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June 3, 2013

Via Hand Delivery

Kristi Izzo, Secretary
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue – 9th Floor
Post Office Box 350
Trenton, New Jersey 08625

Re: In the Matter of Implementation of L. 2012, c.24, The Solar Act of 2012, *et als.*
Docket Nos. EO12090832V ; EO 12090880V

Community Energy; W1-127
Docket No.EO12121134V

Dear Ms. Izzo:

Enclosed herewith for filing with the Board of Public Utilities is an original and twelve (12) copies of each of the following items:

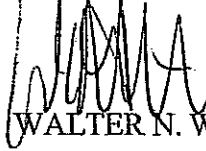
1. Notice of Motion for Reconsideration by the Board.
2. Statement of Alleged Errors of Law or Fact in Support of Reconsideration etc.
3. Certification of David Krupp.
4. Certification of Walter N. Wilson.
5. Proposed Form of Order Granting Reconsideration and Other Relief.
6. Letter Memorandum in lieu of a more formal Brief.

Also enclosed is my check in the amount of \$25.00, representing the filing fee. Kindly file all of the above and return a copy marked "Filed" to me in the self-addressed stamped envelope enclosed. If there is any additional information required to perfect the enclosed request

for reconsideration please advise. Please also advise when the matter will be considered by the Board.

Thank you for your cooperation in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'WALTER N. WILSON', written in a cursive style.

WALTER N. WILSON

cc: Community Energy Renewables, LLC
All listed on the attached service list

Service List

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Attorney for Applicant/Petitioner/Movant for Reconsideration
Community Energy Renewables, LLC (on behalf of its wholly
Owned subsidiary, Harmony Solar LLC)

In the Matter of the Implementation of L.	)	STATE OF NEW JERSEY
2012, c. 24, the "Solar Act of 2012"; and,	)	BOARD OF PUBLIC UTILITIES
	)	Docket No. EO12090832V
In the Matter of the Implementation of L.	)	Docket No. EO12090880V
2012, c.24, N.J.S. 48:3-87 (q), (r) and (s))	
Proceedings to Establish the Processes for	)	Docket No. EO12121134V
Designating Certain Grid Supply Projects as)	
"Connected to the Distribution System"; and,)	
	)	NOTICE OF MOTION FOR
Denial of Application for Community Energy	)	RECONSIDERATION OF THE BOARD'S
Renewables, LLC, on behalf of its wholly	)	ORDER DATED MAY 10, 2013 INSOFAR
owned subsidiary, Harmony Solar LLC	)	AS THE ORDER CLASSIFIES
pursuant to Subsection (s).	)	COMMUNITY ENERGY'S APPLICATION
	)	AS "DENIED" RATHER THAN
	)	"DEFERRED"

To: Kristi Izzo, Secretary
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue – 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

(Remainder of Service List as Attached)

PLEASE TAKE NOTICE that Community Energy Renewables, LLC (hereinafter
"Community Energy"), on behalf of its wholly owned subsidiary, Harmony Solar LLC (PJM
W1-127) (hereinafter the "Harmony Project") now moves before the Board of Public Utilities of
the State of New Jersey (the "Board") for reconsideration of the Board's Order dated May 10,

2013 (the "Order"), served upon Community Energy on May 17, 2013, to the extent the Order "DENIES" rather than "DEFERS" the application of Community Energy seeking approval as "connected to the distribution system" pursuant to N.J.S. 48:3-87(s)(2).

The Motion for reconsideration of Community Energy is made pursuant to the provisions of N.J.A.C. 14:1-8.6, and is made within the time allowed as confirmed by the NJBPU, as being within fifteen (15) days from the date notice was given to Community Energy of the Order.

The Motion shall be returnable, heard and considered by the Board upon such date and at such time as shall be set and determined by the Board. In support of the Motion, Community Energy relies upon the "Statement of Errors of Law and Fact", the Certification of Walter N. Wilson, Esq., and the Legal Memorandum in Lieu of More Formal Brief, all submitted herewith.

PLEASE TAKE FURTHER NOTICE that Community Energy hereby respectfully requests that notice of the date, time and place for hearing on this Motion be provided to the Undersigned and that Oral Argument be allowed at such time and place.

Dated: June 3, 2013

Law Office of Walter N. Wilson

By: 

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Attorney for Applicant/Petitioner/Movant for Reconsideration
 Community Energy Renewables, LLC (on behalf of its wholly
 Owned subsidiary, Harmony Solar LLC)

In the Matter of the Implementation of L. 2012, c. 24, the "Solar Act of 2012" (EO 12090832V); and,	)	STATE OF NEW JERSEY
	)	BOARD OF PUBLIC UTILITIES
)	
	)	Docket No. EO12090832V
In the Matter of the Implementation of L. 2012, c.24, N.J.S. 48:3-87 (q), (r) and (s)	)	Docket No. EO12090880V
)	
Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as "Connected to the Distribution System" (EO12090880V); and,	)	Docket No. EO12121134V
)	
	)	STATEMENT OF ALLEGED ERRORS OF LAW OR FACT IN SUPPORT OF MOTION FOR RECONSIDERATION TO GRANT RELIEF BY WAY OF MODIFICATION OF ACTION TAKEN BY BOARD TO CLASSIFY COMMUNITY ENERGY'S APPLICATION AS "DEFERRED" RATHER THAN AS "DENIED"
Denial of Application for Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary, Harmony Solar LLC pursuant to Subsection (s) (EO12121134V).)	

The Moving Party Stakeholder, Community Energy Renewables, LLC ("Community Energy"), on behalf of its wholly owned subsidiary, Harmony Solar LLC (PJM W1-127) ("Harmony Project"), and by way of a required statement in compliance with N.J.A.C. 14:1-8.6, says:

1. Harmony Solar LLC, a wholly owned subsidiary of Community Energy Renewables, LLC, submitted a completed "Solar Act Subsection s. Application Form" dated December 17, 2012, regarding Project W1-127, located in Harmony Township, Warren County, New Jersey.

2. Item 2 on the Application Form was answered with a response of "No". However, following an asterisk on the Form, it was noted that "[a]ll land use approvals have been secured (Twp. Site Plan, Cnty Site Plan, Cnty Soil, NJDEP Stormwater, NJDEP Wetlands. Building Permits approvals (Twp and NJ DECP [sic; should read DCA) have not been secured."

3. Copies of all obtained and unappealable approvals for the commencement of site preparation and site construction and as required for the issuance of building permits were, in fact, obtained and were unappealable as of December 17, 2012, the date of the Application.

4. The PJM Construction Service Agreement (CSA) and the Interconnection Service Agreement (ISA) had been executed and the required Cash Security was paid to PJM in the amount of \$146,772.00, all prior to the Application date of December 17, 2012.

5. The Project (W1-127) had received SREC Registration Acceptance (referencing Registration No. SRP10923) dated May 29, 2012 from the BPU New Jersey Clean Energy Program.

6. The Board's Clean Energy Order dated May 10, 2013, in reference to Docket No. EO12090832V and EO12090880V and specifically relating to Community Energy; W1-127 (EO12121134V) provides in its opening paragraph in pertinent part as follows:

"The Board defers decision on twenty applications where any indication was made that all final unappealable federal, state and local approvals had been secured pending further review."

7. Despite the "clear indication" and in fact confirmation as contained in the Community Energy Application Form that all final unappealable approvals had been obtained and the attachment to the Application Form of all required final unappealable approvals, the Application of Community Energy relating to W1-127, Docket No. EO12121134V, was not deferred but was

denied.

8. The Board's Clean Energy Order dated May 10, 2013, at page 10, responds to comments, including from Community Energy, that:

"Receipt of all final non-appealable federal, state, and local approvals has also been deemed relevant to determining the status of a project".

9. The Board's Clean Energy Order dated May 10, 2013, at page 20, under a heading of "Applications Recommended for Denial due to Lack of Required Approvals", stated in pertinent part:

"Staff ... further finds that each project has not secured all final unappealable approvals."

10. The Board's Clean Energy Order dated May 10, 2013, at page 31, still under the overall heading "Applications Recommended for Denial due to Lack of Required Approvals" and with specific reference to "Community Energy – (Harmony) Dkt. No. EO12121134V – (PJM W1-127)" stated in pertinent part:

"The application states that all the requisite federal, state, regional and local approvals have not been secured."

And that:

"... all federal, state, regional and local approvals had not been secured by the application date...Staff recommends the application be denied approval under Subsection s(2)."

11. The Board's Clean Energy Order dated May 10, 2013, at pages 36 through 49, inclusive, repeatedly noted the Staff recommendation that:

"the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review."

12. It is apparent that the Application of Community Energy (W1-127 / Docket No. EO12121134V) was erroneously reported as not having secured all federal, state, regional and local approvals by the date of the Application. This mistaken conclusion was perhaps the result of the "No" response appearing in answer to question 2. on the Application Form, although the answer was clarified through asterisk comments which, in fact, confirmed that the "No" response was based solely on the non-issuance of building permits. As evidenced by the attachments to the Application Form, all required federal (none required), state (NJDEP Wetlands Letter of Interpretation [10-21-11] and Stormwater Discharge General Permit [8-24-2011]), Regional (Warren County Soil Conservation District [6-30-2011] and Warren County Planning Board [6-19-12]) and local (Harmony Township Land Use Resolution Granting Variance Approval and Preliminary and Final Site Plan Approval [12-7-11]) approvals **had been obtained and were unappealable as of December 17, 2012.**

13. There are no other federal, state, regional, county or local approvals required for the construction of the site in question.

14. The Subsection s. Order excluded the Harmony Project from the list of projects for "Deferred Consideration", and included other projects that, like the Harmony project, had unappealable land use approvals but not construction permits. For example, the following Projects with which Community Energy is familiar were selected for Deferred Consideration and had not secured construction permits issued as of the date of the application or since:

Day Four Solar – (North Hanover) Dkt. No. EO12121093V – (PJM W2-019)
EffiSolar Development – (North Hanover) Dkt. No. EO12121117V – (PJM W2-082)
EffiSolar Development – (Pemberton) Dkt. No. EO12121118V – (PJM W1-120)
EffiSolar Development – (Pemberton) Dkt. No. EO12121119V – (PJM W1-119)

15. Projects in a similar state of approval (unappealable land use approvals from federal, state, regional and local authorities) but without building permits were included for "Deferred" status in the Board's May 10, 2013, Order.

16. It is apparent from the inclusion of projects with unappealable land use approvals but no building permits in the list of deferred projects that Question 2 of the Application under Subsection S. does not refer to actual building permits. Therefore, the full response filed on behalf of the Harmony Project in answer to Question 2 should be equivalent to and the same as an unqualified "Yes" and the Project should be included in the list of Projects for "Deferred Consideration".

17. Community Energy respectfully requests the Board to grant its request to reconsider the denial of the Community Energy Application (W1-125 / Docket No. EO12121134V) and to correct and/or modify the decision and Order to include the referenced solar electric generation system within the grouping of "Deferred Applications", and, if required, to amend its Application Form, *nunc pro tunc*, to correct its response to question number 2 to "YES".

18. In support of this request and of the request to determine the subject Application as "DEFERRED", Community Energy further relies upon the Certification of David Krupp and the Certification of Walter N. Wilson submitted herewith.

Dated: June 3, 2013

Law Office of Walter N. Wilson

By: 

Walter N. Wilson, Esq.

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Attorney for Applicant/Petitioner/Movant for Reconsideration
 Community Energy Renewables, LLC (on behalf of its wholly
 Owned subsidiary, Harmony Solar LLC)

In the Matter of the Implementation of L. 2012, c. 24, the "Solar Act of 2012" (EO 12090832V); and,	)	STATE OF NEW JERSEY
	)	BOARD OF PUBLIC UTILITIES
	)	Docket No. EO12090832V
In the Matter of the Implementation of L. 2012, c.24, N.J.S. 48:3-87 (q), (r) and (s)	)	Docket No. EO12090880V
Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as "Connected to the Distribution System" (EO12090880V); and,	)	Docket No. EO12121134V
	)	CERTIFICATION OF DAVID KRUPP IN SUPPORT OF MOTION FOR RECONSIDERATION
Denial of Application for Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary, Harmony Solar LLC pursuant to Subsection (s) (EO12121134V).)	

David Krupp, being of full age, hereby certifies as follows:

1. I am employed by Community Energy, Inc. as a Project Developer. As a Project Developer I have been assigned a region within which to develop solar energy projects. My region covers the northern East Coast of the United States, including the State of New Jersey.
2. After the adoption of the Solar Act of 2012, L. 2012, c. 24 §3 (the "Solar Act"), I prepared the following seven (7) Solar Act Subsection s. Applications for submission to the New Jersey Board of Public Utilities by December 17, 2012: (i) Harmony Solar (W1-127), (ii) Jacobstown Solar (W1-129), (iii) West Pemberton Solar (W2-102), (iv) Cedar Branch Solar

(W1-130), (v) Monmouth East Solar (W3-158), (vi) Monmouth South Solar (W3-159), and (vii) Greenwich Solar (W1-048).

3. Question 2 of the Subsection s. Application stated as follows:

“Have all final unappealable federal, state, regional and local approvals been secured?
Yes or No: _____”

4. The Harmony Solar project had secured at the time of the application all final unappealable federal, state, regional and local approvals. Without knowing whether the Question contemplated a construction permit within the word “approval” in Question 2, the Subsection s. Application for the Harmony Project included the following complete response:

~~Have all final unappealable federal, state, regional and local approvals been secured? Yes or no: No:~~ * All land use approvals have been secured (Twp Site Plan, Cnty Site Plan, Cnty Soil, NJDEP Storm Water, NJDEP Wetlands. Building Permits approvals (Twp and NJ DECP) have not been secured.

5. The Subsection s. Order excluded the Harmony Project from the list of projects as “Deferred”, and included other projects that, like the Harmony Solar Project, had unappealable land use approvals but not construction permits. For example, the following Projects were selected for Deferred Consideration and had not secured construction permits issued as of the date of the application or since:

Day Four Solar – (North Hanover) Dkt. No. EO12121093V – (PJM W2-019)
EffiSolar Development – (North Hanover) Dkt. No. EO12121117V – (PJM W2-082)
EffiSolar Development – (Pemberton) Dkt. No. EO12121118V – (PJM W1-120)
EffiSolar Development – (Pemberton) Dkt. No. EO12121119V – (PJM W1-119)

6. I personally investigated the status of the issuance of building permits with the applicable municipalities. This was done not to disparage those projects but purely to confirm that, in fact, a “YES” answer to the question related to all “approvals” pre-requisite to the issuance of

building permits and not to the issuance of the building permits themselves. In fact, I was able to confirm that building permits had NOT issued for those projects.

7. The BPU ruled as to these projects: "Since this project has not progressed to an advanced stage of completion, Staff cannot recommend the project for approval under Subsection s. as prospects for timely completion still remain uncertain. However, since the project has received all necessary approvals, Staff recommends that the decision to approve or deny the application be deferred under Subsection s(2) pending submission of additional information and additional review."


8. Under the interpretation of "approvals" as applied by the BPU in the Subsection s. Order, the Harmony Project had secured all the approvals referenced in Question 2 as confirmed in the attachment included in Appendix 3 of the Application Form, demonstrating the following land use approvals as having been obtained and as being unappealable as of the date of the Application:

- a. Harmony Township Land Use Board Resolution Memorializing the Grant of Use Variance Approval and Preliminary and Final Site Plan Approvals. Dated as revised December 7, 2011.
- b. Warren County Planning Board notice that all conditions of approval have been satisfied. Dated June 19, 2012.
- c. Warren County Soil Conservation District approval of the Soil Erosion and Sediment Control plan. Dated June 30, 2011.
- d. NJ Department of Environmental Protection (NJDEP) Stormwater Discharge General Permit. Dated August 24, 2011.
- e. NJDEP approved Freshwater Wetlands Letter of Interpretation/Line Verification. Dated October 31, 2011.

9. With the resulting interpretation of the BPU that Question 2 of the Application under Subsection s. does not refer to actual building permits, the full response filed on behalf of the Harmony Projects should be equivalent to and the same as an unqualified "Yes" and the Project should be included in the list of Projects for "Deferred Consideration".

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false that I am subject to punishment.

Dated: June 3, 2013


David Krupp

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Attorney for Applicant/Petitioner/Movant for Reconsideration
 Community Energy Renewables, LLC (on behalf of its wholly
 Owned subsidiary, Harmony Solar LLC)

In the Matter of the Implementation of L. 2012, c. 24, the "Solar Act of 2012" (EO 12090832V); and,	)	STATE OF NEW JERSEY
	)	BOARD OF PUBLIC UTILITIES
	)	Docket No. EO12090832V
In the Matter of the Implementation of L. 2012, c.24, N.J.S. 48:3-87 (q), (r) and (s)	)	Docket No. EO12090880V
Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as "Connected to the Distribution System" (EO12090880V); and,	)	Docket No. EO12121134V
)	
Denial of Application for Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary, Harmony Solar LLC pursuant to Subsection (s) (EO12121134V).)	

**CERTIFICATION OF
 FACSIMILE SIGNATURE**

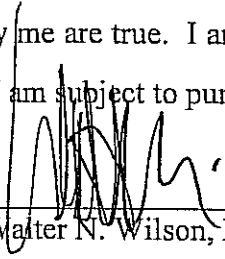
Walter N. Wilson, Esq., of full age, hereby certifies that:

1. I am an attorney at law of the State of New Jersey maintaining an office in Annandale, New Jersey. I am the attorney for the Applicant/Petitioner/Movant for Reconsideration in the above matter.
2. David Krupp confirmed to me that he telefaxed his signed Certification to my attention. A copy of the telefaxed transmittal is attached to the Certification of David Krupp in Support of Motion for Reconsideration submitted herewith.

3. The original signature document for the above Certification will be supplied if requested by the Court or any other party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 3, 2013



Walter N. Wilson, Esq

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Attorney for Applicant/Petitioner/Movant for Reconsideration
 Community Energy Renewables, LLC (on behalf of its wholly
 Owned subsidiary, Harmony Solar LLC)

In the Matter of the Implementation of L. 2012, c. 24, the "Solar Act of 2012" (EO 12090832V); and,)	STATE OF NEW JERSEY
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Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as "Connected to the Distribution System" (EO12090880V); and,)	Docket No. EO12121134V
	)	CERTIFICATION OF WALTER N. WILSON
	)	IN SUPPORT OF MOTION FOR
Denial of Application for Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary, Harmony Solar LLC pursuant to Subsection (s) (EO12121134V).	)	RECONSIDERATION

Walter N. Wilson, being of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and maintain my office at 67 Beaver Avenue, Annandale, New Jersey. The statements contained in this certification are of my own personal knowledge.
2. I am making this certification in support of a motion filed on behalf of Community Energy Renewables, LLC, regarding the status of all required approvals for the Project designated as W1-127 / EO12121134V.

3. I was the attorney for Harmony Solar LLC, the wholly owned subsidiary of Community Energy Renewables, LLC, in regards to prosecuting and obtaining the requisite approvals for the Project, located in Harmony Township, Warren County, New Jersey.

4. There were and continue to be no federal approvals required for the construction of the site. All requisite approvals from state, regional, county and municipal authorities have been obtained for the project and in fact were obtained and were unappealable as of many months prior to December 17, 2012. These approvals can be summarized as follows:

A. Preliminary and Final Site Plan Approval, with Use Variance Relief. All municipal approvals have been approved and a Resolution granting such approvals and relief has been adopted and remains unappealable. The time for any appeal expired long before December 17, 2012. The final memorialization was adopted by the Municipal Board on December 7, 2011. The approval remains in full force and effect.

B. Warren County Planning Board Approval of the Site Plan was confirmed by letter from the Board dated June 19, 2012. The time for appeal has run and the decision is and has been unappealable and remains in full force and effect.

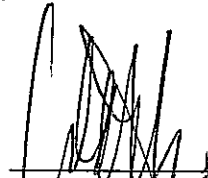
C. Warren County Soil Conservation District has granted final certification of the Soil Erosion and Sediment Control Plan as confirmed in a letter of certification dated June 30, 2011. The certification is unappealable and remains in full force and effect.

D. A Wetlands Verification and Letter of Interpretation was issued by the New Jersey Department of Environmental Protection dated October 21, 2011. The verification and interpretation is unappealable and remains in full force and effect.

E. A New Jersey Department of Environmental Protection Stormwater Discharge General Permit was granted in accordance with the General Rules of the Department on August 24, 2011. The Permit is unappealable and remains in full force and effect.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false that I am subject to punishment.

Dated: June 3, 2013



Walter NL Wilson

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue – 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

In the Matter of the Implementation of L. 2012, c. 24, the “Solar Act of 2012”; and,)	STATE OF NEW JERSEY
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In the Matter of the Implementation of L. 2012, c.24, N.J.S. 48:3-87 (q), (r) and (s))	Docket No. EO12090832V
Proceedings to Establish the Processes for Designating Certain Grid Supply Projects as “Connected to the Distribution System”; and,	)	Docket No. EO12090880V
)	
	)	Docket No. EO12121134V
)	
Denial of Application for Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary, Harmony Solar LLC pursuant to Subsection (s).	)	CLEAN ENERGY ORDER GRANTING RECONSIDERATION AND OTHER RELIEF

THIS MATTER having been opened to the State of New Jersey Board of Public Utilities upon the Motion of Community Energy Renewables, LLC (on behalf of its wholly owned subsidiary, Harmony Solar LLC) for an Order Granting Reconsideration and Amending the Board’s Order dated May 10, 2013, upon such Reconsideration, on notice to and in the presence of the secretary and Board Members, and the Board having reviewed the moving papers and, if applicable, heard the oral argument of Counsel, and good cause having been shown:

IT IS, on this day of , 2013, **ORDERED** that Community Energy's Motion of Reconsideration and Modification of the Board's Order dated May 10, 2013, be and is hereby **GRANTED**; and,

IT IS FURTHER ORDERED that the application of Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary Harmony Solar LLC, regarding PJM W1-127, bearing the Docket Number as above stated, be removed from inclusion in grouping of proposed solar electric generation facilities seeking approval as "connected to the distribution system" under N.J.S. 48:3-87(s)(2), as being "DENIED"; and,

IT IS FURTHER ORDERED that the application of Community Energy Renewables, LLC, on behalf of its wholly owned subsidiary Harmony Solar LLC, regarding PJM W1-127, bearing the Docket Number as above stated, shall be and is hereby included along with other applicants seeking designation which indicated that all unappealable federal, state and local approvals had been secured by the date the applications were filed, as being the subject of a "**DEFERRED**" application; and,

IT IS FURTHER ORDERED that the Board **DIRECTS** Staff to include Community Energy, as regarding the project designated as PJM W1-127, along with all other DEFERRED stakeholders, to development a recommendation to the Board for additional information and milestone reporting requirements to enable further consideration of the deferred applications; and,

IT IS FURTHER ORDERED that Staff issue a revised letter to Community Energy, on behalf of its wholly owned subsidiary, Harmony Solar LLC, regarding project PJM W1-127, notifying them of the deferral of the application as aforesaid.

BY THE BOARD OF PUBLIC UTILITIES:

Robert M. Hanna, President

Jeanne M. Fox, Commissioner

Joseph L. Fiordaliso, Commissioner

Mary-Anna Holden, Commissioner

ATTEST:

Kristi Izzo, Secretary

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June 3, 2013

Via Hand Delivery

Robert M. Hanna, President
Jeanne M. Fox, Commissioner
Joseph L. Fiordaliso, Commissioner
Mary-Anna Holden, Commissioner
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue – 9th Floor
Post Office Box 350
Trenton, New Jersey 08625

Re: In the Matter of Implementation of L. 2012, c.24, The Solar Act of 2012, *et als.*
Docket Nos. EO12090832V ; EO 12090880V

Community Energy; W1-127
Docket No.EO12121134V

Dear President Hanna and Commissioners:

Kindly accept this Letter Memorandum in lieu of a more formal Brief in support of the Motion of Community Energy Renewables, LLC (hereinafter referred to as "Community Energy), for reconsideration of the Clean Energy Order as referenced above. The Order was dated May 10, 2013. The Board's Staff confirmed that the time for the filing of the within Motion for Reconsideration was calculated from the actual service of the Order upon Community Energy, which I understand was May 17, 2013. In accordance with N.J.A.C. 14:1-8.6, 15 days from that date is June 1, 2013, a Saturday, thereby extending the filing date to June 3, 2013.

Brief Statement of Facts

In compliance with the Solar Act of 2012, L. 2012, c. 24, which amended N.J.S. 48:3-51 and 48:3-87, Community Energy submitted a timely Notice of Intent to Qualify under Subsection s(2) with the Board, and thereafter submitted a completed application package to the BPU for Subsection s(2) qualification and approval by December 17, 2012. Community Energy provided response to the twenty-seven (27) questions and attached supporting documents to the

Application Form as relevant Appendices 1, 2, 3 and 7. Attached as Appendix 3 was a letter from the Project Engineering Consultant, Matthew Rutt, P.E., President of LANDCORE Engineering Consultants, P.C., together with copies of all required state, regional, county and local unappealable approvals.

In the Solar Act Subsection s. Application Form itself, Community Energy answered Question 2 with a response of “No”, but provided an asterisk confirming that in fact all required “approvals” were obtained and were unappealable. The “No” answer to the question was based upon the fact that actual building permits had not been issued, although, again, all pre-requisite approvals for same were in place and were unappealable.

The within Motion for Reconsideration respectfully requests the Board to reconsider its decision to deny the Application of Community Energy and to reconsider the Application, modifying the Order to include the Community Energy Application within the grouping of deferred applications.

Legal Argument

Although the power and authority of the Board to reconsider its decisions has case law support based upon the Board sitting as an Administrative “quasi-judicial” entity, a term “used to describe governmental officers, boards and agencies which, while not a part of the judiciary, nevertheless perform functions of a judicial character” [see Adolf v. Elastic Stop Nut, 18 N.J. Super. 543 (App. Div 1952), citing McFeely v. Board of Pension Commissioners, 1 N.J. 212 (1948) and Brandon v. Montclair, 124 N.J.L. 135 (Sup. Ct. 1940); affirmed 125 N.J.L. 367 (E. & A. 1940)], the authority to reconsider and to reverse, modify, vacate or suspend a previous action is specifically authorized at N.J.A.C. 14:1-8.6. The moving party herein seeks reconsideration in accordance with the Administrative Code.

The Administrative Code provision, at N.J.A.C. 14:1-8.6(a)1, provides in relevant part that:

“Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.”

In this instance, Community Energy has set forth in separately numbered paragraphs as contained in a Statement of Alleged Errors of Law or Fact in Support of Motion, etc., the basis and reasoning for the requested reconsideration. Community Energy also submits Certifications of David Krupp and of Walter N. Wilson in support of the request.

Succinctly stated, Community Energy asserts that through a mis-interpreted understanding of Question Number 2 on the Application Form, a “qualified no” answer was provided where an unqualified “yes” was appropriate and correct. Community Energy does not seek to submit any additional information or documentation that was previously not supplied but

only seeks to have the Board reconsider the qualifying statement appended to the answer to question number 2 and the documents submitted as Appendix 3 to confirm that, in fact, the correct answer to question number 2 on the Application Form was and unqualified "YES".

To accomplish the correction, Community Energy either seeks to have the Board more thoroughly review the application material or seeks leave to correct the answer to read as a "YES", relying upon the same documents as previously supplied in Appendix 3.

Other Project Applications submitted to BPU and discussed in the Board's May 10, 2013, Order, also do not have building permits but apparently have all other required land use approvals only. Based upon those findings, and to be consistent therewith, the Board should reconsider its denial of Community Energy's W1-127 / Docket No. EO12121134V Application and should consider the answer to Question 2 as an unqualified "Yes".

It is clear from the cited provisions in the May 10, 2013, Order that if all requisite federal, state, regional and local approvals were correctly noted as having been obtained and having been unappealable as of December 17, 2013, the subject application would have been included in the "Deferred" category rather than the "Denied" category. Such a determination and such a result in this motion is fair and equitable. The oversight should be corrected under any standard of review. The Board's Order of May 10, 2013, accepts that a CSA and ISA have been executed and that interconnection facility costs have been funded. Total costs expended are in excess of \$400,000.00, including \$146,772.00, as cash security to the PJM.

Conclusion

A tremendous injustice will result in the event the Board were to not reconsider. It is an appropriate and proper action under the circumstance and Community Energy respectfully requests that reconsideration be granted and the Order modified as sought.

Respectfully submitted,



WALTER N. WILSON

cc: Community Energy Renewables, LLC
All listed on the attached service list

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