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**REMARKS OF STEFANIE A. BRAND
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REGARDING STAFF SOLAR SUCCESSOR PROGRAM STRAW PROPOSAL**

**BEFORE THE BOARD OF PUBLIC UTILITIES
QUARTERLY MEETING
April 30, 2021**

Good morning Commissioners, as you know, I am the Director of the Division of Rate Counsel. In that capacity, I have the pleasure and honor to represent the citizens of New Jersey who fund and hopefully will benefit from the policies encouraging the continued development of solar energy in New Jersey for years to come. I would like to thank you for the opportunity to provide comments to the Board today on the Staff Solar Successor Program Straw Proposal, which I will refer to as "Staff straw proposal" for the remainder of my comments today. We will be providing much more extensive written comments in the Board's proceeding so today I want to hit some of the highlights.

As you know, the Clean Energy Act of 2018 (or "CEA") included, among other things, a large and ambitious increase in New Jersey's renewable energy commitments. Equally significant was the CEA's termination of a significant portion of New Jersey's long standing solar energy market design. In particular, the elimination of the existing

Solar Renewable Energy Certification or “SREC” program. The CEA was critical of this program, as Rate Counsel has been over several years since the SREC construct has not proven to be the most efficient and cost-effective means of promoting solar energy in New Jersey.

New Jersey has a long history of overpaying for solar. The industry has a long history of claiming they need more and more subsidies and that if they don't get them the sky will fall and the industry will come crashing down. In the past, the Legislature and the Board fell prey to many of these threats and fears and kept increasing the subsidies to the point where New Jersey ratepayers have spent billions of dollars for what is now a little over 5% of our load. The provisions of the CEA were a clear message from the Legislature that it is time to rein in this industry. Other states have managed to develop thriving solar industries that are more economically efficient. They are not paying for \$250 SRECs. In Maryland? SRECs trade for \$77. Pennsylvania? \$40. We cannot keep this up. This inefficiency is not an abstraction but is a real cost that has been entirely paid for by New Jersey ratepayers. The more we overpay for solar. The less we will be able to afford. So as New Jersey moves forward with a solar successor program, Rate Counsel strongly recommends that the Board place a renewed and stronger emphasis on minimizing the rate impact of solar market development particularly through the solar successor program.

Another preliminary thought that I would like to emphasize is equity. Governor Murphy has certainly set ambitious goals for us in terms of achieving a cleaner portfolio of electricity generation. But he has also made it clear that equity needs to be a fundamental consideration in how we approach everything we do. So it's important to

remember that of all the ways we pay for clean energy, utility rates are by far the most regressive and inequitable. Sure there are some societal benefits to these programs so I am not saying that none of it should be put into rates, but the most equitable way to pay is obviously to have those who benefit the most pay the most. Even if we pay for programs through taxes, there are tax brackets that are based on people's level of income. But with rates, low and moderate income customers pay the same amount per kilowatt hour that wealthy customers do. But with lower incomes, the percentage of their income that they have to devote to this essential service – their energy burden -- is higher. We are glad to see these customers are starting to get some benefits through the Community Solar Program, but as the Board considers how to pay for other solar projects going forward, you must consider the inequity of continuing to include such significant amounts of dollars in rates for these projects and balance that with the profits being made by the solar developers and the benefits low and moderate income customers are actually getting from these programs.

The CEA attempts to remedy past wrongs with New Jersey's solar energy program in several ways. I am going to focus on two ways that I think are critically important for today's discussion about the Staff Straw proposal. These are: (1) the CEA's emphasis on competitive bidding and competitive markets to ensure the least cost development of solar energy in New Jersey and (2) the development of a "rate cap" that limits the future financial liabilities for solar energy development that will be borne by New Jersey ratepayers. We believe the Staff's Straw proposal is deficient and inconsistent with the CEA in some respects and should be modified in order to avoid unnecessarily large rate increases for New Jersey ratepayers.

First, with respect to competitive markets, the Staff Straw proposal relies far too heavily on inefficient administratively determined prices that will lead to gamesmanship and excessive ratepayer-supported costs. This is not only inconsistent with the CEA, but with years of Board policies that have repeatedly rejected administratively determined incentives and pricing for solar energy development and have recognized the problems that can arise from such methods.

The administratively determined portion of the Staff's straw proposal will set fixed incentive rates for a range of installations that each year will total at least 60 percent of Staff's estimated solar successor program costs. The proposal is basically the same "first-come, first-served," "herd-style" "run on the bank" approach to solar energy incentives that has been causing us problems for years in New Jersey. The administratively determined "incentive" payments will be established through stakeholder processes that are consistently dominated by a large number of solar developers, not ratepayers. Collectively, this "herd approach" coupled with pre-defined incentive payments that will be dominated by industry interests is the furthest thing that one can get from the competitive market approaches clearly articulated and called for in the CEA.

The CEA, for instance, clearly notes that "where cost recovery is needed for any portion of an efficient solar [installation]" the Board should rely upon "competitive procurement and long-term contracts where possible to ensure" that incentive payments do not "exceed" what is needed to create an efficient incentive (i.e., set to avoid over-incenting solar installations). The CEA also notes that, in developing future solar programs, the Board should "place greater reliance on competitive markets, with the

explicit goal of encouraging and ensuring the emergence of new entrants that can foster innovations and price competition.” Clearly basing 60 percent of a solar successor program on administratively set incentives is inconsistent with setting prices that rely on “competitive markets,” and, furthermore, such administratively determined prices in no way foster the CEA’s clearly articulated goal of encouraging “price competition.”

While the Staff Straw proposal includes some competitive bidding, and Rate Counsel supports this component of the plan, the current straw relies too heavily on administratively determined incentive payments and essentially continues the “transition” plan that was adopted by the Board as an interim approach to supporting solar energy. As such, the Staff Straw proposal is inconsistent with the CEA, past Board policies, and will result in unnecessary increases in ratepayer bills.

The opportunity for gamesmanship in the development of administratively determined incentive payments is an important and real concern. One need only review the progression of the solar “transition program” to see the impact that industry lobbying had on the final values utilized for this interim program that now would be converted into something more permanent. At the onset of the transition program Staff released for comment a set of incentive values that started at \$65 per MWh in 2021, fell to \$59/MWh in 2022, and fell again to \$53 in 2023. These incentives were allowed to increase to \$155/MWh for the period 2023 to 2035. But soon after the release of this proposal, the howling from the solar industry about these values being too “low” was deafening. These solar industry complaints ultimately led to a series of “back and forths” between Board Staff and the industry to “calibrate” the “models” upon which these administratively determined incentives were set. Unsurprisingly, a few weeks later, a

new set of incentive values were proposed by Board staff that were, on average around 20 percent higher than the original administratively determined proposals. This kind of gamesmanship is endemic to administratively determined prices and is the type of outcome the CEA clearly sought to avoid by calling for prices set by competitive market signals, not regulatory fiat or stakeholder processes dominated by industry participants that will benefit from the outcome.

A second, and equally important concern regarding the Staff Straw proposal rests with its proposals for calculating CEA-defined rate caps. Staff's proposal for estimating these cost caps is inconsistent with both the letter and the spirit of the CEA. Before I go into these details, I do want to emphasize the importance of this CEA-defined rate cap for New Jersey ratepayers.

Year after year, New Jersey ratepayers have shouldered the burden of changing solar energy programs to accommodate solar industry claims of program design deficiencies or inadequate financial incentives. Each and every time these solar industry claims arise New Jersey ratepayers have been required to increase financial support for the solar industry. This has occurred despite declines in the cost of solar, meaningful profits, and higher than anticipated SREC prices. This process has been an abject failure primarily because it has placed huge financial burdens on the one stakeholder group that is supposed to benefit from renewable energy development and that is New Jersey ratepayers.

The cost caps in the CEA, which were put into place at the same time as a number of other clean energy provisions that would increase ratepayer costs, can only be read as the Legislature saying, "enough is enough." The legislation clearly

articulates a direction that forces solar developers to compete with one another to bring the most cost effective and innovative projects to the market, and most importantly creates a financial cap on just how much the state will spend on its future solar programs. The most concerning aspect of the Staff Straw is that it undermines the one protection afforded by the Legislature in the CEA to New Jersey ratepayers which is the rate cap.

The parameters of the rate cap in the plain language of the CEA are very simple. The costs to customers for Class I renewable energy requirements shall not exceed 9 percent for the first 2 years or 7 percent thereafter of the total paid for electricity by all customers in that year. The only exception is that the costs do not include the costs of the offshore wind program. Despite the simplicity of this statutory language, the Staff Straw proposes to net out a wide range of “benefits” from the costs to be included in the formula. This is not permitted by the statute, which only excludes the cost of offshore wind and does not speak of any “netting” at all. This proposal, in effect, changes the entire nature of the CEA rate impact cap and exceeds the authority granted to the Board in the statute.

The Staff straw proposal attempts to convert the CEA’s clearly defined rate cap both conceptually and mathematically into a “cost-benefit analysis” or “test” – or alternatively, something akin to a “net benefits test” like the one clearly articulated in the Offshore Wind Economic Development Act or “OSWEDA.” The CEA does not define its rate impact test in this manner, nor does it remotely suggest that anything of this nature be conducted. Further, the legislature is clearly familiar with the use of “net benefits tests” and CBAs and if the legislature intended the Board to use these techniques in

evaluating future renewable energy programs it would have clearly articulated such techniques in the CEA.

This manipulation of the rate cap is nothing more than an end-run around the legislative intent of the CEA and its rate impact protection. The proposal attempts to create additional “head-room” to spend more on solar energy programs than that afforded in the CEA, and no doubt the industry will advocate for even more “benefits” to be “netted out” until the cap is rendered meaningless. But under the cap as crafted by the Legislature, there could be as much as \$750 million per year to spend on Class I RECs. This is a considerable annual sum of money and should clearly be enough to promote the state’s clean energy goals and protect ratepayers at the same time. This is in addition to the amount these projects will get paid for net metering and for the energy they produce.

Finally, the Staff straw proposal also attempts to average annual rate cap surpluses and shortfalls over its entire planning horizon to use rate impact surpluses in one year (years where renewable expenditures are less than the cap) to compensate for shortages (dollar amounts of years in which the rate cap is exceeded) in other years. Later amendments to the CEA have allowed for such banking but only for three select years – not into perpetuity. The CEA simply does not allow for what the Straw proposes. If the legislature wanted to allow banking of rate impact “surpluses” for longer periods of time, it could have done that, but instead, has limited such banking to a three-year period only. Rate Counsel cannot agree with a method that, again, does nothing more than inflate solar energy costs in a way that is contrary to the intent of the CEA and will drive up ratepayer costs to levels higher than what the CEA mandates.

Collectively, Staff's proposed rate cap calculation for the solar successor program will place too great a burden on New Jersey ratepayers and force them to incur costs over and beyond what is envisioned by the CEA. We all know that there is a lot to do to reach our clean energy goals. We don't know exactly what it will cost yet – we are still waiting on that analysis – but we do know that it will be very expensive. As we sit here today, with over a million customers unable to keep up with their bills, we also know that if we overpay and continue to provide windfalls to solar developers as we have been for so long, that we will never be able to reach our clean energy goals and still have a healthy economy in this state. The solar developers will always want more money. But this Board has to make choices and has to balance the needs of ratepayers with those of others. The Legislature made it clear here that the costs – not net costs, not costs minus benefits, costs – should not exceed 7% of the amount paid. The Board is bound by that and must adhere to it. By encouraging competition and forcing the solar industry to operate efficiently, we can live within that generous budget and meet our goals and still leave the people of this state with enough money to feed their families and afford their lives.

In conclusion, I want to thank the Board for the opportunity to provide comments on the Staff Straw proposal regarding the solar successor program. Rate Counsel has, and continues to support fair and efficient solar energy development in New Jersey. However, that development cannot come at ratepayers' expense, nor can we ignore the formally articulated policies of the legislature. We look forward to working with the Board in developing a solution that achieves the appropriate balance.