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June 2, 2016

**Via Email to [B.Hunter@bpu.state.nj.us](mailto:B.Hunter@bpu.state.nj.us)**

B. Scott Hunter  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0350

**Re: Subsection S COD Milestone Dates**

*Pemberton Solar W1-119, LLC (Docket #EO12121119V) (SRP# 37268)*

*Pemberton Solar W1-120, LLC (Docket #EO12121118V) (SRP# 37267)*

Dear Mr. Hunter,

This letter concerns Subsection S milestone dates pursuant to the February 11, 2015 BPU Board Order (Agenda Item 8F; Docket Nos. EO12090832V & EO12090880V) (the "February 2015 Order") regarding Pemberton Solar W1-119, LLC (Docket #EO12121119V) and Pemberton Solar W1-120, LLC (Docket #EO12121118V) (each a "Project" and together the "Projects"). Each Project was developed by EffiSolar Development, LLC ("EffiSolar").

**A. Background**

Each Project began development in 2010 and subsequently obtained all site control, PJM/EDC interconnection agreements/contracts and all local/county/state planning and zoning approvals required for construction. Pursuant to the Solar Act of 2012 (the "Solar Act"), each Project submitted a Subsection S Application in December 2012 with a decision deferred by the Board in its April 2013 Order.

With particular attention to Staff's December 2014 Subsection S supplemental filing criteria concerning project impact on the SREC market and on open space – and for the purpose of proposing a significant concession to bring finality to the multi-year Subsection S process, including pending litigation therefrom – EffiSolar voluntarily reduced each Project's proposed system size by more than 50% (to 10MW DC each). The Board subsequently approved each Project in its February 2015 Order. Page 19 of the February 2015 Order stated:

The Board HEREBY DIRECTS the applicants to adhere to the milestones described in their supplemental filings and supply consistent data in quarterly Milestone Reporting Forms required of all grid supply projects in the SREC Registration Program. If an applicant foresees an inability to meet any of these milestones, the applicant must notify Staff in writing at least 14 days prior to the date of the milestone, provide an explanation of the reason that it will not be able to adhere to that milestone, and request an extension for a specific period of time. The Board HEREBY AUTHORIZES Staff to grant a reasonable extension of a milestone. If Staff denies this request, the applicant may petition the Board for a waiver of the time frame.

On July 27, 2015, EffiSolar submitted a request to BPU Staff to modify the milestones initially submitted in each Project's supplemental filing to accommodate the realistic timeframe required to materially reduce each Project's system size<sup>1</sup>. On August 17, 2015, BPU Staff granted EffiSolar's extension request.

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<sup>1</sup> Of the five projects approved in the February 2015 Order, only three (each developed by EffiSolar) voluntarily reduced their system size. Of those three, only the two Projects described herein required lengthy and extensive modification to both site plans and interconnection designs to accommodate the voluntary system size reduction.

Since the February 2015 Order, all essential steps have been substantially completed to permit construction of each Project at their reduced system sizes including: renegotiation of all site control contracts and leases; updated environmental, geotechnical and related studies; negotiation of all on-site project access easements; approval of amended final site plans including the elimination of any tree removal, substantial improvement to storm water runoff, etc.; preparation and submission of resolution compliance plans to the township, county and soils conservation departments.

In summary, each Project has exercised continuous and exacting diligence to maintain the milestone goals outlined in EffiSolar's July 27, 2015 extension request letter.

#### **B. Interconnection Status**

Each Project's System Impact Study estimates a one (1) year period for JCP&L to construct their direct connection and system upgrades (the interconnection).

The Construction Agreements with JCP&L for each Project were placed into suspension in 2012 pending authorization from the BPU to generate SRECs. Each Project exited their suspensions in July 2015. Since then, EffiSolar and Unity Electric have worked with JCP&L to revise and redesign the original on-site and off-site interconnection route; approve the resulting off-site easement exhibit plan and individual parcel plans; design and approve a new point-of-interconnection concept plan; prepare and submit electrical single line diagrams detailing the facility's AC infrastructure; and reevaluate the reliability impact of the Projects on JCP&L's transmission networks. In addition, EffiSolar has had to negotiate and execute individual utility easements for each parcel along the entire 4000 foot off-site portion of the new interconnection route, as well as access easements with neighboring properties to accommodate the new route.

Much of the extensive time and effort required for the above listed interconnection process steps is attributable to changes in compliance requirements implemented during the 2½ year gap between the effective date of the Solar Act and the February 2015 Order. In this regard, EffiSolar has worked diligently to ensure that the implementation of each Project's updated interconnection requirements is consistent with JCP&L's current standards.

#### **C. Interconnection Dates Must Precede BPU COD Milestones**

The Projects involve an aggregate investment of approximately \$48 million with a complex construction schedule. For example, construction will require coordination of an estimated 63,700 hours of IBEW Local 269 union electrician's time (not including time for land work, engineers, etc.). This extensive capital and personnel requirement can only be deployed with the confidence that each Project's interconnection date will take place prior to the BPU COD milestone date.

**JCP&L cannot yet commit to an interconnection date for each Project. Accordingly, there can be no assurance that each Project's interconnection and resulting permission to operate (PTO) will precede the current December 31, 2016 BPU COD milestone.**

Since each Project must complete its interconnection in order to achieve its BPU COD milestone, and factors beyond our control prevent us from setting a firm interconnection date at this time, EffiSolar cannot be certain that it will meet the current BPU COD milestone date for both Projects.

#### **D. Notification and Request to Staff**

At great expense and with unsparing commitment, EffiSolar has diligently undertaken the complex process of reducing system sizes and meeting new interconnection requirements for each Project to provide a clean path to construction. There is no question that both Projects are commercially viable and will be built as long as we can address circumstances beyond our control.

However, the uncertainty in meeting the current BPU COD milestone dates due to interconnection scheduling factors beyond our control is currently prohibiting the final commitment of the ~\$48 million capital expenditure and related personnel deployment slated for these Projects.

**Since the BPU anticipated such concerns in its February 2015 Board Order, we respectfully request confirmation that Staff will adjust the BPU COD milestone date of each Project to align them with the interconnection delivery date that will be provided by JCP&L as soon as it is determined.**

In support of the above request, EffiSolar notes the following: **(i)** Each of these Projects was approved via Subsection S with COD milestone dates that can be modified pursuant to authority granted to Staff by the Board. **(ii)** Each Project's interconnection date is *not* within its own control. **(iii)** Unlike the other three approved Subsection S projects, these Projects required substantial modification to site plans *and* interconnection plans as a direct result of the significant size reductions agreed to in their December 2014 Subsection S supplemental filings. **(iv)** There is no negative impact on the SREC market or on solar development in the State by permitting each Project's BPU COD milestone date to coincide with the actual interconnection delivery date. **(v)** Finally, seeking alignment of the BPU COD milestone date with the interconnection delivery date cannot possibly cause either Project to be viewed as speculative or uncertain of completion. On the contrary, the request herein seeks certainty so these Projects may proceed without the potential exposure from a construction process step that is not in each Project's own control.

**E. Closing**

EffiSolar has discussed these concerns with Ms. Joyce Tamer of FirstEnergy. If there are any questions, Ms. Tamer's contact information is:

**Joyce Tamer**  
**FirstEnergy – Supervisor, FERC & Wholesale Connection Support**  
**Phone: 330-384-5705**  
**Email: Jtamer@firstenergycorp.com**

For the reasons set forth above, we respectfully submit the enclosed request for confirmation from Staff that each Project's BPU COD milestone date will be adjusted to align with the interconnection delivery date that will be provided by JCP&L as soon as it is determined.

Please confirm your receipt of this request and whether you require additional information. If needed, I can be reached at lneuman@effisolar.com or at 212-920-6675. Thank you for your prompt consideration.

Sincerely,



**Lawrence D. Neuman**

President – EffiSolar Development, LLC on behalf of  
Pemberton Solar W1-119, LLC  
Pemberton Solar W1-120, LLC

cc (via email):

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