State of New Jersey
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

February 22, 2013

Via Overnight Delivery and Electronic Mail
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: Comments of the New Jersey Division of Rate Counsel
Aggregated Net Metering Rules Pursuant to
N.J.S.A. 48:3-87(e)(4)

Dear Secretary Izzo:

Enclosed please find an original and ten copies of the Comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-captioned matter. Copies of the comments are being provided to all parties on the e-service list by electronic mail and hard copies will be provided upon request to our office.

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
Director, Division of Rate Counsel

By: Sarah H. Steindel

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

c: OCE@bpu.state.nj.us
Elizabeth Ackerman, BPU
Michael Winka, BPU
Scott Hunter, BPU
Ann Marie McShea, BPU
Tricia Caliguire, Esq., BPU
John Teague, BPU
Marisa Slaten, DAG

Comments of the New Jersey Division of Rate Counsel
Re. Aggregated Net Metering Rules Pursuant to N.J.S.A. 48:3-87(e)(4)
February 22, 2013

The Division of Rate Counsel ("Rate Counsel") would like to thank the Office of Clean Energy ("OCE" or "Staff") for the opportunity to present comments regarding the Board of Public Utilities' ("BPU" or "Board") efforts to enact new standards regarding Aggregated Net Metering as outlined in the Solar Energy Act of 2012, L. 2012 c. 24 (the "Solar Act"), N.J.S.A. 48:3-87(e)(4). Rate Counsel's response to each section laid out by the OCE in its February, 15, 2013 e-mail, as well as an additional proposal for discussion is provided below.

I. Response of Rate Counsel to OCE Questions.

1. *Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice.*

Rate Counsel believes the language of N.J.S.A. 48:3-87(e)(4) prohibits allowing multiple metered accounts on a site to be deemed to constitute one net metering billing account. N.J.S.A. 48:3-87(e)(4) specifically states that:

> For the customer's facility or property on which the solar electric generation system is installed, the electricity generated from the customer's solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1) of this subsection to provide that the electricity generated in excess of the electricity supplied by the electric power supplier or the electricity supplied by the electric power supplier or the basic generation service provider, as the case may be, for the customer's facility on which the solar electric generation system is installed, over the annualized period, is credited at the electric power supplier's or the basic generation service provider's avoided cost of wholesale power or the PJM electric power pool real-time locational marginal pricing rate. (Emphasis supplied.)

The statute thus recognizes that the opportunity cost of generation is best reflected by some measure of a wholesale rate, not something akin to a fully-bundled retail rate, and therefore places strict limits on the scope of the allowable "retail credit," limiting such credit to the "facility or property" where the generation is installed.

The Board should reject suggestions that the word "property" be given a broad definition that would extend the retail credit to separately metered accounts on a large campus-like setting. Such a suggestion was made by the Solar Energy Industries Association ("SEIA") at the November 9, 2012 Public Hearing regarding the overall provisions of the Solar Act. On November 21, 2012 Rate Counsel submitted comments opposing such a practice as inconsistent with the statutory intent of N.J.S.A. 48:3-87(e)(4.). As explained in Rate Counsel's earlier comments, the word "or property" as it appears in the statue was intended to cover situations in which the solar generating equipment is not installed on a roof or otherwise made part of an existing structure, but instead is installed adjacent to one of the customer's facilities on the same property. Rate Counsel believes the statute intended for a host facility to be limited to just that--one metered facility, and not all separately metered accounts owed by the governmental agency on contiguous land in a campus-like setting. It was not intended to extend the "retail" net metering credit to multiple buildings served by multiple meters. The carefully limited statutory language was extensively debated. The Board should not interpret the language in a way that alters the outcome of those debates.

2. *What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?*

N.J.S.A. 48:3-87(e)(4) is unclear regarding its intended purpose for the provision that "Any incremental cost to an electric public utility for net metering aggregation shall be fully and timely recovered in a manner to be determined by the board." Rate Counsel believes cost recovery associated with any "incremental costs" should be handled in a manner similar to how the Board currently permits recovery of costs associated with net metering per N.J.S.A. 48:3-87(e)(2):

> Such standards or rules (adopted by the Board) shall take into consideration the goals of the New Jersey Energy Master Plan, applicable industry standards, and the standards of other states and the Institute of Electrical and Electronic Engineers. The board shall allow electric public utilities to recover the costs of any new net meters, upgraded net meters, system reinforcements or upgrades, and interconnection costs through either their regulated rates or from the net metering customer-generator. (Emphasis supplied.)

Rate Counsel stresses that in keeping with the principle of cost-causation, direct costs associated with any aggregated net metered project, such as interconnection costs, should be recovered directly from the applicable public entity rather than through regulated rates. This prevents important cross-subsidization between rate classes, and is furthermore consistent with current practices regarding standard net metering.

Rate Counsel also believes it is important for all participating parties and the Board to fully understand the incremental costs associated with aggregated net metering before creating any policy regarding cost recovery. Rate Counsel supports the general purpose of OCE's question seeking information regarding the nature of such costs, but believes the OCE should go a step farther and actively seek input from the State's electric distribution companies ("EDCs") regarding the scope and nature of any such costs before the next convening of the Net Metering and Interconnection Stakeholders Committee.

3. *Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.*

Rate Counsel believes N.J.S.A. 48:3-87(e)(4) prohibits solar generation systems being owned by a third party in the context of aggregated net metering, requiring instead that the system to be owned by the aggregated public entity. The statute states that the public entity customer may "contract" with a third party to "operate" a solar generation system, but omits to include references to ownership. This omission is noteworthy as the phrase "owned or operated" appears in several other locations in the Solar Act, indicating that the omission of a reference to ownership is intentional.[1] The lack of a provision permitting third-party ownership, together with the specific requirement that the system be located "on property owned by the customer," is a clear indication that the statute was intended to permit third party operation but not ownership. Rate Counsel further suggests that the Legislature may have prohibited ownership by third parties in order to prevent large grid-supply projects from circumventing Board oversight by partnering with a public entity through aggregated net metering.

4. *May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?*

N.J.S.A. 48:3-87(e)(4) states that: "The standards shall provide that in order to qualify for net metering aggregation, the customer's solar electric power generation system shall be sized so that its annual generation does not exceed the combine metered annual energy usage of the qualified customer facilities, and the qualified customer facilities shall all be in the same customer rate class under the applicable electric public utility tariff." (Emphasis supplied.) Rate Counsel furthermore notes that it is clear that the term "qualified customer facilities" is intend to

[1] In addition to appearing elsewhere in N.J.S.A. 48:3-87(e)(4), the phrase "owned or operated" appears in the new definition of "Connected to the distribution system," N.J.S.A. 43:3-49, and in N.J.S.A. 48:3-87 (t)(1) (twice), -87(t)(2), -87(w) (twice) and -87(x).

apply to both host and satellite sites: "All electricity used by the customer's qualified facilities, with the exception of the facility or property on which the solar electric power generation system is installed, shall be billed at the full retail rate pursuant to the electric public utility tariff applicable to the customer class of the customer using the electricity." (Emphasis supplied.) Thus, the statue is clear in requiring the customer's host site facility and all satellite facilities to be in the same rate class.

5. *May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?*

It is unclear whether Staff's question is intended to refer to qualifications for retail credit or to qualifications for aggregated net metering in general. As discussed under item 1 above, the statue limits the retail credit to a single metered facility. Regarding the general qualifications for aggregated net metering, N.J.S.A. 48:3-87(e)(4) refers to a customer as "a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority." Rate Counsel believes that this statutory language allows a school district to construct a solar generation system at one of its facilities sized against the metered annual energy usage of all of its facilities receiving service from the same provider under the same utility rate class. Annual generation in excess of the electric usage of the host site facility would be credited "at the electric power supplier's or the basic generation service provider's avoided cost of wholesale power or the PJM electric power pool real-time location marginal pricing rate."

II. Adoption of Criteria for Future Projects

Rate Counsel believes any discussion regarding aggregated net metering should be cognizant of the current predicament of the solar energy markets within New Jersey. Solar energy markets have changed considerably from just a couple years ago when New Jersey was consistently experiencing shortfalls in the number of available Solar Energy Renewable Certificates ("SRECs"). The global economic contraction, combined with the increase in solar panel manufacturing, have led to what some renewable energy market analysts have referred to as a "new normal" in the New Jersey solar energy markets. Gone are the days of consistent undersupply and SREC prices traded at or near the Solar Alternative Compliance Payment. The "new normal" for the New Jersey solar market consists of relatively steady and strong solar installation rates with lower and more stable SREC prices.

In recognizing the changing nature of the solar energy market, the recently passed Solar Act included a section requiring the Board to "investigate approaches to mitigate solar development volatility." The OCE through its Renewable Energy Committee is currently seeking input from parties regarding just this question posed by the Legislature. Rate Counsel cautions the Board against developing overly generous aggregated net metering standards or using broad language in its development, as such standards may ultimately undermine other Board policies intended to

bring the current solar market into balance and reduce solar development volatility per the Solar Act.

Rate Counsel recommends that in light of the Solar Act's intention to reduce volatility within the solar development market, the Board should adopt within its rulemaking criteria governing approval of future aggregated net metering projects. Such criteria could alleviate or manage the possibility of overloading an already inundated market by allowing the granting of approval for such projects only when it is deemed such projects are necessary for the New Jersey to reach its renewable energy generation requirement under the State's Renewable Portfolio Standard. This would prevent such development from adversely affecting the existing solar energy market.