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CHRIS CHRISTIE
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Director

November 19, 2010

VIA HAND DELIVERY AND ELECTRONIC MAIL

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Re: EDC Long-Term SREC Contracting Programs
BPU Docket Nos. EO06100744, EO08100875,
EO08090840 and EO09020097

Dear Secretary Izzo:

Please accept for filing an original and ten copies of the New Jersey Division of Rate Counsel ("Rate Counsel") Initial Comments regarding the above referenced matters. Enclosed is one additional copy, please date stamp the copy as "filed" and return it to the courier. Thank you for your consideration and attention in this matter.

Rate Counsel reserves its right to comment further, and to provide additional substantive comments.

Thank you for this opportunity to comment on this important matter.

Respectfully Submitted,

Stefanie A. Brand
Director, Division of Rate Counsel

By: Felicia Thomas-Friel, Esq.
Felicia Thomas-Friel, Esq.
Deputy Rate Counsel

cc: Mike Winka, OCE
OCE – Renewable Energy Committee (via electronic mail)
Service list for SREC Financing Program

STATE OF NEW JERSEY

BEFORE THE BOARD OF PUBLIC UTILITIES

**In the Matter of the Renewable Energy) BPU Docket Nos. EO06100744 and
Portfolio Standard -Amendments to the) EO08100875
Minimum Filing Requirements for)
Energy Efficiency, Renewable Energy,)
and Conservation Programs and for)
Electric Distribution Company)
Submittals of Filing in Connection with)
Solar Financing [Atlantic City Electric)
Company])**

**In the Matter of the Verified Petition of) BPU Docket No. EO08090840
Jersey Central Power & Light Company)
Concerning a Proposal for an SREC-)
Based Financing Program Under)
N.J.S.A. 48:3-98.1)**

**In the Matter of the Verified Petition of)
Rockland Electric Company For) BPU Docket Number EO09020097
Approval of An SREC-Based Financing)
Program and an Associated Cost)
Recovery Mechanism)
)**

**INITIAL COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL
ON PROPOSED MODIFICATIONS TO THE EDC LONG-TERM SREC
CONTRACTING PROGRAMS**

Prior to and including on November 12, 2010, the Parties to the Stipulation regarding the electric distribution companies (“EDC”) long-term solar energy renewable energy certificate (“SREC”) contracting programs met to discuss a number of proposed program modifications. The Parties participating in the meetings included the Division of Rate Counsel (“Rate

Counsel”), the Office of Clean Energy (“OCE”), Atlantic City Electric Company (“ACE”), Jersey Central Power & Light (“JCP&L”), Rockland Electric Company (“RECO”), and the Solar Alliance. Representatives of the Mid-Atlantic Solar Energy Industries Association (“MSEIA”) also participated in the meeting even though they were not a party to the above-referenced dockets.

The proposed program modifications discussed in the meetings included:

- (1) Since final solar project engineering and design can often lead to small changes in initially-planned capacity, allow small deviations in system size (10 percent) for those projects awarded contracts.
- (2) Allow electronic signatures on applications with wet signatures required within a fixed number of post-award days.
- (3) Allow unsigned agreements to be issued to winning bidders upon issuance of Board Order. No execution, however, will be allowed until the 45 day appeal period has expired.
- (4) Allow pre-payment of meter expense.
- (5) Increase program size eligibility from 500 kilowatts (“kW”) to 2 megawatts (“MW”).
- (6) A proposal by MSEIA that would create a standard-offer price for small systems (less than 50 kW) to set the current solicitation’s average bid price across all systems. This proposal was later modified by OCE to set the standard offer price at the lowest bid for a statistically-significant sample of bids within the less than 50 kW category. Under the OCE proposal, parties to the Stipulations would have to agree on the standard offer price established by an analysis offered by the program Solicitation Manager.

Rate Counsel supports the first five proposals and recommends that the Board adopt these modifications since they are likely to improve overall program performance and/or reduce administrative and transactions costs. Rate Counsel does not support, however, any proposals that would establish a standard-offer or other fixed price/feed-in tariff as part of the EDC long term SREC contracting program.

The MSEIA-OCE standard offer/fixed price proposal is simply another variation of a similar pricing proposal offered to the Board in the solar securitization discussions associated with BPU Docket EO06100744. The proposals were summarily rejected by Board Staff for two reasons:

It is an alternative form of a feed in tariff and the Board's Solar Transition Order specifically does not support a feed in tariff model since it is not consistent with the competitive market model and directives in EDECA; and

It is in direct contravention with the RPS provisions in EDECA which directs the suppliers as the responsible party for compliance with the RPS and the solar RPS.¹

Rate Counsel opposes the MSEIA-OCE proposal for many of the same reasons we have discussed in the past including:

- There would likely be additional regulatory and administrative costs in determining the standard offer fixed price amounts and managing the ongoing applications for contracts rather than the fixed, periodic schedule upon which the program is currently based.
- Potential market inefficiencies since small scale projects would have little competitive pressures to reduce costs beyond those provided in the standard offer price.
- Undermining the state's energy policy goals of developing vibrant and competitive energy markets that move away from subsidized financial support over time.

More importantly, Rate Counsel objects to the creation of a small-project set-aside pricing mechanism since it would likely undermine the entire SREC competitive bidding process and could lead to various types of market distortions that would raise the cost of solar energy to ratepayers. MSEIA and OCE's proposal could lead to a reduction, and not increase, in the participation rates for the SREC bidding process. If developers know they have a fall-back offer, they can sit-out of the solicitation and await prices set by the standard offer. This would allow

¹BPU Docket No. EO-06100744. Staff Securitization Straw Proposal, June 13, 2008, p. 2.

small-scale projects, or developers acting on their behalf, to unreasonably profit by arbitraging price differentials to their own advantage.

This arbitrage opportunity would likely yield no longer-term ratepayer benefits, and would be an artificial construct of an ill-defined regulatory mechanism and not the normal functioning of arbitrage in competitive markets seeking to maximize returns to capital from various market opportunities (i.e., differences between short-term and long-term deals). In addition, a mechanism of the nature proposed by MSEIA and OCE could lead to market manipulation since small projects would have incentives to offer high bids in the auction in order to drive up the standard offer price. Again, this would provide no benefits to ratepayers, and would yield profit opportunities to solar developers simply through an ill-defined regulatory mechanism.

Lastly, Rate Counsel objects to the MSEIA-OCE standard offer proposal since it would likely lead to an over-incentive for solar development when considered within the context of OCE's recent Clean Energy Program ("CEP") 2011 budget proposals. OCE's CEP Budget proposals, for instance, includes a recommendation to adopt an "EDC Solar Financing Incentive," or "ESFI," that would apply a rebate to those smaller solar installations that participate in the three EDC's long term SREC contracting programs.² Rate Counsel opposed this proposal in its November 17, 2010, comments on the 2011 CEP Budget. OCE proposes that both a standard offer AND an EFSI be utilized on a forward-going basis, despite the finding in its CEP Budget Evaluation that rebates are unnecessary and unneeded for solar energy development.³ For OCE to recommend both an EFSI and standard offer set aside is both an unnecessary and unconscionable waste of ratepayer dollars. The Board should reject both modifications.

²Honeywell's Residential Energy Efficiency and Renewable Energy Program Plan Filing for 2011. Revised, October 20, 2010, p. 34, 35.

³*Ibid.*, 37.

In conclusion, Rate Counsel would also like to take the opportunity to clarify the record regarding our position in recent stakeholder meetings on these matters. In the last stakeholder meeting, MSEIA accused Rate Counsel and the EDCs as being entirely unsupportive and unwilling to compromise on matters that support small-scale solar energy development in New Jersey. Such conclusions are simply untrue and fail to recognize the tremendous effort and resources Rate Counsel has dedicated to the policy development and market design mechanisms for solar energy over the past five years. Rate Counsel has been an active participant in every venue on the subject and has made compromises on numerous occasions that were in part developed as a response to concerns raised by MSEIA. Rate Counsel continues to support the Board, and the Legislatures' policies on solar energy, and will continue to offer policy proposals, suggestions, and insights that will assist in the creation of a level playing field for all solar energy developers, at the lowest possible cost, to NJ ratepayers.