In the Matter of the Renewable Portfolio Standard	**)**	**Recommendations for Alternative Compliance Payments and Solar Alternative Compliance Payments for Energy Year 2008, A Stakeholder Process Regarding Alternative Compliance Payment and Solar Alternative Compliance Payment Levels for Energy Year 2009 and 2010 or Longer, and a Solar REC-Only Pilot**

Docket Number EO06100744

REPLY COMMENTS OF THE
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL

1. INTRODUCTION

The Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to present our reply comments on various parties' positions on the future market design for solar energy in New Jersey.

Our initial reaction to the comments filed by other parties is surprise at the apparent lack of concern about the overall magnitude of the cost of the solar set aside that is included within the Renewable Portfolio Standard ("RPS"). Summit Blue has estimated that the cost of maintaining this set-aside, under various different market structures, ranges from a net present value ("NPV") amount of between $3.6 billion and $5.6 billion. This is truly a staggering amount of money. Consider that the upper bound of these estimated costs ($5.6 billion) is comparable to 63 percent of New Jersey's 2005 total retail electricity sales.

Rate Counsel is also concerned, given the comments of industry representatives, that these total rate impacts could be considerably understated. Several industry comments noted that (1) industry cost trends are not going down and (2) the assumptions associated with the Summit Blue report are flawed and inappropriate. For instance, EVCO Mechanical Corporation noted that costs continue to increase, not decrease, for solar energy development. According to the comments of one representative, "PV is expensive, the price of panels is not coming down any time soon."[1] The New Jersey Sustainable Energy Industries

[1]Comments of EVCO Mechanical at 55.

Association (“NJSEIA”) notes that the “Summit Blue report is flawed in many of its assumptions.” NJSEIA raises issues about the accuracy of the results associated with the Commodity Model and the Underwriter Model. If the assertions from these two parties are accurate, then the upper bound for rate impacts from solar development, which is defined by the Commodity Market Model, could be even higher than the $5.6 billion estimated by Summit Blue.

Rate Counsel is concerned about the overall economic impact that any of the solar energy market models could have on the New Jersey economy. Based upon our prior analysis, every $1.0 billion spent on the RPS resulted in a total negative economic impact of some $2.1 billion with the loss of some 48,300 jobs per billion spent on the RPS. We have taken these average relationships and applied them to the potential rate impacts included in the Summit Blue Report. The potential negative economic impacts from the various different market structure models are provided in Table 1.

Table 1: Estimated Economic Impacts of Various Solar Market Structure Models

	Direct Impact	Indirect Impact	Induced Impact	Total Impact
Lost Economic Output (NPV million $)				
Rebate/SREC	$ (3,674.3)	$ (1,000.7)	$ (3,652.0)	$ (8,327.1)
SREC Only	$ (3,857.7)	$ (1,050.7)	$ (3,834.4)	$ (8,742.8)
Underwriter Model - 15 year	$ (3,258.2)	$ (887.4)	$ (3,238.5)	$ (7,384.1)
Commodity Market Model	$ (3,716.5)	$ (1,012.2)	$ (3,694.0)	$ (8,422.8)
Auction Model	$ (3,301.2)	$ (899.1)	$ (3,281.2)	$ (7,481.6)
Auction Model - 15 year	**$ (3,005.2)**	**$ (818.5)**	**$ (2,987.0)**	**$ (6,810.6)**
15-Year Tariff Model	**$ (3,004.3)**	**$ (818.3)**	**$ (2,986.1)**	**$ (6,808.7)**
Hybrid-Tariff Model	$ (3,131.6)	$ (852.9)	$ (3,112.6)	$ (7,097.2)
Lost Employment (Jobs)				
Rebate/SREC	(100,258)	(15,834)	(74,741)	(190,833)
SREC Only	(105,264)	(16,624)	(78,473)	(200,361)
Underwriter Model - 15 year	(88,904)	(14,041)	(66,278)	(169,223)
Commodity Market Model	(101,410)	(16,016)	(75,600)	(193,026)
Auction Model	(90,078)	(14,226)	(67,153)	(171,457)
Auction Model - 15 year	**(81,999)**	**(12,950)**	**(61,130)**	**(156,080)**
15-Year Tariff Model	**(81,977)**	**(12,947)**	**(61,113)**	**(156,037)**
Hybrid-Tariff Model	(85,450)	(13,495)	(63,702)	(162,647)
Lost Employee Compensation (NPV million $ wages)				
Rebate/SREC	(1,610)	(326)	(1,426)	(3,362)
SREC Only	(1,690)	(343)	(1,498)	(3,530)
Underwriter Model - 15 year	(1,427)	(289)	(1,265)	(2,982)
Commodity Market Model	(1,628)	(330)	(1,443)	(3,401)
Auction Model	(1,446)	(293)	(1,282)	(3,021)
Auction Model - 15 year	**(1,317)**	**(267)**	**(1,167)**	**(2,750)**
15-Year Tariff Model	**(1,316)**	**(267)**	**(1,166)**	**(2,749)**
Hybrid-Tariff Model	(1,372)	(278)	(1,216)	(2,866)

Table 1 shows that the total negative economic impacts from any of the proposed market structure models could be significant. The SREC Only Model, for instance, could result in a decrease of New Jersey economic output of some $8.7 billion (NPV) and a loss of over 200,000 jobs and $3.5 billion decrease in wages within the next twenty years. Even Rate Counsel's recommended alternative, the 15-Year Auction Model, could result in a negative economic impact of some $6.8 billion (NPV) and a loss of over 156,000 jobs and $2.7 billion in wages. The Board can also think of this as the estimated loss in wealth that could occur to stimulate the development of the solar industry in New Jersey.

Most parties commented on what would be necessary to encourage the development of solar energy and clearly one of the most important incentive factors are the assumptions associated with the internal rates of return ("IRR") that are created, in large part, by the financial support provided in SREC/SACP levels and rebates. Several parties have commented on the underlying

assumptions of the IRRs included in the Summit Blue report as well as being critical of the implications of the IRRs in the OCE proposal.

However, Rate Counsel believes that many of the comments, the OCE Strawman, as well as the Summit Blue report may be flawed regarding their assumptions on the IRRs needed to bring new participants into the solar energy market. The comments of all of these parties assume that the IRRs needed to encourage solar energy development are constant over time. The Summit Blue model, for instance, uses around a 12 percent IRR with a six-year payback for commercial installations. It assumes that this level of incentive or support is constant and will be sufficient to stimulate solar energy investment for every year over the next 20 years. Thus, an IRR of 12 percent is sufficient to stimulate the needed degree of solar energy to meet the state's solar RPS requirement today, and that same amount will be appropriate in 2020.

The assumption that IRRs will be constant over time is also pervasive in the comments of the Sun Farm Network, PV Now, and Advanced Solar Products, to name a few. In addition, the current OCE Strawman is based upon this same assumption.

Rate Counsel is concerned that the assumption of constant IRRs over time may not be appropriate. The IRRs that are apparent in today's market are based upon the needs and preferences for those participating in the solar energy market. In making the decision to choose solar energy, these participants have decided that, at the margin, the opportunity cost of other investments is equal to or less than the IRR (or benefit) that they get from investing in solar energy.

The Board needs to keep in mind that for many of these participants, part of their IRR, which is not quantifiable but still very real, is the non-pecuniary return they get from making a solar energy investment. The monetary IRR plus the non-pecuniary IRR equals the total return to these participants.

Rate Counsel is concerned that as the Board attempts to expand the market, from one which is more than likely based upon a significant number of participants which have a higher non-pecuniary IRR, to one that will have to include other participants, which may have a lower non-pecuniary IRR (particularly in commercial/larger scale applications), increases in overall returns will have to be created through the financial portion of this return in order to stimulate participation. In other words, IRRs are going to have to increase once all the early adopters have been reached.

From an economic perspective, Rate Counsel believes that it could very well be the case that the supply of resources available for solar investment is upwards-sloping, not constant. In other words, IRRs will have increase in order to stimulate more solar investment. Thus, the only way to expand the market from its current level, and get more potential participants to forgo their current

spending for the longer term gains they get from future electricity savings and SREC revenues, is to increase the potential IRRs associated with these investments. There is also the question about the appropriateness of captive ratepayer support/subsidy for the higher IRRs.

If Rate Counsel is correct in its assertion that IRRs will have to increase to meet the Board's solar energy goals, then the SREC/SACP prices associated with every market structure model under investigation will have to increase in order to stimulate additional solar energy investment, holding other factors constant. The rate implications of the change in this assumption have been provided in Table 2. This rate impact examination assumes that instead of a constant IRR over time, the IRR needed each year to encourage additional solar investment increases by 0.25 percent.

The table shows that the overall rate impacts for each of the various market models are considerably higher if the required IRRs grow over time. The overall rate impacts in the top panel of the table are based upon the estimates provided by Summit Blue on June 8, 2007 and differ from those provided in the report. The second panel provides revised rate impacts with the increasing IRR assumption. The last panel shows the increase in the rate impacts from the change in required IRR assumptions.

The rate impacts for the SREC-Only Model increase by over $850 million (NPV) while the 15-Year Auction Model and the Full Tariff Model rate impacts increase by about $500 million. The 15-Year Auction Model, as proposed by Rate Counsel, results in the lowest overall rate impact once the change in IRR assumptions are considered.

Table 2: Ratepayer Impacts: Market Structure Models with Increasing Annual IRRs[2]

	<10 kW Private	>10 kW Private	Public	Weighted Average
	---------- (million $) ----------			
Ratepayer Impacts - Revised Summit Blue				
Rebate/SREC	$ 4,907.9	$ 3,617.3	$ 2,599.5	$ 3,950.4
SREC Only	$ 6,158.9	$ 3,207.6	$ 1,871.1	$ 4,147.6
Underwriter Model - 15 year	$ 4,922.2	$ 2,926.3	$ 1,694.9	$ 3,503.0
Commodity Market Model	$ 5,415.9	$ 3,425.5	$ 2,170.3	$ 3,995.7
Auction Model	$ 5,307.6	$ 2,670.0	$ 1,693.6	$ 3,549.3
Auction Model - 15 year	**$ 4,530.5**	**$ 2,715.4**	**$ 1,546.0**	**$ 3,230.9**
15-Year Tariff Model	**$ 4,529.6**	**$ 2,714.5**	**$ 1,545.1**	**$ 3,230.1**
Hybrid-Tariff Model	$ 4,722.7	$ 2,827.9	$ 1,611.5	$ 3,366.9
Ratepayer Impacts - Increasing Annual IRR				
Rebate/SREC	$ 5,445.4	$ 3,857.9	$ 2,870.8	$ 4,315.2
SREC Only	$ 7,104.5	$ 4,089.0	$ 2,459.5	$ 5,001.9
Underwriter Model - 15 year	$ 5,540.4	$ 3,218.9	$ 1,974.7	$ 3,923.5
Commodity Market Model	$ 6,267.9	$ 3,951.7	$ 2,519.8	$ 4,620.4
Auction Model	$ 5,723.0	$ 2,968.8	$ 2,061.9	$ 3,907.2
Auction Model - 15 year	**$ 5,152.2**	**$ 3,134.2**	**$ 1,943.6**	**$ 3,727.1**
15-Year Tariff Model	**$ 5,151.4**	**$ 3,133.4**	**$ 1,969.5**	**$ 3,731.1**
Hybrid-Tariff Model	$ 5,695.9	$ 3,428.1	$ 2,055.2	$ 4,088.1
Difference in Ratepayer Impacts				
Rebate/SREC	$ 537.5	$ 240.5	$ 271.3	$ 364.9
SREC Only	$ 945.6	$ 881.4	$ 588.4	$ 854.3
Underwriter Model - 15 year	$ 618.3	$ 292.5	$ 279.8	$ 420.5
Commodity Market Model	$ 852.1	$ 526.1	$ 349.5	$ 624.7
Auction Model	$ 415.4	$ 298.8	$ 368.3	$ 358.0
Auction Model - 15 year	**$ 621.8**	**$ 418.9**	**$ 397.6**	**$ 496.2**
15-Year Tariff Model	**$ 621.8**	**$ 418.9**	**$ 424.4**	**$ 501.0**
Hybrid-Tariff Model	$ 973.1	$ 600.2	$ 443.7	$ 721.2

Using a more realistic assumption about the target IRR clearly shows that the costs of the overall solar energy program are considerably larger than the conservative estimates originally provided by Summit Blue as well as the overall costs provided by several comments from the solar industry in this proceeding. For this reason, Rate Counsel believes that some form of policy circuit breaker, based upon the estimated rate impacts of the solar energy program, needs to be injected into the Board's decision in this proceeding.

[2]Required IRRs are assumed to increase by 0.25 percent per year. Thus, commercial projects installed in the first year are based upon a 6 percent IRR, the second year installations would need 6.25 percent IRR, etc.

Rate Counsel believes that the Board should use the current Summit Blue Report as its baseline on a forward going basis for the cost of maintaining the solar energy set aside within the RPS. These rate impacts should be examined at every program sunset review, with forward-looking commitments to the solar energy component of the RPS conditioned by this review. Thus, while the Board may maintain its solar energy commitments to date, future commitments should be reduced in such a fashion that the rate impacts included in the Summit Blue report are not exceeded. This would serve as a programmatic circuit breaker on a forward-going basis.

2. Areas of Agreement with Other Parties

Rate Counsel believes there are a number of areas of agreement between the positions it has taken, and those that were offered by many in the solar industry including:

- *The Board needs to make a strong and final decision in this proceeding. The current process of stop-gap fixes is creating unnecessary uncertainties in the market which are disrupting the development of new solar resources.*

Rate Counsel agrees with many of the solar industry comments which suggest that the Board move decisively with a new market structure model. Like the industry, Rate Counsel believes that continued interim measures, like the current SREC-Only Pilot program, continue to create uncertainties for potential solar energy investments. Investments like solar, with exceptionally high per unit costs, are not usually sustainable in markets that reflect such uncertainty. This is one of the reasons we believe that the OCE Strawman proposal is unsustainable and counterproductive. The Strawman does not represent a long-term solution for reaching the Board's aggressive solar energy goals and will do nothing but continue to increase the shortfalls experienced to date. The Board should reject the OCE Strawman and the industry proposals to put "band-aids" on this proposal and move forward with a market structure that is more sustainable.

- *The OCE proposals are inconsistent with the findings included in the Summit Blue Report.*

Rate Counsel agrees with the comments of the solar industry participants which note that the OCE Strawman proposal is completely at odds with the results of the Summit Blue Report and rate impact analysis. By recommending a method with no securitization, OCE has proposed a market structure that will result in higher costs to ratepayers. Rate Counsel finds this to be an unacceptable recommendation. Table 3 provides our estimates of the potential rate impacts associated with the OCE Strawman. The rate impacts are sorted from the highest impacts to the lowest, and while the OCE Strawman is admittedly not the highest rate impact model examined, it clearly has rate impacts which are

considerably larger than most all other models which have garnered any significant attention. Most importantly, the OCE proposal has rate impacts well in excess of the 15-Year Auction Model and the 15-Year Tariff Model.

Table 3: Comparison of OCE Strawman Rate Impacts to Other Solar Market Structure Models

	<10 kW Private	>10 kW Private	Public	Weighted Average
	---------- (million $) ----------			
Ratepayer Impacts - Revised Summit Blue				
SREC Only	$ 6,158.9	$ 3,207.6	$ 1,871.1	$ 4,147.6
Commodity Market Model	$ 5,415.9	$ 3,425.5	$ 2,170.3	$ 3,995.7
Rebate/SREC	$ 4,907.9	$ 3,617.3	$ 2,599.5	$ 3,950.4
OCE Proposal	**$ 5,616.8**	**$ 2,265.4**	**$ 2,502.6**	**$ 3,648.6**
Auction Model	$ 5,307.6	$ 2,670.0	$ 1,693.6	$ 3,549.3
Underwriter Model - 15 year	$ 4,922.2	$ 2,926.3	$ 1,694.9	$ 3,503.0
Hybrid-Tariff Model	$ 4,722.7	$ 2,827.9	$ 1,611.5	$ 3,366.9
Auction Model - 15 year	**$ 4,530.5**	**$ 2,715.4**	**$ 1,546.0**	**$ 3,230.9**
15-Year Tariff Model	**$ 4,529.6**	**$ 2,714.5**	**$ 1,545.1**	**$ 3,230.1**

- *Market uncertainty will not be addressed without some form of securitization.*

While Rate Counsel is not overly enthused about binding ratepayers to long term contracts for uneconomic resources, we do recognize that some form of securitization may be necessary in order to minimize what are already exceptionally high rate impacts from this policy agenda. Failure to do so, in our opinion, makes what is already a bad situation worse. Thus, we agree with industry comments which note that market uncertainty is not addressed under the OCE Strawman. As we will note later in our comments, we do not believe a multi-year SACP schedule does much good in alleviating any of these uncertainties as well. Any market structure which fails to give investors some form of confidence that their return on investment has a reasonable chance of not being impacted by a future change in regulatory commitment will be expensive for ratepayers.

Rate Counsel would also like to use this opportunity to clarify our position on the issues of certainty, regulatory commitment, and securitization. We agree with the industry that some form of securitization will likely be needed in order to create the regulatory certainty needed to sustain current and future solar energy investments. However, Rate Counsel has, and will continue to question the merit of maintaining the solar energy set-aside within the RPS. We believe that this set-aside is exceptionally expensive and creates considerable and unacceptable rate impacts that will ultimately be translated into negative economic impacts for New Jersey.

- *The Board should consider moving away from its policies establishing entity caps.*

Like many in the industry, Rate Counsel believes that discontinuing the entity caps and size limitations should be considered. The costs of overemphasis on smaller systems results in higher overall costs of kW of solar installed. Rate Counsel believes that moving forward with policies which attempt to garner the economics of scale associated with larger systems will result in a lower overall rate impact for all customers.

- *The Board should reject the notion of qualification lives for SRECs.*

Rate Counsel also agrees with the industry comments that the idea of qualification lives should not be accepted. This proposal runs counter to setting up an efficiency market structure for solar energy development, and in our opinion, will result in higher than necessary rates. Further, as some in the industry noted, such a mechanism may encourage the removal of solar installations from New Jersey locations and to those areas where additional life can be recognized. Such an incentive is counter to the Board's goals of developing solar energy resources in New Jersey.

However, as we will note later in our comments, we do not agree with industry comments stating that attempts to vintage systems which have received generous financial support under the current rebate process are unfair, inefficient, or difficult to conduct.

3. Areas of Disagreement with Other Parties

One of our primary disagreements with other parties submitting comments in this proceeding, which are almost exclusively those associated with the solar industry, is their willingness to modify the proposed OCE Strawman and use this modified proposal as an interim market structure until a more permanent solution can be established, primarily one based upon a Tariff-based Model. Rate Counsel disagrees with the recommendations from other parties that would accept this interim approach for a variety of reasons.

First, such a recommendation is inconsistent with many of these parties' positions that the Board act decisively on the solar energy market structure issue. This proceeding has been ongoing for the better part of a year. All of the models have been discussed at length and examined in a variety of different manners. The only new proposal that has emerged over the past several months has been the OCE Strawman. There is no need to further explore this issue. The Board needs to make a final decision, and Rate Counsel believes it should decide in favor of establishing a modified auction-based approach to securing solar energy resources.

As we noted in our direct comments, the rate impacts of this proposal, which would result in a portfolio of contracts averaging 15 years, are virtually identical to those in the 15-Year Tariff Model. Table 4 shows that under average expectations, the NPV difference between the 15-Year Auction Model and the 15-Year Tariff Model are small.

Further, the policy variance associated with the 15-year Auction Model is considerably lower than the Full Tariff Model. If the Board is concerned about the range of impacts associated with each market structure, and it wants to choose a model that has the lowest probability of an unanticipated rate impact, then it should clearly choose the 15-Year Auction Model. Again, as seen from Table 4, the upper bound of the 15-Year Tariff Model rate impacts clearly shows that it is some $200 million (NPV) higher than the base-case 15-Year Auction Model. Thus, while the two models are virtually identical under average expectations, they are clearly different under extreme conditions which preference an Auction as opposed to a Tariff.

Lastly, if the potential efficiency-creating opportunities associated with the Auction Model are considered, then the least-cost rate impact decision for the Board is easy. The 15-Year Auction Model under efficiency assumptions has an average estimated rate impact that is around $200 million (NPV) lower than its Tariff Model counterpart.

Table 4: Estimated Solar Energy Market Structure Rate Impacts and Ranges

	Estimated Rate Impact		
	Minimum	Average	Maximum
	---------- (million $) ----------		
15-Year Tariff Model	$ 2,171	$ 3,230	$ 4,289
Auction Model - 15 year	$ 2,398	$ 3,231	$ 4,064
Auction Model - 15 year (efficiency)	$ 2,193	$ 3,025	$ 3,858

Rate Counsel would also discourage the Board from making further delays to explore a model for which (a) it has questionable regulatory authority and (b) one that has virtually no rate impact advantage over the Auction Model approach. Rate Counsel believes that moving forward with an interim approach to explore the Tariff Model will result in additional delays and hold ratepayers responsible for making up these shortfalls on an expedited basis in the near future.

The current SREC pilot program is a good example of how interim measures fail to keep the market moving and push greater RPS implementation risk (and cost) onto ratepayers. As EVCO Mechanical noted in their comments, “the SREC-

Only Pilot has shown itself to be a total flop."[3] Rate Counsel believes that the temporary and uncertain nature of the pilot is a major reason for its lack of success. Continuing to rely on stop-gap, interim, piecemeal measures will result in even further delays in meeting the Board's solar energy goals.

Rate Counsel would suggest that if the Board chooses to use the OCE Strawman as an interim measure as it explores the regulatory and legislative requirements for adopting a Tariff Model as recommended by all of the solar energy industry participants, then the Board should remove the current anticipated solar energy shortfalls from the current goals and "re-calibrate" the forward-looking goals to reflect this shortfall.

While many in the solar industry will strenuously object to Rate Counsel's proposal to effectively write-off the current solar shortfalls in the RPS, and will more than likely make immeasurable claims of the market credibility issues associated with this potential reduction, it is simply the case that these goals have been missed to date, are sunk, and have no forward-looking implication. As long as the Board continues with its commitment with solar energy on a forward-going basis, and even strengthens that commitment with a solid market structure like an auction approach, it is likely the case that investors will have greater confidence in the market on a forward-looking case, not less. Piecemeal, and admittedly unsuccessful, pilot measures create more market uncertainty since these failures only reinforce and delay the inevitable.

Unfortunately, there are also a number of other key areas where Rate Counsel's position differs from other solar industry participants commenting in this proceeding. Our differences with other parties are primarily related to the potential vintaging of earlier-funded projects to prevent a windfall gain at ratepayers' expense and establishing a multi-year SACP schedule.

As we noted in our direct comments, it would be unfair and inequitable for the Board to allow projects supported by ratepayers under the prior rebate process to now receive additional, unanticipated support from SREC revenues which will also be paid for by ratepayers. This would be akin to requiring ratepayers to pay twice for the same support of solar energy. Such a policy would also allow previously-supported projects to "double-dip" on their level of financial support. Not correcting for this apparent inequity would be nothing more than an unjustifiable wealth transfer from current and future ratepayers to those projects which have been funded over the past several years by other ratepayers. The Board should reject such a notion out of hand.

We emphatically disagree with the comments of PV Now which would suggest that somehow, allowing these earlier-supported projects to earn a windfall is appropriate since it would "reward" them for being an early adopter. There is nothing in any of the Board's prior policies which would suggest that the purpose

[3]EVCO Mechanical Comments at 55.

of the rebate program was to “reward” those adopting solar energy with some kind of income or profit. The rebate program has been, and always should be, a financial support program developed and maintained to help reduce barriers to entry (through high initial capital costs) of solar energy. This is not a program designed to create profit opportunities.

In fact, Rate Counsel would point out that Summit Blue has already noted that some of the participants in this program, particularly the larger scale private applications, have actually gotten a windfall incentive amount that goes over and beyond the IRRs needed to bring these participants into the market. Allowing additional windfalls, as suggested by PV Now, would be egregious in principle alone, regardless of what we believe is a marginal implementation cost and effort. We are disappointed that the industry is ready, willing, and able to modify the rules of the game in instances where such changes are favorable for them, but entirely rigid and inflexible when such policy changes are proposed to protect the broader class of ratepayers. Again, the Board should reject such a notion.

While Rate Counsel does not support OCE’s Strawman proposal, we do support what we think was their intent in setting qualification lives for these prior-supported projects. As we noted in our June 22, 2007 comments, we believe that OCE’s proposal was offered as a method of creating fairness in the process and not one intended to prejudice or limit the support that was previously developed in the prior market structure regime. Rate Counsel would support some sort of vintaging that pursues these policy ends: that is, making the appropriate correction in market design for those participants that have already received support under prior mechanisms.

Our other major area of disagreement with the solar industry is related to the topic of setting a multi-year SACP schedule. As we noted in our June 22, 2007 comments, we do not believe, contrary to industry comments, that these schedules do anything to provide additional support to the financial community regarding the Board’s commitment to solar energy.

Instead, a multi-year SACP schedule will only serve in a ratchet-like capacity from a ratepayer perspective. The schedule will certainly be easy to increase if these administratively-determined prices are too low, but will fail to be decreased should industry cost trends and efficiencies become more favorable. This gives industry considerable pricing (and profit) headroom in offering SRECs and significantly reduces the circuit-breaker/price cap intent of the mechanism. The industry’s support of this mechanism is yet another example of their asymmetric support of changes in policy that support themselves and their customers, but not those which provide protections to ratepayers.

If the Board opts to establish some form of multi-year SACP schedule, then Rate Counsel strongly recommends that an aggressive efficiency expectation be built into the pricing reductions for the schedule over time. The longer the period of

the multi-year schedule, the more aggressive the efficiency factor embedded into the schedule.

4. Conclusions

Rate Counsel again thanks the Board for the opportunity to provide its written reply comments in this important matter. Rate Counsel reiterates its support for a 15-Year Auction Based Model. We believe that such an approach brings together the best in both security for solar energy commitments, and the development of active, healthy and competitive renewable energy markets. If renewable resources (solar, wind, bioenergy, etc.) are to serve as meaningful complements, and ultimately substitutes to traditional resources, they are going to need to be incorporated into more mainstream energy market institutions and approaches. Rate Counsel believes the development of an Auction Model will move the solar energy industry in this direction and will ultimately strengthen the development of solar energy in New Jersey at the least cost to ratepayers.

In addition, and based upon our review of the comments included in this proceeding to date, Rate Counsel also offers two additional recommendations:

(1) The Board should adopt a rate impact circuit breaker that will be defined by the estimated results included in the Summit Blue Report for the market structure model the Board ultimately chooses. (i.e., estimate rate impacts from any future solar set-aside review should not exceed those estimated by Summit Blue) Forward going reviews of the solar energy program should include updated rate impact analyses, and if those analyses show continued rate increase commitments in excess of the prior estimates, then some downward revision would be conducted.

(2) The Board should begin the process of reviewing the current obligation to solar energy for possible revision. Current shortfalls from current and prior year goals are sunk and should have no impact on the forward looking goals for the industry. The Board may want to consider re-calibrating these goals to take into account the lost ground to date, to re-set the current goals on a more favorable and permanent market structure like a 15-Year Auction Model.