



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

October 18, 2019

By Hand-Delivery and Electronic Mail

Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 S. Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: New Jersey Division of Rate Counsel
Comments on New Jersey's Solar Transition Revised 2019/2020
Incentive Staff Straw Proposal and Modeling Addendum**

Dear Secretary Camacho-Welch:

Enclosed please find the original and ten 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
Director, Division of Rate Counsel

By:

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

c: solar.transitions@bpu.nj.gov
OCE@bpu.state.nj.us
Paul E. Flanagan, BPU
Sara Bluhm, BPU
Kelly Mooij, BPU
Sherri Jones, BPU
Abe Silverman, BPU
Scott Hunter, BPU
Rachel Boylan, BPU

In re: New Jersey's Solar Market Transition)
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October 18, 2019

1. Introduction

The Division of Rate Counsel (“Rate Counsel”) thanks the Board of Public Utilities (“Board” or “BPU”) for the opportunity to provide comments on Staff’s Solar Transition Incentive Straw Proposal. The ongoing Solar Transition proceeding was initiated by the Clean Energy Act (P.L.2018, c.17) (“Act”) which directs the Board to transition the solar market away from current solar financing methods based on the use of Solar Renewable Energy Certificates (“SRECs”) to a new program that will continue the efficient and orderly development of solar energy generation.

Specifically, the 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 (hereafter the “threshold level”), and no later than June 1, 2021. In October 2018, Staff issued a notice seeking stakeholder input on this transition and scheduled a stakeholder meeting. Rate Counsel provided public testimony and responded to Staff’s initial request for comments.

During the course of this Solar Transition proceeding Staff has recommended that the transition be addressed in three phases:

1. The closure of the current SREC market to new registrations upon attainment of 5.1 percent of the energy sold in New Jersey being generated by solar facilities. These “legacy” installations will include those installed and operational prior to the statutory threshold of 5.1 percent being met;
2. The Transition Program, which would be available to projects that have registered with the SRC program but have not yet started commercial operation at the time the 5.1 percent target is achieved; and

3. The Successor Program, which would be developed for all projects that had not registered with the SREC program prior to the 5.1 percent threshold.

On August 22, 2019, Staff issued the “2019/2020 Transition Incentive Staff Straw Proposal” for public comment and included a set of 18 specific implementation and policy questions. To assist with the phases of the solar transition proceeding, Staff retained Cadmus and Sustainable Energy Advantage as Solar Transition Consultants (“Staff Consultants”). The proposed options for the Transition Incentive (“TI”) were based on the consultants’ analysis and report.¹ As a result of input received from stakeholders, Staff directed the Staff Consultants to modify its modeling assumptions and develop an updated set of results. A revised TI proposal was issued on October 3, 2019.

The Transition Incentive Staff Straw Proposal (hereafter referred to as the “TI Proposal”) is limited to installations in the Transition Program. At this point, Staff has not made any specific proposals regarding legacy or successor installations. Staff proposes that transition projects be allowed to earn what they refer to as Transition RECs or “TRECs.” Like SRECs, these TRECs will also have a 15-year qualification life. The TI Proposal seeks comment on two different ways in which these TRECs can be “valued.”

The first, Valuation Option #1, is based on the Staff Consultants’ recommendation to structure the TI in a way that is almost identical in structure to the current SREC legacy program. It includes a demand obligation-based design with tradeable certificates, just as the current SREC legacy program does. This option includes a TI Alternative Compliance Payment (“TI-ACP”) that is “customized” to ensure that the TI does not exceed the RPS compliance cost cap established in the Act: TI-ACP prices are set at lower levels during the so-called “kink” period

¹ Sustainable Energy Advantage and Cadmus. 2019. Transition incentive supporting analysis & recommendations. Prepared for New Jersey Board of Public Utilities.

from Energy Years 2021 through 2023, then would almost triple (from \$259 to \$719) because cost cap “headroom” will be available after Energy Year 2023. An important difference between this proposed valuation method and the current SREC program is that it applies “SREC Factors” to different project types to allow for variations in incentives (e.g., landfills/brownfields, community solar). Staff proposes that smaller net metered installations receive one-half of the value of a TREC compared to a “preferred siting” category that would receive a full-value TREC.

Staff’s proposed Valuation Option #2 is a fixed-price TREC based on the Staff Consultants’ modeling and would serve as a benchmark price upon which the SREC Factors would also be applied. These fixed prices are also set lower in Energy Years 2021 through 2023 so they do not exceed the cost cap, then increased for the twelve years thereafter. Staff’s original proposal, the proposed pre-factoring prices were \$65, \$59 and \$53 in Energy Years 2021, 2022 and 2023 respectively, followed by a three-fold increase from the Energy Year 2023 price to \$155, which would remain in effect through Energy Year 2035.

The revised proposal offers the same pre-factoring prices for Energy Years 2021, 2022 and 2023. However, it is not clear what prices Staff is proposing for Energy Year 2023 through 2035. As in the original proposal, the Revised Straw proposal stated Valuation Option #2 would be compensated at a fixed price using Staff Consultants’ modeled scenario “Transition Incentive 3” (“TI-3”) “with elements of” “Transition Incentive 4” (“TI-4”). However, Staff’s original proposal showed a single price schedule for these scenarios, while Revised Table 1, appearing at page 6 of the Revised Straw Proposal, shows a range of possible results of the “TI-4” modeling scenario. One of these, corresponding to the consultants’ “base cost” assumptions and a 15-year TREC, results in the same TREC prices as the “TI-3” scenario, with an SREC price of \$189 in

Energy Years 2023 through 2035. However, Staff has also presented the results of four other variations of the “TI-4” modeling scenario, reflecting different cost assumptions and TREC terms, resulting in TREC prices ranging from \$119 to \$370 starting with Energy Year 2023. The Revised Straw Proposal gives no indication which of these variations would be considered in setting TREC prices.

2. Rate Counsel General Comments

Preliminarily, Rate Counsel notes the short time frames provided to prepare for the stakeholder meetings and to submit written comments. In addition, as noted in the preceding section, Staff’s current proposal under Valuation Option #2 is unclear. Thus, Rate Counsel is submitting these comments while reserving our right to argue, in further proceedings before the Board or in the event of an appeal, that the Board failed to provide sufficient notice and opportunity for comment to meet the requirements of due process. See In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339 (2011).

Rate Counsel encourages the Board to restructure New Jersey’s solar market in a manner consistent with the clear legislative intent of the Act which calls upon the Board to establish a mechanism that will be “efficient” and “orderly” and “to continually reduce” the cost of achieving solar energy goals. It also requires the program to be modified to allow for the utilization of “competitive processes such as competitive procurement and long-term contracts.” N.J.S.A. 48:3-87(d)(3). Most importantly, the Act emphasizes this intent by establishing a cost cap to protect ratepayers from incurring excessive RPS compliance costs. In addition, the Board is required to implement its responsibilities with regard to renewable energy in a manner that “make[s] energy services more affordable for low- and moderate-income customers’ and to

“transform the renewable energy market into one that can move forward without subsidies.”
N.J.S.A. 48:3-87(l)(5).

Rate Counsel is concerned that the TI Proposal offered by Staff and its consultants, treats the Act’s cost cap as a de facto “floor” rather than a cap. Both proposed valuation options attempt to maximize value for solar installations, not minimize costs for New Jersey ratepayers. Further, manipulating TI-ACP prices to maximize financial headroom under the cost cap is clearly inconsistent with the Act’s intent of minimizing costs (not maximizing solar financial returns). Rate Counsel strongly encourages the Board to adopt an incentive mechanism for both existing (legacy) and transition solar installations in a fashion that is aggressive, reflects lower installed cost market trends, and reduces ratepayer transition costs.

Throughout this proceeding, in both public testimony and written comments, Rate Counsel urged the Board to keep in mind the ratepayer implications of this solar transition and encouraged the Board to pursue actions that lead to an aggressive reduction in solar development costs for ratepayers. This should be the primary goal of the transition process and as well as any future incentive programs.

Rate Counsel has a strong interest in seeing that the Act’s provisions are met with the least cost and disruption to the State’s ratepayers. A recent report prepared by Monitoring Analytics, the independent market monitor for PJM Interconnection showed that New Jersey paid approximately \$606 million in RPS compliance costs in 2017, compared to a total of \$809 million for all of PJM.² This demonstrates that New Jersey, as compared to other states in PJM, has been paying far too much for RPS compliance. We believe this fact was recognized by the Legislature when it called for changes to New Jersey’s solar programs in the Clean Energy Act and the establishment of hard caps on RPS compliance costs going forward.

² Monitoring Analytics, LLC, Carbon Pricing Education (2019). See www.MonitoringAnalytics.com.

The proposal to value TRECs using a price-setting mechanism with tradeable TRECs that is directly comparable to the current SREC program flies in the face of the Act's objective of replacing the current program with a more cost-effective mechanism. Since the program's inception, ratepayers have spent over \$2.6 billion on SRECs.³ And today, despite sufficient supply, SREC prices are on the rise, increasing almost 10 percent since the beginning of the year. Recently reported SREC prices are as high as \$240 per MWh.⁴ In fact, current SREC prices are 45 percent higher than prices offered and accepted over one year ago in the ninth round of solicitations in the competitively-bid SREC-Based Financing Program ("SREC II Program").⁵ Rate Counsel views the TI Proposals first valuation option as nothing more than the status quo using the term "TREC" rather than "SREC".

The TI Proposal's Valuation Option #1 may have "tradeable TRECs" with the intent of allowing "market forces to set the value of each TREC," however it has no hallmarks of competition. The number of projects installed and TRECs generated will be set and remain constant once a Successor Program is started, meaning there will be no new entries to the market. Market participants will understand the fixed nature of this market and will likely bid their TRECs at a price close to the TACP. This outcome is not consistent with the Act's objective of reducing and ultimately eliminating subsidies. It will drive up ratepayer supported transition costs.

The Board must adopt a solar market design that ends the over-subsidization solar installations in New Jersey, particularly for legacy and transition solar installations. Rate

³ This figure represents the total cost of SRECs and SACP from Energy Year 2005 through Energy Year 2018. See New Jersey RPS Compliance History, available at:

<http://njcleanenergy.com/files/file/rps/EY18/RPS%20Comp%20EY%202005-2018.pdf>.

⁴ S&P Global Market Intelligence. 2019. NJ solar renewable energy credit prices extend gains on active buying. August 26.

⁵ Docket Nos. EO12090799, EO12080750, and EO13020118, Order dated August 29, 2018.

Counsel estimates that a residential project installed in 2012 at a cost of \$6.35 per watt, using historic SREC prices would earn a return of 16.8 percent. Similarly, a large-scale commercial project installed in 2012 at a cost of \$5.45 per watt would earn a return of 18.8 percent. If legacy SREC prices were lowered to \$100 in 2021, both projects would still be earning a 15 percent to 17 percent return.

The development of any solar incentive mechanism should be focused on establishing the lowest price necessary to stimulate investment and encourage development, rather than determining the highest price we can allow without exceeding the cost cap. Thus, given the options presented, Rate Counsel recommends Valuation Option #2. Rate Counsel finds that a fixed price TREC, established by Board order with the compliance obligation placed on EDCs to be the only suitable option. This option represents a lowest overall cost to ratepayers than Valuation Option #1. As noted by Staff this option would be “relatively easy to implement” and offers ratepayers the least cost and most head room under the cost cap. Given the restriction of the cost cap, the higher prices proposed under Valuation Option #1 may actually allow for less solar development, which clearly runs contrary to the intent of the Act. Rate Counsel notes also that the Staff Consultants are now recommending that the Board adopt the fixed price option. As explained at page 30 of their September 25, 2019 Addendum to their original report, this option better balances the objectives of “sustained solar growth, cost mitigation and Cost Cap adherence.”

Historically, Rate Counsel has opposed the use of adders, set-asides and other incentives that are design to encourage one type of solar installation over another. This includes establishing targets for installation types or market segments. Thus, Rate Counsel views the current Board proposal of “factorization” with a high degree of skepticism.

Rate Counsel is also concerned with the TI Proposal to set TREC and/or TACP prices in a manner that reflects a “kink” in the payment schedule starting out with low prices and accelerating after a three-year period once the Act’s renewable cost cap restrictions are lessened. On its face, this approach seems to be an attempt to maximize the contribution to solar installations rather than minimize the overall cost of solar development that should (but does not) include legacy, transition, and successor installations. In addition, from a conceptual viewpoint, an ACP/SACP is an alternative price that must be paid if load serving entities are unable to generate or purchase enough RECs/SRECs and are set on a decreasing scale to reflect the decreasing cost of solar technology. The TI Proposal sets TACP prices in a manner that is entirely inconsistent with the Board’s past practice of establishing a consistently declining schedule of SACP prices over time. Never before has the Board developed a set of SACP prices that are initially low, but then increase substantially, and remain constant.

However, given the fact that Staff has structured this solar transition on a piecemeal basis (i.e., addressing transition issues entirely independent of legacy and successor installation policies), and because the Act’s renewable cost cap is, as it should be, a meaningful and binding constraint on the Board’s solar policies, Rate Counsel sees no other practical option but to choose the TI Proposal’s Valuation Option #2. The proposed fixed TREC price schedule with factorization, despite being inefficient, piecemeal, and highly subjective (in the use of factors) should result in lower ratepayer costs relative to the other proposed valuation techniques offered in the TI Proposal. In regard to the various price schedules for TI-4 offered in Revised Table 1 reflecting different cost profiles and incentive terms, Rate Counsel recommends the “Low Cost – 20 Year” price of \$119 as it results in the lowest net present value (“NPV”) and as stated by the Staff Consultants “would provide greater ratepayer cost savings relative to other options.”

While Rate Counsel typically does not support the use of creating market segments, Rate Counsel believes that the proposed TREC prices with factorization will continue to encourage solar development while minimizing ratepayer costs. If Board Staff decides at a later date, to abandon or change its factorization multipliers, then the proposed fixed TREC prices will also have to be adjusted in a corresponding manner.

3. Rate Counsel Responses to Staff Questions

General Structure of the proposed Transition Incentive

(1) What are the potential advantages and challenges of Staff's proposed Transition Incentive design?

Comment:

Please see Rate Counsel's general comments offered above. Rate Counsel's foremost concern with the TI Proposal is that: (a) it seeks, in large part, to preserve the status quo and is entirely inconsistent with the cost-saving intent of the Clean Energy Act; (b) it attempts to maximize return to solar installations rather than minimize ratepayer costs; and (c) it could be administratively burdensome and lead to confusion.

(2) What are the advantages and challenges to the two approaches; a fixed price TREC and a market based TREC?

Comment:

Please see Rate Counsel's general comments offered above. Rate Counsel recommends that the Board establish a schedule of fixed payments for both legacy and transition projects to: (a) reduce overall ratepayer costs; (b) maintain some form of consistency and continuity between the two sets of installations; and (c) reduce uncertainty about the cost of the legacy and transition programs so that an appropriate focus can be placed on a competitive market-based successor program.

- (3) Does the proposed Transition Incentive provide sufficient financial surety for projects currently in the SRP pipeline that may not reach commercial operations prior to the closure of the SREC market to new entrants?**

Comment:

This question belies the misguided nature and orientation of the TI Proposal. The Board's policy goal should not be to provide solar installations with "financial surety;" the goal should be to minimize ratepayer and administrative costs. Rate Counsel believes the fixed price schedule with factorization multipliers offered in Valuation Option #2 is the better of the two options offered by Staff.

- (4) How can the Board most accurately predict the amount of capacity expected to be in the SRP pipeline at the time the 5.1% Milestone is hit? During what timeframe in the transition process, would a final determination of the size of the pipeline of eligible projects be required? Should there be a true-up?**

Comment:

This forecast was provided by the Staff Consultants in their report and Attachment 1.

Eligibility

- (5) How should the Board treat projects entering the SRP pipeline that have not 1) filed a complete SRP Registration or received conditional certification from the Board after October 29, 2018, and 2) have not commenced commercial operation upon the Board's determination that the 5.1% Milestone has been attained?**

Comment:

Any projects in the pipeline that have not filed a complete registration or received approval and have not commenced commercial operation upon the Board's determination of 5.1 percent attainment should be placed in the Successor Program. Please see continued response to Question 6 below.

- (6) **Should the Board cease accepting new registrations to the SREC Registration Program, and begin only accepting registrations to a new Transition Incentive cluster?**

Comment:

Yes. In our comments filed in November 2018, Rate Counsel recommended that closure of the SREC program is already past due. And, as highlighted in our general comments above, legacy SREC prices are too high, and have been for far too long. And, for projects built today, ratepayers will remain on the hook paying these inflated prices for another 15 years. In order to meet the State's clean energy goals with the remaining financial resources available (i.e., cost cap), it is necessary to reduce the cost of solar development and close the legacy SREC program.

Terms for each TREC

- (7) **Please discuss the proposed 15 year TREC term, with appropriate justification for any recommended changes.**

Comment:

Rate Counsel disagrees with the use of qualification lives since this presumes that a tradable permit-based market design is acceptable and consistent with the Clean Energy Act. As we have noted in several places in these comments, the Board should set an administratively determined schedule of fixed prices for legacy and transition projects.

In order to avoid misunderstanding, the Board should clarify that acceptance of payments results in a transfer of all rights to the solar attributes represented by the TRECs. Cf. I/M/O the Ownership of Renewable Energy Certificates ("RECs") Under the Electric Discount and Energy Competition Act, as it Pertains to Non-Utility Generators and the Board's Renewable Energy Portfolio Standards, BPU Dkt. No. EO04080897 (Apr. 20, 2005). In the event of the enactment of a carbon tax or other development that creates economic benefits resulting from the solar attributes, those benefits would need to be evaluated and appropriate compensation paid for the

benefit of ratepayers. Alternatively, the fixed payments could cease in the event of a carbon tax or other development intended to provide an economic advantage to solar generation.

Value of a TREC

- (8) Are the TI-ACP schedules proposed to be associated with each compliance entity option appropriate? If modifications are required, how should the schedules be adjusted and why?**

Comment:

No. Given the history and performance of the current legacy SREC program, Rate Counsel can no longer support a supply-demand driven ACP derived format. Despite the fact that both the SACP and solar installation costs have decreased significantly, there has not been a corresponding decrease in SREC prices. Please see Rate Counsel's general comments offered above which discuss the experience and shortcomings of the current SREC program.

- (9) Please critique the proposal of a "custom" TI-ACP which is relatively low in EY21, EY22 and EY23 and increases thereafter, keeping in mind the statutory cost cap the program must operate under.**

Comment:

Please see Rate Counsel's general comments above

- (10) What are the implications of establishing a "Buyer of Last Resort" and floor price mechanism for the TREC market? What factors should Staff consider in recommending how a purchase price is established?**

Comment:

Please see Rate Counsel's general comments offered above. Rate Counsel does not support a market-determined price and recommends an administratively set schedule of prices for legacy and transition solar installations.

- (11) When and how should a floor price be established to provide the maximum benefit to ratepayers, developers, investors?**

Comment:

Rate Counsel does not support tradeable TRECs and recommends an administratively-determined fixed-price TREC. A floor price would only be applicable to demand obligation-based design with tradeable TRECs. Rate Counsel discourages the use of tradeable market-based TRECs as well as a floor price. The primary goal of this transition process as well as any future incentive programs should be to reduce ratepayer costs and exposure. Establishing a floor price, or minimum value would only serve to insulate solar developers, not ratepayers. This would also be inconsistent with the legislative intent of the Act. Please also see Rate Counsel's general comments offered above.

- (12) Would the availability of a floor price above the NJ Class I ACP provide any reduction in finance costs for eligible projects?**

Comment:

Rate Counsel does not support a market-determined price and recommends a fixed-price TREC. Please see Rate Counsel's general comments offered above.

Factorization of TRECs

- (13) Do you agree with the proposed categories of factors? Why or why not?**

Comment:

As stated in our general comments, Rate Counsel typically does not support the use of adders or market segmentation as it represents an attempt to micromanage a set of solar sub-markets that the Act clearly intends for the Board to eliminate. Rate Counsel has discouraged, and continues to discourage, the use of set asides or market segmentation for solar installations

such as those in landfills, brownfields or areas of historic fill. The fact that stakeholders cannot agree on an appropriate degree, or specific level of factorization, underscores this fact.

Rate Counsel has not had the opportunity to review the underlying workpapers and calculations upon which these factors are based so formulating a definitive position on the specific factor proposals is difficult at this time. The only description provided is that TREC factors are computed by dividing the cost of entry (“COE”) of each incentive group by the COE of the highest cost incentive group. However, Rate Counsel understands that Staff Consultants have established these factors, based upon the surveyed economics of various types of solar installations. And, given the framework of the TI Proposal and the manner in which the TREC factors were developed, Rate Counsel can generally support the fixed price schedule with factorization offered in Valuation Option #2.

Rate Counsel takes exception however to the revised factorization multiplier for net metered projects. In its original TI proposal, Staff offered a 0.2 factor for smaller net metered systems which recognized that these mostly residential projects receive relatively stable energy savings and net metering revenues that help provide a considerable degree of financial support for their installation. The 0.2 factor, purportedly considered the lower financial risks associated with these types of residential projects and the fact that additional financial incentives may not be needed to facilitate smaller net metered projects. Rate Counsel supported the logic, at least, upon which these calculations are based and believed that they could help to lower overall ratepayer transition costs.

However, the revised TI proposal increased the factor for net metered systems from 0.2 to 0.5 is unacceptable. On its own, this revision may not seem like a large increase. However, coupled with the increase in proposed prices, it is a significant change. Consider that in the

original TI proposal, Valuation Option #2 had a price schedule of \$155 for TRECs after the “kink” period. Using a factorization for net metering of 0.2, this resulted in a TREC price of \$31. In the revised TI proposal, not only has the price increased to \$189, the net metering factor has also increased to 0.5, resulting in a TREC price of \$94, which is three times the originally proposed price and an increase of 205 percent. There is no reason why ratepayers should provide this amount of support.

Rate Counsel also notes that the way these proposed transition factors are being utilized is inconsistent with other competitive bidding practices and programs arising for solar energy incentives and development in other states. For instance, in previous comments, Rate Counsel recommended that the Board study the SMART Program currently used in Massachusetts. The SMART Program is designed to procure solar generating capacity based on long-term fixed-price contracts. A competitively-bid auction for large projects sets the clearing price or base rate. This base rate is then multiplied by a compensation factor to accommodate other higher-cost project types. These compensation factors are essentially the opposite of the factorization multipliers proposed in the TI Proposal. The TI Proposal offers an incentive rate for the highest-cost, least-competitive projects as a starting point rather than least-cost, most-competitive projects.

(14) Please address the financial incentive levels for each of the four project types.

Comment:

Please see Rate Counsel’s general comments and response to Question 13.

(15) Do you agree with the proposed assigned factors? Why or why not? Please provide documented explanations for your response.

Comment:

Please see Rate Counsel’s general comments and response to Question 13.

Compliance Entities

- (16) Please discuss the advantages and disadvantages of the two proposed options, i.e. having the compliance entities be 1) Third Party Electric Suppliers and Basic Generation Service Providers, or 2) the Electric Distribution Companies.**

Comment:

As noted by Staff in its proposal, a compliance obligation to purchase TRECs placed on TPS and BGS would imply a market-based tradeable TREC with value based on supply and demand. Rate Counsel does not support this format. Rate Counsel recommends a fixed TREC price, established by Board order for TRECs and that the compliance obligation placed on the EDCs.

- (17) Which of the two options is preferable for the Transition Incentive?**

Comment:

Rate Counsel prefers a fixed payment schedule for both legacy and transition solar installations.

- (18) Do parties agree that a fixed price TREC lends itself to the EDCs serving as the compliance entity, while a market-based price for TRECs lends itself to the TPS/BGS providers serving as the compliance entity?**

Comment:

Yes. A fixed price TREC would require the EDCs to procure and retire all TRECs at prices set by the Board, whereas a market-based, tradeable TREC would place the compliance obligation on TPS/BGS providers.