



**GENOVA
BURNS**
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CASE MANAGEMENT

MAR 04 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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March 1, 2019

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MAIL ROOM

MAR 04 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

VIA UPS AND ELECTRONIC MAIL

Aida Camacho-Welsh
Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, New Jersey 08625

**Re: Request for Modification of Settlement Agreement of Board Order dated
June 29, 2016 on behalf of CEP Solar Ltd.
BPU Docket No. Q019030303**

Dear Ms. Camacho-Welsh:

On behalf of Petitioner CEP Solar LTD, enclosed for filing with the Board of Public Utilities are an original and ten copies of a Petition requesting an amendment to the Board Order of June 29, 2016 which settled the Subsection (s) litigation under Docket No. EO112090832V; EO12090880V; EO12121108V; EO12121138V; EO12121095V; EO12121124V; EO12121112V; EO12121120V, to allow the full build out of the four remaining solar farm projects, and such other relief as set forth in the Petition.

Also, enclosed is a check in the amount of \$25.00 representing the filing fee.

If you have any questions concerning the filing, please contact the undersigned. Thank you.

Cms

R. Boylan
Legal
DAG
C. Vachier
S. Hunter
S. Jones
CLEAN ENERGY(2)
S. Blum
AJG/KAL
Encs.

Respectfully submitted,

GENOVA BURNS LLC

ANGELO J. GENOVA

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CASE MANAGEMENT

MAR 04 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

REQUEST FOR MODIFICATION OF)
SETTLEMENT AGREEMENT APPROVED BY)
BOARD OF PUBLIC UTILITIES ("BPU"))
ORDER DATED JUNE 29, 2016 ON BEHALF)
OF CEP SOLAR LTD PURSUANT TO)
N.J.A.C. 14:1-1, ET SEQ.)

PETITION

DOCKET NO. _____

To The Honorable Board of Public Utilities:

INTRODUCTION

Pursuant to N.J.A.C. 14:1-4, et seq., Petitioner CEP Solar LTD ("CEP"), respectfully submits this Petition to the Board of Public Utilities ("BPU" or "Board"), seeking an amendment to the BPU Order which settled the Subsection (s) litigation under Docket No. EO112090832V; EO12090880V; EO12121108V; EO12121138V; EO12121095V; EO12121124V; EO12121112V; EO12121120V dated June 29, 2016 bearing an Effective Date of July 9, 2016, to allow the full build out of the four remaining solar farm projects as they were originally approved through the municipal land use process, and such other relief as set forth in the Petition. A copy of the June 29, 2016 Order is attached as Exhibit P-1.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 23, 2012, the Solar Act of 2012 was signed into law and took effect immediately. L. 2012, c. 24, § 3 ("Solar Act"). The law amends N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87, which are provisions of the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-87(s) ("Subsection (s)") applies to land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to - 23.24, at any time within the ten-year period prior to the Solar Act's effective date ("farmland"). Under Subsection (s), a solar electric power generation facility on qualifying land that is not net-metered or an onsite generation facility (that is, the electricity is not being used to satisfy the electrical needs of structures on or adjacent to the land where the solar facility is located) is subject to a review process by the BPU to determine whether the proposed project should be approved as connected to the distribution system and therefore eligible to create SRECs.

Subsection (s) provides that the BPU can approve a proposed facility on farmland if "PJM issued a System Impact Study for the facility before June 30, 2011;" the facility filed a notice of intent to qualify under Subsection (s)(2) with the BPU within sixty (60) days of the effective date of the Act, (i.e., by September 21, 2012); and the BPU approved the facility as "connected to the distribution system." N.J.S.A. 48:3-87(s)(2). The Legislature specified that "[n]othing in this subsection shall limit the board's authority concerning the review and oversight of facilities," except for those "approved pursuant to [N.J.S.A. 48:3-87q]." N.J.S.A. 48:3-87(s).

Effisolar Development, LLC, Quakertown Farms, Renewtricity, and EAI Investments, LLC, (the "Solar Parties") each filed a timely application pursuant to Subsection (s). Each application met the criteria specified in Subsection (s). A total of 59 applications were filed with BPU pursuant to Subsection (s). Of the 59 Subsection (s) applications that were filed under the Solar Act, the BPU denied all but three under Subsection (s). All the applications filed by the Solar Parties were denied. The Solar Parties all filed timely appeals. On June 6, 2016, the Solar Parties, reached a settlement agreement with the staff of the BPU ("Settlement" or "Settlement Agreement"). The Settlement recognized that the four projects proposed by the Solar Parties were the last remaining active and viable projects that had filed pursuant to Subsection (s), been denied and appealed. By Order dated June 29, 2016, bearing an Effective Date of July 9, 2016, the BPU adopted the Settlement in its entirety. See Exhibit P-1.

In relevant part, the terms of the Settlement were as follows:

1. Staff will recommend that the Board approve the Settlement Agreement and thereby approve the Projects designated as PJM W3-077, PJM W3-044, PJM W3-003, and PJM W4-073 (the "Projects") under Subsection (s) so that the Projects can be deemed conditionally connected to the distribution system and eligible to earn SRECs under the terms set forth below.
2. Each Project shall be reduced to 10 MW direct current ("DC").
3. Each Developer shall have up to 24 months from the date of this Settlement Agreement to decide whether the Developer shall pursue the development of its Project.
4. If Developer wants to proceed with its Project, the Developer shall have the right to file a written statement with the BPU (the "Election"), which Election must be filed with the BPU before the expiration of the 24-month period. If the Developer does not file the Election before the expiration of the 24-month period, the right to file an Election: a) shall be deemed to have expired; b) shall be null and void; and c) shall be deemed forfeited.
5. With the timely filing of the Election, the Project shall be conditionally approved and deemed connected to the distribution system, subject to satisfaction of the SRP registration and milestone reporting requirements identified in the Settlement Agreement.
6. Within fourteen (14) days of the effective date of the Board Order approving the Settlement Agreement, the Developer shall file a SRP registration package to reflect the 10 MW DC. If the Developer does not file the Election before the expiration of the 24-month period, the SRP: a) shall be deemed to have expired; b) shall be null and void; and c) shall be deemed forfeited.
7. Board Staff will recommend that the Board extend the current one-year SRP Registration length under the Renewable Portfolio Standards rules, N.J.A.C. 14:8-2.1 to -2.11 ("RPS rules"), to a three-year SRP Registration length consistent with the Settlement Agreement. Any enlargement of the SRP Registration length under the RPS rules will not further extend the three-year SRP Registration length for the Developers.
8. The Development shall contract and provide documentation of the Electric Distribution Company ("EDC") authorization to energize the Project within twelve (12) months of the date the Election is filed with the Board. If the Developer constructs and provides documentation of authorization to energize before the twelve (12) months have elapsed, the Project shall continue to be deemed connective to the distribution system and therefore eligible to generate SRECs.

9. In the event the Developer does not construct and provide documentation of authorization to energize before the twelve (12) months have elapsed, the Project: a) shall no longer be conditionally approved; b) shall no longer be deemed connected to the distribution system; and c) shall not be eligible to generate energy upon which SRECs may be based.
10. Each Developer shall have the right to request one six-month extension to the aforesaid twelve (12) months and such extension may be granted by the SRP Manager upon a showing that the extension is necessitated by events beyond the Developer's control despite good faith efforts by the Developer to timely construct and energize the project. Such extension request must be filed with the SRP Manager prior to the expiration of the aforesaid twelve (12) months period.
11. Within ten (10) days of the effective date of the Board Order approving the Settlement Agreement, the Solar Parties agreed to file a Stipulation of Dismissal with Prejudice withdrawing their pending appeals.

Subsequent to the settlement CEP purchased the development and solar rights of the four Projects involved in the Settlement Agreement. Following the acquisition, CEP stepped into the shoes of the Solar Parties with regard to the Settlement Agreement. CEP, as a new purchaser with fresh capital, has the resources and commitment to expand the Projects, and should not be prejudiced from modifying the Settlement Agreement simply because they were not at the original negotiating table.

The 10 MW DC limit imposed in Condition 2 was a significant reduction in MW DC that the Projects had received. This Petition is to allow the Projects to be built out in accordance with the municipal approvals that were granted for the Projects and the original applications to the BPU. The proposed modification to the Settlement is consistent with the policy of the State and BPU to promote clean, renewable energy.

REQUEST FOR MODIFICATION OF THE SETTLEMENT AGREEMENT

CEP respectfully requests that the BPU modify the Settlement Agreement to allow the full build out of the remaining four (4) Projects based on the initial applications to BPU and as they were approved through the municipal land use process.

The legal standard for modification of a settlement agreement is found in N.J.S.A. 52:14B-9(d), which simply mandates that the modified agreement must not be "precluded by law." Common law requires that the decision be "responsive to the purpose and function of the agency." Dragon v. New Jersey Dep't of Env'tl. Prot., 405 N.J. Super. 478, 493 (App. Div. 2009) (internal quotations omitted). The standard for modification of settlement agreements is generally set forth in Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div.), certif. denied, 94 N.J. 600 (1983). Although noting that settlement agreements should ordinarily be enforced, Pascarella provides that "other compelling circumstances" may warrant modification of a settlement agreement. Id. at 125 (quoting Honeywell v. Bubbs, 130 N.J. Super. 130, 136 (App. Div. 1974)).

The Petitioner has learned that the Board has concerns that modifying this Settlement Agreement will set a precedent that will require the BPU to reopen all settlement agreements. CEP submits that this concern is not warranted or based in New Jersey law. Each settlement agreement is unique

and the Board can refuse to agree to the modification. In this case, the governmental and public interest concerns are so compelling to warrant the modification of the Settlement Agreement. Changed circumstances in the State of New Jersey, including a new administration committed to solar energy, justify the modification of the Settlement Agreement at this time. The Settlement Agreement and corresponding Order were executed in 2016 prior to the passage of significant legislation expanding New Jersey's commitment to renewable energy, including solar. This dramatic change in policy is clearly a compelling changed circumstance that fully justifies a modification of the Settlement.

Public Interest

During the past year, Governor Phil Murphy signed several legislative initiatives into law to establish New Jersey's leadership in clean energy. The Renewable Energy Act, N.J.S.A. 48:3-87.8 et al., improves and expands New Jersey's renewable energy programs, including solar, by making near-term structural changes to the State's solar program to ensure the program is sustainable over the long term.¹ The Renewable Energy Act requires the State to procure 600 megawatts of energy storage by 2021 and 2,000 megawatts by 2030 and In addition, in 2018 Governor Murphy signed Executive Order No. 28 directing State agencies to develop and updated Energy Master Plan ("EMP") with a goal of 100% clean energy by 2050. Governor Murphy also announced support for the State's re-entry into The Regional Greenhouse Gas Initiative to reduce carbon-dioxide gas emissions from the energy sector and invest in renewable energy.

With the stated goal of 100% of the State's energy being provided by way of clean energy by the year 2050, the development of the full municipally approved capacity of these solar projects is clearly in the public interest. Both large and small projects are necessary if the State is to meet the clean energy goal.

Insisting on adherence to the prior Settlement is contrary to the State's renewed commitment to clean energy. It will send the wrong message to others seeking to develop renewable energy facilities. These Projects were approved and ready to proceed when the Solar Act was passed. It would be arbitrary to preclude development of the Projects at the capacity at which they were previously approved. All permits and approvals were previously granted at great cost for this capacity. Obtaining approval for siting future solar grid supply projects in contrast to the Projects which are ready to proceed now. It makes no sense to adhere to the Settlement with the resulting abandonment of previously approved capacity that these carbon free Projects represent.

Protection of agriculture cannot be used as a justification to adhere to the prior settlement. The development of 10 MW DC on each of the farms will significantly reduce any current agricultural use of the properties. In addition, three of the four owners of the properties have made clear that if the solar projects don't proceed, the remainder of their properties to be developed for other non-agricultural uses. See true and exact copies of Affidavit of Jane M. Santini, attached as Exhibit P-2; Affidavit of David Nathanson, attached as Exhibit P-3; and Affidavit of David Den Hollander, attached as Exhibit P-4.

¹ The BPU is currently developing a SREC Successor Program to ensure the continued success of the solar industry in the State as required by P.L. 2018, c.17 (the "Clear Energy Act").

Solar farms represent a less intense use of the properties. Solar farms are preferred by the local residents to warehouses or high-density housing. These Projects represent a creative solution to maintain the viability of the properties while preserving the ability of the lands to return to an agricultural use in the future.

Economic Benefit

The Projects also will provide an economic benefit to New Jersey at a time when the State's solar industry is in decline. The State lost 696 solar jobs in 2018, a 10% decline, dropping the total employment in New Jersey's solar industry to 6,410, according to the National Solar Jobs Census by The Solar Foundation. Johnson, Tom. "More Job Losses Last Year for New Jersey's Solar Sector - Report Asserts." - NJ Spotlight, 13 Feb. 2019, www.njspotlight.com/stories/19/02/12/more-job-losses-last-year-for-new-jerseys-solar-sector-report-asserts/. The Projects represent material employment amongst the electrical trade unions, iron workers, and local trades that are all involved in the development of these Projects.

Building each of these Projects will represent an infusion of investment of a minimum of another \$20,000,000 respectively in the localities in which they are located and provide employment for hundreds of New Jersey residents. Employment for the residents of New Jersey and labor union jobs is critical in weighing the merits of these Projects. The attached affidavit of Nick Castello, a Business Representative from IBEW Local 102, the union representing electrical workers in areas where the Projects are located, discusses the effect the Projects could have on its workers. See Exhibit P-5. Mr. Castello explains that "[d]epending on the amount of time for completion, each of the Projects could require between around 50 and 200 additional electrical workers," resulting in the addition of anywhere between 400 and 500 jobs. This added employment would reduce the number of unemployed electrical workers in the area significantly.

The economic contribution of the solar farms to the rate payers of New Jersey should also be considered. It is undisputed that each kilowatt hour ("kWh") of renewable energy contributes an economic benefit that can be monetized. There are multiple studies published nationwide that discuss this issue.

Each Project will result in a local real estate infusion of several hundreds of thousands of dollars in Farmland roll back taxes and thereafter annual payment of taxes that would dwarf the current tax revenues from the properties that are farmland assessed. These Projects are all located in rural municipalities that would greatly benefit from the additional property tax revenues.

Open Space and Renewable Energy

The placement of solar facilities on farmland does not permanently reduce our farmland inventory. In fact, true farming communities use solar facilities to thwart the permanent development and depletion of their farmland inventory. A common rationale at local planning and zoning board hearings in approving solar facilities on farms is that the solar use will be decommissioned at some point in the future with the ability of the property to once again be farmed.

Each project developer enters into a development agreement with the municipality, bearing a decommissioning plan and a bond guaranteeing the decommissioning of the solar facility and a return of the property to its preexisting condition, unless the owner and operator is a public utility company in which event the town does not require the bond be posted. This statement is true in every project.

Attached are affidavits executed by property owners of three of the Projects. In Franklin Township in Warren County, the property owner intends to develop the balance of the property with warehouse buildings and the associated infrastructure, should the expanded solar use not be permitted. Once the warehouse is completed, this development would exhaust the balance of the property and forever preclude its use for agriculture. See Exhibit P-2.

In Washington Township in Warren County, the property owner plans on developing the property with single family homes if the expanded solar use is not approved. Should the property become a 13-lot subdivision, there will be no potential for it to return to farming. See Exhibit P-3.

In Franklin Township in Hunterdon County, the property owner plans on developing the property with hoop buildings and roads. See Exhibit P-4.

Each of the communities have expressed an interest in avoiding those uses and maintaining the chance that the ground will remain farmland in the future. For example, Mayor Jeff DeAngelis of Franklin Township in Warren County has submitted an Affidavit in strong support of this Petition. According to Mayor DeAngelis, "the solar use is a great use for farmland that could otherwise be permanently developed with residential or commercial uses that will forever convert the ground from farmland to the proposed use." See true and exact copy of Affidavit of Mayor Jeff DeAngelis, attached as Exhibit P-6.

As demonstrated herein, there are compelling changed circumstances warranting modification of the Settlement Agreement, including public interest concerns and economic benefits.

For the reasons stated above, CEP requests that the Settlement Agreement be amended as follows:

- A. Each of the Projects has filed the Election required pursuant to Paragraph 4 on Page 2 of the Board Order; and
- B. Paragraph 9 of the Board Order is to be amended to provide that each Project shall have an additional 24 months from the date of the Effective Date of a Board Order to construct and energize as was originally requested from the BPU as follows:
 - a) 18 MW DC for the solar farm designated as PJM W3-077 in Franklin Township, Warren County, New Jersey;
 - b) 23 MW DC for the solar farm designated as PJM W3-044 in Washington Township, Warren County, New Jersey;
 - c) 23 MW DC for the solar farm designated as PJM W3-003 in Franklin Township, Hunterdon County, New Jersey; and
 - d) 20 MW DC for the solar farm designated as PJM W4-073 in Pohatcong, Warren County, New Jersey; and

- C. An amended SRP registration shall be filed within 14 days of the Effective Date of the Board Order. The SRP registration shall entitle the additional MW and the resultant capacity to 15 years of SRECs.

The rationale for the provision that each Project have 15 years of SRECs is as follows:

- i. The existing SRP registration is for a term of 15 years.
- ii. Each of the Projects were conceived at a time when the program was 15 years. The costs incurred, land values paid, are based on a 15-year term.
- iii. The Projects have incurred serious and material losses as a result in the delay of the decision to grant them SREC eligibility. Had there been no delay, the Projects would have long ago energized in the 15-year program. Had there been no delay, the Projects would have been energized and earning SRECs worth millions of dollars for the past several years.
- iv. The finance ability of a 15-year SREC grid supply project is a proven commodity. The finance ability of a 10-year SREC grid supply project is unproven. The Developer is very concerned that after expending the resources required to bring the Projects to energization, that the Projects may not be reasonably commercially financeable.

Therefore, CEP respectfully requests this Board modify the Settlement Agreement to permit the completion of the Projects as originally requested from the BPU, consistent with the BPU and the State's policy in favor of incentivizing clean, renewable energy.

MISCELLANEOUS

Attached to and made a part of this Petition are the following exhibits which Petitioner suggests be marked as indicated:

Exhibit P-1	BPU Order which settled the Subsection (s) litigation under Docket No. EO112090832V; EO12090880V; EO12121108V; EO12121138V; EO12121095V; EO12121124V; EO12121112V; EO12121120V dated June 29, 2016 bearing an Effective Date of July 9, 2016
Exhibit P-2	Affidavit of Jane M. Santini
Exhibit P-3	Affidavit of David Nathanson
Exhibit P-4	Affidavit of David Den Hollander
Exhibit P-5	Affidavit of Nick Castello
Exhibit P-6	Affidavit of Mayor Jeff DeAngelis

REQUESTED RELIEF

Based on the Petition, the Petitioner requests the following relief:

1. The Board ORDER that the Settlement Agreement is hereby amended to permit the completion of the Projects;
2. The Board ORDER that the Settlement Agreement is amended to reflect that each of the Projects has filed the Election required pursuant to Paragraph 4 on Page 2 of the Board Order;
3. The Board ORDER that Paragraph 9 of the Settlement is amended to provide that each Project shall have an additional 24 months from the date of the Effective Date of a Board Order to construct and energize as was originally requested from BPU as follows:
 - a) 18 MW DC for the solar farm designated as PJM W3-077 in Franklin Township, Warren County, New Jersey;
 - b) 23 MW DC for the solar farm designated as PJM W3-044 in Washington Township, Warren County, New Jersey;
 - c) 23 MW DC for the solar farm designated as PJM W3-003 in Franklin Township, Hunterdon County, New Jersey; and
 - d) 20 MW DC for the solar farm designated as PJM W4-073 in Pohatcong, New Jersey.
4. The Board ORDER that an amended SRP registration shall be filed within 14 days of the Effective Date of the Board Order. The SRP registration shall entitle the additional MW and the resultant capacity to 15 years of SRECs; and
5. Such other relief as may be justified.

Respectfully submitted,

GENOVA BURNS LLC

By: 

ANGELO J. GENOVA, ESQ.
Attorney for Petitioner
494 Broad Street
Newark, New Jersey 07102

Request for Modification of Settlement Agreement by Petitioner CEP Solar LTD
BPU Docket No. _____

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VERIFICATION

STATE OF NEW JERSEY)


) **ss.:**

COUNTY OF ESSEX)

Angelo J. Genova, Esq., being duly sworn according to law, upon his oath, deposes and says:

1. I am an attorney at Genova Burns LLC, representing the Petitioner in the foregoing Petition, and I am both responsible for the foregoing Petition and authorized to make this Affidavit on behalf of the Petitioner.

2. The statements made in the foregoing Petition are true to the best of my knowledge, information and belief.



ANGELO J. GENOVA, ESQ.

Sworn to before me this
1st day of March, 2019,



Notary Public

ROCHELLE WILSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/12/2023
14598532v4 (23857.001)