendation for approval or denial based upon the project's prospects for completion."

Only solar electric facilities "connected to the distribution system in the State" may generate SRECs. Pursuant to L. 2012, c. 24, the BPU determines whether a solar electric facility is "connected to the distribution system," if that proposed facility is located on land that had been "actively devoted to agricultural or horticultural use" at any time within the 10-year period prior to the law's effective date. N.J.S.A. 48:3-87(s). The law looks to whether the land was valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1, at *any time* within the previous 10 years. Relevant to the BPU's action, the statute set out three requirements for such solar facilities to be deemed "connected to the distribution system." N.J.S.A. 48:3-87(s)(2)(a)-(c). The solar facilities must have received a System Impact Study from PJM on or before June 30, 2011; filed notice with the BPU within 60 days of July 23, 2012, the legislation's effective date; and received approval from the BPU. Ibid. The statute provides no additional criteria for the BPU's approval, instead leaving the agency to exercise its discretion. N.J.S.A. 48:3-87(s)(2). The BPU's Order provides a lengthy discussion of the exercise of its discretion in response to comments from solar developers as well as legislators opining on the subject.

Upon review of the BPU's Order, solar developers with projects denied SREC eligibility have different options available to them. Solar developers may seek reconsideration of the BPU's decision by filing a motion within 15 days. As final agency action, the BPU's Order is appealable within 45 days. For those not seeking appeal or reconsideration, the BPU urges petition under N.J.S.A. 48:3-



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87(q)(1), which applies during the energy years of 2014-16 (beginning on June 1, 2013). The cost and benefit associated with each option will be specific to each project denied SREC eligibility.

For those 20 projects pending approval, the BPU will seek public input on the additional information and milestones necessary for approval. Staff has been directed to work with stakeholders to develop the additional information and milestone reporting requirements to “enable further consideration of the deferred applications.” Stakeholders received notice on May 13, 2013 that public involvement in the process would begin at a stakeholder meeting at 1pm on May 14, 2013. Solar developers with deferred applications are urged to participate in this public process.

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