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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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FORWARD
CASE MANAGEMENT

2019 NOV 25 A 9:28

BOARD OF PUBLIC UTILITIES
TRENTON, NJ



PSEG

Services Corporation

November 20, 2019

**In the Matter of the Petition of
SunPower Corporation Seeking a Declaratory Judgement
Pursuant to N.J.S.A. 52:14B-1 et seq., and/or
a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b)**

BPU Docket No. QO19091240

VIA E-MAIL AND OVERNIGHT MAIL

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Dear Secretary Camacho-Welch:

Enclosed are an original and ten copies of Public Service Electric and Gas Company's Comments on SunPower Petition in the above proceeding.

By copy of this letter, copies of the comments are being forwarded this date via electronic mail to all persons whose name appear on the attached distribution list.

Thank you for your anticipated courtesies.

Respectfully submitted,

Matthew M. Weissman

C Attached Service List (E-Mail Only)

Case mgmt
S. Richardson, Esq.
P. Owen, Esq.

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SunPower Corporation Seeking a Declaratory Judgement
Pursuant to N.J.S.A. 52:14B-1 et seq., and/or
a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b)**

BPU Docket No. QO19091240

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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NOV 21 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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In The Matter Of the Verified	:	BPU Docket No. QO19091240
Petition of SunPower Corporation	:	
Seeking a Declaratory Judgment	:	Comments of
Pursuant to NJSA 52:14B-1 et seq.,	:	Public Service Electric and Gas
and/or a Waiver Pursuant to the	:	Company
Waiver Rule, NJAC 14:1-1.2(b)	:	
	:	
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Public Service Electric and Gas Company ("PSE&G" or the "Company") hereby submits its comments to the New Jersey Board of Public Utilities ("BPU" or the "Board") regarding the Petition of SunPower Corporation (the "Petitioner" or "SunPower") in the above-referenced proceeding.

I. Background

SunPower is proposing to develop a series of four solar generating facilities (the "Facilities") located on land owned or leased by the Delaware River Port Authority ("DRPA") at stations on the DRPA's Port Authority Transit Corporation ("PATCO") Speedline rapid transit system, which runs from Lindenwold, New Jersey, northward and westward through Camden and continuing into Philadelphia, Pennsylvania. See the Figure below. PSE&G currently serves the entire New Jersey portion of the PATCO line through the Westmont master meter, at which point electricity is distributed throughout the system via the distribution line owned and operated by the DRPA.¹

The Facilities will have a total capacity of approximately 21 MW and will be sized and located as follows: (1) an 8.3 megawatt ("MW") facility at the Lindenwold Station; (2) a 3.4 MW facility at the Ashland Station; (3) a 5.3 MW facility at the Woodcrest Station; and (4) a 3.9 MW facility at the Ferry Avenue Station.² The Facilities will serve the PATCO system through an existing distribution line and will connect the PSE&G system at the DRPA's master meter, located

¹ Petition at 3. For purposes of these comments, PSE&G assumes that the factual statements in the Petition are true and correct.

² Id. at Exhibit B.

at the Westmont Station.³ The Facilities will provide electricity to the DRPA for its PATCO system pursuant to a power purchase agreement (“PPA”).⁴



II. Comments on the Petition – PSE&G Does Not Object To A Waiver Of The Board’s Regulations Under the Special Circumstances Of This Case

Under New Jersey statutes, a solar generating facility can be eligible for solar Renewable Energy Credits (“SRECs”) and/or net metering if the facility is located on the same property as, or on property that is contiguous to, the property on which the generated energy is consumed.⁵ Under the Board’s net metering regulations, the meaning of the term “contiguous” for this purpose is made more precise, so that a solar facility can be eligible for these benefits if it is located “[w]ithin the legal boundaries of the property”, or of “contiguous” property, “as set forth within the official tax map, on which the energy is consumed”⁶

Under a plain reading of the Board’s regulation, the DRPA Facilities would not qualify for SRECs or for net metering. The electric energy generated by the four solar facilities will be consumed throughout the PATCO distribution system, which is located on many different parcels of land on the tax maps of several different New Jersey municipalities. Therefore, none of the four solar facilities will be located within the bounds of the property, or of contiguous property “as set forth within the official tax map” on which the energy is consumed.

However, while PSE&G does not agree with certain of the legal theories underlying SunPower’s request, the Company would not object if the Board grants a waiver and permits the net metering of the Facilities, under the special circumstances presented in this case and for the

³ Id. at 3.

⁴ Id. at 1. It is not clear from the Petition whether the Facilities will be owned by SunPower or by a successor in interest.

⁵ N.J.S.A. 48:3-87(d)(3), -87(e)(1), -51.

⁶ N.J.A.C. 14:8-4.1(b)

public policy reasons discussed in the Petition.⁷ For example, SunPower notes that the Facilities will provide clean energy to the DRPA, reducing the agency's need for power and reducing congestion; the New Jersey statutes, at N.J.S.A. 48:3-87(m), intend that the Board support SRECs and other solar incentives that benefit renewable energy projects serving public entity customers; the draft Energy Master Plan calls for New Jersey to be served 100% by clean energy sources by 2050; and the benefits of net metering will help DRPA reduce its operational costs, aiding its on-going viability.⁸

As noted above, PSE&G does not agree with all of the legal theories put forth in the Petition. Although the PATCO system is located on many different parcels of land on the tax maps of several different New Jersey municipalities, SunPower asks the Board to "accept the DRPA's declaration that the [Facilities] are located on its one property, with such property so declared under its statutory power to define its property under N.J.S.A. 32:3-6, 32:3-13.52, 32:3-12, and 32:3-13.54."⁹ However, the cited statutes do not provide the DRPA the authority to "declare" its various property interests to be a single property for net metering purposes. Rather, the cited statutes: (1) authorize the DRPA to acquire property through condemnation;¹⁰ (2) define the term "property" as used in the DRPA's enabling legislation;¹¹ (3) provide that bonds and other securities issued by the DRPA are tax-exempt;¹² and (4) exempt DRPA's property and the transfer thereof from taxes.¹³ These provisions do not authorize a state agency to declare unilaterally that its parcels and property interests constitute a single piece of property for purposes of the BPU's net metering statutes and regulations.

SunPower argues further that because the DRPA is a tax-exempt public entity, "municipal tax designations are not relevant or dispositive to determining if a solar facility constitutes 'on-site' generation"¹⁴ and that the Board's Order in the NJ Land case provides for a "tax exempt exception" to the Board's net metering rules.¹⁵ However, the holding of that case is much

⁷ If the project is approved for SRECs and net metering from a regulatory perspective, it will still need to go through the technical review that PSE&G must undertake for this unusual project, to ensure that the configuration of the Facilities can be net-metered from an operational perspective. This will include studies performed by PSE&G's System Planning and System Protection departments. These studies will likely include costs for which the customer will be responsible.

⁸ Petition, at 10-11.

⁹ Id. at 6.

¹⁰ N.J.S.A. 32:3-6.

¹¹ N.J.S.A. 32:3-13.52.

¹² N.J.S.A. 32:3-12.

¹³ N.J.S.A. 32:3-13.54.

¹⁴ Id. at 9.

¹⁵ Petition at 6 (citing I/M/O Application of NJ Land, LLC Seeking a Declaratory Judgment Pursuant to N.J.S.A. 52:14b-1 et seq., or a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b), Docket No. QO16040382, Order (Jan. 25, 2017) ("NJ Land Order").

narrower than SunPower suggests. Indeed, at the Board Agenda Meeting in which NJ Land was addressed, BPU President Fiordaliso was clear that the decision “was in no way setting precedent for future request for waiver to our rules,” due in part to the “uniqueness of the project.”¹⁶

Consistent with President Fiordaliso’s recognition of the uniqueness of NJ Land, the United States Supreme Court precedent that the Board relied on in that case dealt specifically with the boundaries of federal military installations.¹⁷ The statutory provisions that SunPower relies on, on the other hand, generally address DRPA’s authority to acquire and own property for purposes of executing its railroad function. Further, the military base in NJ Land was located in a single municipality, while the portion of DRPA’s transit line at issue extends through several different municipalities. In fact, the Board has found that, where a proposed solar facility and an end user were “located not only on multiple block and lots apiece but within separate townships,” the proposed project does not meet the requirements of N.J.A.C. 14:8-4.1(b).¹⁸

Notwithstanding these legal concerns, PSE&G recognizes that the Board may waive provisions of its rules where such waiver is: (1) in accord with the general purposes and intent of the rules; and (2) full compliance with the rule requirements would adversely affect ratepayers.¹⁹ PSE&G takes no position regarding whether rejection of SunPower’s request would adversely affect customers. However, if limited to the unusual facts and circumstances of this request, PSE&G would not object to a grant of SunPower’s request in light of the general purposes and intent of the rules.

The Board has stated that the purpose of the net metering rules is to “facilitate investment in distributed renewable energy (renewable energy located close to the source of energy consumption).”²⁰ The Board has also stated that the net metering rules were intended to support the benefits of renewable energy, including the reduction in pollution and the need for new power plants, as well as alleviating the demand for large transmission projects and reducing congestion on existing lines.²¹ Similar to the military base in the NJ Land Order, the proposed Facilities here, which benefit a duly authorized public entity, in this case performing an essential transportation function.

The requested waiver would satisfy the requirement that a waiver be in accord with the general purpose and intent of the Board’s rules. Thus, PSE&G would have no objection to a grant of the requested waiver, limited to the facts and circumstances presented by the SunPower Petition.

¹⁶ NJ Land, Transcript (January 25, 2017), at 7-8.

¹⁷ NJ Land Order at 5-6.

¹⁸ I/M/O Verified Joint Petition of Solops, LLC and College Road Associates, LLC for a Declaratory Ruling or, in the Alternative, for a Waiver of Rule, Docket No. Qo16060487, Order (Feb. 22, 2017) at 5.

¹⁹ N.J.A.C. 14:1-1.2(b)(1); see also NJ Land Order at 7.

²⁰ NJ Land Order at 7 (quoting 44 N.J.R. 2043(a) (Aug. 6, 2012)).

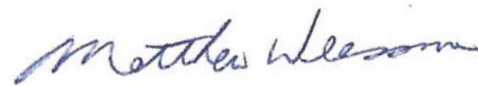
²¹ NJ Land Order at 7.

Specifically, PSE&G does not object to a waiver for this particular project, where the electric power generated by the solar Facilities for the benefit of a duly authorized state entity that was created and exists to serve an “essential governmental function”; the solar Facilities all connect to the same private distribution wire owned and operated by that entity; and all of the equipment constituting the Facilities and the location of the Master Meter serving the state entity are contiguous, with no third party owning property between where the solar power is generated and where it is consumed.²²

III. Conclusion

The Facilities do not satisfy the relevant regulations, as they are not located on or contiguous to property on which the energy will be consumed under the terms of those regulations. Neither the DRPA’s authority to acquire and own property nor its tax exempt status entitle it to “declare” its varied parcels and property interests to be contiguous for purposes of the Board’s regulations. However, if limited to the unusual circumstances of this case, PSE&G would not object to a waiver permitting the proposed project to earn SRECs and to receive the benefits of net metering.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Matthew Weissman".

Matthew M. Weissman

²² Petition at 3-4.