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2019 MAY -8 P 2: 12
**BOARD OF PUBLIC UTILITIES
TRENTON, NJ**

MAY -8 2019
**BOARD OF PUBLIC UTILITIES
TRENTON, NJ**

May 7, 2019

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MAY 08 2019

**BOARD OF PUBLIC UTILITIES
TRENTON, NJ**

VIA UPS AND ELECTRONIC MAIL

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

0019030303

**Re: CEP Solar Ltd. Petition for Modification of Settlement Agreement of Board
Order scheduled for May 8, 2019**

Dear Ms. Camacho-Welsh:

I represent CEP Solar LTD (the "Petitioner") in connection with Petitioner's filed Petition scheduled to be considered by the New Jersey Board of Public Utilities (the "BPU" or "Board") at the May 8, 2019 Board meeting. By Petition filed on March 1, 2019, Petitioner requested 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.

A. Revisiting the Settlement Sets No Dangerous Precedent and Advances Public Policy

I understand from my client that its principals have been in dialogue with Commission Staff in the hope of resolving the matter. In that context, the Petitioner has learned that the Board remains concerned 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 modifying our Settlement Agreement will not compel the Board to modify any other agreement. In short, the Board can always refuse to agree to modification.

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." 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.

AMS

R. Boylan, Esq.
S. Richardson, Esq.

J. Blum
list copies

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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 Agreement. Indeed, an argument could be made that the Commission would be derelict in advancing this Administration's progressive policy towards reliance on alternatives and renewables were it not to seize this opportunity to revisit the original settlement as proposed by the Petitioner.

B. Preservation of Farmland is Served by the Proposed Revised Settlement

To the extent that the Board has concerns that the full build out of the projects in the paragraph S settlement would in some way adversely impact farmland, the Petitioner offers the following information:

- 1) The property located in Washington Township, Warren County is zoned industrial with a residential overlay. Half of the property is currently being developed with a solar farm. The property owner has already retained counsel for 14 single family dwellings in the event the balance of the property is not deemed SREC eligible. See Affidavit of landowner David Nathanon, attached to the March 1, 2019 Petition.
- 2) The property located in Franklin Township, Warren County is zoned C-2 Commercial allowing commercial buildings and grid supply solar. Half of the property is being developed with a grid supply solar farm. The property owner has determined they will develop the property with warehouses in the event the balance of the property is not deemed SREC eligible. See Affidavit of Jane Santini, attached to the March 1, 2019 Petition.
- 3) The property located in Franklin Township, Hunterdon County has been approved for 23MW dc grid supply solar. Approximately half of the property has been developed and energized with a 10MW dc solar farm. The property owner has determined that if the balance of the property is not deemed SREC eligible they he would develop the land with commercial greenhouses. See Affidavit of David Den Hollander, attached to the March 1, 2019 Petition.

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4) The property in Pohatcong Township, Warren County has been approved for 20MW dc grid supply solar farm. One half of the property will be developed with a 10MW dc grid supply solar farm. The balance of the property can be developed residentially.

5) The Mayor of Franklin Township, Warren County, Jeff DeAngelis, has submitted a certification in support of the full build out of the property for grid supply solar in Franklin Township, Warren County. See Affidavit of Mayor Jeffrey DeAngelis, attached to the March 1, 2019 Petition. Mayor DeAngelis advises that the Township feels strongly that the use of the solar field preserves the property for future agricultural purposes. Mayor DeAngelis is certain the property will otherwise be lost to commercial development thus precluding future generations from considering its use and permanently removing the property from its agricultural inventory. The Mayor respectfully requests the opportunity to address the Commissioners' Aides.

I trust you will share this communication with the Board as it considers the Petition at its May 8 meeting. I thank you and the Board for your consideration. Should you have questions or require additional information, please contact me.

Very truly yours,

GENOVA BURNS LLC


ANGELO J. GENOVA

AJG/KAL

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