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June 8, 2022

Members of the Senate Environment & Energy Committee  
P.O. Box 099  
Trenton, N.J. 08625

**RE: S2732 (Extends certain deadlines for completion and commercial operation of solar electric power generation facilities under certain circumstances.)**

Members of the Senate Environment & Energy Committee:

I write on behalf of the Division of Rate Counsel regarding S2732/A4089 (Extends certain deadlines for completion and commercial operation of certain solar electric power generation facilities under certain circumstances), which is up for consideration before the committee on Thursday, June 9, 2022. I regret that I am unable to attend the committee's meeting due to prior commitments, but hope you will consider our comments. Please note, Rate Counsel also sent the Assembly Telecommunications and Utilities Committee a letter on June 1, 2022, about our concerns with the companion bill A4089. **Rate Counsel is opposed to this bill since it will inevitably result in increased rates for utility ratepayers. Additionally, this bill will stand in the place of the Board of Public Utility's ("Board") expertise and thwart the Board's ability to maintain discretion over whether to grant extensions of deadlines to qualify for financial incentives to solar projects and developers. Since ratepayers ultimately pay these incentives, automatic extensions will result in higher utility rates.**

As you are aware, Rate Counsel represents and protects the interests of all utility customers – residential customers, small business customers, small and large industrial customers, schools, libraries, and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel also gives consumers a voice in setting energy, water, and telecommunications policy that will affect the rendering of utility services well into the future.

This bill will result in additional incentives, and since ratepayers ultimately fund these financial incentives, this bill will increase utility rates. The bill automatically extends the deadlines for completion and commercial operation of "subsection (t)" solar projects (i.e. projects sited on landfill, brownfields, and areas of historic fill) that applied for incentives under the Board's legacy Solar Renewable Energy Certificate Registration Program ("SRP"), and were later transferred to the Transition Incentive ("TI") program. These projects would be able to

claim an automatic extension upon the submission of a certification by the project sponsor that a “tolling event” had occurred. “Tolling event” is defined broadly in the legislation as including any “action or inaction” by PJM Interconnection, L.L.C. (“PJM”) or an electric utility that delays the completion or commercial operation of the facility.

This bill effectively takes away the Board’s ability to deny extensions to solar developers. It directly conflicts with the Board’s intention and expertise since the Board has purposely designed its solar incentive programs to reduce incentives over time and encourage more market competition in the solar industry. Additionally, under this bill, the Board would be prohibited from even investigating the factual accuracy of the certification. The legislation would dictate the duration of the extension, which would continue through the conclusion of the “tolling event” and would expire only at the conclusion time allowed for completion and commercial operation under the Interconnection Service Agreement amount the project sponsor, PJM and the utility.

Rate Counsel opposes this bill, because it would eliminate the Board’s ability to enforce any deadlines for the affected solar projects, and result in the payment of substantial excess incentives to these projects. As noted, the projects covered by the proposed legislation are subsection (t) projects which, by definition, are projects that originally applied for incentives prior to the closure of the SRP program on April 30, 2021. The Board’s regulations for the TI Program gave these projects until October 30, 2021 to achieve commercial operation, and this deadline was extended to April 30, 2022 under a Board Order granting a blanket six-month extension to all TI projects that had submitted a complete registration package to the Board prior to the date of the Order.<sup>1</sup>

The legislation would allow indefinite additional extensions of the deadlines for former subsection (t) projects. Further, as noted, the Board would not be permitted to conduct any review of the project sponsors’ certifications. This highly unusual provision would prevent the Board from performing its fundamental duty as a regulator to assure that the relief it grants is based on a properly evaluated factual record. In effect, the extensions would be obtained based on unilateral actions of the project sponsors.

The projects and solar developers that that would be the beneficiaries of this legislation are not without recourse. They can apply for incentives under the initial phase of the SuSI program, known as the Administratively Determined Incentive (“ADI”) Program. The ADI program includes an Interim Subsection (t) market segment that is available to former subsection (t) projects up to 75 megawatts of total capacity.<sup>2</sup> While the incentives under the ADI program are lower than the TI incentives, they were set by the Board at levels that should be adequate for projects that achieve commercial operation in the later time frames contemplated under the ADI program.<sup>3</sup>

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<sup>1</sup> I/M/O a New Jersey Solar Transition Pursuant To P.L. 2018, C.17 – Order Addressing Requests For Extension For Projects In The Solar Transition Incentive Program, BPU Docket Nos. QO19010068 & QO21060883 (June 24, 2021).

<sup>2</sup> I/M/O a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Dkt No. QO20020184, Order at 26 (Jul. 28, 2021) (“SuSI Order”).

<sup>3</sup> SuSI Order at 7, 16, 23, 49 (Jul. 28, 2021).

As the Board noted in a recent Order, the allowance of repeated extensions for all of the former subsection (t) projects could substantially increase the costs of the TI program, which was intended to be only a temporary bridge between the SRP and the SuSI program.<sup>4</sup> In addition, the indefinite extensions allowed by the legislation would undermine the project sponsors' incentives to complete these projects on a timely manner. As the Board has noted, the public has a substantial interest in the timely completion of solar projects.<sup>5</sup> Moreover, ratepayers can only fund so much in incentives. If the former subsection (t) projects receive unnecessarily high incentives, it will decrease the funds available for other projects that could be completed on a more timely basis.

Rate Counsel supports the goals of the Energy Master Plan, but must oppose this legislation. As the Committee is aware, there are many New Jersey residents and businesses that are struggling to pay their electric bills. The COVID-19 pandemic has been especially financially challenging to many households and families. Although the moratorium on utility shut-offs was recently extended for households that are seeking financial assistance, there are nearly 1 million utility customers in arrears on their utility bills. It is clear that many ratepayers will face the real threat of losing utility service at some point. Rate Counsel urges the Committee not to add to the burdens already faced by the State's electric utility ratepayers to lock in unnecessarily high subsidies for some solar projects.

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<sup>4</sup> See, I/M/O a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17; I/M/O the Implementation of L. 2012, c. 24 N.J.S.A. 48:3-87(t) – A Proceeding to Establish a Program to Provide SRECs to Certified Brownfield, Historic Fill and Landfill Facilities; Syncarpha GEMS, LLC GEMS Landfill – Petition for Extension of Expiration Date under Transition Incentive Program, BPU Dkt. Nos. EO12090832V, EO12090862V & QO18010053 Order at 7 (Dec. 15, 2021).

<sup>5</sup> Id.

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We hope you will consider our comments and urge you to not pass this bill out of committee. Please let us know if you have any questions. We very much appreciate the opportunity to share our comments on behalf of the State's ratepayers. Please feel free to contact our office if you have any questions. Thank you for your attention to these important matters.

Sincerely,

*/s/ Brian O. Lipman*

Brian O. Lipman  
Director, Division of Rate Counsel

c:

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