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October 19, 2020

Via Electronic Mail

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

Re: I/M/O THE COMMUNITY SOLAR PILOT PROGRAM
DOCKET NO.: QO18060646

I/M/O COMMUNITY SOLAR PILOT PROGRAM YEAR 2
APPLICATION FORM AND PROCESS
DOCKET NO.: QO20080556

Dear Secretary Camacho-Welch:

This law firm represents Gabel Associates ("Gabel") in the above-referenced matters. Kindly accept this letter brief, in lieu of a more formal brief on behalf of Gabel, pursuant to N.J.A.C. 14:1-8.6(a), in support of its Motion/Request for Clarification and Reconsideration of the New Jersey Board of Public Utilities ("Board" or "BPU") October 2, 2020, Community Solar Order ("Community Solar Order" or "Order"). Thank you for your consideration and attention in this matter.

Gabel is a New Jersey based energy consulting firm extensively involved in solar project development and policy in New Jersey. Gabel is an active participant in the BPU's development of its Community Solar Pilot Programs, having filed extensive written comments and testifying at the public comment meetings. Gabel Associates is consultant to the Atlantic County Utilities

Authority, which was selected in the round one process and Gabel is currently engaged by and working with several government entities to apply in the Round 2 Process. Gabel Associates has substantial experience in energy aggregation, having managed more than twenty Government Energy Aggregation Programs procurements for residential customers on behalf of municipalities, and has supported the development of over 200 solar projects.

Gabel has reviewed the Community Solar Order and recognizes the leadership and care the Board has demonstrated with respect to developing this new market. Gabel has identified five issues which the BPU should expeditiously reconsider and/or clarify so that New Jersey's efforts to make solar energy available to low and moderate income ("LMI") customers can be realized.

Gabel respectfully requests reconsideration with respect to five issues addressed in the Community Solar Order. The Board should promptly address these issues at its next meeting so that Gabel, its government entity clients, and others interested in LMI community solar development in New Jersey will be able to develop projects that will realize benefits to LMI customers. The Board should quickly clarify these issues as without prompt and timely reconsideration, Community Solar led by local government entities will not be able to move forward; and the vision of the Board and the Murphy Administration to bring solar energy to low- and moderate-income customers will not be realized.

Standard for Reconsideration

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." N.J.A.C. 14:1-8.6.

The effective date of the Board's Order in this matter is October 2, 2020. Accordingly, this motion is timely filed. 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.

As set forth fully below, reconsideration of the Board's Order is appropriate and necessary here because the Order:

- Did not address the substantial comments filed by Gabel and other parties relative to the issues identified in this Motion;
- Is based upon an inaccurate and incomplete understanding of the historical, established role of public entities in the development of solar projects (not as "owners" as stated in the Order, but as managers and procurers of solar energy);
- Did not recognize, reference, or analyze the process of "BGS Consolidated Billing" which will unlock the benefits of community solar to LMI community solar (which was expressed in detail by Gabel and other parties in filed comments);
- Did not give appropriate weight to the strong public policy in New Jersey to institute community solar policies that focus on environmental justice through low cost solar energy to LMI customers; and finally,

- Is unduly discriminatory since its focuses on "Third Party Supply Consolidated Billing" instead of focusing on "BGS Consolidated Billing" which will align payment to Community Solar Providers with the treatment offered BGS suppliers.

POINT I

GOVERNMENT ENTITIES DO NOT OWN SOLAR PROJECTS AND THE ORDER SHOULD BE CLARIFIED IN THIS REGARD

The BPU's finding on page 6 that a municipality that implements an opt-out community solar project must own the project should be reconsidered and revised.

To clarify, while the private sector would own and maintain a solar generating asset in the opt-out municipal community solar LMI project, the municipality would be responsible for the overall management of the community solar program, for procuring the solar vendor, and for subscribing load. This responsibility includes enrolling customers through the "opt out" mechanism where the municipality conducts outreach and education, identifies the tranche of LMI customers, bills those customers until such time as consolidated billing is permitted, maintains a waiting list that serves as a feeder for customer changes that occur over the life of the project, swaps in new accounts in and removes non-active accounts in order to maintain a load to generation balance over the life of the project, and assures compliance with the Board's Orders and rules. While the municipality may contract with a third party to carry out these responsibilities, the solar asset owner is not responsible for the load and the other elements of the project in a Community Solar project. Load recruitment and management over the life of the project is led and undertaken by the municipality.

In New Jersey, based on over a decade in the solar market, public entities very seldom own solar projects, as they have neither the capital appetite or the expertise; they typically rely on

private sector entities to develop, design, finance, own, build and maintain projects. Local government entities do not typically "own" solar projects - they typically contract for solar electricity through 15-year power purchase agreements that have several options after term, one of which is ownership. These agreements give the public entity control over the project through contract terms and conditions without the public entity owning the project. Our experience working with public entities on hundreds of projects informs us that ownership is not preferred or desired. It is not core to the services the public entity provides and is better handled by a third party.

This same approach can, should, and will be applied to community solar. Accordingly, the Board's finding should be restated to state that the government entity implementing an opt-out project should manage and implement the opt-out project but need not own the solar project. If this finding is not addressed, opt-out projects provided for in the Community Solar Order cannot move forward.

POINT II

GOVERNMENT ENTITIES, NOT JUST MUNICIPALITIES SHOULD BE PERMITTED TO ENGAGE IN OPT-OUT FOR LMI CUSTOMERS

The Order at page 6 states that "municipalities" should implement opt-out projects. This statement and direction should be clarified to state the "government entities including municipalities, counties and instrumentalities of same" can implement an opt-out program. For example, the Atlantic County Utilities Authority (ACUA) was approved in Program Round 1; it should be permitted to implement an opt-out program, which it currently plans to undertake in Pleasantville and potentially in other municipalities. ACUNA is part of Atlantic County government, is a public entity and is answerable to the County Freeholders and the people of

Atlantic County. Accordingly, the words "municipal ownership" should be replaced with "public entity led" so that municipalities and other public entities including ACUA can participate in opt-out.

POINT III

THE TREATMENT OF OWNERSHIP DURATION OF PROJECTS SHOULD BE CLARIFIED

The following bolded sentence from page 7 of the Community Solar Order should be corrected:

> *The automatic enrollment project shall be owned and operated by the local government for the duration of the project life, defined as no more than 20 years from the date of commercial operation of the project or the period until the project is decommissioned, whichever comes first.* ***Ownership and operation shall nonetheless permit a period of temporary third-party, tax credit investor ownership in order to maximize the finance ability of the automatic enrollment project, subject to appropriate contractual provisions that maintain the local government entity's ultimate control of the automatic enrollment project. (emphasis added)***

As discussed above, government entities most often enter into long term agreements with owner vendors (either PPAs or leases) for solar energy. These structures allow for long term private ownership of the project (usually 15 years), well beyond the period of temporary third-party tax credit investor ownership. This model has the private sector entity maintain the facility and be responsible for any upgrades and repairs etc. over the term. Government entities simply do not want, nor are they staffed and equipped for these responsibilities, and the risks and responsibilities are best left with the solar companies. Accordingly, the ownership should not be "temporary" as stated in the bolded sentence and the Board should amend its Order in this regard. As written, this provision will prevent the development of opt-out municipal community solar projects.

POINT IV

THE BOARD SHOULD FOCUS ON BGS CONSOLIDATED BILLING TO MAKE LMI PROGRAMS WORK

Statements on page 5 and 9 of the Order should be reversed to focus on "BGS Consolidated Billing", and not on "Third Party Supply (TPS) Consolidated Billing", as discussed herein below.

Page 5 of the Order states: *Staff therefore recommends that the Board direct the EDCs to work with Staff to implement consolidated billing for community solar, building upon the existing consolidated billing mechanisms for Third Party Suppliers when relevant.*

This sentence in the Order and the Board's related ordering sentence on page 9 should be corrected and clarified to make clear that the Board and the EDCs should consider "BGS consolidated billing" as it will allow for development of LMI community solar projects and is fairer than TPS billing and is non-discriminatory. As detailed in comments submitted by Gabel Associates and various other commenters, but not addressed in the Order, BGS consolidated billing will be effective in supporting project development of LMI projects, while the type of consolidated billing provided for third party supply will not.

Third Party Supplier consolidated billing has a highly restrictive provision that allows EDCs to remove customers from consolidated billing if the customer is more than 120 days arrears in payment. This is not fair to LMI customers, will be VERY restrictive for LMI customers (as many have severe arrearages), will greatly injure project finance ability, and will prevent LMI projects from being developed by greatly reducing revenue flow and certainty.

In "BGS Consolidated Billing" Basic Generation Service (BGS) charges appear on the EDC bill and are paid by customers. Importantly, payment from EDCs to BGS suppliers is not dependent on the customer's payment (i.e., the BGS suppliers receive regular and timely payment).

Adapting this provision for LMI community solar will greatly support the development of LMI projects by assuring greater revenue flow and certainty. Since most LMI customers are on BGS supply it represents no shift in risk to EDCs relative to the status quo.

The Provision of BGS Consolidated Billing can be a "game changer" in the Board's goal of making LMI community solar work in New Jersey. Without addressing credit issues attendant to serving LMI customers, Community Solar directed to individually LMI metered customers will be halting and very difficult to achieve. By providing the billing and payment timing afforded BGS suppliers to community solar projects serving LMI customers, the Board can directly address this issue. Moreover, it is fundamentally fair to provide this service to LMI community solar as it is already provided to BGS suppliers. BGS suppliers are provided with this strong payment protection, so too should LMI community solar providers.

Accordingly, the Board should amend and clarify that its direction to the EDCs and the Board's subsequent review and implementation should focus on "BGS Consolidated billing". If the Board does not reconsider and amend its direction in this regard, the development of LMI community solar projects will be greatly restricted or prevented.

POINT V

THE PREFERENCE FOR SOLAR ON MINING SITES SHOULD BE CLARIFIED

The Board should reconsider and clarify its descriptions and priorities as stated in Table 2 on page 4 of the Order. This Table states the following preferences for community solar projects:

- *Higher preference, e.g.: landfills, brownfields, areas of historic fill, rooftops, parking lots, parking decks, canopies over impervious surfaces (e.g. walkway), former sand and gravel pits, former mines*
- *Medium preference, e.g.: floating solar on water bodies such as water treatment plants and sand and gravel pits, that have little to no established floral and faunal resources (*)*
- *No Points, e.g.: preserved lands, wetlands, forested areas, farmland*

The Board should clarify the following question: how would a floating solar project on a former mining site – specifically where water has filled in a former sand and gravel pit -- be ranked?

Mining sites have pits that are either filled with sand or with water. As stated in filed comments, these sites have unique benefits for solar energy development by the location of projects built at a scale that helps New Jersey achieve its ambitious solar goals. Further, these sites, already zoned for industrial use, do not infringe on open space and typically come with robust electrical infrastructure to facilitate interconnection. Whether the solar system at such sites floats on water or is on land, these specific types of "solar-on-mining-site" projects should be given higher preference. The above statement of "higher preference" already includes such projects when they are land-based. What is not clear from the Order is whether a similar project located on a pit that has filled with water should receive the same high priority. The Board should clarify its Order to state that the higher preference category should include solar at sand and gravel pits

that are both on ground **and** on water; as projects on both ground and water provide equivalent benefit.

CONCLUSION

Based on the above considerations, Gabel respectfully requests that the Board issue an Order addressing the above matters; and that the Board take such action at its next agenda meeting to allow for applicants to move forward in the preparation of applications currently in progress.

We appreciate the opportunity to work with the BPU to bring solar to LMI customers in furtherance of the Board's goals.

Respectfully submitted,

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP

By: *Alice M. Bergen*
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AMB/md

cc: Hon. Joseph Fiordaliso, President *(via email only)*
Hon. Upendra Chivukula, Commissioner *(via email only)*
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