

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

IN THE MATTER OF THE APPLICATION OF \*  
CITIZENS UB SOLAR, LLC FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE \* Case No.: 9483  
AND NECESSITY TO CONSTRUCT A 9.9 MW  
SOLAR PHOTOVOLTAIC GENERATING \*  
FACILITY IN THE TOWN OF UNION BRIDGE  
AND CARROLL COUNTY, MARYLAND \*

\* \* \* \* \*

**REBUTTAL TESTIMONY**  
**OF**  
**BRIAN MORRISSEY**  
ON BEHALF OF CITIZENS UB SOLAR, LLC

July 31, 2019

1   **Q.   PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TITLE.**

2   A.   My name is Brian Morrissey. My title is Managing Director at Citizens Energy  
3       Corporation (“Citizens”). My business address is 88 Black Falcon Avenue, Center  
4       Lobby, Suite 342, Boston, MA 02210.

5   **Q.   ARE YOU THE SAME BRIAN MORRISSEY THAT SUBMITTED DIRECT**  
6       **TESTIMONY IN THIS PROCEEDING?**

7   A.   Yes, I am.

8   **Q.   WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9   A.   The purpose of my rebuttal testimony is to respond to the Direct Testimony submitted by  
10       the Town of Union Bridge (the “Town”). In particular, I describe the Applicant’s efforts  
11       to resolve any issues raised by the Town. I also discuss the proposed landscape screening  
12       for the Project, which mitigates the esthetic impacts of the Project on the Town. I end by  
13       discussing PPRP Condition 26 (Glare Mitigation) and propose revised language.

14   **Q.   WHAT WAS THE PROJECT’S INITIAL PROPOSAL TO THE TOWN?**

15   A.   The initial proposal to the Town was for a 12 MW DC / 10 MW AC project located on  
16       land owned by the Applicant. The majority of this project was located on industrially  
17       zoned land, with the exception of a roughly 10 acre parcel located in a residential zone  
18       (R-6000) across from the Town Hall. The project would have provided the Town with  
19       additional tax revenue associated with the development on land that is currently in an  
20       agriculture tax advantaged status.

21   **Q.   HOW DID THIS PROPOSAL CHANGE OVER TIME?**

1 A. The Applicant agreed to make changes to the Project upon requests from the Town.  
2 First, the Applicant agreed to donate approximately one acre of land for stormwater  
3 improvements that would benefit the Town – all at no cost to the Town. Second, the  
4 Town requested that a majority of the panels be removed from the R-6000 zone to allow  
5 for a wastewater treatment facility to be placed there instead. The Applicant agreed and  
6 redesigned the Project to allow for a 5-7 acre wastewater treatment facility in the R-6000  
7 zone. Lastly, the Town asked that the Applicant agree to annexation of our land outside  
8 of the Town limits to allow the Town to tax a greater portion of the Project. At this point  
9 in the design, that would amount to approximately a 300% tax increase to the Town. The  
10 Applicant also agreed to this change.

11 **Q. WHY DID THE APPLICANT AGREE TO THESE CHANGES?**

12 A. Citizens is a non-profit energy company founded in 1979 by Joseph P. Kennedy II that  
13 develops, owns, and operates for-profit energy facilities to fund heating oil and natural  
14 gas assistance programs for low-income households. As such, Citizens is committed to  
15 the communities in which it operates. The Project, as originally proposed, was located  
16 partially within an R-6000 zone in the Town, where the Project would not have been  
17 permitted under the Town's zoning ordinance. Thus, the Applicant sought to provide  
18 enhanced benefits to the Town and reduce the impact of the solar project to the R-6000  
19 zone in exchange for allowing the Project to be located in the R-6000 zone.

20 **Q. DID YOU AND REPRESENTATIVES OF THE PROJECT MEET WITH THE**  
21 **TOWN COUNCIL AND MAYOR TO DISCUSS THE PROJECT?**

22 A. Yes. I attended the following meetings:

- 1           • 4/12/2018: Public meeting with Town Planning and Zoning Commission and  
2           Town Mayor located at the Town Hall. This was when the County requested land  
3           for the stormwater facility.
  
- 4           • 5/17/2018: Open house at Town of Union Bridge and public meeting with Town  
5           Planning and Zoning Commission and Town Mayor located at the Town Hall.  
6           The Applicant held an open house prior to a regularly scheduled Planning and  
7           Zoning Commission meeting in order to field questions from the public.
  
- 8           • 6/21/2018: Public Hearing with Town Planning and Zoning Commission and  
9           Town Mayor. This was a more formal public comment period located at the Town  
10          community center, similar to the first public comment hearing for the CPCN.
  
- 11          • 7/19/2018: Public meeting with Town Planning and Zoning Commission and  
12          Town Mayor located at the Town Hall. This was where we proposed a reduced  
13          footprint in the R-6000 to allow for a wastewater treatment facility. In response to  
14          this meeting, the Town Planning and Zoning Commission recommended that the  
15          Mayor and Town support the Project, subject to several conditions.
  
- 16          • 8/13/2018: Meeting with Town Council. Provided a background and overview of  
17          the project.
  
- 18          • 9/19/2018: Meeting with Carroll County to discuss a PILOT agreement. The  
19          Town was in attendance at this meeting. The purpose of this meeting was to see  
20          if the County was open to a PILOT agreement. We worked with the Town to

propose a structure where the Town received a portion of the County's tax revenue from the project.

- 10/18/2018: First Public Comment Hearing for CPCN located at the Town community center. The Applicant's proposal at this point included donating land for stormwater improvements, the wastewater treatment facility, and annexation.

**Q. WHAT WAS THE INITIAL REACTION OF THE TOWN COUNCIL AND MAYOR TO THE PROJECT?**

A. I perceived that the reaction was positive. The Town seemed engaged over many months of meetings, and they were always very cordial to work with. However, as the process progressed, the Town began increasing its demands from the Project.

**Q. AFTER MULTIPLE MONTHS OF PLANNING DISCUSSIONS AND MEETINGS, HOW DID THE TOWN INCREASE ITS REQUESTS FROM THE PROJECT?**

A. In July 2018, the Town Planning and Zoning Commission recommended that the Mayor and Town support the Project, subject to: (1) annexation of the unincorporated portion of the Project into the Town; (2) that five acres of land for a future waste water treatment plant be conveyed unconditionally to the Town at a future date; (3) that land for a stormwater management facility be conveyed to the Town or County; and (4) that the Project produce "substantial tax benefits to the Town." A copy of the draft minutes of this meeting, which includes these four recommendations, are included as **Attachment A**.

While the Applicant generally agreed to these commitments, it did so under the expectation that the "substantial tax benefits to the Town" would be reasonably

1 formulated to allow the Project to be economically viable. This would have required the  
2 execution of a PILOT agreement with the Town and/or the County.

3 The Town and the Applicant offered a joint proposal to the County to allocate some of  
4 the County's potential tax revenue from the project back to the Town, but the proposal  
5 was rejected by the County. After the County informed us that they were not interested in  
6 a PILOT agreement, the Town informed the Applicant it would not support the Project  
7 unless we agreed to a PILOT with the Town that was, in my estimation, over five times  
8 what the Project would be normally taxed over a 25 year period (\$130,000 vs. \$660,000).  
9 Note that this extraordinary taxation would be in addition to normally assessed county  
10 taxes.

11 **Q. IN YOUR OPINION, WAS THIS REQUEST REASONABLE?**

12 A. No. With the land donations, annexation, and reduced footprint of the Project, the  
13 increased tax burden was detrimental to the economics of the Project such that it would  
14 no longer be economically feasible. Additionally, the demand for extraordinary tax  
15 revenue from a development that will use little to no municipal services seemed  
16 excessive.

17 While Citizens is a non-profit energy company, the projects it operates need to be  
18 profitable to fund its programs. While Citizens was excited to provide direct benefits to  
19 the Town, it could no longer do so when the demands of the Town rendered the Project  
20 uneconomic. If the Town had been willing to work with the Applicant to reach an  
21 agreement on a reasonable PILOT, the Town would have enjoyed substantial benefits  
22 through land for a waste water treatment plant and stormwater management facility, as

1 well as the realization of tax revenue it would not have otherwise received. The Town's  
2 unreasonable demand for taxation significantly above ordinary tax rates tipped the scale  
3 of the Project's economics such that it was impossible to accept it and build an  
4 economically viable solar facility.

5 **Q. WHAT WAS THE APPLICANT'S RESPONSE TO REACHING THIS IMPASSE?**

6 A. Once it appeared that it was no longer viable to reach an agreement with the Town to  
7 allow the Project to be located within the R-6000 zone, the Project was redesigned to  
8 locate the solar array entirely within Carroll County, where the project is permitted by  
9 right under its zoning ordinance.

10 **Q. WHAT IS THE TOWN'S POSITION WITH RESPECT TO THE AESTHETIC**  
11 **IMPACT OF THE PROJECT ON THE TOWN?**

12 A. The Town's position is that the Project will have a negative aesthetic impact on the  
13 Town.

14 **Q. DO YOU AGREE WITH THIS POSITION?**

15 A. No, I do not. Between the Project and the residences inside the Town, there would be a  
16 significant buffer – a minimum of approximately 500 feet. This buffer area includes the  
17 R-6000 district that is currently being farmed, and the Applicant plans to keep it in  
18 agriculture.<sup>1</sup>

19 In addition to this natural agricultural buffer between the Town and the Project, on July  
20 12, 2019 PPRP proposed Condition 22, which requires the Applicant to implement a  
21 landscape buffer outside the perimeter fence that will screen the Project from all adjacent

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<sup>1</sup> Note also that that S. Main Street heading into the Town is a heavily trafficked road with trucks entering and exiting the Lehigh cement facility on the other side of S. Main Street from the Project.

1 public roads, residential properties, and cultural landmarks. The landscape buffer must be  
2 a minimum of 6 feet above ground level at planting and 30 feet at maturity.<sup>2</sup> In addition,  
3 the Project's landscaping plan must be submitted to the Commission, PPRP, MHT, the  
4 Town of Union Bridge, and Carrol County for review and approval prior to the start of  
5 construction.

6 In my experience as a developer of solar projects across the United States, this is the most  
7 robust screening requirement I have ever encountered. The Applicant has gladly accepted  
8 this condition and will work with all interested parties to ensure the Project's visual  
9 impacts are effectively mitigated through implementation of PPRP Condition 22.

10 **Q. HAS PPRP PROPOSED A CONDITION TO ADDRESS GLARE IMPACTS?**

11 A. Yes, PPRP Condition 26 addresses glare impacts. As proposed by PPRP, it reads as  
12 follows:

13 26. Glare Mitigation – Prior to construction, Citizens UB Solar shall construct a  
14 temporary, opaque buffer within the setback to mitigate glare impacts upon surrounding  
15 public roads and properties. The buffer shall be any combination of additional fencing,  
16 landscaping and berms that completely screens Green Valley Road from the sun's  
17 reflections off solar arrays from the time the panels are mounted on supports. The  
18 temporary buffer shall be installed within the setback where permanent landscaping has  
19 been proposed or required, as described in Recommended Condition 22, and will be  
20 maintained until the permanent landscape buffer provides an opaque visual barrier. The  
21 temporary buffer will be in conformance with all applicable State and local laws and  
22 regulations.

23 **Q. DO YOU AGREE WITH THIS CONDITION?**

24 A. While I agree with this condition in concept (*i.e.*, addressing glare impacts to Green  
25 Valley Road with an opaque buffer), I am concerned that as worded this condition is both

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<sup>2</sup> A map of the locations of the required landscape screening is included on page 37 of PPRP's Project Assessment Report.



1       overly broad while also not allowing for appropriate mitigation techniques. First, as  
2       worded, the condition is not clear that the landscape buffer for the Project may serve as  
3       the glare mitigation technique if appropriately opaque. If read literally, this would have  
4       the effect of requiring the Project to install two buffers when only one is needed. Second,  
5       it is not clear that the buffer would be required only in areas where glare would occur,  
6       which would require the Project to install a buffer in areas where there is no glare impact.  
7       Third, the condition is not clear that slats or fabric may be used in the perimeter fence to  
8       mitigate glare. This may be a cost-effective method of addressing glare impacts and  
9       should not be excluded by the condition.

10   **Q.   DO YOU HAVE PROPOSED REVISED LANGUAGE TO PPRP CONDITION 26**  
11   **TO ADDRESS THESE CONCERNS?**

12   A.   Yes, I do. I proposed revising PPRP Condition 26 as follows to address the above issues:

13       26. Glare Mitigation – Prior to when the panels are mounted on supports, Citizens UB  
14       Solar shall construct an opaque buffer to screen any locations where the sun’s reflections  
15       off the panels would impact surrounding public roads and properties. The buffer may  
16       include any combination of the permanent landscape screening approved under  
17       Recommended Condition 22, an opaque addition to the Project’s perimeter fencing (such  
18       as slats or fabric), additional fencing, or berms. The buffer shall be maintained until the  
19       permanent landscape screening provides an opaque visual barrier, after which all  
20       components of the buffer may be removed with the exception of the permanent landscape  
21       buffer. The buffer shall be in conformance with all applicable State and local laws and  
22       regulations.

23   **Q.   DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

24   A.   Yes.