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

July 8, 2020

Senator Bob Smith
216 Stelton Rd. Suite E-5
Piscataway, N.J. 08884

RE: S2605 (Directs BPU to Establish Utility Scale Solar Energy Development Program)

Dear Senator Smith:

I write on behalf of the Division of Rate Counsel regarding S2605, which you recently introduced to encourage the development of utility scale solar. We applaud the goal of this bill, but hope you will consider a few important changes that will give more protections to ratepayers.

As you are aware, the Division of Rate Counsel represents and protects the interest of all consumers -- 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 or businesses seek changes in their rates and/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

Rate Counsel supports the development of utility scale solar, and does not object to the goal of this bill, which is to qualify utility scale solar for Class I renewable energy credits (RECs) and long term contracts. We believe these measures are consistent with the goals the State has set to achieve our clean energy goals.

However, some of the mechanisms in the bill are designed in ways that will keep the bill from achieving its goals in a manner that does not unduly increase costs to ratepayers. We have discussed our concerns with representatives of Dakota Power, a proponent of this legislation, and we believe some of the concerns discussed below and the amendments we propose in the attached mark-up may be consistent with their intent, and thus are simply clarifications. Other changes we propose may not be, however we believe they are essential to protect ratepayers. We ask that you consider our amendments and incorporate them into the bill.

It appears the bill was fashioned after the Offshore Wind Economic Development Act (OWEDA). As I am sure you are aware, the Legislature in OWEDA provided a different mechanism for encouraging the development of offshore wind than for other types of renewable energy. For other types of renewable energy, for example solar and other Class I sources, the

RECs represent the environmental attributes of the project only. Those projects would sell and/or use the electricity generated or any capacity payments that can be obtained from PJM wholesale markets as they choose. In OWEDA, the Legislature fashioned the ORECs as an "all-in" product, representing the energy, capacity and environmental attributes of the project. It was believed that this was necessary due to the extraordinary lead time required for OSW and the truly nascent nature of that industry. It was believed that the OREC needed to be constructed in that way to allow the developers to get financing and make the necessary investments even though recovery of those investments would be very far off. As you also know, given the increased risks this would pose to ratepayers, the Legislature also provided a "net benefits" test in OWEDA, requiring the developers to demonstrate net benefits to ratepayers before they could be awarded ORECs.

Utility scale solar is very different from offshore wind. It is a fairly well-developed industry at this point and there is even a question as to whether they are at grid parity and need any subsidy at all. It does not take a particularly long time to build a utility scale solar facility and the risks of building one do not begin to approach the risks of building an offshore wind facility. In addition, the primary protection for ratepayers included in OWEDA, *i.e.*, the net benefits requirement, has not been included in this bill.

Most importantly, there have been changes to the wholesale markets since OWEDA was passed that make shifting the risk of energy and capacity sales to ratepayers even more onerous. As you know, a recent decision by FERC determined that any state-subsidized generation facility that seeks to bid in to the PJM Capacity market will be subject to PJM's Minimum Offer Price Rule (MOPR). This means that the bids for those facilities will be adjusted to remove the impact of that subsidy and will force those facilities to submit higher bids which may cause them not to clear the PJM Market. If they do not clear, New Jersey ratepayers will still pay for those subsidized resources but they will also have to pay for an equivalent amount of non-subsidized capacity, thus essentially paying twice. Projects can try to get around the MOPR by demonstrating that their costs are lower and getting a "unit-specific exemption," but receiving such an exemption is likely to be difficult and cannot be assumed. Thus, by defining the utility-scale RECs in the bill as including energy and capacity as well as environmental attributes, the bill shifts the risk that the project will be subject to MOPR onto ratepayers, instead of leaving it with the project developer where it belongs. The difference between the total Net Present Value cost of the proposed bill (including energy, capacity and environmental attributes for a full 20 years), and a REC cost that includes only environmental attributes, is estimated to be as much as $2.1 billion. While the revenues from the sale of energy and capacity (if any) would be returned to ratepayers, the bill as written shifts the entire risk that the projects will not get capacity revenues due to MOPR on to ratepayers. We know we will have to deal with this issue with respect to offshore wind, where the statute and contracts were all entered into before the MOPR ruling was issued by FERC. But to enter into the same arrangement now that we know about the MOPR issue would be fundamentally unfair and inadvisable. The RECs here should represent the environmental attributes just like all other Class I RECS and Solar RECS.

Other issues that we have flagged in the attached include:

(1) Tightening up the qualification and evaluation criteria for the competitive solicitation, keeping the cost cap confidential from bidders, and allowing the BPU to hire an independent consultant to assist with that process. This will prevent any gaming of the bid process to ensure that bids are awarded to the lowest responsible bidders.

(2) Clarifying that the 1% fee for open space and the 2.5% fee for utility administrative costs are to be paid by the developers and not by ratepayers.

(3) Changing the contract term from 20 years to 10 years to be consistent with prior long term contracting programs, reduce ratepayer exposure and avoid some of the issues the state has had with prior long-term contracts. Given that the cost caps included in this bill are based on projected costs, this will avoid some of the problems we have had in the past with long-term contractual commitments with non-utility generators while still providing the assurances these projects will need to obtain financing.

(4) Changing the measurement of procurement targets from alternating current (AC) to direct current (DC) to be consistent with the Board's practice of using DC to track solar development.

We believe these changes will allow this bill to achieve its goals without adding significant and unnecessary costs for ratepayers. We are happy to discuss them with you further or answer any questions you may have.

We very much appreciate the opportunity to share our comments on behalf of the State's ratepayers. Please contact our office if you have any questions. Thank you for your attention to these important matters.

Sincerely,

Stefanie A. Brand
Stefanie A. Brand
Director, Division of Rate Counsel

Cc:
Senator Christopher "Kip" Bateman
Kevil Duhon, Senate Democratic Office, Aide
Roseann Brown, Chief of Staff, Senator Bateman
Matthew Peterson, OLS aide, Senate Environment and Energy Committee