Agenda Date: 5/10/23
Agenda Item: 8A

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR CLARIFICATION AND INTERPRETATION OF THE REMOTE NET METERING ("RNM") PROGRAM PURSUANT TO THE BOARD'S APPLICATION AND APPROVAL PROCESS IMPLEMENTING PROVISIONS OF THE CLEAN ENERGY ACT OF 2018	)	ORDER DOCKET NO. QO22050358
IN THE MATTER OF THE REMOTE NET METERING APPLICATION FILED PURSUANT TO THE BOARD'S APPLICATION AND APPROVAL PROCESS IMPLEMENTING PROVISIONS OF THE CLEAN ENERGY ACT OF 2018 THE PHOEBUS FUND AIRSPACE A – TOWN OF PHILLIPSBURG	)	DOCKET NO. QO22040251
IN THE MATTER OF THE REMOTE NET METERING APPLICATION FILED PURSUANT TO THE BOARD'S APPLICATION AND APPROVAL PROCESS IMPLEMENTING PROVISIONS OF THE CLEAN ENERGY ACT OF 2018 THE PHOEBUS FUND AIRSPACE B – TOWN OF PHILLIPSBURG	)	DOCKET NO. QO22040252

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Douglas J. Steinhardt, Esq., on behalf of The Phoebus Fund, LLC
Andrew R. Kennedy, The Phoebus Fund, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers a May 31, 2022 petition filed by the Phoebus Fund, LLC ("Phoebus" or "Petitioner") titled "Motion for Clarification and Interpretation", requesting clarification and interpretation of the Remote Net Metering ("RNM") Program pursuant to the Board's application and approval process implementing provisions of the Clean Energy Act of 2018.[1]

[1] L. 2018, c.17, codified at N.J.S.A. 48:3-87.12.

BACKGROUND AND PROCEDURAL HISTORY

Program Background

The Clean Energy Act of 2018 was signed into law on May 23, 2018 ("Clean Energy Act"). Section 6 of the Clean Energy Act required the Board to establish an application and approval process for RNM within 120 days of the law's enactment. N.J.S.A. 48:3-87.12.

On July 13, 2018, Board Staff ("Staff") issued a Request for Comments on Staff Assumptions and Questions toward development of a Straw Proposal for Implementation of Section 6 of the Clean Energy Act. A public stakeholder meeting was held at the New Jersey Department of Environmental Protection ("NJDEP") on July 31, 2019. Twenty-nine people attended the meeting, including 14 representatives of solar developers, as well as the electric distribution companies ("EDCs"), the NJDEP, the Division of Law, and Staff.

Ten sets of responses to the request for comments were received by the August 7, 2018 deadline, including responses from AC Power LLC, Atlantic City Electric Company, Borrego Solar Systems Inc., Conti Solar, Jersey Central Power & Light Company, New Jersey Resources, Public Service Electric and Gas Company, RE-Imagine Real Estate, LLC, Rockland Electric Company, and Soltage LLC.

On September 17, 2018, the Board approved an RNM application and approval process based upon stakeholder comments and Staff's recommendation.[2] The RNM Order covered the following elements of an RNM application and approval process: RNM eligibility; the definition of a Public Entity; Host Customer; Credit Receiving Customer; Total Average Usage; the determination of maximum capacity of the solar electric generation facility; the value of an RNM "Credit"; and the application and approval process.

On July 28, 2021, the Board established the Administratively Determined Incentive ("ADI") Program, which defined eight (8) distinct market segments with unique incentive levels. The incentive levels were established based on modeling of the costs and revenues characteristic of the market in 2021 and expected to be relevant to the market for the next three (3) years. The Board provided a $20 per MWh adder for projects benefiting public entities, which would increase the incentive level for four (4) relevant project types: small and large net metered non-residential rooftop or carport, small and large net metered ground mount.

The first RNM application, submitted for the Raritan Valley Community College ("RVCC"), was approved by the Board on August 18, 2021. Since that time, seven (7) additional RNM applications have been approved by the Board. The projects range from 5.2 kilowatts ("kW") (RVCC) to 822.6 kW (Woodbridge Township).

Petitions

On March 3, 2022, Staff received two (2) RNM applications from Phoebus, submitted for the Town of Phillipsburg. On March 17, 2022, Staff returned the two (2) applications as administratively incomplete. The applications failed to identify a host customer utility account or receiving

[2] In re the Board's Establishment of a Remote Net Metering Application and Approval Process Pursuant to the Clean Energy Act of 2018, BPU Docket No. QO18070697, Order dated September 17, 2018 ("RNM Order").

customer accounts. Phoebus proposed siting a solar installation where no utility service currently exists, establishing a new utility account with unspecified loads, and assigning net metering credits to a proposed new "master" utility account which would consolidate the billing for multiple metered accounts for the Town of Phillipsburg.

On April 13, 2022, Phoebus refiled its two (2) RNM applications, designating the properties on which the solar facilities would be located as Airspace A and Airspace B. Both RNM applications listed the same utility account numbers to serve as a Host Customer Primary Account and the same account numbers to serve as a receiving customer account. Each RNM application also lists the Host Customer's Primary Account usage as "2200 est.", so that it appeared that no utility bills were currently available for the account.

On May 11, 2022, in response to Staff's identification of discrepancies found with the April 13 filing, Phoebus filed a set of corrections to various pages of the two (2) RNM applications. The revised RNM application for Airspace A had revised entries for each host customer account's "Billed Electricity Usage." The revised filing also included the Part I Interconnection Applications for Airspace A and Airspace B projects. These interconnection applications listed the same account number and an entry of "T.B.D." for the utility meter number.

On May 16, 2022, Staff met with Phoebus representatives. Phoebus explained that its applications were premised upon a novel interpretation of RNM that relies on the legal concept of "airspace" and the establishment of "air rights" derived from statutory definitions of property. Petitioner explained that Phillipsburg equitably owns two (2) airspaces located at Block 86, Lot 67 in Lopatcong, New Jersey. As described by Petitioner, these are two (2) separate properties with two (2) separate RNM applications. Phoebus stated that the solar generation facilities serving both RNM projects would potentially be co-located with others. Each such facility would occupy a separate "airspace property". The resulting solar facility would have a maximum capacity of 16.9 megawatts measured in Alternating Current, corresponding to approximately 20 megawatts measured in direct current ("MWdc"). Staff recommended that Phoebus file a petition with the Board for its review of this novel approach.

PETITION FOR CLARIFICATION

On May 31, 2022, Phoebus filed a petition for "Clarification and Interpretation" in which Phoebus seeks the Board's consideration of "a novel approach to the RNM program utilizing airspace to obtain the lowest possible price of solar energy for Public Entities through optimal solar siting[.]" Petition at Par. 3.

Phoebus requested that the Board clarify several requirements in the RNM Order so that it will accommodate Phoebus' proposed model. First, Petitioner asked that the Board find legally transferred airspace to be "property" in the context of the Board's requirement that a public entity host solar on its own property. Next, Phoebus asked the Board to find that "summary accounts" or "master accounts" meet the definition of an "account" from the RNM Order. In addition, Phoebus asked the Board to determine that approval for net metering may be given where there is no existing load. Noting that if its other requests are granted, multiple remote net metered projects may be "co-located" as that term is defined in the Board's ADI rules, Phoebus also asked that the Board find co-located RNM solar projects to be eligible for ADI incentives. N.J.A.C. 14:8-11.2. Finally, although it sought co-location of individual remote net metered projects, each of which is likely to be smaller than the one (1) MW threshold for requiring payment of prevailing wage, Petitioner asked that these RNM projects be required to follow the Prevailing Wage Act.

STAFF RECOMMENDATION

Following the framework laid out in the Clean Energy Act and L. 2021, c. 169 ("Solar Act of 2021" or "Act"), the Board has recognized the need for a differentiated approach to providing solar incentives in order to allow a variety of New Jersey parties to benefit from solar. Those who should benefit include but are not limited to residential homeowners, commercial power users, public entities, and those involved in different segments of solar development. Starting with the Transition Incentive ("TI") Program, the Board has provided differentiated incentive structures and levels for different types of solar, with the predominant consideration being the structural differences between segments in terms of development costs and project revenues. The Board has repeatedly indicated that the primary motivation to establish differentiated incentives has been to enable solar development in a variety of segments in New Jersey, while minimizing costs to ratepayers. For instance, in the Order establishing the Successor Solar Incentive ("SuSI") Program, the Board adopted Staff's recommendation for differentiated incentive levels based on the following rationale:

> [D]ividing the incentive level into multiple market segments, . . . each with its own incentive level, recognizes the different costs and revenues associated with different project types, and carefully balances the need for differentiation in incentive levels against the higher cost and administrative complexity associated with increasing the number of market segments in the ADI Program.[3]

With regard to larger scale solar, the Solar Act of 2021 specifically instructs the Board to establish an incentive program following competitive principles for all grid supply facilities and net metered facilities over five megawatts. Following the Act, the Board established the Competitive Solar Incentive ("CSI") Program in its December 7, 2022 Order ("CSI Order").[4] In the CSI Order, the Board notes that "[t]he proposed CSI Program uses competitive principles to ensure that the cost of the incentive is as minimal as necessary to support new private investment in solar facilities."[5]

Phoebus proposed a different approach to large scale solar, one which would incorporate the legal concept of "air rights" into the RNM program. Noting that the RNM Order defines a host customer as a public entity that proposes to host a solar electric generation facility on its property but does not define "property," Phoebus asked the Board to clarify that "legally transferred airspace" meets the "property" requirement of the RNM Order.[6] In support of its request, Petitioner quoted New Jersey statutes defining airspace as property and case law recognizing property rights in airspace.[7] Petitioner then asserted that the RNM program has had limited participation because public entities are reluctant to use their property to site solar installations.

Staff does not dispute the accuracy of Petitioner's citations. However, the fact that airspace is

[3] In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO20020184, Order dated July 28, 2021, at 18 ("SuSI Order").

[4] In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169, BPU Docket No. QO21101186, Order dated December 7, 2022.

[5] Id. at 12-13.

[6] Petition at Pars. 10-14.

[7] N.J.S.A. 46:3-19 through -21; Hartz Mt. Industries v. City of Jersey City, 22 N.J. Tax 634, 636 (App. Div. 2005) (affirming the Tax Court's holding that "air rights" were to be construed as an interest in land, pursuant to N.J.S.A. 46:3-19 through -21, and subject to the same burdens and responsibilities as land).

legally cognizable as property in New Jersey fails to support Petitioner's proposal to graft that concept onto the RNM program. In the first place, even a solar facility located primarily in "airspace" would require direct or indirect mounting upon a ground surface. Petitioner's construct presupposes that this ground would not belong to the public entity, thus effectively eliminating it as an eligible site. Furthermore, the RNM program creates a very specific and narrow exception to the requirement that all net metered facilities reside behind a single customer's meter. Only public entities may be certified as host customers. N.J.S.A. 48:3-87.12. In implementing this narrow exception, the Board specified that the public entity "host" its solar electric generation facility on its own property. To expand the meaning of "property" as proposed by Phoebus and permit "hosting" of a solar facility above private property would broaden the RNM exception significantly beyond what the statute allows. Petitioner has cited nothing to indicate that the Legislature intended such a result.

Staff recommends that the Board clarify that to "host a solar electric generation facility on their property", a public entity must have property rights for the surface the solar facility will be mounted on.

Next, noting that the Order defines "receiving accounts" and references the accounts of host customers but does not expressly define "account," Petitioner asked the Board to find that "summary accounts" or "master accounts" meet the definition of an "account" from the RNM Order."[8] As envisioned by Petitioner, this definitional shift would allow small public entities that have no single large account to "obtain NJ generated solar energy from RNM."[9] In support of its position, Phoebus quoted the definition of "Net metering aggregation" as "a procedure for calculating the combination of the annual energy usage for all facilities owned by a [public entity customer]." N.J.S.A. 48:3-51. As interpreted by Petitioner, this definition "already allows the aggregation of all public facilities to a single account."[10]

By taking the definition of "net metering aggregation" in isolation, Petitioner misrepresented the nature of net metering aggregation as set out in the statute and implemented by the Board. The aggregation permitted in the net metering aggregation program does not enable a change to the definition of "account" in the RNM program. While the statute permits aggregation of a public entity's accounts for purposes of sizing a solar generation facility, it limits the retail credit that may be claimed by the public entity to the load on the host site. N.J.S.A. 48:3-87(e)(4). The Legislature designed remote net metering to function in exactly the opposite fashion, allowing the net metering credits earned by the facility on the host site to be utilized by "other public entities designated to receive credits." N.J.S.A. 48:3-87.12. Furthermore, the Board's rules governing aggregated net metering do not reference "master accounts" or "summary accounts".[11] Finally, aggregating public entity electricity accounts into one monolithic host customer account for purposes of boosting the proposed system size would enable massively larger systems capable of greater avoidance of transmission and distribution charges, a result that would further burden ratepayers and that nothing in the legislative language or history supports. Thus, in attempting to graft aggregation onto remote net metering, Petitioner distorted both legislative directives as well as the Board's rules.

[8] Petition at Par. 16.

[9] Ibid.

[10] Petition at Par. 15(b).

[11] See N.J.A.C. 14:8-7.3.

Petitioner further asserted that New Jersey public entities already have access to "summary" or "master" accounts that are provided individual account numbers and considered an account by New Jersey EDCs.[12] Again, Petitioner misconstrued the meaning and function of an existing industry mechanism. It is Staff's understanding a "master account" or "summary account" is a mechanism used by utilities for purposes of billing consolidation. Contrary to Petitioner's apparent belief, a "master account" does not entail any actual combining of meters or even combining of kilowatt-hours; rather, it serves the administrative goal of issuing monthly bills for several accounts in a single document.

In brief, there is no precedent and no convincing rationale for importing the aggregation of a public entity's accounts into the RNM regulatory scheme, while sound public policy weighs against such an interpretation. Staff recommends that the Board clarify that master meters may not be utilized in the RNM application process as a "primary host customer account" or "host customer account" for purposes of establishing maximum solar capacity in the Public Entity Certification Agreement.

Phoebus also asked the Board to determine that approval for net metering may be given where there is no existing load, contending that such a ruling would be consistent with the interconnection procedure for new construction. Petitioner noted that when net metering is proposed for new construction, the Board-approved interconnection process allows for initial EDC approval to be granted on the basis of estimated usage; customer load must be in place before a Permission to Operate is granted but not before construction of the solar facility.[13]

Petitioner's analogy fails because RNM, unlike New Construction, requires existing load at the host site. As noted above, the RNM program was designed to provide a narrow exception to the standard net metering requirement that the generation facility reside behind a specific customer's meter and that the load served be behind that meter as well. Given this context, the RNM Order's directive that "the solar facility must be located on property containing at least one electric meter of the host customer"[14] is properly interpreted as referring to an existing meter serving a pre-existing load. Consistent with this interpretation, no RNM projects have yet been authorized that do not have existing load located behind the same meter as the solar facility. Phoebus attempted to support its position by arguing that approving RNM facilities on these sites "would allow Public Entities to utilize their preferred lands . . . allowing for a more optimal location of solar on public entity property."[15] While that statement may be accurate, it fails to justify the subsidy Petitioner seeks from New Jersey ratepayers for these preferred solar sites. Therefore, Staff recommends that the Board deny Petitioner's request to base the approval of the RNM application based on an approved meter that has not been installed on site yet.

Petitioner's next request for relief involved the Board's prohibition on co-location in the ADI Program. The Board's rules define "co-location" as "siting two or more SuSI-eligible solar facilities on the same property or on contiguous properties, such that the individual facilities are eligible for a higher incentive value than they would be if they were combined into one single facility." N.J.A.C. 14:8-11.2. The definition excludes net metered projects if they serve separate net metering customers. Ibid. Noting that if its other requests are granted, multiple RNM projects serving the same public entity may be co-located pursuant to the definition above, Phoebus asked

[12] Petition at Par. 15(c)-(d).

[13] Petition at Par. 17.

[14] RNM Order at 7.

[15] Petition at Par. 17(e).

that the Board determine that RNM solar projects shall be eligible for ADI incentives that would otherwise be found to be ineligible due to co-location. N.J.A.C. 14:8-11.4(f). Phoebus argued that since the use of its air rights construct would enable public entities to install solar facilities at a lower cost than otherwise possible, the Board should deem these facilities eligible for ADI incentives.[16]

As Petitioner acknowledged, the Board's rules explicitly prohibit co-location within the ADI Program. Moreover, the definition of co-location quoted by Petitioner sets out the reason for this prohibition: to prevent siting of solar facilities "such that the individual facilities are eligible for a higher incentive value than they would be if they were combined into one single facility." N.J.A.C. 14:8-11.2. Thus, this particular definition highlights the Board's goal of matching incentives to the financial realities of specific market sectors and in particular its reluctance to allow larger solar facilities to take advantage of programs or rules specifically designed to enable development of smaller facilities. In support of its proposal, Phoebus argued the financial advantage its interpretation would give to public entities; however, this is a financial advantage whose additional cost would be borne by New Jersey ratepayers. The ratepayers already subsidize all ADI and CSI incentives. The Board strives to design its incentives so that this subsidy is no greater than is needed by a given segment of the solar market. Phoebus' requested interpretation of the rule, in short, would directly contravene its purpose. Staff recommends that the Board deny this request.

Finally, Petitioner requested clarification "that RNM projects would be required to follow the Prevailing Wage Act requirements."[17] This request in itself highlighted the issue just discussed. All solar installations sized at or above one MW that receive financial assistance from the Board, whether as Solar Renewable Energy Credits known as SREC-IIs or otherwise, are subject to prevailing wage rates pursuant to N.J.S.A. 48:2-29.47.[18] By requesting clarification on this matter, Petitioner acknowledged that its proposed airspace construct could create ambiguity as to whether a facility premised on such property would qualify as smaller or as larger than one (1) MW. In other words, this request underscored the fact that Petitioner's airspace construct, if accepted, would likely result in co-location - multiple small projects receiving higher incentives than the one for which a single large project in the same space would be eligible. It is these inflated subsidies that would enable the payment of prevailing wage by the public entities. Staff recommends that the Board find that no clarification of the applicability of the prevailing wage law is necessary because Petitioner's proposed airspace construct will not be incorporated into RNM.

Petitioner cited several legal and regulatory sources in support of its novel approach: the establishment of RNM in the Clean Energy Act of 2018, provisions of the 2019 Energy Master plan ("EMP") supporting increased renewable energy investments, and a recommendation in the Cadmus Capstone Report to expand RNM to allow for better siting and solar deployment at lower costs.[19] According to Petitioner, its proposed expansion of RNM would enable accelerated solar development in the public sector and facilitate compliance with the EMP solar goals. Petitioner asserts that current installation rates are insufficient to meet these goals.[20]

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[16] Petition at Par. 22.

[17] Petition at Par. 21.

[18] See N.J.A.C. 14:8-11.9.

[19] Petition at Pars. 2-7, citing the 2019 Energy Master Plan ("EMP") at 2.1.1, 2.3, 6.2.1 and 6.2.3; N.J.S.A. 48:3-87.12; and the New Jersey Solar Transition Final Capstone Report at Modelling, note on 61.

[20] Petition at Par. 23.

While Staff believes that Petitioner is correct that there would likely be more interest in developing large-scale solar if the higher incentives intended for smaller scale development were to be made available to larger facilities, that approach directly contravenes the principle that the Board firmly established in the implementation of the various solar programs: to minimize cost to ratepayers by differentiating incentives such that each market segment receives no more than what it needs to enable continued solar development. Nor are Petitioner's claims regarding lagging installation rates well founded. As of March 31, 2023, over 1300 solar electric generation facilities totaling more than 410 MWdc have been installed at public entities throughout the State. In addition, the Board continues to develop and implement programs to meet the EMP's ambitious goals, including most recently the CSI Program.

Petitioner also argued that its proposed interpretation of RNM would resolve what Petitioner characterizes as an inequitable distribution of solar between urban and suburban/rural areas of the State by allowing urban areas with constrained siting capabilities to make use of their airspace.[21] Staff notes, however, that Phoebus' only applications to qualify for RNM using the airspace construct involve projects located in and serving public entities in a rural area. Thus, its actions to date do not support Petitioner's argument that the airspace construct would promote equity. Moreover, even had Phoebus proposed developments in the urban areas it attempted to invoke in this argument, this claim would lack merit. Petitioner once again made a policy argument to benefit a specific class of New Jersey ratepayers while ignoring the burden that would be placed on all ratepayers to make that benefit possible.

In addition to the above concerns, Staff notes that Petitioner's airspace construct could be used to circumvent the siting stipulations that apply, per statute, to larger scale solar facilities. As such, implementation of this concept has the potential to lead to the loss or degradation of farmland and open space in direct contradiction of the Legislature's intent in directing the Board to develop siting criteria for large solar facilities. N.J.S.A. 48:3-114; N.J.S.A. 48:3-119. In recognition of the fact that these facilities have the potential to result in loss of farmland and open space and in furtherance of the legislative mandate, the Board has instituted protections that specifically apply to all facilities that would be eligible for the CSI Program.[22] However, these protections would not apply to the Petitioner's potentially large scale but net metered facilities. This construct might thus open a loophole in the regulatory scheme and undermine the policy of preserving New Jersey's remaining open space. Staff notes that the Board anticipates implementing a pilot program for dual use solar facilities, which would provide special consideration for qualifying solar projects that preserve the agricultural function of farmland.

In sum, Petitioner's requested clarification of the RNM Order to allow the use of air rights to site RNM projects; master accounts to aggregate usage; net metering where no load exists; and co-location of solar facilities hosted on airspace does not comply with the Board's solar transition and net metering order and rules or with the Board's commitment to supporting the New Jersey solar industry at the lowest cost to ratepayers. Petitioner's request that the Board clarify that the prevailing wage law apply to these projects serves to underscore the flaws in its approach. This concept also has the potential to undermine legislative goals for the preservation of open space and farmland. Thus, the use of airspace as proposed by Petitioner is not a viable solar development option for public entities, and such projects would not be eligible for the benefits of the SuSI Program.

[21] Petition at Par. 19.

[22] CSI Order at 35-40.

Staff recommends denying the Petition and, by extension, the RNM applications under dockets QO22040251 and QO22040252.

DISCUSSION AND FINDINGS

New Jersey has a strong and diverse landscape of solar development, and the Board has a long history of facilitating its continued health and expansion in order to meet Governor Murphy's Clean Energy goals and offer economic opportunities to a variety of commercial players. Through its array of solar programs, the Board intends to provide opportunities to many different types of consumers seeking to take advantage of the benefits of solar, and to many different types of companies providing the materials and services needed to deliver these benefits. The diversification of solar has increasingly led to a diversification of needs, both in terms of incentives and in terms of rules governing development.

The differences in program specifics that has resulted from the Board's recognition of these inherently different needs have led to certain parties' attempts to qualify for the program or segment they view as most advantageous. It is incumbent upon the Board to delineate incentives for the various market segments in a way that safeguards an appropriate level of diversity in New Jersey solar development and an appropriate level of subsidy, with incentives scaled to the costs and benefits of each segment. The Board recognizes the importance of larger-scale solar development in meeting the State's clean energy goals and has established the CSI Program specifically to facilitate this development. Simultaneously, the Board must further the Legislative goal of providing siting criteria that will protect New Jersey's natural and farmland resources.

Furthermore, net metering is an important tool to facilitate the transition to clean energy for public entities. However, whether remote or otherwise, net metering comes at substantial cost to ratepayers in the form of a decreased basis for recovery of electric power transmission and distribution costs. The Board therefore limits its availability to the cases expressly provided for in the applicable laws and implementing rules. The Board **FINDS** that the use of airspace as proposed by Petitioner does not comport with the Board's mandate to promote solar development at the lowest cost to ratepayers.

The Board also concurs with Staff that the model proposed by Petitioner would potentially enable large scale solar facilities not subject to the Legislative protections built into the CSI Program. The Board **FINDS** that if Petitioner's proposed use of airspace were to be approved it would potentially enable large scale solar at the detriment of the State goal of preserving open space and farmland.

The RNM Order requires a public entity to "host a solar electric generation facility on their property."[23] The Board **HEREBY CLARIFIES** that the word "host" in this requirement signifies that the public entity must have property rights that would allow them to mount the proposed solar installation on the intended surface without a third party's consent. The Board **ALSO CLARIFIES** that the term "account" as used in the RNM Order refers to specific electricity accounts associated with the host or receiving site and does not refer to master or summary accounts. The Board **FURTHER CLARIFIES** that a host site for an RNM solar facility must have pre-existing load behind the meter used by an EDC for the purposes of billing an electricity account.

[23] RNM Order at 6.

With respect to co-location, although the term "waiver" is not used, Petitioner effectively seeks a waiver of N.J.A.C. 14:8-11.4(f). Pursuant to N.J.A.C. 14:1-1.2(b), "[i]n special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from [these rules]." The rules go on to explain that "[t]he Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public." N.J.A.C. 14:1-1.2(b)(1).

In this case, Petitioner has advanced the lower cost to public entities of its siting proposal as the justification for deeming that the resulting solar facilities would not be co-located within the meaning of the Board's rules. The Board concurs with Staff that the lower cost to public entities would mean a higher cost to all other ratepayers. The Board **FINDS** that waiver of N.J.A.C. 14:8-11.4(f) with this rule would increase the number of solar facilities subsidized by the ratepayers and therefore adversely affect them. Thus, the Board **FINDS** that waiving this rule would not be in accordance with the general purpose and intent of the rules and **DENIES** the requested waiver.

Having denied the above requests, the Board **FINDS** that it does not need to clarify that the prevailing wage law applies to projects located on airspace and **DENIES** Petitioners request for this clarification, as moot.

The Board **HEREBY DENIES** the petition from Phoebus. The Board **ALSO DENIES** the RNM applications under dockets QO22040251 and QO22040252.

The effective date of this Order is May 17, 2023.

DATED: May 10, 2023

BOARD OF PUBLIC UTILITIES
BY:

JOSEPH L. FIORDALISO
PRESIDENT

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST:

SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE PETITION FOR CLARIFICATION AND INTERPRETATION OF THE REMOTE NET METERING ("RNM") PROGRAM PURSUANT TO THE BOARD'S APPLICATION AND APPROVAL PROCESS IMPLEMENTING PROVISIONS OF THE CLEAN ENERGY ACT OF 2018

DOCKET NO. QO22050358

IN THE MATTER OF THE REMOTE NET METERING APPLICATION FILED PURSUANT TO THE BOARD'S APPLICATION AND APPROVAL PROCESS IMPLEMENTING PROVISIONS OF THE CLEAN ENERGY ACT OF 2018 THE PHOEBUS FUND AIRSPACE A – TOWN OF PHILLIPSBURG

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QO22040252

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