

**ORDER NO. 88720**

IN THE MATTER OF THE APPLICATION OF ONEENERGY BLUE STAR, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A 6.0 MW SOLAR PHOTOVOLTAIC GENERATING FACILITY IN KENT COUNTY, MARYLAND <hr/>	* * * * * * * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND <hr/> CASE NO. 9387 <hr/>
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**Issue Date: May 31, 2018**

**ORDER ON APPLICATION FOR REHEARING**

On March 9, 2018, pursuant to § 3-114 of the Public Utilities Article, *Annotated Code of Maryland* (“PUA”) and Code of Maryland Regulations (“COMAR”) 20.07.02.08, OneEnergy Blue Star Development LLC filed an Application for Rehearing (“Petition”) of the Maryland Public Service Commission’s (“Commission”) Letter Order issued on February 7, 2018, in the above-captioned proceeding. This Order addresses the issues raised in the Petition and grants in part and rejects in part the Petition.

**I. Background**

On July 10, 2015, Blue Star, an entity of OneEnergy, filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) with the Commission to construct a 6 MW solar photovoltaic generating facility in Kent County, Maryland. The Commission granted Blue Star’s CPCN application on October 21, 2016 with certain

conditions consistent with the project's planned interconnection to a distribution-level circuit. On October 30, 2017, Blue Star notified the Commission that the project had been redesigned as three separate 2 MW arrays and requested that the Commission expedite approval of the Delmarva Power & Light ("DPL") Interconnection documents submitted purportedly to satisfy the CPCN conditions. Subsequently, on December 6, 2017, Blue Star provided Staff with three executed Interconnection Agreements between Washington College and DPL, which also were intended to satisfy the CPCN conditions. During the Commission's January 3, 2018 Administrative Meeting, Blue Star presented its request for expeditious approval of the Washington College and DPL Interconnection Agreements. Several parties attended the Administrative Meeting some supporting and others objecting to Blue Star's request. The Commission took the matter under advisement.

After further consideration of the matter, on February 7, 2018, the Commission issued a Letter Order and found that should Blue Star proceed with its proposed redesign – dividing the project into three 2 MW generating facilities – then Washington College would not be an "eligible customer-generator" for net metering in accordance with the PUA § 7-306, and therefore the approval of the Interconnection Agreements as presented could not be granted. The Commission also advised Blue Star that should it proceed with its proposed redesign, the current CPCN would be deemed canceled. The Commission therefore denied Blue Star's request for acceptance of the three Washington College - DPL Interconnection Agreements. On February 16, 2018, Blue Star provided notice of its intent to seek rehearing of the Commission's decision. On March 9, 2018, Blue Star filed an Application for Rehearing of the Commission's February 7, 2018 Letter Order.

## II. Discussion and Finding

In its Petition, Blue Star asks the Commission to reconsider its findings regarding the definition of “eligible customer-generator” pursuant to PUA § 7-306(a)(4). Specifically, Blue Star requests that the Commission reverse or modify its order based on new facts presented in its Petition – facts that were not originally presented in full at the time of the January 3, 2018 Administrative Meeting. The relevant facts that Blue Star specified in its Petition included a fuller description of the leasehold interest of Washington College in the proposed location of the Blue Star solar facility. Specifically, the Petition indicates that in late 2016 Washington College began to work with Sol Systems to further the institution’s sustainability and educational goals and decided that partnering with the Company “in an aggregated net metering program would offer the College the opportunity to add a renewable source to its energy mix,” as well as facilitate some of its educational goals.<sup>1</sup> On April 21, 2017, Sol Systems acquired Blue Star<sup>2</sup> and entered into three Solar Facilities Lease Agreements (collectively “Subleases”) with Washington College to sublease portions of Blue Star’s solar facility to Washington College.<sup>3</sup> The Petition indicates that under the Subleases as assigned by Sol Systems, Blue Star grants to Washington College the right to access, use and occupy portions of its Solar Facilities. Washington College and Sol Systems also entered into three Solar

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<sup>1</sup> Petition at 4.

<sup>2</sup> Blue Star was party to a Land Lease and Solar Easement (“Lease”) with David A. Bramble (“Owner”) for up to fifty acres of real property zoned for industrial use and located at 12213 Galena Road, Masey, Maryland, for the purpose of, *inter alia*, constructing solar energy conversion systems, including solar photovoltaic panels, support structures, electrical equipment, and related facilities (collectively, the “Solar Facilities”). See Petition at 4-5.

<sup>3</sup> Petition at 5.

Power Purchase Agreements (collectively, the “PPAs”). “Under the PPAs, as assigned by Sol Systems, Washington College grants to Blue Star a license to access the Premises for the installation, commission and operation of the Solar Facilities for the purposes of generating energy for the direct benefit of the College.”<sup>4</sup>

First, Blue Star argues that the fuller description of the leasehold interest held by Washington College in the premises where the Blue Star Solar Facility is located supports reversal of the Commission’s February 7, 2018 Letter Order and supports a finding that the College is an eligible customer-generator under PUA Section 7-306(a)(4).<sup>5</sup> Blue Star contends that “[p]ursuant to the Lease, Memorandum, Subleases PPAs and amendments thereto and assignments thereof, Washington College is a customer that has contracted with third party Blue Star, the owner and operator of the contemplated Solar Facilities, which are to be located on property leased by Washington College.”<sup>6</sup> Blue Star notes that the discussion at the “Administrative Meeting focused *on the distance* between the Solar Facilities and the Washington College campus”<sup>7</sup> (emphasis added) and that the Commission ultimately found that Washington College did not meet the definition of “eligible customer-generator” since the generating facility is not located on the customer’s premises.<sup>8</sup>

Blue Star states that while the legislature did not define “premises” for the purposes of this legislation there is nothing in the statute that suggests the word has other

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

than its ordinary meaning.<sup>9</sup> Blue Star cites the Merriam-Webster dictionary definition of premises to mean “a tract of land with the building thereon,” or alternatively as “a building or part of a building usually with its appurtenances (such as grounds).”<sup>10</sup> Additionally, Blue Star states that while “premises” is not included in Section 1-101 of the PUA the term is defined in multiple sections of the Maryland Code and in some cases is inclusive of and references premises that have been leased. Therefore, Blue Star argues that “premises” includes leased property, including the case with Washington College having a leasehold interest in property that it contracts with Blue Star to access for the purpose of installing and operating Solar Facilities to benefit the College. The Petition further lists legislative changes made over time to “expand the definition of eligible customers from single family dwellings and schools to essentially any type of customer owning and operating a solar or wind facility.”<sup>11</sup> Blue Star’s Petition also emphasizes that “[m]ost important to the Blue Star project, the legislature allowed customer-generators who did not themselves own or lease generating systems to participate by contracting third parties to locate facilities on either the customer’s premises or on property contiguous to the customer’s premises, a development that contemplated entry into a variety of contractual arrangements, including leases.”<sup>12</sup>

Second, Blue Star argues that the Commission’s denial of its request arbitrarily imposes a restriction that was not imposed on similar solar projects in Maryland. Specifically, Blue Star compares the landfill owned by the City of Annapolis that is

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<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 9.

leased to a developer and is located outside Annapolis municipal limits<sup>13</sup> to the Blue Star project. The Petition indicates that the City of Annapolis project “was planned as five separate 2 MW net metering units and two separate 1 MW net metering units, all located on the same site.”<sup>14</sup> Blue Star contends that of the three proposed net metering customers, the Anne Arundel County Board of Education would not be an “eligible customer-generator” according to the Commission’s February 7, 2018 Letter Order because the Board of Education “is located downtown and doesn’t have school facilities on the landfill or on property contiguous to the landfill.” For the City of Annapolis, the Commission declined to require a CPCN or impose other restrictions on a project to locate a solar facility on a capped landfill. Blue Star also referenced the Perryman Solar Project which received a CPCN and has multiple off takers from individual 2 MW units that are not located on the customer’s premises or contiguous property. Blue Star argues that each of these projects consists of one or more 2 MW units, with multiple net-metering customers, that are local governments, non-profit organizations, or educational institutions like Washington College.<sup>15</sup>

The Commission notes that there are some similarities regarding the customer premises issue presented in the cases referenced by Blue Star; but also recognizes that Staff’s Comments filed on December 22, 2017 in MailLog #217586 points out that each of these facilities including Blue Star are “larger solar facilities [that] are being nominally subdivided into 2 MW units possibly to evade the CPCN requirement and become

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<sup>13</sup> *Id.* at 10.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 11.

eligible for net metering.”<sup>16</sup> Staff cautioned against allowing large generating facilities to subdivide into smaller 2 MW units, noting that in doing so, “the statutory requirements for obtaining a CPCN, and the statutory limitations on who may be an eligible customer generator for net energy metering will essentially be nullified.”<sup>17</sup> Staff also pointed out that if the practice of allowing subdivisions of large facilities is allowed to continue unchecked, then “the 1,500 MW cap will be reached quickly, and the beneficiaries are likely to be a relatively small number of larger customers.”<sup>18</sup> The Commission acknowledges the gap that the current statutory language provides and therefore will reverse in part February 7, 2018 Letter Order in this case to allow “leased premises” for eligible customer-generators to be included for net metering purposes under these particular facts. On this basis, the Commission will accept the proffered Interconnection Agreements as meeting the CPCN Conditions, and the Commission accepts Blue Star’s request. However, should Blue Star elect to proceed with its proposed reconfiguration of the projects, only one of the 2 MW generating facilities may be eligible for net energy metering by Washington College, if that is consistent with the utility’s net energy metering tariff, and satisfies other requirements for eligible customer generators.

For a single eligible customer-generator wishing net metering, the system may not have a rated capacity of more than 2 megawatts.<sup>19</sup> Regarding aggregate net metering, COMAR 20.50.10.07(C) provides, “An electric company shall require that an eligible customer-generator requesting meter aggregation under this regulation provide written

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<sup>16</sup> Staff Comments re ML##217586 at 6 (December 22, 2017).

<sup>17</sup> *Id.* at 6

<sup>18</sup> *Id.* at 7.

<sup>19</sup> COMAR 20.50.10.01(B).

allocation instructions detailing how to distribute its excess generation credits *to each account* prior to the commencement of any meter aggregation” (emphasis added). Here however, the three separate interconnection requests by Washington College each have the identical account number: 50001585244.<sup>20</sup> Consequently Washington College is not permitted to have all three 2 MW facilities net metered.<sup>21</sup>

Even though not applicable here since Blue Star obtained a CPCN, the Commission is concerned that solar developers may be subdividing large plots into a number of smaller 2 MW arrays for the purpose of evading the CPCN requirement, clearly counter to the intent of the statute. The Commission therefore directs Staff to review PUA § 7-306 and propose regulations that clarify the “premises” and co-location issues raised by Blue Energy’s request for prospective net metering projects.

**IT IS THEREFORE**, this 31<sup>st</sup> day of May, in the year of Two Thousand Eighteen, by the Public Service Commission of Maryland,

**ORDERED:** (1) That the Application for Rehearing filed by OneEnergy Blue Star Development LLC, is granted in part as discussed herein;

(2) That as prescribed herein, the Commission will accept Blue Star’s proffered Interconnection Agreements as meeting the CPCN Conditions. Therefore, the

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<sup>20</sup> Mail Log 217586, Attachment B.

<sup>21</sup> This conclusion is also supported by the legislative history of HB 934. Written testimony from the Maryland-DC-Virginia Solar Energy Industries Association, Sol Systems, and the Utility-Scale Solar Energy Coalition of Maryland all expressed support for amendments that would allow the colocation of net energy metered projects.



Commission accepts Blue Star's request for expedited acceptance; and,

(3) That should Blue Star elect to proceed with its proposed reconfiguration of the projects, only one of the 2 MW generating facilities may be eligible for net energy metering by Washington College. Accordingly, Blue Star shall submit a compliance filing designating the generating facility for which net metering shall apply.

By Direction of the Commission,

*/s/ David J. Collins*

David J. Collins  
Executive Secretary