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TRENTON, NJ

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

175 Fairfield Avenue, #1A  
West Caldwell, NJ 07006  
Tel: 973-403-1661

September 16, 2019

**BY OVERNIGHT DELIVERY**

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

2019091240

**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)**

Dear Madam Secretary:

The undersigned represents SunPower Corporation ("SunPower"). SunPower hereby submits its Petition for Declaratory Relief pursuant to N.J.S.A. 52:14B-1 et seq. with respect to application of the definition of "on-site generation facility" as contained in N.J.S.A. 48:3-51 and its net metered solar project. Please circulate this Petition for processing at the earliest possible date.

A copy of the within Petition is being provided to Public Service Electric and Gas Company ("PSE&G"). Also, a copy is being provided to Stefanie Brand, New Jersey Rate Counsel.

Please contact the undersigned if you have any questions regarding this filing.

CMS

Legal

DHG

RPA

CLEAN ENERGY (2)

S. HUNTER

E. PIERCE

Respectfully submitted,

RUSSO TUMULTY NESTER  
THOMPSON & KELLY, LLP

HOWARD O. THOMPSON

Enclosure

c. PSE&G – Legal Department

Stefanie Brand, Esq. NJ Rate Counsel

Paul Flanagan, Executive Director

Abe Silverman, General Counsel

Grace Strom Power Chief of Staff

Sara Bluhm, Director – Office of Clean Energy

Stacey Peterson, Director -- Energy Division

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Attorneys for Petitioner SunPower Corporation

In the Matter of the Verified Petition of  
SUNPOWER CORPORATION

Docket No.

Seeking a Declaratory Judgment  
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)

PETITION FOR  
DECLARATORY RELIEF

SunPower Corporation, hereinafter sometimes "Petitioner" or "SunPower," says in support of the within petition:

**I. Preliminary Statement/Executive Summary**

A. **Petitioner.** Petitioner is the developer of an approximately 21 MW (DC) solar photovoltaic electric generating facility with four subparts (the "Solar Facility") for the Delaware River Port Authority (the "DRPA") that are the subject of this Petition.<sup>1</sup> The DRPA is the customer under an account (No. 42 004 745 06) with the local electric distribution company, Public Service Electric & Gas Company (the "EDC"). The EDC delivers electricity via one electric meter (the "Master Meter") that serves multiple power needs at the DRPA. The Solar Facility will be designed to provide the DRPA with electricity through a power purchase agreement (the "PPA") to replace less than 70% of the annualized energy delivered by the EDC to the Master Meter on a net-metered basis. The EDC-supplied energy delivered at the Master Meter powers the New Jersey portion of the PATCO rapid transit service owned by the DRPA.

B. **The DRPA.** The DRPA is a public corporate instrumentality of the State of New Jersey and the Commonwealth of Pennsylvania which is duly authorized under New Jersey law pursuant to N.J.S.A. 32:3-1 et seq. (the "DRPA Statutes"). Pursuant to the DRPA Statutes, the DRPA was created and exists for "an essential governmental function" including (quoting from N.J.S.A. 32:3-2):

(b) The effectuation, establishment, construction, acquisition, operation and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities

<sup>1</sup> This Petition does not include solar generating facility projects for the DRPA at two bridges and its One Port Center Drive, Camden, New Jersey location.

necessary for efficient operation in the Port District...

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage, or any of them, between points in New Jersey within the Port District and points in Pennsylvania within the Port District, and intermediate points. Such system may be established either by utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved or by the construction or provision of new rail facilities where deemed necessary, and may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.<sup>2</sup>

Further, the DRPA has broad statutory powers with respect to property, as enunciated in N.J.S.A. 32:3-6<sup>3</sup>:

If for any of its authorized purposes (including temporary construction purposes) the Commission shall find it necessary or convenient to acquire any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the Commission may find and determine that such property, whether a fee simple absolute or a lesser interest is required for public use and, upon such determination the said property shall be deemed to be required for a public use until otherwise determined by the Commission.

... All counties, cities, boroughs, villages, townships, and other municipalities, and all public agencies and commissions of the commonwealth of Pennsylvania and the state of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

The commonwealth of Pennsylvania and the state of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two states, or of either of them, which may be, or become, necessary or convenient to the effectuation of the authorized purposes of the commission, including lands lying under water and lands already devoted to public use.

The term "real property" as used in this compact includes lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term and includes not only fees simple absolute, but also any and all lesser interests such as easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate.

Finally, the DRPA is exempt from taxation as set forth in N.J.S.A. 32:3-12 and N.J.S.A. 32:3-13.54

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<sup>2</sup> See also, N.J.S.A. 32:3-13.51 which states, in part: In addition to any other powers heretofore or hereafter granted to it, the authority, in connection with construction or operation of the project authorized by this act, shall have power to make reasonable regulations for the installation, construction, maintenance, repair, removal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles or any other equipment and appliances (in this paragraph (b) called "works" ) located in the State of New Jersey of any public utility as defined in section 48:2-13 of the Revised Statutes of New Jersey, in, on, along, over or under any such project.

<sup>3</sup> See also, N.J.S.A. 32:3-13.52.



The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, for the increase of their commerce and prosperity and for the improvement of their health and living conditions; and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes...

and

no property, real or personal, nor its transfer or use, shall be subject to any tax by ... the State of New Jersey, or any political subdivisions..., imposed on the purchase, use, sale, transfer or on the privilege of transferring title to such property, or on the execution, delivery or recording of any written instrument in connection therewith, to or by the authority, in carrying out the project authorized by this act or in carrying out any other undertaking of the authority.

**C. The DRPA Property.** As detailed herein, there are several subparts of the Solar Facility, which, together with the DRPA's operating assets served by the Solar Facility are all located on the DRPA's designated real property located in the Borough of Lindenwold,<sup>4</sup> the Townships of Haddon, Cherry Hill, and Voorhees and the City of Camden in Camden County. (See **Exhibit A**).

The subparts of the Solar Facility are to be constructed at various train stations on the PATCO rapid transit service line owned by the DRPA. The EDC delivers electricity to the PATCO rapid transit service at a Master Meter located at the Westmont Station for PATCO and the DRPA owns and operates a distribution wire behind the Master Meter that runs next to the PATCO rail line, utilizing the electricity to serve PATCO trains and infrastructure. The subparts of the Solar Facility will be located over parking areas at the PATCO train stations that are commonly known as Lindenwold Station, Ashland Station, Woodcrest Station, and Ferry Avenue Station. (See **Exhibit B**). These parking areas are next to the PATCO rail line. The rapid transit service's electricity needs in New Jersey are to be partially served by the Solar Facility. (See **Exhibit C**).

The DRPA has confirmed that, pursuant to its statutory authority: (a) the property on which the train stations and the PATCO rapid transit rail line are located was acquired under various deeds, and (b) despite the municipalities having assigned tax lot designations to parts of the property, the property is tax exempt and constitutes one property (See **Exhibit C**). To be clear, this means that the subparts of the Solar Facility to be located at various DRPA stations, as noted above, will connect to the DRPA's private wire running next to the rail line feeding electricity to PATCO trains and rail line infrastructure. These connections from the subparts of the Solar Facility all will be behind the Master Meter, which is the one location at which the EDC delivers its electricity to the DRPA. Finally, as per the DRPA, all of the equipment constituting the Solar Facility and the Master Meter location are on one property, with no third party owning property between where the solar power is generated and where it is consumed.<sup>5</sup>

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<sup>4</sup> To be clear, the DRPA's Lindenwold Station is in the service territory of Atlantic City Electric, but the PATCO distribution line's electric energy usage in New Jersey is fed from the Master Meter, with such energy delivered by the EDC.

<sup>5</sup> Petitioner also submits, as **Exhibit D**, the Title Report of William A. Slover, Esq., confirming the DRPA property in question, despite multiple municipal tax lots, has no intervening tax lots owned by third parties that cause the Solar Facilities to not be "on site" generation (as further discussed below in this Petition). The parking area at the Woodcrest Station is leased by the DRPA from New Jersey Transit but, given the DRPA's broad

Based on the foregoing, the Solar Facility will constitute "On-site generation" within the meaning of N.J.S.A. 48:3-51.

The Solar Facility serving the DRPA (as seen on **Exhibit B**) is intended to be "net-metered."<sup>67</sup> The Solar Facility will interconnect with the EDC behind the Master Meter at the Westmont Station in the Haddon Township, Camden County portion of DRPA's property. The electricity from the subparts of the Solar Facility will be used by the operating assets of the DRPA behind the Master Meter via the DRPA-owned distribution line.<sup>8</sup>

Based on the DRPA's confirmation that the property on which the subparts of the Solar Facility and the Master Meter are located constitute one piece of its real property,<sup>9</sup> Petitioner asserts that the Solar Facility is entitled to solar incentives. N.J.S.A. 48:3-87, subsection m. (emphasis added) states:

The board shall ensure the availability of financial incentives under its jurisdiction, including, but not limited to, long-term contracts, loans, SRECs, or other financial support, to ensure market diversity, competition, and appropriate coverage across all ratepayer segments, including, but not limited to, residential, commercial, industrial, non-profit, farms, schools, and public entity customers.<sup>10</sup>

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definition of "real property" (i.e. leasehold interests of the DPRA constitute "real property"), this on-site generation conclusion includes Woodcrest Station.

<sup>6</sup> The Solar Facilities' electricity production will not exceed DRPA's historic annualized usage of electricity at the Master Meter of 38,810,014 kWh.

<sup>7</sup> N.J.A.C. 14:8-1.2 defines "net-metering" as a

system of metering and billing for electricity in which the supplier/provider and/or the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period determined under N.J.A.C. 14:8-5.3; and
2. Compensates the customer-generator at the end of the annualized period determined under N.J.A.C. 14:8-5.3 for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

<sup>8</sup> Petitioner notes that, while it is locating subparts of the Solar Facility in different parts of the DRPA's one property, the subparts of the Solar Facility will interconnect to each other and deliver electricity for the PATCO line and not to provide electricity to the stations themselves (which have separate metered service).

<sup>9</sup> The DRPA's statutory power (noted above) entitles the DRPA to declare the Woodcrest Station (while leased from New Jersey Transit) to be the DRPA's real property for the purposes of this Petition. Even without that declaration, the Woodcrest Station parking area leased from New Jersey Transit is located on a single tax lot that abuts the DRPA's owned property, thereby allowing the DRPA to avail itself of the "on-site generation" definition and regulations.

<sup>10</sup> N.J.A.C. 14:8-1.2 defines "state entity" as a department, agency, or office of State government, a State university or college, or an authority created by the State. New Jersey created the DRPA under the DRPA Statutes cited above. Under N.J.A.C. 14:8-7.2, aggregate net metering is available for "eligible customers" with eligible customers including a "state entity." The DRPA is, by definition, an "authority." Merriam Webster can be consulted for the definition of "entity"; a being with independent, separate or self-contained existence; something that has a separate and distinct existence and objective, and an organization (such as a business or governmental unit) that has an identity separate from those of its members. Hence, applying this definition, the DRPA also is a state entity.

**D. EDC Declined to Confirm Net-Metering, On-Site Generation.** The EDC refused Petitioner's request to interconnect the subparts of the Solar Facility as a net-metered project on June 27, 2019. The basis for denial, as stated in email communications, is that the DRPA Property information provided did not confirm (based on a tax map) that the subparts of the Solar Facility were within the boundaries of the property where the energy would be consumed or were on a contiguous property.

Given the EDC's refusal and/or inability to approve the Solar Facility as on-site generation and net metered to serve the DRPA's energy needs, Petitioner, as the developer of the Solar Facility, and the DRPA, as the customer, have agreed that it is best to have the DRPA formally confirm (See **Exhibit C**) that the DRPA Property is one property, and the fact that there are multiple tax lots assigned by the municipalities to the DRPA Property is of no consequence due to the tax exempt status of the DRPA. As demonstrated above, the DRPA is given broad statutory power to determine what its real property is and it has declared that the DRPA Property on which the Solar Facility is located is one piece of its real property. This, together with the fact that New Jersey statutes declare the DRPA to be a state entity, provide the certainty needed that the property ownership complies with the Board's requirements for the Solar Facility to be confirmed as on-site generation.

Accordingly, Petitioner requests that the Board: (1) issue a declaratory order confirming that the Solar Facility meets the requirements under N.J.A.C. 14:8-4.1(b)(1) to be net-metered and on-site generation for service to the DRPA's Property behind its Master Meter; and (2) pursuant to N.J.A.C. 14:1-1.2(b), issue an order waiving the specific requirement of N.J.A.C. 14:8-4.1(b)(1) with respect to the DRPA Property having multiple tax lots, due to the DRPA's declaration of one property and that the DRPA Property falls under the exception provided Joint Base McGuire-Dix-Lakehurst under the provisions of the Board's January 25, 2017 NJ Land decision (Docket No. QO16040382).

## **II. Parties and Relief Sought.**

1. N.J.S.A. 52:14B-8 permits "any interested person" to seek "a declaratory ruling with respect to the applicability . . . of any statute or rule enforced or administered by [the] agency." The Board is the agency charged with enforcement of N.J.S.A. 48:3-49 et seq. which law, when enacted, was referred to as the Electric Discount and Energy Competition Act (the "Act").
2. Petitioner SunPower Corporation is a Delaware corporation that is a leading developer, owner and operator of renewable energy facilities and solar panel manufacturer in the United States.
3. The EDC is a Board regulated local electric distribution company.
4. DRPA is a public corporate instrumentality of the State of New Jersey that, among other things, owns and operates the PATCO rapid transit service and train stations and is the customer under the EDC's account # 42 004 745 06. DRPA has authorized

Petitioner to submit this Petition and supports the relief sought, as confirmed by the Verification attached hereto as **Exhibit F**.

5. Petitioner seeks a Declaratory Ruling from the Board that the energy generated from the Solar Facility will be considered "generated on the customer's side of the meter" because the Solar Facility will be on the DRPA's Property where the energy will be consumed under N.J.S.A. 48:3-51 and under the Board's regulations as set forth in N.J.A.C. 14:8-4.1(b), with one NJ Transit parking area with a part of the Solar Facility also being part of the DPRA's Property pursuant to the DRPA Statutes or as property contiguous to the DRPA Property. After applying the tax exempt exception to tax lot analysis of a customer's property found in the Board's January 25, 2017 NJ Land decision (Docket No. QO16040382 at page 7) (waiving strict compliance under N.J.A.C. 14:1-1.2(b)) and also accepting the DRPA's declaration that the subparts of the Solar Facility 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, the provisions of N.J.A.C. 14:8-4.1(b) requiring reference to tax maps to determine the property boundaries should be waived.
6. Under such a Declaratory Ruling, the Solar Facility would be eligible (assuming it otherwise complied with the Board's requirements for registration, construction and completion) for solar incentives under N.J.S.A. 48:3-87, Section m as cited above.

### **III. Property Configuration**

7. The DRPA is a public corporate instrumentality of the State of New Jersey that was created and exists for "an essential governmental function" providing bridge and rapid transit rail service that is a key driver of the economy in Camden County, New Jersey. The details of the Executive Summary are incorporated in this paragraph, as if restated verbatim herein.
8. The DRPA Property includes rails and train stations along the PATCO rapid transit line which DRPA Property is identified as consisting of multiple tax lots on the tax maps of the Borough of Lindenwold, the Townships of Haddon, Cherry Hill, and Voorhees and the City of Camden in Camden County. (See **Exhibit A**) (the "DRPA Property"). The DRPA Property is tax exempt and is one property, as per the DRPA. (See **Exhibit C**). The subparts of the Solar Facility are to be constructed on the DRPA Property at various locations as set forth on **Exhibit B**.<sup>11</sup>
9. The subparts of the Solar Facility, the point of interconnection of the Solar Facility with the EDC's distribution grid (the "IP"), which is at the Master Meter, and the DRPA's PATCO rapid transit line that will be served by the Solar Facility are all located on the DRPA Property.

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<sup>11</sup> Camden County's tax lots and blocks are available on line and municipalities also have on line tax lot availability. By way of example, the Township of Voorhees has tax maps clearly showing the PATCO line

10. The DRPA has broad authority to declare various property interests it holds to be "real property" and "required for public use" under N.J.S.A. 32:3-6 including "lands, structures,... and any and all lesser interests such as easements, rights of way, uses, leases, licenses and all other corporeal hereditaments..."
11. As set forth in **Exhibit C**, the DRPA has declared its lease of a parking area from New Jersey Transit at the Woodcrest Station on the PATCO rapid transit line to be its "real property" under the DRPA Statutes and part of the one property it has confirmed to exist, irrespective of tax lot designations, for the Solar Facility to be deemed on-site generation. Further, the DRPA has confirmed that the energy portion of its electric service to the PATCO rapid transit line is provided by an energy supplier.<sup>12</sup>
12. The electricity produced by the Solar Facility will be delivered from the subparts of the Solar Facility directly to the DRPA, with internal meters measuring the production of each subpart, but with the entire Solar Facility wired together so that all energy is delivered behind the Master Meter through the DRPA's internal distribution system for the DRPA's use, without using the EDC's distribution network. The current tax parcel designations for the DRPA Property are indicated above and on **Exhibit A**.
13. All existing electricity generation service is delivered by the EDC; i.e. the EDC's service territory includes the entirety of the DRPA's PATCO rapid transit line in New Jersey ending at the Lindenwold Station.<sup>13</sup>

#### **IV. New Jersey's Statutory & Regulatory Framework**

14. To qualify to produce SRECs or other Board-granted solar incentives, the Solar Facility must be "connected to the distribution system." N.J.S.A. 48:3-87.<sup>14</sup>
15. One way a facility can be considered "connected to the distribution system" is if it is "(1) connected to a net metering customer's side of a meter, regardless of the voltage at which that customer connects to the electric grid. . . ." N.J.S.A. 48:3-51. An alternative way to be "connected to the distribution system" under the act is for the Solar Facility to be an "on-site generation" facility. N.J.S.A. 48:3-51.

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<sup>12</sup> N.J.S.A. 48:3-87(e)(1) requires electric power suppliers to provide net metering to all customer classes on a non-discriminatory basis.

<sup>13</sup> The DRPA confirms in **Exhibit C** that the EDC began serving the entirety of the PATCO rapid transit line in New Jersey via the Master Meter a number of years ago and that the energy portion of its electricity needs is met by one or more energy suppliers. **Exhibit C** also confirms that electricity delivered by the EDC and/or produced by the SunPower Solar Facility behind the Master Meter is used entirely in New Jersey and with none delivered to Pennsylvania. The end of the PATCO rapid transit line at the Lindenwold Station is physically in the service territory of Atlantic City Electric, but the PATCO internal distribution line in New Jersey is served to the end of the line by the EDC.

<sup>14</sup> Petitioner acknowledges that New Jersey's SREC program is in transition to closing and that new regulations are being promulgated. Petitioner respectfully notes that under Section m. of N.J.S.A. 48:3-87, the Board is to ensure the availability of financial incentives including, but not limited to, SRECs and other financial support to public entity customers.



16. The definition of "On-site generation" is found in N.J.A.C. 14:8-1.2.

On-site generation facility" means a Class I or Class II renewable generation facility and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other but may be otherwise separated by an easement, public thoroughfare, or transportation or utility-owned right-of-way. (Emphasis added).

Petitioner submits that the Solar Facility will qualify to produce SRECs (or later Board-granted solar incentives) as both a facility "connected to the customer's side of the meter" and as an "on-site generation facility."

17. The Board's regulations define what it means for renewable energy "to be generated on the customer's side of the meter" in N.J.A.C. 14:8-4.1(b), which provides in pertinent part that for a Class I renewable energy, "to be generated on the customer's side of the meter," the "renewable energy generation facility" can be located:

i. Within the legal boundaries of the property, as set forth within the official tax map, on which the energy is consumed; or

ii. Within the legal boundaries of a property, as set forth within the official tax map, that is contiguous to the property on which the energy is consumed. The property on which the energy is consumed and the property on which the renewable energy generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an existing easement, public thoroughfare, or transportation or utility-owned right-of-way and, but for that separation, would share a common boundary. The fact that a public thoroughfare may be encumbered by third-party easements does not alter a determination as to whether two properties would be considered contiguous.

N.J.A.C. 14:8-4.1.<sup>15</sup>

18. The energy generated by the Solar Facility will meet the definition of energy generated on the customer's side of the meter under the Board regulations, since it will all be generated behind the Master Meter and the DRPA has declared (as seen in **Exhibit C**)

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<sup>15</sup>When first promulgated, this regulation read: "Within the legal boundaries of a property, as set forth within the deed for the property . . . ." For clarification, the Board changed the rule to "as set forth in the official tax map." 45 N.J.R. 942(a) 2013.

that everything is contained within one piece of DRPA's real property. This state entity and its real property are tax exempt, the real property was required for public use, and municipal tax lots and municipal boundary are of no import to the state's entity's ownership and operation of its real property.

19. As was the case with Joint Base McGuire-Dix-Lakehurst in the NJ Land case (Docket No. QO16040382 at page 7), New Jersey has removed the DRPA lands from all state taxation by statute. N.J.S.A. 32:3-12 and N.J.S.A. 32:3-13.54. Quoting the NJ Land decision at page 7, "Therefore, the reference to the official tax map in N.J.A.C. 14:8-4.1 is not determinative or applicable."
20. Petitioner confirms that the Solar Facility is sized so as not to exceed the historic annual usage of the DRPA as measured by the Master Meter.
21. Petitioner respectfully submits that for it to give the DRPA the benefit of reduced rate solar power, the Petitioner needs the financial benefits from the production of SRECs (or, if need be, the transition or successor solar financial incentives) that come from the Solar Facility being designated as "connected to the distribution system" on the "customer's side of the meter." Further, for the DRPA to realize the savings from the Solar Facility and its PPA with Petitioner, the Solar Facility must be interconnected as a net-metered facility. The EDC has indicated that it cannot approve the Solar Facility for net-metering due to the multiple tax lots. The Board's ruling is needed because of the provision in the Board's regulation, i.e. N.J.A.C. 14:8-4.1, which requires consideration of the official tax map to determine the legal boundaries of a property.
22. As noted in **Exhibit C**, the DRPA supports this Petition and confirms that the Solar Facility will serve the DRPA in fulfilling its authorized public purpose; i.e. serving the people of the State of New Jersey with the PATCO rapid transit line.
23. Petitioner respectfully submits that tax maps are not relevant to DRPA, and that the Board must honor the DRPA's statutorily granted right to determine what is its single piece of real property and reaffirm its prior position (as noted in the NJ Land Order) that with tax exempt entities, municipal tax designations are not relevant or dispositive to determining if a solar facility constitutes "on-site" generation under N.J.A.C. 14:8-4.1(b). Further, reference can be made to Camden County tax maps (even though Camden County, like its municipalities, cannot tax the DRPA) to further confirm what the DRPA, as a state entity, already has advised the Board: i.e. that the property served by the Solar Facility is one continuous piece of real property that will be served on a net-metered basis. Therefore, Petitioner requests that the Board waive strict compliance with its regulations concerning tax lots and/or tax maps, accept the DRPA's designation of its real property, irrespective of tax lots, and allow the Solar Facility to receive SRECs (or, if need be, successor solar financial incentives) for the electricity the Solar Facility delivers for use by the DRPA behind the DRPA's side of the Master Meter.

## VI. Waiver.

24. N.J.A.C. 14:1-1.2(b) allows the Board to “relax or permit deviations” from its rules “in special cases and for good cause shown.” Further, the Board “*shall*, in accordance with the general purpose and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the interests of the general public.” Id. at 1.2(b)(1) (emphasis added).
25. The Board has established a two-part test to evaluate requests for waivers under N.J.A.C. 14:1-1.2(b)(1). Under the first prong of the test, the Board considers whether the request supports the general purpose and intent of the rules; and, under the second prong, the Board considers whether full compliance with the rules would adversely affect the public interest. See, e.g., In the Matter of the Petition for Waiver of N.J.A.C. 14:8-2.9(c)-William R. Warren, Docket No. QW14101269 (April 15, 2015); In the Matter of the Clean Energy Program Authorization of Rebates Exceeding \$300,000 and Request for Extension of Time to Complete Project-Bayshore Regional Sewerage Authority, Docket No. EG1202016V (March 12, 2012).
26. In I/M/O the Application of NJ Land, LLC Seeking a Declaratory Judgment, Docket No. QO16040382 (the “NJ Land Order”), the Board summarized its intent regarding the pertinent regulations as follows:

The general purpose of the Board’s net metering rules, as set out in a former rule proposal, is to ‘facilitate investment in distributed renewable energy (renewable energy located close to the source of energy consumption).’ 44 N.J.R. 2043(a) (August 6, 2012). The Board noted that in addition to the reduction in pollution and need for construction of new power plants, positive impacts from all renewable energy has the added benefits of helping alleviate the demand for large electric transmission and reducing congestion on existing electric distribution lines, ‘thus reducing power outages and improving the reliability of electric service to all customers.’

Id.

27. Petitioner’s request(s) for waiver support the general intent of the rules. The general intent of the rules is to facilitate investment in distributed renewable energy close to the source of the energy consumption. In this instance, the Solar Facility will provide clean energy to the DRPA, reducing the DRPA’s need for power provided by large electric transmission lines, and the inherent congestion that can occur with heavy demand for power delivered from transmission lines. This helps reliability of electric service for all customers in the area.
28. Second, Petitioner notes that Section m. of N.J.S.A. 48:3-87 states the New Jersey Legislature’s intent that the Board support SRECs and other solar incentives that

benefit solar renewable energy projects serving public entity customers. The DRPA is such a public entity customer.

29. Third, Petitioner notes that the new draft of New Jersey's Energy Master Plan, Section IV, calls for New Jersey to be served 100% by clean energy sources by 2050.
30. Fourth, Petitioner submits that, with respect to the Board's intent to facilitate investment in distributed renewable energy, Petitioner projects that its costs to install the nearly 21 MW Solar Facility noted in this Petition that will serve the DRPA will be in the tens of millions of dollars. This is a cost that the DRPA, as a state entity, avoids having to expend itself to erect solar generation to serve its electricity needs. The ability to net-meter the entire load of the Solar Facility allows both SunPower, as the Petitioner and renewable energy supplier, and the DRPA, as its customer, to be able to benefit financially by avoiding societal benefit charges, with a lower energy price. This benefits a state entity and the citizens of New Jersey it serves.
31. Petitioner submits that not only are its request(s) for waiver in accordance with the intent of the net-metering rules, but that full compliance with the regulatory requirements would adversely affect the interest of the public. As noted above, the DRPA performs essential governmental services serving thousands of people on its PATCO rapid transit line and its Delaware River bridges. The proposed solar generation will help the DRPA in undertaking its statutorily-mandated, transit service purposes that serve the people of the state of New Jersey and help drive the local economy. The Solar Facility presents the DRPA with the opportunity to receive less expensive energy from a non-polluting/non-fossil fuel source to serve the DRPA's electricity needs, thereby reducing its ongoing operational costs and aiding its ongoing viability.
32. Furthermore, strict compliance with the Board's regulation's focus on the tax map to determine if a facility is "on-site" generation (i.e. N.J.A.C. 14:8-4.1(b)) would adversely affect the public's interest by preventing interconnection and operation of a renewable energy source that will serve the people of an economically challenged part of New Jersey, i.e. Camden County, thereby helping to reduce and/or stabilize costs for the DRPA as a state entity.
33. Petitioner submits that because Petitioner's request(s) are in accord with the general purposes and intent of the rules and full compliance with the rule requirements would adversely affect the interests of the public, the Board should relax or permit deviation from the applicable regulations regarding tax maps, so that the Solar Facility may interconnect and serve DRPA's operations as on-site generation and as net-metered service, as proposed.
34. Petitioner points to the Board's decision in the NJ Land case (as cited above), which determined: that tax lot and block designations for a military base were not relevant or dispositive for determining what constituted the property for "on-site" generation purposes; and that the military base had confirmed it was one/single piece of real

property despite other entities occupancy rights. Similarly, here the DRPA has confirmed that all of the real property in question constitutes one piece of real property and the DRPA has statutorily granted power to make such a determination. This relaxation in or deviation from the applicable regulations concerning tax map considerations would be a minor one that is narrowly available, in this case to the DRPA as a state entity.

35. Moreover, all the DRPA's usage at the DRPA Property at this time is served behind one Master Meter, with the DRPA operating its own distribution line. The subparts of the Solar Facility will be electrically connected via the DRPA's internal distribution lines and part of DRPA's load behind the Master Meter. In effect, DRPA simply is substituting electricity that the EDC has provided to the DRPA with electricity that the subparts of the Solar Facility can provide to the DRPA.
36. The DRPA's existing electrical service results from an electrical configuration for receipt of power previously arranged for by and with the EDC. The DRPA's electric usage for its PATCO rapid transit equipment conveniently receives energy input at one location and is measured there by the Master Meter. Given the DRPA's unique, statutorily created operation, Petitioner will not be reconfiguring power lines and meters in an effort to make these solar projects work within the Board's regulatory framework. It fits now as net metered and as on-site generation.
37. A relaxation of the regulations is appropriate given the unique customer: the DRPA.<sup>16</sup> Petitioner respectfully submits that the benefits provided by this Solar Facility extend to the people served by PATCO, the DRPA's employees, local electrical reliability, and the local economy.
38. In sum, Petitioner submits that the unique scenario provides the basis for the Board to relax or permit deviations from the rules. Petitioner requests that the Board waive strict compliance with the regulations as they apply to the Solar Facility and the DRPA, such that the energy produced from the Solar Facility be considered generated "on-site generation" and on the "customer's side of the meter," so it will qualify as a net-metered facility to receive SRECs and such other Board-granted solar incentives provided by the Board to state government entities.

#### **IV. Conclusion.**

**WHEREFORE, for all the reasons set forth herein, Petitioner respectfully requests that the Board approve this Petition and issue a Declaratory Judgment: (i) confirming that with the energy produced by the Solar Facility may serve the DRPA for its energy needs**

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<sup>16</sup> Petitioner respectfully notes that the relaxation of the Board's regulations sought together with the uniqueness of the electrical configuration, the single customer served, and the impact of the customer on the local economy are akin to factual situation which led the Board to grant relief in I/M/O the Joint Petition of KDC Solar LLC and Six Flags Entertainment Corporation Seeking a Declaratory Judgment, Docket No. QO14080855, Order dated February 11, 2015.



which have been measured at the Master Meter as energy to be "generated on the customer's side of the meter" and as "on-site generation" located and delivered on the DRPA Property under N.J.S.A. 48:3-51 and N.J.A.C. 14:8-4.1; and (ii) pursuant to N.J.A.C. 14:1-1.2(b), waiving the strict application of the regulatory requirements in N.J.A.C. 14:8-4.1 to find that the Solar Facility may serve the electricity needs of the DRPA behind the Master Meter on the DRPA Property despite multiple tax lot designations and receive SRECs for its generation as a net-metered facility (and/or other future Board-granted separate solar incentives).

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