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June 14, 2013

**VIA EMAIL AND FEDERAL EXPRESS**

Kristi Izzo, Secretary of the Board  
State of New Jersey Board of Public Utilities  
44 South Clinton Ave., 9<sup>th</sup> Fl.  
Trenton, NJ 08625-0350

**Re:** In the Matter of 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 and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric, Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1 and N.J.S.A. 48:3-98.1 ("Solar Loan III")  
**BPU DOCKET NO. EO12080726**

Dear Secretary Izzo:

Enclosed for filing please find the original plus ten copies of the Motion for Reconsideration of the Solar Energy Industries Association ("SEIA") in the above-captioned matter. Upon filing, please return a time-stamped copy of the Motion to me in the enclosed self-addressed stamped envelope. Thank you and please feel free to contact me if you have any questions or concerns.

Best Regards,

STEVENS & LEE, P.C.



Michael A. Grun

Enclosures

cc: Honorable Robert M. Hanna, President  
Honorable Jeanne M. Fox, Commissioner  
Honorable Joseph L. Fiordaliso, Commissioner  
Honorable Mary-Anna Holden, Commissioner  
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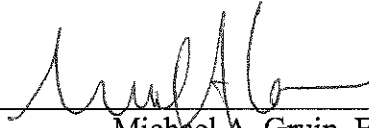


DIRECTS PSE&G to submit a Solar Loan III Monthly Activity Report (\*MAR\*) for the duration of the Solar Loan III Program. The Solar Loan III monthly activity reporting shall be consistent with the requirement set forth in Appendix A – Solar Loan III Monthly Activity Reporting.” *Order* at 19.

3. This motion is made pursuant to the Board’s inherent authority and N.J.A.C. 14:1-8-6.
4. The specific relief that SEIA now seeks is predicated on the legal assertions set forth more fully in the attached Memorandum in Support of Motion for Reconsideration.

Dated: June 14, 2013

STEVENS & LEE  
A PA PROFESSIONAL CORPORATION  
ATTORNEYS FOR INTERVENERS  
THE SOLAR ENERGY INDUSTRIES ASSOCIATION

By:   
Michael A. Gruin, Esq.  
Attorney I.D. No. 009362001

<b>In the Matter of the Petition of</b>	)	STATE OF NEW JERSEY
<b>Public Service Electric and Gas</b>	)	BOARD OF PUBLIC UTILITIES
<b>Company for Approval of a Solar Loan</b>	)	
<b>III Program and Associated Cost</b>	)	<b>BPU DOCKET NO. EO12080726</b>
<b>Recovery Mechanism and For Changes</b>	)	
<b>in the Tariff for Electric Service,</b>	)	
<b>B.P.U.N.J. No. 15 Electric, Pursuant to</b>	)	<b>Memorandum in Support of Motion for</b>
<b>N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21</b>	)	<b>Reconsideration of</b>
	)	<b>The Solar Energy Industries Association</b>
	)	

**INTRODUCTION**

On August 1, 2012, the Public Service Electric and Gas Company (“PSE&G”) filed its petition with the New Jersey Board of Public Utilities (“BPU” or “Board”), requesting approval of a three year solar financing program, the Solar Loan III Program (“SLIII”), pursuant to N.J.S.A 48:3-98.1. By Order dated December 3, 2012, Commissioner Fiordaliso granted the motions to intervene of the Solar Energy Industries Association (“SEIA”), Mid-Atlantic Solar Energy Industries Association (“MSEIA”), and KDC Solar LLC (“KDC Solar”), (collectively with PSE&G and the Division of Rate Counsel (“Rate Counsel”), “the Parties”. The Parties engaged in discovery, participated in settlement and discovery conferences, and submitted direct and rebuttal testimony.

On April 26, 2013, PSE&G, Board Staff, KDC Solar, SEIA and MSEIA executed a global settlement agreement (“Stipulation”) as it pertained to the PSE&G’s SLIII Program. On May 31, 2013, the New Jersey Board of Public Utilities (“BPU”) issued an order (“the Order”) approving the Solar Loan III program, adopting the Stipulation with amendments as outlined in the Order and including the reporting requirements in Attachment A of the Order.

This Motion for Reconsideration concerns reporting requirement “vi” of Appendix A, namely the requirement for PSE&G to provide data on the total cost per project, including design costs; equipment cost by panel, inverter and balance of system; labor cost; and soft costs, including permitting and interconnection. It should be noted that while the parties to this proceeding agreed on general reporting requirements for the program, as reflected in the Stipulation filed with the Board, the specific data points that the Board ordered to be included in the monthly reports were not agreed to, or even discussed, by the parties. As such, the parties did not have the opportunity to provide input to the Board on the specific data points to be included in Appendix A to the Order.

SEIA fully supports the settlement agreement and commends the Board both for recognizing the importance of this program to the solar market and in adopting this settlement. SEIA’s point of concern is only with this particular reporting requirement which was not part of the settlement agreement. Further, in the appropriate setting outside of the SLIII matter, SEIA is willing and interested to work with Staff and other interested parties to determine appropriate mechanisms for reporting cost information throughout the market (not just the small subset of the market covered by SLIII) while respecting commercially sensitive information. However, SEIA respectfully submits that it is appropriate for the Board to reconsider the inclusion of the data points required by section “vi” of Attachment A, for the reasons set forth more fully below.

## ARGUMENT

### **I. The Board's Reporting Requirement "vi" in Attachment A Should Be Reconsidered Because It is Not Rationally Based on the Board's Stated Goal of Project Oversight and Protecting Ratepayer Funds**

The Board has the authority to reconsider a decision pursuant to N.J.A.C. 14:1-8.6. A motion for reconsideration should not be made merely because a party is dissatisfied with the Board's decision. *Dario v. Dario*, 242 N.J. Super. 392, 401 (Ch. Div. 1990) Further, a motion for reconsideration should not be used to introduce new evidence into the record. *Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi*, 398 N.J. Super. 299, 310 (App. Div. 1987) Instead, reconsideration is available for those cases in which the Board either expressed its decision based upon a palpably incorrect or irrational basis, or it where it is obvious that the Board either did not consider, or failed to appreciate the significance of probative, competent evidence. *D'Atria*, 242 N.J. Super. At 401.

In the instant case, the Board's decision to include the reporting requirements listed in section "vi" of Attachment A should be reconsidered because the requirement in no way achieves the Board's stated goal of effectively overseeing the use of ratepayer funds in the SLIII Program. (Order at 19) In fact, the reporting requirement has the potential to increase the cost of the SLIII Program through decreased competition and increased administrative costs.

## **II. The Reporting Requirement “vi” Is Not Rationally Based on the Goal of Protecting Ratepayer Funds Because It Does Not Accurately Reflect the Cost of the Program**

The Board states that reporting requirement “vi” ensures that ratepayer funds are used in a reasonable and prudent manner. *Order* at 19. However, the cost data required by the Board is not rationally related to the Board’s stated goal of protecting ratepayer funds.

In the Solar Loan III program, projects are competitively chosen based on the SREC price bid in for a particular project by a particular company. However, the cost data required by the Board in Attachment A is in no way connected to the competitive manner in which projects are to be chosen for award. The cost structure of a project is not factored into this competitive solicitation process.

Further, if the goal of the Board in requiring this information is increased market transparency, the Solar Loan III program is not the correct framework through which to collect such data as it constitutes a small fraction of the overall market and therefore costs would not be representative of the market. By contrast, collection of cost data is certainly relevant for the Solar 4 All Extension program, because in that program, PSE&G makes decisions on which projects will go forward based on project costs.

## **III. The Reporting Requirement “vi” Is Not Rationally Based on the Goal of Protecting Ratepayer Funds Because It Has the Potential to Increase the Cost of the Program**

The Board states that its data reporting requirement is based on the goal of protecting ratepayer funds through increased transparency. *Order* at 19. However, the requirement may in fact increase ratepayer costs by decreasing competition in the SLIII program.

SLIII program projects are chosen based on competitively bid SREC prices. Thus, the cost of the projects is directly tied to the competitiveness of the program. In its Order, the Board states that it is not persuaded that its additional reporting requirements in any way supplants PSE&G's right to control its day to day operations. *Order* at 19. However, the Board fails to take note of the impact that its reporting requirements will have on the unregulated companies that would participate in the program. The key to the SLIII program is that project costs stay low with increased competition. Cost information, and particularly the detailed cost information required by the Board Order, is competitively sensitive to program participants. Such a requirement may have a chilling effect on participation in the program, as some potential program participants may choose not to participate in the program if they are forced to provide competitively sensitive information. This could decrease competition, increase the cost of projects, and thus increase the cost to ratepayers.

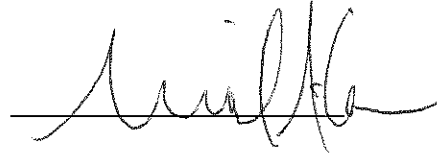
Therefore, for the reasons stated above, there is no rational basis for reporting requirement "vi" in Attachment A , and the Board should reconsider this requirement, and remove it from the Order.



## CONCLUSION

For the reasons set forth above, the Board should reconsider its Order and remove reporting requirement "vi" from Appendix A.

Respectfully Submitted,



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**In the Matter of the Petition of Public Service Electric and Gas Company  
for Approval of a Solar Loan III Program and an Associated Cost Recovery Mechanism  
and for Changes in the Tariff for Electric Service, Pursuant to N.J.S.A. 48:3-98.1  
Docket EO12080726**

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