

FORWARD
Atlantic County Utilities Authority

P.O. Box 996 • Pleasantville, NJ, 08232-0996
Street Address: 6700 Delilah Road, Egg Harbor Twp., NJ, 08234-5623
609.272.6950 • www.acua.com • info@acua.com
BOARD OF PUBLIC UTILITIES
TRENTON, NJ

January 14, 2020

VIA HAND DELIVERY AND E-MAIL

Aida Camacho-Welch, Esq.
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

RE: Motion for Reconsideration in the matter a New Jersey Community Solar Program
pursuant to P.L. 2018, C.17

BPU Docket NO.: QO18060646

Dear Secretary Camacho-Welch:

Please accept for filing an original and eleven (11) copies of Atlantic County Utilities Authority ("ACUA") Motion for Reconsideration of the Board's December 20, 2019 Order in the above matter. Please stamp and date the additional copy as "filed" and return it in the enclosed self addressed stamped envelope. Thank you for your consideration and attention in this matter.

The Board's rules state "a motion for rehearing, reargument, or reconsideration of a proceeding may be filed by any party within 15 days after the effective day of any final decision or order by the Board." The effective date of the Board's decision in this matter is December 30, 2019. Accordingly, motions for reconsideration are due by January 14, 2020, and this motion is timely filed.

The ACUA is an instrumentality of Atlantic County and is responsible for managing solid waste and sewage for the residents of and businesses in the county. ACUA owns and operates a fully permitted landfill in Egg Harbor Township, New Jersey which will be the site for a Community Solar Project awarded to ACUA by the Board in its decision on December 20, 2019. This project will serve only low-and-moderate income customers.

Case mgmt
S. Richardson, Esq.
A. Hard, Esq.

R. Boylan, Esq.
P. Owen, Esq.
S. Bluhm

ACUA has a long and highly successful record in developing and generating sustainable initiatives at its sites, including the Jersey-Atlantic Wind Farm (the first coastal wind farm in the United States and the first wind farm in New Jersey); a 500 kilowatt solar project; a Compressed Natural Gas (CNG) station to fuel its fleet of natural gas vehicles; a landfill gas-to-energy project on its landfill; multiple electric vehicle charging stations across 4 locations; and a green vehicle wash, powered by 100% renewable energy, to meet and exceed New Jersey stormwater management regulations.

ACUA's Community Solar Project is a continuation of ACUA's strong commitment to the development of innovative and progressive sustainability and energy-efficient initiatives.

The ACUA has a strong interest in Community Solar and in supporting Governor Murphy's strong environmental justice policies. In fact, the ACUA committed in its application to exclusively serve LMI customers, well beyond BPU requirements. ACUA is excited for the opportunity to offer low-cost solar energy to our low-and-moderate income residents.

The Board's December 20, 2019 Order requires reconsideration and amendment to reverse the Board's denial of ACUA's request for a waiver of N.J.A.C. 14:8 – 9.10(b)(i)(i). ACUA requested that the Board grant this waiver, as it would permit ACUA to sign up LMI customers on an "opt-out" basis, as the Board permits under its Government Energy Aggregation Program. Use of this opt-out approach is needed to enable ACUA to operate this program more efficiently to the benefit of LMI customers. Put another way, the opt-out approach mitigates the otherwise high cost of LMI customer sign-up that would prevent program development.

The opt-out approach is a fair, accepted, and effective way to make the Community Solar work for LMI customers. In rejecting ACUA's waiver request the Board erred by: a) failing to recognize the high priority Governor Murphy has placed on developing effective Environmental Justice Programs; b) not recognizing the Board's own success in using opt-out for its Government Energy Aggregation Programs in a manner that is highly customer sensitive; and c) not acknowledging the "pilot nature" of the Community Solar Program. Accordingly, the Board should grant the waiver requested by ACUA so it can enable the Governor's vision to be realized.

POINT I

The Board should reconsider and reverse its denial of ACUA's waiver request as it is unreasonable and contrary to the expressed policies of the Board and the Governor.

A motion for reconsideration "shall state . . . the alleged errors of law or fact relied upon" in seeking reconsideration. N.J.A.C. 14: 1-8.6. Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision (*D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence (*Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996)). Additionally, new or additional information should be considered in the interest of justice (*Ibid*). The moving party must show that the action was arbitrary, capricious or unreasonable (*D'Atria*, *supra*, 242 N.J. Super. At 401).

Accordingly, reconsideration and reversal is needed because the Board unreasonably and improperly did not recognize or misunderstood key elements of the need for the waiver, contrary to its own policy and experience with opt-out provisions.

The Governor and the BPU's Community Solar Energy Pilot Program is intended to place an emphasis on environmental justice by delivering solar energy and the associated benefits to low- and-moderate income customers. However, contrary to the Governor's strongly stated policy to help low-and-moderate income customers participate in the solar market, the denial of the waiver request by the Board for ACUA's 100% LMI program contradicts a series of policies, rules, and "facts on the ground" that demonstrate that the Board's decision is arbitrary, capricious, and unreasonable, and will frustrate the very goals the Governor and Board have established for this Community Solar effort.

POINT II

The Board's specific reasons for denial of the waiver are unreasonable and not based on facts or the Board's own rules.

The Board's Order (on page 5 and page 6) provides the reasons for Board Staff's recommendation that the ACUA's waiver request be rejected, all of which evidence a material misstatement of the Board's own rules, processes, and policies, as described below. (The Board denied the ACUA waiver request on page 8 of the Order, without discussion. For purposes of this Motion, we are addressing Board Staff's reasoning.)

The Governor has made Community Solar for LMI a key goal of his Administration. Nowhere in the staff recommendation nor in the Board's discussion and findings relative to the waiver request is this policy recognized or reflected. This is a major omission in the Order which the Board should address.

In addition, the following reasons stated by Staff are unreasonable and not supported by facts:

a) First, page 5 of the Board's Order states:

"While Staff believes that 'opt-out' provisions for community solar are worth exploring in future Program Years, particularly in conjunction with consolidated billing, Staff believes that allowing it in current circumstances would pose an unacceptable risk of 'slamming,' i.e. having customers signed up for community solar without their full knowledge and/or consent."

This statement fails to recognize the protections in the Board's current opt-out approach and rules, all of which have been carefully developed by the Board's Division of Energy over the past decade to fully and effectively protect customers. Additionally, the opt-out approach has been working in the market for eight years. Slamming in the context of GEA has not been an issue (it has been relative to other third-party supplier matters). This is due in large part on the following protections required by the Board and its Division of Energy for opt-out, which ACUA will include in its Program:

- Notice to designated customers that they can opt-out at any time during the program with no penalties. (Notice will only be provided to Housing Choice Section 9 voucher recipients and residents of the PHA complexes, not to every resident in Pleasantville. This limited notice is intended to prevent customer confusion, effectively manage customer relationships, and limit the active subscribers to correlate with solar project capacity.);
- A letter to each designated customer explaining the program and advising them of their opt-out and other rights;
- Continued and ongoing ability for individual customers to opt-out after enrollment, with no penalties - slamming typically entails getting locked into a longer-term agreement that has early termination fees; and
- A utility notification letter sent to customers upon submittal of enrollment.

In addition, ACUA will include the following supplementary processes to inform and protect customers:

- Customer and constituent support, including the development of educational and marketing materials as well as holding public informational sessions at community meetings;
- Development of a website (or a dedicated page on ACUA's website) through which the public can obtain further information regarding the Program;
- A dedicated toll-free number to facilitate customer questions or opt-out requests;
- Assignment of a designated staff person in the municipal building to address any issues; and
- A solar contract that is publicly procured and managed by ACUA, and not by a private vendor, with strong customer protections and public disclosure.

The assertion in the Order that states that protection from slamming is more effective with consolidated billing also has no basis. The opt-out protections required by the Board are applicable under both separate and consolidated billing, so the customer is fully protected from slamming either way. A dual bill approach is not more susceptible to slamming than consolidated billing.

In short, this objection raised by staff contradicts the Board's own rules and the hard work and results of the Board's Division of Energy to assure that customers are fully informed of opt-out enrollment with the opportunity to opt-out at any time; and the eight years of success of Government Energy Aggregation programs. Moreover, ACUA has added additional processes to further inform and protect customers.

b) The Board Order of page 5 provides another reason offered by staff to reject the waiver:

"Staff notes that community solar is not comparable to GEA, for two primary reasons: 1) community solar systems are limited in size and in number of subscribers allowed per MW installed capacity, unlike GEA, which is designed to serve most, if not all the residents in a given municipality; 2) GEA is implemented via consolidated billing, i.e. both the cost and the benefit received through GEA is reflected directly on customer's bills; community solar subscribers receive a separate bill from their subscriber organization."

Both of these stated comparisons with Government Energy Aggregation in fact help assure customer knowledge and consent for the ACUA opt-out program, and again are belied by the Board's own experience and success with the opt-out provisions of Government Energy Aggregation. The first reason ("Community solar systems are limited in size and in number of subscribers allowed per MW installed capacity, unlike GEA, which is designed to serve most, if not all the residents in a given municipality") in fact provides *further* protection for customers: because the number of customers in a community solar program is relatively small (no more than 250 per MW per the Board's regulations, or 500 total for the ACUA's 2 MW program), it is, in fact, easier to fully inform customers of their opt-out enrolment and of all their rights under the ACUA program. Accordingly, the logic of the Order's determination is faulty.

The staff's second stated distinction between GEA and Community Solar ("GEA is implemented via consolidated billing, i.e. both the cost and the benefit received through GEA is reflected directly on customer's bills; community solar subscribers receive a separate bill from their subscriber organization") is a distinction without a difference. The use of a separate bill will in no way create a risk of slamming as all the rules and processes developed above apply to a separate bill. Moreover, a customer receiving a separate bill ensures that the customer will be even more aware of their enrollment.

c) The next reason stated by staff on page 6 of the Order is as follows:

"Staff believes ACUA's relationship with PHA should facilitate obtaining affirmative consent from subscribers, and that this approach is the most customer-centric approach possible."

The conclusory statement is without basis, as described hereinabove. Contrary to this statement in the Order, without the opt-out provision ACUA, a public entity, will not be able to operate the program in a customer-centric manner which enables customers to save money. This requested reconsideration and waiver is necessary, as the marketing and sales process of obtaining wet or electronic signatures for LMI customers is burdensome and expensive, creating a financial barrier to a successful LMI Community Solar Program.

The traditional opt-in method may work with markets to middle- and upper-income customers with a deep interest in the environment, but it will not work with individually metered LMI customers. **Accordingly, the opt-out method is vital to the success of the Governor's and the Board's environmental justice efforts and will eliminate a significant hurdle that has stunted Community Solar success for the LMI population in other states.**

The use of opt-out has been already demonstrated by the use of opt-out in the Board's Government Energy Aggregation program and will be further supported by ACUA's status as a public entity and commitment to an open process. Accordingly, these statements cited by Board staff provide no reason to disallow this proven approach, and in fact support use of the opt-out process.

Conclusion

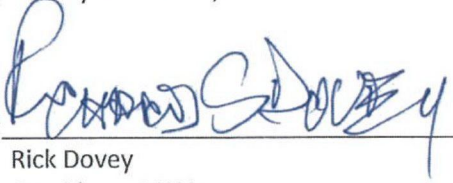
ACUA requests that the Board reverse its decision, and provide a waiver from N.J.A.C. 14:8-9.10(b) to enable the enrollment of low- and moderate income ("LMI") individually metered residential customers through a "modified opt-out" process in a manner that is similar to the approach successfully used by the Board and many municipalities across New Jersey in their administration of Government Energy Aggregation ("GEA") Programs (N.J.A.C. 14:4, et seq.), which is designed to be highly protective of customers. This opt-out approach will be directed to LMI customers only, including the individually metered customers who receive Housing Choice Section 9 vouchers from the Pleasantville Housing Authority (PHA). These recipients earn 30% or less of the area median income, easily qualifying them as LMI customers in need of financial relief on their energy bills. Accordingly, granting this waiver will position the BPU to meet the Governor's Environmental Justice goals.

ACUA's Program will be operated by a public entity and will be customer-centered with a goal to fully protect customers, while advancing the Governor's environmental justice policies with 100% LMI participation. In short, the opt-out approach will facilitate the development of ACUA's program which will only include LMI customers. While other states have struggled to reach LMI customers in their Community Solar programs, **this waiver can help make New Jersey a national leader in LMI-based Community Solar, delivering on the Murphy Administration's primary Community Solar goal: serving LMI customers.**

Finally, the Community Solar Program is in a Pilot stage. Therefore, it is appropriate to permit the Applicant to use the opt-out approach in the interest of investigating how New Jersey can develop a highly successful program designed to reach the greatest amount of LMI customers at the lowest cost in subsequent Pilot stages or in the permanent BPU program.

Accordingly, the Board should reconsider and reverse its denial of ACUA's waiver request and approve a waiver of N.J.A.C. 14:8-9.10(b) and authorize the use the opt-out elements described in the ACUA Application.

Respectfully submitted,

By: 
Rick Dovey
President, ACUA

c: Joseph Fiordaliso, President (via Hand-Delivery)
Commissioner Upendra Chivukula (via Hand-Delivery)
Commissioner Robert Gordon (via Hand-Delivery)
Commissioner Mary-Anna Holden (via Hand-Delivery)
Commissioner Dianne Solomon (via Hand-Delivery)
Service List (via electronic mail and US Regular Mail)

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF A NEW JERSEY
COMMUNITY SOLAR PROGRAM PURSUANT TO
P.L. 2018, C.17

BPU Docket NO.: QO18060646

NOTICE OF MOTION FOR
CLARIFICATION AND
RECONSIDERATION

TO: Honorable Joseph L. Fiordaliso, Commissioner
Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

and

ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that pursuant to N.J.A.C. 14:1-8.6(a), the Atlantic County Utilities Authority ("ACUA") hereby moves for an Order for Reconsideration of the New Jersey Board of Public Utilities' ("Board") December 20, 2019, Solar Transition Order ("Transition Order").

PLEASE TAKE FURTHER NOTICE that, in support of its Motion, ACUA shall rely upon the accompanying Letter Brief.

By: 

Richard Dovey, President

Dated: January 14, 2020

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF A NEW JERSEY
COMMUNITY SOLAR PROGRAM PURSUANT TO
P.L. 2018, C.17

BPU Docket NO.: QO18060646

ORDER

This matter having been presented by the Atlantic County Utilities Authority's ("ACUA"), on notice to the Board of Public Utilities (and the Honorable Joseph L. Fiordaliso) and the parties and persons set forth on the attached Service List, and having considered the motion and other documents on file in this matter, including the Letter Brief submitted in support of the motion, and other good cause appearing,

IT IS on this _____ day of _____, 2020,

ORDERED that the ACUA's motion for Reconsideration of the New Jersey Board of Public Utilities' ("Board") December 20, 2019, Solar Transition Order ("Transition Order") is hereby granted.

Hon. Joseph L. Fiordaliso,
Commissioner