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Director

November 21, 2012

Via Overnight Delivery and Electronic Mail

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of Implementation of L.2012, c.24, the Solar Act of 2012
BPU Docket No.: EO12090832V**

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel in connection with the above-captioned matters. Copies of the comments are being provided to all parties 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 it in our self-addressed stamped envelope.

Honorable Kristi Izzo, Secretary
November 21, 2012
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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
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**I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012
BPU Docket No. EO12090832V**

**Comments of the New Jersey Division of Rate Counsel
Concerning Board Standards and Programs
November 21, 2012**

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“BPU” or “the Board”) for the opportunity to present our comments on the numerous new standards and programs outlined by the New Jersey Legislature in L. 2012, c. 24, also known as the Solar Act (“Solar Act”). Presented below is Rate Counsel’s initial input concerning each topic listed by the Board in its October 25, 2012 “Notice of Stakeholder Meeting on the Solar Act of 2012 (L. 2012, c. 24),” and concerning the comments presented at the November 9, 2012 stakeholder meeting. Rate Counsel reserves its right to submit further comments at a later date or dates.

I. Initiation of a Proceeding to Investigate Approaches to Mitigate Solar Development Volatility Pursuant to N.J.S.A. 48:3-87(d)(3)(b).

Under N.J.S.A. 48:3-87(d)(3)(b) the Board is required, no more than 24 months following the date of enactment of the Solar Act (*i.e.*, July 23, 2014), to complete a proceeding to investigate approaches to mitigate solar development volatility and submit a report on the results to the New Jersey Legislature. Rate Counsel looks forward to participating in the Board’s investigation. In view of the importance of this matter, Rate Counsel requests that the Board, over the next 90 days, establish a timetable and procedural schedule for the investigation. In developing this timetable, Rate Counsel requests that all parties be given ample time to comment, develop their own analyses, respond to other parties analyses, and comment upon the final recommendation and report associated with solar development volatility that the Board will submit to the Legislature by July 23, 2014.

Rate Counsel will provide input in accordance with the schedule to be established by the Board but wishes to note, as a preliminary matter, that any report submitted to the Legislature on solar volatility should reflect the Board’s responsibility under N.J.S.A. 48:3-87(1) to implement all of its responsibilities under N.J.S.A. 48:3-87 in such a matter as to:

- (1) 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;
- (2) maintain adequate regulatory authority over non-competitive public utility services;
- (3) consider alternative forms of regulation in order to address changes in the technology and structure of electric public utilities;

- (4) promote energy efficiency and Class I renewable energy market development, taking into consideration environmental benefits and market barriers;
- (5) make energy services more affordable for low and moderate income customers;
- (6) attempt to transform the renewable energy market into one that can move forward without subsidies from the State or public utilities;
- (7) achieve the goals put forth under the renewable energy portfolio standards;
- (8) promote the lowest cost to ratepayers; and
- (9) allow all market segments to participate.

Thus, the report should reflect a balance between the objective of reducing solar industry volatility and the considerations enumerated above.

II. Implementation of Subsections (q), (r), and (s) – Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System Pursuant to N.J.S.A. 48:3-87 (q), (r), and (s).

N.J.S.A. 48:3-87(q) defines the terms and conditions under which projects anticipated to come on line in energy years 2014, 2015 and 2016 that are not (a) net metered, (b) an on-site generation facility, (c) qualified for net metering aggregation, or (d) certified as being located at a brownfield site, may request Board certification as “connected to the distribution system.” This subsection requires applicants seeking such designations before the Board to include a notice escrow. The subsection limits the total accepted applications for this designation in any given year to 80 megawatts (“MWs”) and restricts individual applicants to a capacity of 10 MW or less. The Board is required to rule on these applications within 90 days.

N.J.S.A. 48:3-87(r) identifies the eligibility and filing requirements for other types of otherwise non-qualifying solar projects seeking “distribution connected” status. N.J.S.A. 48:3-87(s) identifies the “distribution connected” eligibility and filing requirements for solar projects located on property subject to the “Farmland Assessment Act of 1964.”

Rate Counsel offers the following suggestions for the Board in promulgating rules consistent with the above subsections of the legislation:

- (1) The Board should define the filing requirements for any projects requesting “distribution connected” status. The legislation is silent on this matter. Rate Counsel recommends the Board require applicants to include a complete set of information about their project (size, cost, location, type of installation). The statutory provisions themselves provide a starting point for the types of information that could be used in these filings. Subsection (r)(2), for example, provides a list of additional criteria outlining the applicant’s anticipated impact on solar markets, the distribution utility,

and ratepayers and similar types of requirements should be used in the subsection (s) proceedings.

- (2) The filing requirements under all three subsections should include a statement explaining why it is in the public interest for the Board to approve the applicant's request.
- (3) Applicants should be required to serve the Division of Rate Counsel at the same time they make a filing before the Board.
- (4) Given the 90 day approval process for applications under subsections (q) and (r), the Board should include a completeness process similar to that adopted for applications under Section 13 of the RGGI law, N.J.S.A. 48:3-98.1. The 90 day approval clock should not begin until the applicant is found to have complied with the Board's filing requirements.
- (5) For applications under subsection (r), the Board should define a process under which the 80 MW will be allocated in any given year and how carry-overs will be processed in later years, if at all. Given the 90 day approval window, it seems that a first-come, first-served process may be the only means for allocating the initial 80 MW annual limitation unless the Board established a timetable through the year in which this 80 MW allowance will be available to the market. If the Board can establish such a timetable for projects to come on line in Energy Year 2014, and for Energy Years 2015 and 2016, the Board could consider auctioning off the rights to this 80 MW in any given year. The Board could establish a solicitation process in which projects could bid for the right to be designated as "distribution connected," and the revenues generated from this process could be used to offset the SBC or other clean energy program costs.
- (6) Non-approved applicants in excess of the annual 80 MW limitation provided in subsection (r) would likely still have to re-file applications, but the review could be expedited based upon the information included in the application like the public interest criteria, the size of the project, its location, the auction bid (if the Board chooses this option), or other benefits, provided a certification was submitted by the applicant stating that no other project details had changed or been modified since the original filing.
- (7) The Board should direct the Office of Clean Energy to investigate, and estimate, for each energy year, the potential capacity eligible under subsection (r).

III. Initiation of a Proceeding to Establish a Program to Provide SRECs to Solar Generation Facilities on Brownfields, Historic Fill Areas, and Properly Closed Landfills Pursuant to N.J.S.A. 48:3-87(t).

N.J.S.A. 48:3-87(t) requires the Board, no more than 180 days after the enactment of the Solar Act (i.e., January 19, 2013), to establish a program to provide SRECs to solar generation projects located on landfills and brownfields, and to "establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility."¹ Rate Counsel is concerned that the financial incentives contemplated by this subsection be limited to those contemplated by the legislation.

Some parties in the recent stakeholder meeting argued that the Board should create something akin to a "super SREC" to apply some form of additional premium to landfill projects to pay for not just the costs of installing and operating the solar installation, but also the costs of site remediation. For instance, Bellmawr Borough in Camden County mentioned in the stakeholder meeting:

We are particularly concerned about this legislation and are particularly appreciative of it because we are struggling with how to get our landfill properly closed and get to the finish line that you all envision so there could be solar on it. And that process has been complicated by what has happened to the hazardous discharge site remediation fund...²

So as a community that has undertaken a \$70 million remediation project where the community had put 20-some million dollars into the process, we are now staring at how do we get to the finish line.³

Rate Counsel strongly opposes diverting ratepayer money for site remediation and believes that any rules developed to define the types of incentives that will allowed under this subsection should be used strictly for solar project development and operation, as provided by the statutory language. Rate Counsel is also strongly opposed to the creation of an SREC carve-out for generation from facilities located on landfills, as this could lead to indirect subsidies for site remediation.

Rate Counsel also notes that additional costs to construct and operate solar generation facilities on remediated property are inherently variable depending on the type and extent of

¹ N.J.S.A. 48:3-87(t), emphasis added.

² Tr. 84: 13-19, emphasis added.

³ Tr. 85: 9-12, emphasis added.

contamination, and the remediation techniques being employed. Furthermore, it is not clear that all of these costs will be incurred by the generator, rather than the electric distribution company (“EDC”) responsible for interconnection,⁴ and thus ultimately ratepayers. The Board should be mindful of this fact as it develops any incentive mechanism pursuant to subsection (t).

IV. Development of Net Metering Aggregation Standards Pursuant to N.J.S.A. 48:3-87(e)(4).

N.J.S.A. 48:3-87 (e)(4) requires the Board, within 270 days of the effective date of the Solar Act (i.e., April 19, 2013), to develop standards requiring electric distribution companies to offer “net metering aggregation” to public entities, allowing those entities to install a single solar generating facility sized based upon the combined annual energy usage of the customer’s facilities. This subsection is explicit in providing that generation from the solar generation facility in excess of the host facility’s usage will be credited at wholesale, and not retail, based rates:

For the customer’s facility or property on which the solar electric generation system is installed, the electricity generated from the customer’s solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1) of this subsection to provide that the electricity generated in excess of the electricity supplied by the electric power supplier or the basic generation service provider, as the case may be, for the customer’s facility on which the solar electric generation system is installed, over the annualized period, is credited at the electric power supplier’s or the basic generation service provider’s avoided cost of wholesale power or the PJM electric power pool real-time locational marginal pricing rate.⁵

In this way, the statutory provision recognizes that the opportunity cost of generation is best reflected by some measure of a wholesale rate, not something akin to a fully-bundled retail rate.

At the stakeholder meeting the Solar Energy Industries Association (“SEIA”) lamented the wording of the legislation, and recommended the Board adopt a broad definition of the term “facility or property on which the solar electric generation system is installed” in an effort to “give a little bit of meaning to the statue.”⁶

Now, it’s not a criticism of (...) board staff’s interpretation. The Board has to take the statue as it finds it. I would say that one

⁴See, for example, Tr. 71:23 to 72:22.

⁵N.J.S.A. 48:3-87(e)(4), emphasis added.

⁶Tr. 100: 25 to 101:1.

opportunity for the Board to get a little bit of meaning to the statute is to perhaps take a broad interpretation of the word property. The statute allows, (...) for retail crediting for meters where the system is situated on the property.

So, for example, a campus type setting where you have multiple meters, we would like to see at least the Board interpret the term property broadly to accommodate all those meters on that contiguous property at retail value.⁷

Rate Counsel opposes any attempt to expand the definition of the “facility or property” to create a “retail” credit. The language of this statute was extensively debated and the Board should not interpret the language that resulted in a way that alters the outcome of those debates. The word “or property” as it appears in the statute was intended to cover situations in which the solar generating equipment is not installed on a roof or otherwise made part of an existing structure, but is instead installed adjacent to one of the customer’s facilities on the same property. Rate Counsel maintains that the statute intended for an entity with multiple facilities to receive a “retail” credit for the usage of only a single facility and not all separately metered accounts owned by the governmental agency on contiguous land in a “campus-like” setting.

Rate Counsel further notes its continuing concern with the Board regulation at N.J.A.C. 14:8-4.3(l), that allows net metering customers to deliver electric generation but receive payment for generation, plus distribution and surcharges including the “non-bypassable” Societal Benefits Charge (“SBC”).⁸ As Rate Counsel explained most recently in its October 5, 2012 comments on the Board’s Net Metering rulemaking proposal, BPU Docket No. EX11120885V, this regulation is contrary to the basic statutory provisions that govern net metering, and should be amended to limit the “retail” credit to generation.

V. Initiation of a Proceeding to Consider the Need to Supplement Incentives for Net Metered Projects Three MW or Greater Pursuant to N.J.S.A. 48:3-87(w).

N.J.S.A. 48:3-87(w) requires the Board, within 270 days, of the enactment of the Solar Act (*i.e.*, by April 19, 2013) to complete a proceeding that would examine the possibilities of providing additional SREC-based incentives to commercial and industrial solar applications. Many participants at the Board’s stakeholder meeting questioned the belief that larger solar generation facilities are not competitive with smaller ones.⁹ Rate Counsel agrees with this assessment, and

⁷ Tr. 100: 13-25.

⁸ N.J.S.A. 48:3-60(a).

⁹ See Tr. 111:17 to 112:5: “(...) SEIA very strongly questions the need as to whether we even need incentives for these sorts of projects. (...) New Jersey is already a leader in commercial and industrial projects (...) and as was mentioned before, we have seen these projects grow since the time that they were allowed.” See also, Tr. 113:21 to 114:1; “But in any case it is true generally that (the commercial and industrial) slice of the market is the most cost-

recommends the Board not adopt any incentives based on the mistaken premise that larger solar generation facilities are not competitive in the solar market.

Rate Counsel also notes that the purpose of the incentives contemplated in subsection (w) is “to further the goal of improving the economic competitiveness of commercial and industrial customers from taking power from such projects.”¹⁰ Thus, the goal of the incentive is not to make the larger solar installation more competitive, but to make the commercial and industrial enterprise that is host to the installation more competitive. Rate Counsel does not believe that such an incentive is needed, and, if established, would likely be in contradiction to many of the goals of N.J.S.A. 48:3-87(l). Regardless, while the legislation requires the Board to review and investigate these issues, it does not require the Board to adopt a specific set of incentives.

Conclusion

For the reasons discussed above, Rate Counsel respectfully submits the following:

- (1) The Board should act within the next 90 days to establish a procedural schedule for its investigation of approaches to investigate solar industry volatility pursuant to N.J.S.A. 48:3-87(d)(3)(b). Further, the report to be prepared pursuant to N.J.S.A. 48:3-87(d)(3)(b) should reflect a balance between the objective of reducing solar industry volatility and the considerations enumerated in N.J.S.A. 48:3-87(l).
- (2) The application and approval processes for solar projects seeking “distribution connected” status under N.J.S.A. 48:3-87(r), (s) and (t) should be further defined as explained in more detail above, to assure that such status is granted in accordance with the applicable statutory provisions and in a manner consistent with the public interest.
- (3) The Board should assure that the incentives to be implemented under N.J.S.A. 48:3-87(t) for solar generation facilities on brownfields, historic fill areas, and properly closed landfills are limited to the additional costs of constructing and operating such facilities, and do not require ratepayers to pay for site remediation. Additionally, in developing such incentives the Board should consider that some such costs may be incurred by the EDC rather than the generator.
- (4) The Board should reject suggestions that it expand the availability of the “retail” net metering credits for municipalities participating in aggregated net metering under N.J.S.A. 48:3-87(e)(4), which is limited by statute to the “facility or property” on which the solar generation facility is installed, by adopting a “broad” definition of the word “property.” The Board should also amend its present regulation that improperly

effective of any market segment. It has generally the lowest cost per watt to build it of any kind of project and that includes the giant grid supply projects that require a lot of infrastructure to be built.”

¹⁰ N.J.S.A. 48:3-87(w), emphasis added.

includes charges for distribution service and surcharges including the SBC in the “retail” credit.

- (5) The Board should not adopt any additional incentives for large net metered projects under N.J.S.A. 3-87(w).

The above comments are preliminary, based on the topics listed in the Board’s October 25, 2012 Notice of Stakeholder Meeting and the comments presented at the stakeholder meeting on November 9, 2012. Rate Counsel reserves its right to submit further comments at a later date or dates.