



State of New Jersey  
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May 13, 2022

Members of the Senate Environment and Energy Committee  
Statehouse Annex  
P.O. Box 068  
Trenton, N. J. 08625

**RE: S439 (Directs BPU to establish process to maintain supply and demand for solar renewable energy certificates.)**

Members of the Senate Environment and Energy Committee:

I write on behalf of the Division of Rate Counsel regarding S439 (Directs BPU to maintain supply and demand for solar renewable energy certificates), which is up before the committee on May 16, 2022. I regret that I won't be able to attend the meeting, but hope you will consider our comments. We have concerns that this bill will increase the financial burden on ratepayers as it perpetuates continued over subsidization of legacy solar.

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. The 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 would require the Board of Public Utilities (“BPU”) or (“Board”) to manage the market for Solar Renewable Energy Certificates (“SRECs”) that were issued under the legacy SREC program. The Board would be required to establish a process to assess the legacy SREC program and adjust the renewable portfolio requirements for legacy SRECs in order to “maintain an appropriate value for SRECs, which is consistent with the historical relationship between the value of the SREC and the value of the solar alternative compliance payment, as determined by the board ....” This process would continue through Energy Year 2035. Rate Counsel has several serious concerns about the bill.

First, it is important to recognize that this bill would not lead to a single penny of new solar investment. The legacy SREC program that is the subject of this legislation has been closed to new entrants since the end of April, 2020. No more solar will be built under this program. This bill is about providing a guarantee that the owners of the legacy solar facilities will recover the compensation they desire for solar that has already been built, a guarantee they explicitly did not have at the time they chose to build.

Second, the objective appears to be to direct the Board to maintain legacy SREC prices at or near the SACP. These prices are higher than necessary to compensate owners of the legacy SREC project for their investments. The owners of these projects never had any guarantee that they would receive any specific values for SRECs. Therefore, the SREC values that were assumed by investors when the projects were built were heavily discounted from current SREC prices. In other words, investments were not made based on the assumption that SREC values would remain high for the life of the project. While the legacy project owners may desire SREC values at or near the SACP through 2035, they can be fairly compensated at lower SREC values.

A 2018 decision of the United States Court of Appeals for the Third Circuit is relevant here. That decision held that the property rights of holders of taxi medallions issued by the City of Newark were not violated when an agreement with a ride-sharing provider reduced the market value of the medallions. As the court explained, the value of the medallions was subject to the expectation that there could be regulatory change, and therefore an action that reduced the value of the medallions was not a “taking.” Newark Cab Ass’n v. City of Newark, 901 F.3d 146, 153 (3d Cir 2018). This same principle applies to legacy SRECs. The owners of the legacy solar projects have been aware from the outset that there was no guarantee that SREC values would be maintained at the levels they preferred.

Since this bill would perpetuate ratepayers’ historic over-subsidization of the legacy solar projects, we urge that it not be passed out of committee in its present form. If the Committee wishes to consider this bill, it should be amended to direct the Board to set SREC values that will provide the legacy projects with reasonable, but not excessive compensation. The following is suggested language in lieu of Section 1 of the bill:

The board shall adopt, pursuant to the “Administrative Procedure Act,” P.L. 1968, c.410 (C. 52:14B-1 et seq.) rule and regulations to establish values for SRECs that will provide fair compensation for the investments in the solar facilities generating the SRECs. No later than 270 days after the effective date of this section, the board shall file, with the Office of Administrative Law, a notice of a proposed rule to establish the process required by this section.

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 fund additional subsidies that are not needed to fairly compensate the owners of the legacy solar projects, and that will do nothing to advance the State's clean energy goals.

We hope you will consider our comments. 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/s Brian Lipman,*

Brian O. Lipman, Esq.

Director, Division of Rate Counsel

c: Kevil Duhon, Deputy Executive Director at New Jersey Senate Democratic Office  
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