

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND**

In the Matter of the Application of Citizens  
UB Solar, LLC for a Certificate of Public  
Convenience and Necessity to Construct a  
9.9 MW Solar Voltaic Generating Station  
in the Town of Union Bridge and  
Carroll County, Maryland

Case No. 9483

**REPLY OF COMMISSION STAFF TO THE SETTLEMENT FILED BY  
CITIZENS UB SOLAR, LLC AND THE TOWN OF UNION BRIDGE**

The Commission Staff submits this reply to the joint motion filed on October 31, 2019 by Citizens UB Solar, LLC (“UB Solar”) and the Town of Union Bridge, Maryland (“the Town”) that asks the Commission to approve a settlement negotiated by UB Solar and the Town in connection with the solar project proposed by UB Solar (Mail Log (“ML”) 227330). Staff is pleased that UB Solar and the Town have agreed to a settlement. Staff does not oppose the settlement. For the reasons discussed below, Staff recommends that the Commission take no action on the settlement.

The settlement includes several commitments by UB Solar and the Town:

1. UB Solar will initiate the annexation by the Town of a land parcel on which the Project will be located (§II(1), p. 3)
2. UB Solar will reimburse the Town up to \$5,000 for the expenses incurred by the Town in connection with the land annexation (§II(6), p. 5)
3. UB Solar and the Town will execute an agreement under which UB Solar will make a payment to the Town, which is referred to as a Payment in Lieu of Taxes (§II(3), p. 4)
4. UB Solar and the Town will execute a purchase option that gives the Town the option to purchase a land parcel on which the Project will be located (§II(4), p. 4)
5. UB Solar will reimburse the Town for certain expenses associated with the Town’s participation in this proceeding (§II(7), p. 5)

In reviewing a proposed settlement, the Commission evaluates whether the terms of the settlement are in the public interest.<sup>1</sup> Consequently, approval of the UB Solar/Town settlement would require the Commission to determine that the commitments in the settlement are in the public interest. However, the Public Utilities Article (“PUA”) of the Annotated Code of Maryland does not authorize the Commission to approve the settlement commitments. The PUA states that “the Commission has the powers specifically conferred by law.” (PUA 2-112(b)(1)). A Commission action is invalid if is “outside the statutory authority or jurisdiction of the Commission.” (PUA 3-203). This principle applies even in a situation (such as here) where parties to a proceeding ask the Commission to take an action that is beyond the Commission’s jurisdiction.<sup>2</sup> Thus, because the settlement includes commitments by UB Solar and the Town that are outside the Commission’s jurisdiction, the Commission should not take action on this component of the settlement.

The settlement also establishes requirements in connection with the landscape buffer that the Project will construct (§II(5), p. 5). However, these requirements are included in condition #22 of the conditions recommended in the Direct Testimony of Frederick Kelley, who testified on behalf of the Maryland Department of Natural Resources’ Power Plant Research Program (“PPRP”)(ML 226062). PPRP’s conditions are endorsed in the Secretarial Letter filed by PPRP on July 15, 2019 (ML 226071). In reviewing UB Solar’s CPCN application, the Commission will evaluate PPRP’s conditions,. (UB Solar does not oppose PPRP’s conditions. Staff’s understanding is that no party opposes PPRP’s conditions.) Consequently, there is no need for the Commission to take action on the landscape buffer provision of the settlement.

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<sup>1</sup> See *Competitive Selection of Electricity Supplier/Standard Offer Service*, 94 Md. PSC 113, 145 (2003); *Delmarva Power and Light Co.*, 88 Md. PSC 209, 211 (1997).

<sup>2</sup> *Boyd v. Supervisor of Assessments*, 57 Md. App. 603, 471 A.2d 749, 751-752 (Md. Ct. of Special Appeals 1983).

### CONCLUSION

For the reasons discussed above, Staff recommends that the Commission take no action on the UB Solar/Town settlement.

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November 8, 2019

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 8<sup>th</sup> day of November 2019, a copy of this pleading was either e-mailed or mailed by first-class U.S. mail, postage prepaid, to all the parties on the Service List compiled by the Commission in this proceeding.

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Kenneth Marc Albert