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July 29, 2011

**Via Hand Delivery and Electronic Mail**

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

**Re: New Jersey Clean Energy Program Net Metering and Interconnection Working Group—Staff Draft/Straw Proposal for Amendments to Net Metering Regulations**

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel in connection with the above-referenced matter. Copies of the comments are being provided to the Board's Net Metering and Interconnection listserv.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it to our courier.

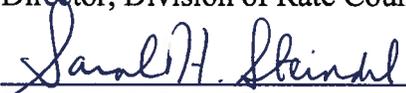
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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

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**Comments of New Jersey Division of Rate Counsel on  
Staff Draft/Straw Proposal for  
Amendments to Net Metering Regulations**

**July 29, 2011**

These comments are submitted on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) in response to the “Staff Draft/Straw Proposal” (“Straw Proposal”) for amendments to the Board’s Net Metering regulations, N.J.A.C. 14:8, that was circulated to the Renewable Energy Committee and Net Metering and Interconnection Standards Working Group by e-mails dated July 19 and July 21, 2011. At the July 22, 2011 meeting of the Net Metering and Interconnection Standards Working Group Staff invited comments on the Straw Proposal, to be submitted no later than July 29, 2011.

Rate Counsel has serious concerns about the rule amendments contemplated by Staff. The amendments suggested in the Straw Proposal have the potential to expand the scope of net metering well beyond that contemplated in the relevant provisions of the Electric Discount and Energy Competition Act of 1999 (“EDECA”), N.J.S.A. 48:3-49 et seq. Under N.J.S.A. 48:3-87(e)(1), the Board is authorized to require “electric power suppliers and basic generation service providers” to offer net metering to “industrial, large commercial, residential and small commercial customers ... that generate electricity, on the customer’s side of the meter, using a Class I renewable energy source ....” The term “customer” is defined in EDECA as a “person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility’s service territory ... within this State.” N.J.S.A. 48:3-51. Thus, the statute contemplates that net metering will be available to customers—defined as end users of electricity—that also generate electricity for their own use.

The amendments contemplated in the Straw Proposal include the following:

1. Allowing the customer and the generator to be separate entities;
2. Allowing the generation facility to be located on a property that is “contiguous” to the customer’s property, with contiguous defined as either sharing a common boundary or being separated by “no more than one easement, public thoroughfare, transportation right-of-way or utility-owned right of way”; and
3. Allowing one entity to construct multiple generating facilities serving multiple customers on “contiguous” properties.

These proposed changes, together with the recent amendments to EDECA allowing net metering for industrial and large commercial customers and the Board’s subsequent removal of the two-Megawatt (2 MW) cap for net-metered generation facilities (see 42 N.J.R. 52(a) (Jan. 4, 2010); 42 N.J.R. 1402 (July 6, 2010)), could open up net metering to large-scale operations serving multiple customers. Rate Counsel submits that, if these changes are made, these entities (1) must collect the SBC and other surcharges for electricity delivered to off-site users that do not pay these charges to a utility, and (2) they must also pay electric distribution charges, the SBC and other surcharges on all electricity delivered to the customer by the electric distribution utility (i.e., net metering credits should not include these charges). Otherwise, the proposed rule changes will be inconsistent with EDECA.

In effect, Staff appears to be incorporating the concept of an “on site generation facility” into the net metering regulations. Under EDECA, an on-site generation facility is defined as a generation facility that provides electricity to an end user “located on the property or on property contiguous to the property on which the end user is located.” N.J.S.A. 48:3-51. An “on-site generation facility,” which may be owned by a different entity from the end user and which may

or may not be fueled by renewable energy source, is allowed to sell electricity to the end user without being deemed a public utility. Id. By delivering directly to the end user, on-site generation facilities avoid paying utility's charges for electric distribution service. On-site generation facilities are not required to collect the Societal Benefits Charge ("SBC") or other surcharges for power delivered to the on-site user, but must collect such charges for power delivered off-site. N.J.S.A. 48:3-77.

Staff's Straw Proposal would extend the benefits of net metering to all on-site generation facilities fueled by Class I renewable energy sources. The cost of this proposal to other ratepayers could be significant, as net metering provides substantial subsidies beyond those generally available to on-site generation facilities. In addition to avoiding utility delivery charges for electricity that is delivered on-site, a net metering customer receives credits for electricity delivered to the utility and/or third party supplier during times when the electricity being generated by the customer's generation facility exceeds the customer's load. Under the Board's current rules the credits include the utility's delivery charges, as well as the SBC and other surcharges. N.J.A.C. 14:8-4.3(l). Net metering customers can receive such credits for electricity delivered by the customer over 12-month period up to the amount of electricity supplied to the customer by the utility and/or third party supplier over that same period. N.J.A.C. 14:8-4.3(c), (d) and (e). A net metering customer with a system sized to produce 100% of the customer's electric usage on an annualized basis can avoid all charges for basic generation service or third party supply, as well as the utility's delivery charges, the SBC and other surcharges. To extend such benefits to customers who are generating electricity for off-site use is not consistent with N.J.S.A. 48:3-77 and could have substantial ratepayer impacts. There must be

careful consideration of these potential burdens, as well as the consistency of the Staff proposal with the relevant provisions of EDECA.

In addition, in light of the expansion of net metering to larger customers and larger generating facilities, the Board and its Staff should re-examine the regulations that currently require net metering credits to include the utilities' delivery charges, the SBC and other surcharges. EDECA does not require net metering credits to include credits for bill components other than electric generation service. Under N.J.S.A. 48:3-87 (e)(1), the Board's net metering standards "shall require electric power suppliers and basic generation service providers to offer net metering . . . ." (emphasis supplied). Thus, net metering is mandated only for providers of electric generation service. The cited provision does not require net metering to be provided by providers of electric distribution service. Although the State's electric utilities currently provide both distribution service and electric generation service in the form of basic generation service, these are two separate functions that could be provided by two separate entities. EDECA requires the utilities to net meter only in their capacities as basic generation service providers. Thus, EDECA does not require the application of net metering to the utilities' distribution charges, or to the SBC and other charges that are paid by the State's electric distribution customers.

The Board's current rules allow net metering customers to sell generation service, while receiving credits for generation, distribution, and surcharges. While these rules may have been reasonable when net metering was limited to smaller customers and smaller generating facilities, they now have the potential to impose unreasonable burdens on the utilities' other ratepayers. Staff's evaluation of the current net metering regulations should include an assessment of the present and potential costs to ratepayers, and evaluation of the reasonableness of imposing such costs on New Jersey's electric ratepayers.