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November 20, 2019

BY E-MAIL AND REGULAR MAIL

New Jersey Board of Public Utilities
Attn: Board Secretary
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350

RE: SUNPOWER CORPORATION

**Filing of Petition for Declaratory Relief Pursuant to N.J.S.A. 52:14B-1 et seq.
and/or a Waiver Pursuant to N.J.A.C. 14:1-1.2(b)
BPU Docket No. QO19091240**

FORWARD
CASE MANAGEMENT
2019 NOV 26 A 10:31
BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Dear Madam Secretary:

This letter acknowledges receipt of comments by PSE&G and the Rate Counsel – both dated today – to the above-referenced Petition pending before the Board. SunPower takes this opportunity to submit a brief set of comments in response to the two sets of comments.

SunPower appreciates the position taken by PSE&G, indicating it does not object to a waiver in this particular and *unique* set of circumstances, while disagreeing on some points. The customer to be served in this matter is a state entity, the Delaware River Port Authority (the “DRPA”) that serves thousands of New Jersey residents via a rail system powered in New Jersey from one meter. SunPower agrees that the relief sought is to be limited to this project that will serve the DRPA under the unique circumstances applicable to the DRPA.

Rate Counsel objects to the Petition and submits that it should be denied. SunPower respectfully submits that the objections ignore that there is a public entity to be served by the solar project, that the public entity’s PATCO rail system serves the public and will do so by the renewable power supplied by this project.

Further, there is a crucial distinction regarding this project for the Board to bear in mind: there is only one meter – rather than multiple meters – serving the PATCO line. To be clear, this solar project will be a behind-the-meter project that will serve the DRPA’s separately operated, electric internal distribution line. In short, the customer and the project are unique. SunPower does not seek to open the floodgates for non-compliant projects. Again, the decision of the Board sought under this Petition is a waiver applicable only to this project serving the DRPA, based on the unique set of facts applicable to this project.

SunPower also disagrees with Rate Counsel’s view on what constitutes net metering and on-site generation and respectfully points to the statute and regulations cited in the Petition. This is not a grid project. It is a net-metered project where, from time to time, it is possible that the utility meter will reverse. That is how net-metered projects for individual customers work. As noted by PSE&G in its

Case mgmt
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S. Richardson, Esq. *S. Hunter*
P. Krogman, Esq.

comments, the obligation will remain for the project to be properly designed and interconnected – a process done in coordination with the utility’s interconnection requirements.

Moreover, on the issue of on-site status, the DRPA *could* formally consolidate its lots into one lot by a consolidating deed in order to gain approval of the Petition, but the DRPA already has declared its property to be one property under its statutory power. SunPower notes that no such requirement of lot consolidation was imposed on Joint Base McGuire-Dix-Lakehurst in order for the NJ Land solar project to be approved for net-metering and receipt of SRECs. SunPower also notes that the NJ Land case involved an internal distribution line crossing through several municipal tax lots. Further, in the Marina Energy matter (Docket No. QO18030297), the Board confirmed in its November 19, 2018 Order that a system in one township immediately adjacent to the end user’s use in another township did not prevent the system from being approved for SRECs with applicable lot consolidations. Likewise, the fact that the DRPA’s PATCO rail line and its internal distribution line travels through several municipalities does not mean the DRPA’s property is not one property under the applicable statute (N.J.S.A. 48:3-51), or that the Board’s related regulation cannot be waived. Further discussion of applicable statutory and regulatory definitions including, but not limited to N.J.A.C. 14:8-1.2’s definition of “on-site generation,” is set forth in the Petition. Given the state entity involved, the DRPA, SunPower respectfully submits that requiring lot consolidation of the DRPA – particularly given the DRPA’s declarations with respect to the Petition – would be excessive and would provide no further public benefit. The property served is one property owned by state entity, without intervening real property/lot owners.

SunPower respectfully submits that the Board look to Exhibit C to the Petition, which Exhibit C is signed by the DRPA and submitted in support of its real property rights and this project. Aside from noting the DRPA’s property to be one property in paragraph 12, Exhibit C also confirms that this project will help the DRPA reduce its costs, benefit the people of New Jersey, and is in furtherance of the Master Plan’s goal for 100% renewable energy in this century. A copy of Exhibit C is submitted with this letter.

In summary, there is one meter serving this customer, the solar energy would be delivered behind-the-meter on the customer’s property, and there are public purposes that will be served by this solar project. Simply put, *the public interest is served by SunPower’s project for the DRPA*. For the reasons set forth above and in the Petition, SunPower respectfully requests that the Board grant the waiver sought based on *and subject to* its unique set of circumstances including, but not limited to, the state entity to be served by the solar project on the state entity’s internal distribution line behind one meter.

Respectfully submitted,

RUSSO TUMULTY NESTER
THOMPSON & KELLY, LLP



HOWARD O. THOMPSON

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