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January 31, 2020

**By Hand Delivery and Electronic Mail**

Honorable Aida Camacho-Welch, Secretary  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: Comments of the New Jersey Division of Rate Counsel on the  
Staff Straw Proposal on Defining the Clean Energy Act of 2018's  
Statutory Cost Caps—Items 2 and 3**

Dear Secretary Camacho-Welch:

Please accept for filing the enclosed original and ten (10) copies of comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-referenced matter. Copies of Rate Counsel's comments are being provided to all parties on the 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 to our courier.**

Honorable Aida Camacho-Welch, Secretary  
January 31, 2020

Thank you for our consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

By:   
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Assistant Deputy Rate Counsel

Enclosure

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**STATE OF NEW JERSEY**  
**BEFORE THE BOARD OF PUBLIC UTILITIES**

**In re: Staff Straw Proposal on Defining the     )**  
**Clean Energy Act of 2018's Statutory Cost     )**  
**Caps     )**

**COMMENTS OF THE**  
**NEW JERSEY DIVISION OF RATE COUNSEL**  
**ON THE STAFF STRAW PROPOSAL ON DEFINING THE CLEAN ENERGY ACT OF**  
**2018's STATUTORY COST CAPS**

**January 31, 2020**

## 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 its Staff’s Straw Proposal to define the statutory cost caps (“cost caps”) in the Clean Energy Act (P.L.2018, c.17) (“CEA”), which will guide the Board in its development of the solar market in New Jersey. The CEA directs the Board to transition the solar market away from current solar financing methods based on the use of Solar Renewable Energy Credits (“SRECs”) to a new program that will continue the efficient and orderly development of solar energy generation. In addition, the CEA established a cost cap on the total cost that ratepayers are required to pay for Class I renewable energy requirements. Thus, as part of its adoption of the solar Transition Incentive program (“TI Program”) on December 6, 2019, the Board directed its Staff to “initiate a proceeding on the calculation of the cost cap, and to report back to the Board regarding the recommendations and outcomes of said proceeding ....”<sup>1</sup>

In response to this directive, Staff, by Notice dated December 6, 2019, initiated a proceeding to solicit comments on three objectives: (1) determine whether the Board should adopt a multi-year approach to compliance with Cost Caps; (2) gather stakeholder input as to how the Cost Caps should be determined and implemented; and (3) explore reforms to the Legacy SREC program that ensure a robust solar market while conforming to the statutory limitations on cost. Notice at 1. Rate Counsel filed comments on the first issue on January 16, 2020. The comments herein address the questions issued for the second objective, “Defining the Terms of the Clean Energy Act;” and the third objective “Reform of the Legacy SREC Program.”

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<sup>1</sup> I/M/O a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Dkt. No. QO19010068, Order at 34 (Dec. 6, 2020).

## **Defining the Terms of the Clean Energy Act**

### **1. Do parties agree that Staff has correctly identified the numerator and the denominator?**

#### **Response:**

Rate Counsel is unable to respond adequately to this question because Staff has not explicitly provided nor defined how the numerator and denominator for the cost cap calculation will be developed. Staff simply defines the numerator as the “Cost to Customers of the Class I Renewable Energy Requirement.” Similarly, the denominator is defined as the “Total Paid for Electricity by All Customers in the State.” While Staff has correctly quoted the statutory language, it has not identified the components of Class I Costs or the components of Total Paid for Electricity that it proposes to use in making the calculations. Further, Staff has not identified the data sources it will use to make the calculations. Staff has also not identified when such calculations will be made and how they will be posted or communicated to the Board and stakeholders. Rate Counsel encourages Staff to explicitly define how it proposes to calculate the cost cap and the data upon which this calculation will be based.

### **2. Staff notes that the State’s Class I REC programs have resulted in benefits to the citizens of the State of New Jersey, including improved public health, reduction in carbon emissions, and direct financial benefits, such as lower energy and capacity costs.**

#### **a. Is it appropriate for the Board to factor these benefits into the Cost Cap Equation?**

#### **Response:**

No. It is not appropriate for the Board to factor any societal or financial benefits into the Cost Cap Equation. First, and most importantly, 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. 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. Adding benefits to the cost cap calculation would only serve to allow increased ratepayer spending, which would be contrary to the statutory language and would undermine the CEA's objective of "continually reduc[ing]" ratepayer' renewable energy costs. N.J.S.A. 48:3-87(d)(3).

Second, improved public health and reduced carbon emissions are societal benefits that are exceedingly difficult to quantify. There is a wide variation in published estimates of societal benefits. These variations are a function of differences in studies, methodologies and assumptions employed, discount rates and damage functions. More importantly, the Board has recognized problems with the use of societal costs and benefits in the past.<sup>2</sup> The Board has not only noted the technical concerns with utilizing societal benefit estimates but has also addressed the inherent policy concern with their use, finding that, "environmental benefits should be tied to market prices because that is a reasonable manner to ensure fair, just and reasonable ratepayer impact."<sup>3</sup>

- b. If so, please comment on which categories of benefits, if any should be included, whether they should be included in the numerator or denominator, and how they should be calculated.**

**Response:**

None, for the reasons articulated in Rate Counsel's response to Question 2(a).

- 3. The numerator is defined as the "cost to customers of the Class I Renewable energy requirement."**

**Response:**

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<sup>2</sup> I/M/O the Petition of Fishermen's Atlantic City Wind Farm, LLC for the Approval of the State Waters Project and Authorizing Offshore Wind Renewable Energy Certificates, BPU Dkt. No. EO11050314V, Board Decision on the Merits of the Application at 23-24 (Mar. 28, 2014).

<sup>3</sup> Id. at 24.

This statement accurately quotes the statutory language, but Staff has not provided any clarity on how it will calculate this variable nor the data it will use to calculate this variable. Staff has also not explained how frequently this number will be calculated and made available to the public. Please see Rate Counsel's response to Question 1.

**4. Staff's current practice in calculating clean energy program costs is to aggregate retired quantities from the annual RPS compliance reports of load serving entities and apply the last price recorded in PJM-EIS Generation Attribute Tracking System ("GATS").**

**a. Is there a better source of data and calculation methodology?**

**Response:**

Rate Counsel is in agreement with Staff's current practice in calculating clean energy costs. Rate Counsel is not aware of a better source of data and/or a calculation methodology. The calculation should be consistent with the current practice of using the annual RPS compliance reports and prices from PJM GATS. Staff has provided no rationale for changing this methodology.

**b. If so, how would we measure those costs?**

**Response:**

Please see Rate Counsel's response to Question 4(a).

**c. Should the Board analyze what energy costs would have been without the Cost Cap-Eligible Programs to determine the appropriate net cost to consumers of the programs?**

**Response:**

No. Staff should not make this calculation since it is not relevant. Such a calculation should not be used to calculate any kind of offsetting benefit in the cost cap calculation. Such an offset would be contrary to the intent of the CEA for the reasons explained in Rate Counsel's response to Question 2(a).

**d. If so, how should such an analysis be conducted?**

This calculation should not be conducted since it is not relevant to estimating a cost cap consistent with clear legislative intent and language of the CEA.

**e. How should Staff handle savings associated with the “merit order effect” whereby renewable energy and load reductions reduce the market price of capacity and energy rates to all customers?**

Please see Rate Counsel’s response to Question 2(d) above. Staff should not calculate merit order benefits since these benefits are not prescribed in the CEA. The CEA does not define a “net benefits” test of any kind nor does it use a net benefit-type variable in the calculation of the overall rate impact. Staff’s proposal to estimate merit order benefits is inconsistent with past Board policies regarding the examination of net benefits for other renewables (i.e., offshore wind). In the past, the Board has clearly noted that these kinds of merit order benefits should not be included in a cost-benefit analysis.<sup>4</sup>

In addition, allowing for this type of benefit to be considered could influence the outcomes of competitive, FERC-regulated wholesale markets and would run contrary to a Supreme Court decision in Hughes v. Talen Energy Marketing, LLC,<sup>5</sup> which invalidated the State of Maryland’s program that guaranteed independent power producers a long-term contract rate that differed from the PJM market clearing price for capacity because it interfered with the Federal Energy Regulatory Commission’s (“FERC’s) exclusive jurisdiction over wholesale electric rates. The decision of the United States District Court for the District of New Jersey decision in PPL EnergyPlus, LLC v. Hanna<sup>6</sup> invalidated the New Jersey Long Term Capacity

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<sup>4</sup> I/M/O Consideration of the State Water Wind Project and Offshore Wind Renewable Energy Certificate. BPU Dkt. No. QO18080843, Order at 13 (Dec. 18, 2018).

<sup>5</sup> 578 U.S. \_\_\_, 136 S. Ct. 1288, 194 L. Ed. 414 (2016)

<sup>6</sup> 977 F.Supp.2d 372 (D.N.J. 2013), aff’d PPL EnergyPlus, LLC v. Solomon, 766 F. 3d 241 (3d Cir. 2014).



Pilot Project (“LCAPP”) on similar grounds.<sup>7</sup> If an explicitly stated intent of the New Jersey program is to reduce PJM market prices, the program could be pre-empted.

Please also refer to Rate Counsel’s response to Question 2(a).

**f. How should savings received by customers who install on-site renewable energy be addressed?**

**Response:**

Customer savings do not need to be identified and addressed in the cost cap calculation since this is not prescribed in the CEA. Further, customer savings will be included as part of the overall, state level “total cost of retail electricity” sales noted earlier. The greater the energy savings, the lower the total cost of retail electricity (i.e., denominator) holding other factors constant, and assuming the Staff utilizes an appropriate measure of the retail cost of electricity from a credible and respected source, such as the Department of Energy, Energy Information Administration (“EIA”) retail rate and electricity sales data.

**g. Are there volatility hedge benefits that should be included?**

**Response:**

No. It is not appropriate to incorporate any savings associated with a volatility hedge benefit in the Cost Cap Equation. Not only is this another assumed savings that is difficult to accurately quantify, but it also runs contrary to the legislative language and intent of the CEA. Further, as noted above, including such benefits is counter to the Board’s past position in examining the value of other renewable energy resources. As the Board has noted, most ratepayers in New Jersey obtain electric supply through BGS auctions or third-party suppliers,

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<sup>7</sup> See Cassell, B., [Federal court knocks down a second state generation law](https://www.transmissionhub.com/articles/2013/10/federal-court-knocks-down-a-second-state-generation-law.html), Transmission Hub (Oct. 14, 2013). Available at: <https://www.transmissionhub.com/articles/2013/10/federal-court-knocks-down-a-second-state-generation-law.html>.

and are thus not subject to frequent or severe volatility in energy prices thus this type of benefit is unwarranted.<sup>8</sup> Please see Rate Counsel’s response to Question 2(a).

- 5. The denominator of the Cost Cap Equation references “total paid for electricity by all customers in the state.”**
- a. Should payments associated with solar installations be included in the denominator? Should the Board differentiate between host-owned and third-party owned systems?**
  - b. Are there other types of customer-generated electricity whose costs should be considered? For example, should the Board include electricity costs incurred by owners of Combined Heat & Power systems, microgrids, or other large on-site generators?**
  - c. Should associated finance costs be included?**
  - d. Should delivery charges imposed by the Electric Distribution Companies (“EDCs”) be included?**
  - e. Should Staff calculate the costs just to Board-jurisdictional load, as is the case for RPS compliance currently?**

**Response (Questions 5(a)-(e)):**

Each of Staff’s questions regarding the denominator of the Cost Cap Equation only serve to increase the denominator, and thereby increase ratepayer spending. There is absolutely no reason why payments associated with solar installations, finance costs, adjustments to jurisdictional load should be included in the straight-forward and simple calculation contemplated in the CEA. “Total paid for electricity” should be just that, the dollar amount spent on electricity by New Jersey customers. There is no valid rationale provided for including expenses to inflate the denominator. Lastly, the Board is unable to accurately determine the total cost of solar installations since it does not regulate these costs, the information associated with these costs is not collected by any government agency, nor is such cost information publicly available. This would raise considerable and unnecessary credibility and transparency issues in the calculation of the cost cap.

- f. Should Staff calculate the costs as the sum of all EDC sales to end-use customers?**

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<sup>8</sup> I/M/O Consideration of the State Water Wind Project and Offshore Wind Renewable Energy Certificate. BPU Dkt. No. QO18080843, Order at 14 (Dec. 18, 2018).

**Response:**

Yes. The cost should be calculated as the sum of electricity sales to end-use customers.

**g. Should we rely on Energy Information Administration (“EIA”) sales data?**

**Response:**

Yes. The EIA would be a reasonable and reliable source for sales data.

**h. Is there a better source of data and calculation methodology?**

**Response:**

Rate Counsel is not aware of another source of data or calculation methodology.

**i. How should the lag in EIA data be addressed?**

**Response:**

EIA data on state electricity sales is published monthly and is only lagged by 2 months.

This is not a major issue, and Staff could easily project two months of data using recent trends.

**j. Should non-bypassable surcharges, including such things as Zero Emission Credits, be included in our calculation of energy costs?**

**Response:**

Yes. Board approved non-bypassable charges should be included. However, Staff should recognize that such non-bypassable charges are included in the total retail electricity sales information collected by the EIA.<sup>9</sup>

**Reform of the Legacy SREC Program**

**1. Should Staff consider reforms to the SREC market in order to reduce the variability in potential SREC outcomes?**

**Response:**

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<sup>9</sup> See U.S. Energy Information Administration, Annual Electric Power Industry Report, Form EIA-861 detailed data files, available at: <https://www.eia.gov/electricity/data/eia861/>.

Yes. Rate Counsel renews its position that Staff and the Board should restructure the New Jersey solar market in a manner that is consistent with the legislative intent of the CEA which calls for a mechanism that will be “efficient” and “orderly” and “continually reduce” the cost of achieving solar energy goals. The legacy SREC program has over-subsidized solar installations in New Jersey for too long and should be reformed.

**2. Should owners of SREC contracts be required to take part in any restructuring of the program, or should participation be voluntary?**

**Response:**

Participation in restructuring of the program should be mandatory for all owners of SREC contracts.

**3. Should Staff examine moving toward converting SRECs to a fixed price product, or would it be better to look at a lower Alternative Compliance Payment (“ACP”) and the institution of a floor price or buyer of last resort?**

**Response:**

The legacy SREC program should be restructured to convert SRECs to a fixed price product. This would help to: (a) reduce overall ratepayer costs; (b) maintain some form of consistency between the legacy and transition programs; and (c) reduce uncertainty and potential volatility for the projects that remain in the legacy SREC program.

**4. If Staff were to recommend setting a fixed price for SRECs, how should that price be set?**

**Response:**

Throughout the development of the Transition Incentive program, Staff’s consultants solicited information from the solar industry on installation costs and required returns. The responses received should provide enough information to estimate a fixed SREC price for the solar installations remaining in the legacy program.

**5. If Staff were to look at a lower ACP and buyer of last resort program, how should such a program be structured?**

**Response:**

Rate Counsel does not agree with and opposes continued use of an ACP and buyer of last resort program. Please see Rate Counsels' response to Question 3.

**6. Should the Board consider a "tight collar"? How would such a program be implemented?**

**Response:**

As noted in the Staff's proposal, a "tight collar" would constrain legacy SREC values so that they would remain within a certain range of prices. In Staff's terms, it would "protect investors" from low SREC costs in the same manner as ratepayers are supposed to be protected from high subsidy costs by the CEA cost cap. Rate Counsel disagrees with the continued manipulation of SREC prices for the legacy program and any mechanism that ties prices to an ACP. Please see Rate Counsel response to Question 5.

**7. Are there other reforms that Staff should consider?**

**Response:**

Rate Counsel is not aware of other reforms to be considered at this time.