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STEFANIE A. BRAND
Director

February 22, 2019

VIA ELECTRONIC MAIL (solar.transitions@bpu.nj.gov)
AND HAND-DELIVERY
Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 S. Clinton Avenue, 3rd Floor, Suite 314
Trenton, New Jersey 08625-0350

Re: New Jersey Solar Transition
Staff Straw Proposal ("Straw Proposal")

Dear Secretary Camacho-Welch:

Enclosed please find the original and then copies of the comments of New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-captioned matter.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope. Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
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STATE OF NEW JERSEY

BEFORE THE BOARD OF PUBLIC UTILITIES

New Jersey Solar Transition	)
Staff Straw Proposal ("Straw Proposal")	)

COMMENTS OF THE NEW JERSEY DIVISON OF RATE COUNSEL ON NEW JERSEY'S SOLAR MARKET TRANSITION

February 22, 2019

INTRODUCTION

The Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to provide comments on the issues surrounding the development and transition of the New Jersey Solar Renewable Energy Certificate ("SREC") Program.

The recently signed Clean Energy Act (P.L.2018, c.17) directs the BPU to transition the solar market away from SRECS and into a new methodology. Specifically, the Clean Energy Act requires the Board to adopt rules and regulations to close the SREC program to new applicants once solar generation reaches 5.1 percent of total retail sales upon the attainment, and no later than June 1, 2021.

These comments are submitted in response to a Notice issued by the Board on December 26, 2018 (the "Notice") requesting comments in response to a "Staff Straw Proposal." This Notice solicits comments on a four-point "proposal for discussion and consideration," (the "Straw Proposal") as well as thirteen specific "questions for consideration and discussion." Notice, p. 4-6. Rate Counsel's comments in response to the Notice are offered below. Rate Counsel previously submitted comments in this matter on November 2, 2018 in response to a Notice issued by the Board on October 5, 2018. These comments will refer to Rate Counsel's earlier comments where appropriate.

STRAW PROPOSAL

The Straw Proposal is as follows:

- **Defining attainment as being met when 5.1% of the actual kilowatt-hours sold in the state come from solar electric power generators.**

- **Recognizing that, based on the definitions proposed above, Pipeline SRECs are those projects that have filed an SRP Registration but have not entered into**

commercial operation prior to the attainment of the 5.1% trigger. Recognizing that those Pipeline SRECs will not be used for satisfaction of the RPS of the Legacy SRECs, in order to ensure that the current market does not become over-supplied.

- **Developing a process whereby the Pipeline SRECs are eligible for either a transitional program or able to roll into the SREC Successor Program, as developed. As part of the design process, the Board would consider how to ensure that Pipeline SRECs are considered and provided value (including whether to develop a separate program for Pipeline SRECs, or roll those Pipeline SRECs into the SREC Successor Program, as developed).**

- **Over an 18-month period, closely monitor the price cap to ensure that it is not exceeded, with the recognition that the Board could exercise its authority to reduce the Class I RECs in the event of the cap being exceeded.**

Initially, Rate Counsel notes that this proposal presents a proposed basic structure for a transition program, but does not include important details such as the level of compensation proposed to be provided to "legacy" projects and those falling within the transition period. The proposal also does not provide any details concerning the design of SREC Successor program. As will be noted in responses to some of the specific questions below, it is difficult to provide further helpful input for the Board in the absence of a specific proposed program structure and details. Rate Counsel looks forward to providing further input after the Board Staff has developed a more specific proposal.

Additionally, Rate Counsel has some concerns about the limited proposal quoted above. First, Rate Counsel disagrees with the proposal to define the date when the current SREC program closes based on an after-the-fact determination that 5.1 percent of actual kilowatt-hours sold are being produced by solar facilities. Rate Counsel continues to believe, as discussed in the comments submitted on November 2, 2018, that the Board should define a date to close the current SREC program using the historic completion rate from the solar installation pipeline. This approach will provide more clarity and certainty to solar developers, will achieve definitive

closure of the current SREC program that is contemplated under the Clean Energy Act, and will enhance the Board's ability to monitor and control costs.

Second, Rate Counsel disagrees with the proposal to award "Pipeline SRECs" to projects that have filed an SRP Registration but have not commenced commercial operation at the time the current SREC program is closed. A transition program that continues to award SRECs is inconsistent with the Clean Energy Act's goals of achieving a definitive end to the current SREC program and aggressively moving to reduce solar development costs for ratepayers. As discussed in Rate Counsel's November 2, 2018 comments, this can be achieved by implementing competitive procurement beginning with the transition period.

Third, Staff's proposal to "monitor" the price cap is not sufficient. As also discussed in Rate Counsel's November 2, 2018 comments, in order to meet the State's clean energy objective within the statutory price cap, the Board and its Staff will need to actively manage the costs of both the transition and the Successor SREC program.

As discussed at length in Rate Counsel's earlier comments, the Clean Energy Act's price cap reflects the Legislature's recognition that resources are not unlimited, and that, accordingly, the State's clean energy goals will not be reached without careful attention to costs. The objective should not be providing compensation for solar developers at levels that maintain the status quo, or "sustaining" certain elements of the solar industry that have received excessive compensation in the past. The Board needs to quantify the resources that are available under the rate cap, and develop a program than can achieve the State's objectives within that cap. Rate Counsel's recommendations for the closure of the current program and the design of the transitional and successor programs will facilitate this process.

SPECIFIC DISCUSSION QUESTIONS

1. **In your direct experience, how has the current SREC program functioned over the past 5 years?**

Comment:

Rate Counsel recognizes that the current SREC program has incentivized the development of over 2.65 Gigawatts ("GW") of solar capacity, including 1.4 GW in the past five years. However, it is clear that the SREC program has provided more than ample funding. The total installed cost of solar has fallen considerably, but ratepayers have not experienced comparable decreases in SREC prices. As discussed at greater length in Rate Counsel's November 2, 1018 comments, today's SREC prices are still more than double what is needed to incentivize solar development, even for small and usually more expensive solar installations.

2. **How should any proposed SREC Successor Program be organized in conformance with the Clean Energy Act and Staff's SREC Transition Principles? Please provide detailed quantitative and qualitative responses as to the perceived pros and cons of each of the following options:**

   a. **a fixed price SREC;**
   b. **a market-determined SREC; and**
   c. **any other option(s).**

Comment:

Rate Counsel reiterates that the use of competitive processes will be essential to achieve the Clean Energy Act's goals. The Clean Energy Act is clear in calling on the Board to "continually reduce, where feasible, the cost of achieving" the state's solar energy goals. N.J.S.A. 48:3-87(d)(3). This is also reflected in the "SREC Transition Principles" stated in the notice, which include "[p]rovid[ing] maximum benefit to ratepayers at the lowest cost." Notice, p. 2. Rate Counsel continues to recommend a program that follows a competitively-bid auction format. This would conform to the Clean Energy Act's directive to "utilize competitive processes such as competitive procurement and long-term contracts where possible" to minimize costs.

N.J.S.A. 48:3-87(d)(3). Rate Counsel also continues to caution the Board against accepting any arguments that the solar transition process should be used to reduce competitive pressures or continue with the current SREC program structure.

3. **Based on your response to question 2 above, provide precise quantitative and qualitative recommendations as to how your preferred SREC Successor Program model would be implemented, keeping in mind the necessity of satisfying the "SREC Transition Principles" set forth above.**

Comment:

In the absence of a specific proposed program structure, Rate Counsel is not able to provide the detailed "quantitative and qualitative" recommendations requested in this question. Development of a detailed program design and implementation strategy is a complex process requiring resources that are not available to Rate Counsel within the context of the current stakeholder process.

Rate Counsel continues to recommend that Staff and the Board study competitive procurement processes such as the process currently being used in Massachusetts. The Solar Massachusetts Renewable Target ("SMART") Program is an incentive program designed to procure new solar generating capacity based on long-term fixed-price contracts for projects less than 5 MW. A summary of this program was provided in Rate Counsel's November 2, 2018 comments.

4. **How should Legacy SRECs be valued? Should these Legacy SRECs be valued under the SREC Successor Program or valued separately?**

Comment:

As discussed in Rate Counsel's November 2, 2018 comments, the key to SREC transition is to clearly decide and define what will happen to legacy SREC-eligible projects. Rate Counsel believes that legacy SRECs should be valued separately. As recommended in the earlier comments, the Board should set an administratively-determined price for legacy projects for the

remainder of their SREC eligibility. Rate Counsel estimated that a starting price of $100, which is 40 percent of the current SACP, would allow legacy projects to cover their installation costs and leave room under the cost cap for new Class I REC initiatives. This rate would decline at the same rate as the current SACP.

Setting prices in this fashion would assure investors of legacy projects that their expectations on SREC prices will be honored. All retired SRECs at these fixed prices would be used to meet the solar RPS obligation. Most importantly, these fixed-price payments would leave sufficient room under the cost cap for new Class I REC initiatives.

5. How should Pipeline SRECs be valued? Should these Pipeline SRECs be valued under the SREC Successor Program or valued separately?

a. Should the Board continue the current SREC program as a separate program? If so, how?
b. Should the Board include the current SREC program within the SREC Successor Program? If so, how?

Comment:

As discussed above, Rate Counsel disagrees with the concept of creating "Pipeline SRECs." This is inconsistent with the Clean Energy Act's goal of discontinuing the current SREC program and maximizing the use of competitive processes. As discussed in Rate Counsel's November 2, 2018 comments, there may be a need for a transition program to sustain continued solar development until a permanent successor program can be implemented. Rate Counsel continues to recommend that a transition program, if needed, should be no longer than two years and should be modeled on the SREC Financing Programs conducted by Jersey Central Power and Light ("JCP&L"), Atlantic City Electric ("ACE") and Rockland Electric Company ("RECO"). In the absence of a specific proposal, Rate Counsel is not able to provide detailed comments on the "Pipeline SREC" approach suggested by Staff.

The current SREC program should not be continued either as a separate program or as part of the SREC Successor program. Further, there should be no projects that are "grandfathered" into the legacy projects beyond the attainment of the 5.1 percent trigger. A new and completely separate, market-based program based on the standards of "competitive processes," and "competitive procurement" should be established. This must be done to comply with the intent of the Clean Energy Act, its guiding principles and its requirements concerning the ratepayer cost cap. N.J.S.A. 48:3-87(d)(3).

6. **For any solar transition, should the Board set a megawatt ("MW") target for annual new solar construction? If so, should those targets be defined as percentage of retail sales or a set MW cap? Under what circumstances and/or assumptions is this target achievable?**

Comment:

It is Rate Counsel's position that there should not be a need for the Board to set a megawatt target for annual development. The Clean Energy Act set new percentages for the solar RPS. The solar RPS has been, and will continue to be, defined as a percent of total retail sales. This is the only target that should be set, or met.

7. **In any SREC Successor Program, should the Board seek to set annual MW capacity caps for new solar construction or percentages of retail sales? Why or why not? If yes, what should be the value through 2030 and why? If yes, should the Board seek to set differentiated capacity caps under the solar RPS based on project type?**

Comment:

See response to Question 6 above.

8. **In the SREC Successor Program, should the Board provide differentiated SREC or solar value incentives to different types of projects? Should such differentiated SREC compensation be created through SREC multipliers, through an add-on valuation, or through some other method? Based on what factor(s) should any SREC compensation be differentiated?**

Comment:

Given that no proposed program structure or detail has been offered, it is premature to consider how differentiated SREC or solar value incentives to different types of projects would be executed. Rate Counsel does note, however, that in response to Question 3, it encouraged the Board tostudy the SMART Program currently used in Massachusetts. This program sets a base price based on the clearing price determined by a competitively-bid auction and from that compensation factors are applied for projects of various size, and adders are established for attributes such as locations, community sharing and/or low income.

Rate Counsel continues to recommend that the Board exercise caution in establishing market segments. While the Clean Energy Act requires some market segmentation, the Board should not overly segment the market, and any targets for particular segments should be set based on prior experience. Setting unreasonable segment targets could lead to a shortfall in reaching the Clean Energy Act's solar energy goals.

9. How should the cost cap be measured? Should any "head space" under the cost cap in the first years be "banked"? Why or why not?

Comment:

The cost cap is defined in the Clean Energy Act as "the cost to customers of the Class I renewable energy requirement imposed under [N.J.S.A. 48:3-87(d)]," excluding the cost of offshore wind. This statutory language refers to all costs incurred by utility customers to meet the statutory Class I energy requirements except for offshore wind. It includes the cost of all SRECs and other Class I Renewable Energy Certificates ("RECs") Solar and other Class I Alternative Compliance Payments ("ACPs"). These dollar amounts are already calculated annually by OCE in its NJ RPS Compliance History Report.[1] In addition there are other costs that are encompassed

[1] Available at: http://www.njcleanenergy.com/renewable-energy/program-updates/rps-compliance-reports.

within the statutory language that are not currently quantified by the Board, including ratepayer-funded subsidies resulting from net metering, and other costs, such as distribution system upgrades and administrative costs that are funded by ratepayers as a whole. The costs of the successor to the current SREC program, as well as any transition program, will need to be accommodated after accounting for the foregoing costs.

The statutory language does not allow the Board to "bank" any "head space" that may exist during the initial years of the cost cap. The Clean Energy Act provides that "the cost to customers ... shall not exceed nine percent of the total paid for electricity by all customers in the State for energy year 2019, energy year 2020, and energy year 2021, respectively, and shall not exceed seven percent of the total paid for electricity by all customers in the State in any energy year thereafter." N.J.S.A. 48:3-87(d)(2). This language is clear. It establishes a maximum cost to utility customers for each energy year, and that cost is required to decrease from nine percent to seven percent of the total cost of electricity paid by customers starting in energy year 2022. The "banking" of "head space" would defeat this clear statutory requirement.

10. Can and should the cost cap be determined based on net costs that include some type of valuation of associated benefits? If so, what should those qualitative and quantitative benefits be and how should they be assigned a value? If the Board can and should consider a net benefits test, should other cost impacts be included? Which ones? Why? If other cost impacts should not be included, why not?

Comment:

The Clean Energy Act does not allow the offsetting of benefits as suggested in this question. The statutory language quoted above sets a cap on "costs," and does not contain any language allowing the Board to subtract "qualitative and quantitative" benefits. More fundamentally, the statute reflects a legislative determination of the value of renewable energy to the State's ratepayers; that value is the statutory rate cap. It would be illogical to read the statutory language otherwise. Under the interpretation suggested by Staff's question, ratepayers

could be required to pay for the "quantitative and qualitative value" of renewable energy plus additional subsidies amounting to nine percent of the total costs of electricity through energy year 2021 and seven percent thereafter. This would be an unreasonable result which clearly was not intended by the Legislature.

11. **What steps should the Board take to implement the cost cap? In particular, please discuss the pros and cons of decreasing the Class I REC Renewable Portfolio Standards. Should any measures implemented differentiate among the different type of Class I renewable energy technologies? Should these measures differentiate among the different market sectors (e.g. utility-scale grid supply versus small residential systems)? Should these measures be technology neutral? Why or why not?**

Comment:

As noted above, the Board needs to actively manage compliance with the cost cap. The initial step in this process should be the preparation of a draft budget for comment by stakeholders. This draft budget should include estimates of the amounts of the rate cap for the next several years, and proposed allocations of the cap amounts to each cost category, including the costs that are not currently quantified by the Board.

As Rate Counsel has noted, a key element in the budget will be the cost of the solar transition. This cost will be determined by how the Board decides to close the current SREC program and how much compensation will be paid to legacy projects for the remainder of their SREC eligibility periods. These determinations, along with a complete quantification of other costs, will determine the resources available for new solar and other initiatives.

As discussed in Rate Counsel's November 2, 2018 comments, the budgeting process should focus on achieving the Clean Energy Act's goals within the cost cap. Any discussion of measures to comply with the cost cap by modifying the statutory goals is premature until the Board has fully explored the options for meeting the goals and is contrary to the plain language of the statute.

12. **Should the solar industry transition into a true, incentive-free market as the costs of solar begin to approach "grid parity be a goal, or even a consideration, of the SREC Successor Program? If so, how can a SREC Successor Program assist that transition? Should a transition also encompass changes to the net metering program (cf. ongoing FERC/PJM review of DER aggregation)?**

Comment:

Rate Counsel has repeatedly recommended that the New Jersey solar market be allowed to stand on its own and follow a market-based competitively-determined structure. The guiding principles for moving forward with the solar transition are clearly articulated in the Clean Energy Act which calls upon the Board to establish mechanisms that will be "efficient" and "orderly" and that will rely upon "competitive processes" and "competitive procurement." N.J.S.A. 48:3-87(d)(3).

Going forward, the most important concept in ensuring that new programs continually reduce the cost of achieving the State's solar energy goals is to incorporate competition. To the extent that new programs are needed, Rate Counsel supports using competitive bidding and other forms of market-based mechanisms for stimulating new solar development.

13. **Please provide comments on any significant issues not specifically addressed in the questions above, making specific reference to their applicability in the New Jersey context. Please do not reiterate previously made comments.**

Comment:

Rate Counsel encourages with Board to include a proposed budget with a more complete straw proposal for further review and comment.