



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
PO Box 45029  
Newark, NJ 07101

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

JOHN J. HOFFMAN  
*Acting Attorney General*

CHRISTOPHER S. PORRINO  
*Director*

June 24, 2013

Via Hand Delivery and E-Mail

Kristi Izzo, Secretary  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Re: I/M/O the Petition of Public Service Electric and Gas Company for Approval of an Extension of a Solar Loan III Program and an Associated Cost Recovery Mechanism for Changes in the Tariff for Electric Service  
BPU Docket No. EO12080726

Dear Secretary Izzo:

Please accept this letter in opposition to the motion for reconsideration, pursuant to N.J.A.C. 14:1-8.6(a) ("Motion") filed on behalf of the Solar Energy Industries Association ("SEIA") by the Staff of the Board of Public Utilities ("Staff"). The Motion should be denied because the Board's reporting requirements are appropriate for the Solar Loan III Program and the SEIA fails to demonstrate Board's decision is based on erroneous law or fact.

**I. Background**

On August 1, 2012, Public Service Electric and Gas Company ("PSE&G") filed a petition with the Board requesting approval of the Solar Loan III Program. On September 13, 2012, the Board designated Commissioner Joseph L. Fiordaliso as the presiding hearing officer. On December 3, 2012, Commissioner Fiordaliso



granted SEIA's motion for intervention, among others. On January 11, 2013, the Division of Rate Counsel ("Rate Counsel") filed direct testimony. PSE&G filed rebuttal testimony on February 6, 2013. Following extensive discovery, the parties agreed to cancel the evidentiary hearing dates scheduled for April 1 and 2, 2013, and stipulated to the admissibility of all discovery responses and the relevant portions of the evidentiary hearings in In re the Petition of Public Service Electric and Gas Company for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism, BPU Docket No. E012080721 ("Solar 4 All Extension"). The matter was briefed and, subsequently, the majority of the parties entered into a settlement. Parties filed comments in support of and against the settlement agreement.

The Board approved the settlement by Order dated May 31, 2013 ("May 31 Order"). In the May 31 Order, the Board found:

While generally finding that the Stipulation complies with the law and Board policy, the Board is mindful of Rate Counsel's concerns about oversight of the SLIII Program and its use of ratepayer funds. The Board agrees that for the public interest to be best served, Board oversight must be clearly delineated, and the functioning of the SLIII Program must be as transparent as possible. Accordingly, the Board therefore FINDS that the Stipulation must be modified as set forth below to provide sufficient additional reporting and controls to ensure that ratepayer funds are used in a reasonable and prudent manner. The Board is not persuaded that requiring such additional reporting and controls in any way supplants the Company's right to control its day to day operations but only reflects the Board's obligation to supervise the activities of a public utility to ensure that it provides safe, adequate and proper service at just and reasonable rates. N.J.S.A. 48:2-13, 2-23.

Therefore, after a review of the full record including all the filings, testimony and comments, the Board **FINDS** that it is prudent and reasonable to require monthly

reporting measures within the Solar Loan III Program.

[May 31 Order at 19.]

The Board directed PSE&G to submit a Solar Loan III Monthly Activity Report ("MAR") for the duration of the Solar Loan III Program. The contents of the MAR are to be consistent with the requirements set out in Appendix A.

## II. SEIA Fails to Allege Errors of Law or Fact

SEIA asserts the requirement that the total cost per project, including design, labor, equipment, and "soft costs," should be removed by the Board. (Motion at 2).

A motion for reconsideration must state the "alleged errors of law or fact relied upon." N.J.A.C. 14:1-8.6(a)(1). The state judiciary has found that reconsideration should only be utilized in narrow circumstances - (1) when the "decision [is] based upon a palpably incorrect or irrational basis" or (2) when "it is obvious that the [Board] either did not consider, or failed to appreciate the significance of probative, competent evidence." See Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

However, SEIA fails to state any specific error in law and fact and instead argues that the reporting requirements under Appendix A section "vi" may increase the cost of the Solar Loan III Program to ratepayers. Motion at 3. This purely speculative and bald assertion is devoid of any evidence to support it and is insufficient to sustain a motion for reconsideration.

Similarly, Intervener KDC asserts that it will suffer a competitive disadvantage if required to disclose the information itemized in Appendix A section "vi." KDC claims that it takes great pains to keep information on its equipment, labor, and "soft" costs confidential. KDC has not, however, quantified the ills it claims it will suffer and in the absence of such specific harm the Board should not find KDC's claims persuasive. The fact remains that KDC will be reaping the benefit of the ratepayers' dollars and under those circumstances is poorly placed to refuse to disclose where those dollars are going.

For these reasons, the Board should deny the Motion.

### **III. The Board's Reporting Requirements are Appropriate for the Solar Loan III Program**

In the May 31 Order, the Board found that the public interest is best served with a Solar Loan III Program using ratepayer funds is as transparent as possible. May 31 Order at 19. The Board also agreed with Rate Counsel's comments that increased oversight was appropriate for the Solar Loan III Program.<sup>1</sup> Ibid. The Board has a statutory duty to ensure service "at just and reasonable rates." See N.J.S.A. 48:2-23. The Board's duty is directly implicated by the approval of the Solar Loan III Program, because when a program is subsidized by the ratepayers, the fullest possible understanding of the costs of that program is necessary for the Board to ensure that the rates through which that subsidy flows are "just and reasonable." And given that the cost of a project determines the price at which it is bid and thus the extent of the ratepayer subsidy, there is clearly a direct relationship between the reporting requirement at issue and the Board's fulfillment of its obligations.

The Solar Loan III Program does not simply provide a percentage of the cost to install photovoltaic solar. Rather, the Solar Loan III Program, when the federal investment tax credits and net metering benefits are included, provides a ratepayer funded guarantee for the full cost of a project. This feature differentiates the Solar Loan III Program from the other solar incentives provided by the New Jersey Clean Energy Program, including the Customer On-site Renewable Energy program, the Renewable Energy Incentive Program, the Solar Renewable Energy Certificate ("SREC") Registration Program, or any combination thereof.

Because there essentially is a guaranteed rate of return built into the cost of installations funded under the Solar Loan III Program, the Board's MAR of detailed cost information is appropriate. In this ratepayer funded solar program, however, the Board can only control the cost on a forward looking basis, after the monthly reporting. The Board does not have the ability to disallow or claim as unreasonable any previously

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<sup>1</sup> Although SEIA filed initial comments in support of the settlement, SEIA did not take the opportunity to reply to Rate Counsel's comments before the Board approved the settlement.

incurred cost in the Program. However, the Board can and should have a window into these costs to better be able to understand them, which in turn can result in more appropriately managed costs in the future.

Moreover, the Board already manages public utility cost information on confidential basis. The Board is simply requiring a detailed view of all costs, as it would with any utility in a base rate case. SEIA does not provide any evidence that those applicants who choose to participate in the Program and receive a guaranteed rate of return would not be able to request confidential treatment of their cost information pursuant to the Board's regulations. See, e.g., N.J.A.C. 14:1-12.1 to -12.17.

### Conclusion

SEIA fails to demonstrate that the reporting requirements of the May 23 Order were based upon an incorrect or irrational basis or that the Board failed to consider probative, competent evidence. SEIA only argues that the requirement "may" increase ratepayer costs by decreasing competition in the Program. SEIA's contention is that if required to provide detailed cost information, some solar industry competitors may choose not to participate in the Program. Motion at 4-5. However, even KDC does not assert in its supporting motion that it will not participate in the Solar Loan III Program, because of these reporting requirements. Therefore, Petitioner has failed to making a showing that the Board should reconsider this requirement and the Motion should be denied.

Respectfully Submitted,

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:   
T. David Wand  
Deputy Attorney General

cc: Service List (via E-Mail)