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March 20, 2020

**By 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: In the Matter of a Solar Successor Incentive Program Pursuant to  
P.L. 2018, c. 17**

**Docket Nos. QO19010068 and QO20020184**

Dear Secretary Camacho-Welch:

Please accept for filing the attached comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-referenced matter. These copies are also being submitted electronically in accordance with the Board's February 28, 2020 Notice in this matter. Copies of Rate Counsel's comments are being provided to all parties on the service list by electronic mail only.

**Please acknowledge receipt of these comments.**

Honorable Aida Camacho-Welch, Secretary

March 20, 2020

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Thank you for our consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND

Director, Division of Rate Counsel

By: /s/ Sarah H. Steindel

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Enclosure

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

**In the Matter of a Solar Successor                    )   Docket Nos. QO19010068 and**  
**Incentive Program Pursuant to P.L. 2018,        )   QO20020184**  
**c. 17**

**COMMENTS OF THE**  
**NEW JERSEY DIVISION OF RATE COUNSEL**  
**ON NEW JERSEY'S 2019/2020 SOLAR TRANSITION**  
**SOLAR SUCCESSOR PROGRAM**

**March 20, 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 Staff’s Solar Successor Program topics. The ongoing Solar Transition proceeding was initiated by the Clean Energy Act (P.L.2018, c.17) (“Act” or “CEA”) which directs the Board to transition the solar market away from current solar financing methods based on the use of Solar Renewable Energy Certificates (“SRECs”) to a new program that will continue the efficient and orderly development of solar energy generation.

Specifically, the Act requires the Board to adopt rules and regulations to close the SREC program to new applicants once solar generation reaches 5.1 percent of total retail sales (hereafter the “threshold”), and no later than June 1, 2021. N.J.S.A. 48:3-87(d)(3). During the course of this Solar Transition proceeding Staff has recommended that the transition be addressed in three phases:

1. The closure of the current SREC market to new registrations upon attainment of 5.1 percent of the energy sold in New Jersey being generated by solar facilities. These “legacy” installations will include those installed and operational prior to the statutory threshold of 5.1 percent being met;
2. The Transition Program, which would be available to projects that have registered with the SREC program but have not yet started commercial operation at the time the 5.1 percent threshold is achieved; and
3. The Successor Program, which would be developed for all projects that had not registered with the SREC program prior to attainment of the 5.1 percent threshold.

To assist with the phases of the solar transition proceeding, Staff retained Cadmus Group, LLC as a Solar Transition Consultant (“Staff Consultant”). Rules closing the SREC program were published in the New Jersey Register on February 3, 2020 and the Board issued an Order in December 2019 establishing the Solar Transition Incentive program. To focus on the Successor Program, the Staff Consultant held stakeholder workshops on December 17, 2019 and March 3, 2020. At the December 2019 stakeholder workshop, the Staff Consultant sought feedback on potential policy pathway design choices which included the incentive type, payment structure, price setting mechanism, price adjusting mechanism and compensation structure. On February 28, 2020 the Board issued a Notice convening the March 3, 2020 stakeholder meeting to solicit further input on a series of questions formulated by Staff. In addition, the Board requested written comments be submitted no later than March 20, 2020. Rate Counsel participated in the two stakeholder meetings. In addition, Rate Counsel’s written comments are offered below.

**Topic 1: Successor Program Incentive Design**

- 1. Please describe the advantages and disadvantages of the three incentive program types identified above.**

**Response:**

Throughout the Transition Incentive proceeding, in both public testimony and written comments, Rate Counsel has urged the Board to be mindful of ratepayer impacts in the development of future solar incentive programs. Rate Counsel continues to advocate for solar incentive programs that aggressively reduce ratepayers’ financial burdens. Developing a program that promotes continued solar development at minimal ratepayer costs should be the primary goal of the successor program. The Board must adopt a program that ends the over-incentivization of New Jersey solar installations. As detailed below, Rate Counsel strongly supports a program that relies on a competitive solicitation process. Rate Counsel believes that

this is the only option that can achieve the CEA's objective of replacing the current SREC program with one that will reduce costs to ratepayers.

At page 4 of the February 28, 2020 Notice Staff identifies three potential "incentive program types." While Staff's descriptions of the three program types are not completely clear, none of them appear to offer a program based on competitive solicitation. The first program type identified by Staff, a "Tariff Based Incentive," appears to contemplate a feed-in tariff in which administratively determined subsidies based on cost and revenue estimates are available to any and all projects. The third option, "Performance-Based Incentive," appears to contemplate a similar process, except that the subsidy would be based on an administratively determined estimate of the value of the attributes of solar generation. Both of these options would result in a very inefficient process that is contrary to long-held Board policies of discouraging feed-in tariffs. This proceeding, as well as the prior proceeding developing the Solar Transition Program, underscores how contentious a process for setting the appropriate solar incentive value can become. Two things need to be considered. First, the Board may not have complete information in order to set an appropriate incentive value. Second, any administratively determined incentive value will likely be incorrect, exposing ratepayers to the risk that incentives will be too high.

Staff's second option, "Market-Based RECs," appears to contemplate a structure with tradeable certificates, similar to the legacy SREC program. Rate Counsel cannot support this option, since it would simply perpetuate the same problems that have arisen under the current program and that the CEA seeks to address. Repeatedly, the Board or the Legislature has moved to lower Solar Alternative Compliance Payment ("SACP") values in order push down SREC prices to better reflect the ongoing cost efficiencies arising from solar installations. However,

SREC prices, while declining, have failed to track the declining costs of solar. The Board should reject any proposal that is comparable to the former SREC program.

The CEA directs the Board to establish a successor program that supports solar development in an “efficient” and “orderly” fashion as defined in the CEA. The CEA also directs the Board to control costs by using “competitive processes such as competitive procurement and long-term contracts,” with the ultimate objective of “transform[ing] the renewable energy market into one that can move forward without subsidies.” N.J.S.A. 48:3-87(d)(3). Neither an administratively determined subsidy nor a program based on the current legacy SREC program will accomplish the CEA’s objective of a more cost-effective and cost-efficient mechanism.

**2. How would you expect the incentive value (and the cost to ratepayers) to change based on the incentive program type?**

**Response:**

The incentive value and cost to ratepayers should only be determined by a competitively-bid solicitation format. Incentive values determined by an administratively determined fixed price or tradeable certificates would be inefficient, and place far too much cost risk upon ratepayers.

**3. Should the Board establish a differentiated incentive (i.e. different incentives for different project types), as was done for the Transition Incentive program? If yes, what should these different project types be?**

**Response:**

Rate Counsel has previously recommended the Board study the SMART Program currently used in Massachusetts. The SMART Program is designed to procure solar generating capacity based on long-term, fixed-price contracts. SMART Program participants receive a fixed per kWh compensation that is separate from their electricity bill for a period of 10 or 20 years.

A competitive request for proposals was first held in Massachusetts in November 2017. The Massachusetts distribution companies jointly solicited bids for projects between 1 and 5 MW for a total solicitation capacity of about 100 MW. Each company solicited an amount of capacity proportional to their load share and the results of this competitive solicitation were used to establish a base compensation rate or clearing price for projects between 1 and 5 MW. Rates for projects less than 1 MW are set based on an index or “rate factor” that attempts to reflect the different costs of development for projects of different sizes. Incentives are available for 10 years for projects less than 25 kW; and 20 years for projects greater than 25 kW and less than 5 MW. The table below outlines each project capacity level and the applicable rate factor.

<b>Generation Unit Capacity</b>	<b>Base Compensation Rate Factor</b>	<b>Term Length</b>
Low income less than or equal to 25 kW AC	230%	10-year
Less than or equal to 25 kW AC	200%	10-year
Greater than 25 kW AC to 250 kW AC	150%	20-year
Greater than 250 kW AC to 500 kW AC	125%	20-year
Greater than 500 kW AC to 1,000 kW AC	110%	20-year
Greater than 1,000 kW AC to 5,000 kW AC	100%	20-year

Adders are also applied for facilities with certain attributes such as low-income, community solar, or location (agricultural, building mounted, brownfield, landfill). These adders range in value from \$0.02 per kWh to \$0.06 per kWh.

The SMART Program is made up of eight blocks with each block representing about 200 MW of capacity. As projects respond to the incentive rate offered, the capacity blocks are filled. Going forward, incentive payments decrease by a pre-determined amount for each block so that once a block reaches its maximum capacity within a EDC’s service territory, future projects then become eligible for the rates offered in the next lower-priced block. Projects are awarded on a

first-come, first-served basis. Most importantly, in the SMART Program the starting point for an incentive price is based on the least-cost, most-competitive projects, which provides a strong financial signal for early adopters. This declining block program design is applied in other states as well, such as New York's NY-Sun program.

While Rate Counsel suggests following a program structure similar to that used in Massachusetts, it also recommends that the Board exercise caution in establishing numerous market segments. While the CEA requires some market segmentation, the Board should not overly segment the market. Setting unreasonable and unnecessary segment targets could lead to a short fall in reaching the CEA's solar energy goals. Additionally, Rate Counsel does not support a size cap for projects participating in this program. The focus of any incentive program going forward should be to encourage the most cost-efficient projects at the lowest unit price (\$/MWh). Establishing a cap on project size could run contrary to this goal.

In addition, Rate Counsel would like to highlight the distorting effect continued net metering subsidies will have on a Successor Program. The Board did give recognition to this issue its Solar Transition Order by approving a lower Transition Renewable Energy Certificate ("TREC") factor for net metered projects. In the Massachusetts SMART Program, the uneven playing field that net metering creates is addressed by subtracting a "value of energy" ("VOE") component from a project's compensation. SMART Program customers who enroll in net metering receive an incentive rate that is calculated as the base compensation rate, plus any applicable adders, minus the VOE. The VOE is established by the Department of Energy Resources and is equal to the three-year average of the basic service rate plus current rates for transmission, distribution and transition. This rate is calculated for each EDC and rate class.

**4. How should the Board set the value of the incentive: via administrative modeling, a competitive solicitation, or an on-going market? What are the advantages and disadvantages of these three mechanisms?**

**Response:**

Incentive values for future solar programs should be set through competitive solicitation. Administrative modeling or a market with tradeable certificates will not achieve the CEA's goals. Please see Rate Counsel's response to Question 1 and 3. In Massachusetts the SMART Program started with a competitive procurement seeking 100 MW of projects larger than 1 MW. The initial 100 MW was divided proportionally among the distribution companies using distribution load data. The Department of Energy Resources set ceiling price to help ensure the overall cost-effectiveness of the program. The results of this procurement established a clearing price for each distribution company based on the last project accepted by each EDC. This last project was determined by ranking eligible applicant projects in each EDC service territory by price, then adding the capacity of ranked projects together, until the next project in the list could not be accepted without the EDC exceeding its specified solicitation capacity amount.

**5. How should the Board establish and periodically revise the maximum incentive payment caps described in the Clean Energy Act?**

**Response:**

It is unclear why the Board would be in a position to establish or revise the cost caps as defined in the Clean Energy Act. The CEA established a cost cap on the total cost that ratepayers are required to pay for Class I renewable energy requirements. The intent of the CEA, and the restructuring of New Jersey's solar market, was to define a clear transition process that will be "efficient" and "orderly" and "continually reduce" the cost of achieving solar energy goals. N.J.S.A. 48:3-87(d)(3). It also requires the program to be modified to allow for the utilization of "competitive processes such as competitive procurement and long-term contracts

....” Id. Most importantly, the CEA established a clear and unambiguous renewable energy implementation cost cap to protect ratepayers from incurring excessive RPS compliance costs. The CEA states that costs “shall not exceed nine percent of the total paid for electricity by all customers in the State for energy year 2019, energy year 2020, and energy year 2021, respectively,” and “seven percent of the total paid for electricity by all customers in the State in any energy year thereafter; ...” N.J.S.A. 48:3-87(d)(2). While an amendment adopted in early 2020 allows some averaging, this is strictly limited. The cap may be increased only for energy years 2022 through 2024, and only to the extent costs are under the cap in energy years 2019 through 2021. Id. The Board lacks authority to make any other modifications of the caps for specific energy years.

**6. What is the preferred incentive qualification life (10 vs. 15 years) based on typical project financing?**

**Response:**

Rate Counsel disagrees with the use of the term “qualification life” since this presumes that a tradeable certificate-based market design is acceptable and consistent with the CEA. However, as described in Rate Counsel’s response to Question 3, term lengths for smaller projects (less than 25 kw) should be set for a shorter period of 10 years. This reflects the falling cost of solar installations while allowing project owners to recover costs quickly. The remaining projects types should be set for a term of 15 or 20 years.

**7. The Clean Energy Act requires that the Board “encourage and facilitate market-based cost recovery through long-term contracts and energy market sales.” Please provide your assessment of various market-based cost recovery mechanisms, and their applicability to each of the three incentive program types developed by Cadmus.**

**Response:**

Rate Counsel has repeatedly recommended that the New Jersey solar market be allowed to stand on its own and follow a market-based competitively determined structure. The guiding

principles for moving forward with the solar transition are clearly articulated in the CEA which calls upon the Board to establish mechanisms that will be “efficient” and “orderly” and that will rely upon “competitive processes” and “competitive procurement.” Going forward, the most important concept in ensuring that new programs continually reduce the cost of achieving the State’s solar energy goals is to incorporate competition. Please see Rate Counsel’s response to Question 3.

## **Topic 2: MW Targets/Program Capacity**

### **8. What MW target project categories should be established?**

#### **Response:**

A total capacity amount should be set based on the state’s need for solar capacity as determined by the solar RPS. For instance, in Massachusetts a 1,600 MW program target was set to reach a state goal of 10 percent solar generation. Allocation of the total capacity value to EDCs should be based on each EDCs load share. Also, each capacity block in the Massachusetts program has a minimum of 20 percent and a maximum of 35 percent of capacity set-aside for projects less than 25 kW. Other than that, there are no targeted capacity amounts. Rate Counsel agrees with this method, which allows the market to determine what type or size of project gets installed given the competitively determined price offered. For instance, Rate Counsel’s response to Question 3, includes a table that outlines the Base Compensation Rate Factor for each type of Generation Unit Capacity. If no one in the market responds to the price offered for “Greater than 250 kW AC to 500 kW AC” then it indicates a disinterest in the market for cost-efficient projects of that size. Thus, a target should not be established for this category, as other more cost-efficient projects will fill any shortfall in the overall targeted capacity amount.

**9. How should the Board set the capacity for each MW target, in compliance with the incentive cap and cost cap requirements? Please consider: 1) how the Board should set the overall capacity to be made available on an annual basis for the Solar Successor Program; and 2) the relative breakdown of the total annual capacity between MW target project categories.**

For reference, the breakdown of installed capacity by solar installation type as of January 2020 is as follows:

Residential	30%
Non-Residential <= 100 kW	4%
Non-Residential > 100 to < 1000 kW	24%
Non-Residential >= 1000 kW	21%
Grid Supply	21%

Source: <https://www.njcleanenergy.com/renewable-energy/project-activity-reports/projectactivity-reports>

**Response:**

Please see Rate Counsel’s response to Questions 3 and 8.

**10. Should the historical breakdown of actual MW installations serve as the basis for future targets?**

**Response:**

No. Actual solar installations in New Jersey are the result of multiple programs over 15 years targeting and incentivizing certain capacity groups and types. There should not be targets set for specific capacity sizes. As explained in Rate Counsel’s response to Questions 3 and 8, the market should determine what projects get built based on prices set by a competitive solicitation. Please see Rate Counsel’s response to Questions 3, 8 and 9.

**11. How should the Board administer these MW targets? Should projects be allowed to participate on a first-come, first-served basis?**

**Response:**

As per Rate Counsel’s responses to Questions 3, 8 and 10, there should not be administratively determined MW targets for specific market segments. Projects should participate on a first-come, first-served basis as they respond to the prices offered as the result of a competitive solicitation.

**12. What measure should the Board implement to prevent “queue sitting”? Please include in your response a discussion of a) maturity requirements, b) filing fees, and c) alternative suggestions.**

**Response:**

Queue sitting may be addressed through the use of a performance deposit. A performance guarantee deposit would be submitted at the time of bid submittal, or after the initial capacity solicitation, upon program registration.

**13. Should excess annual capacity be reallocated if not used (e.g. if a project drops out of the pipeline)?**

**Response:**

No. If the Successor Program is designed in a competitively-bid solicitation format with declining blocks as described in Rate Counsel’s response to Question 3, there would not be a need for reallocating capacity from year to year. The SMART Program is made up of eight blocks with each block representing about 200 MW of capacity. As projects respond to the incentive rate offered, the capacity blocks are filled. Going forward, incentive payments decrease by a pre-determined amount for each block so that once a block reaches its maximum capacity within a EDC’s service territory, future projects then become eligible for the rates offered in the next lower-priced block. Projects are awarded on a first-come, first-served basis.

**14. Should projects located in municipal utilities that do not pay into the RPS be eligible to receive Successor Program incentives?**

**Response:**

No. The legacy SREC program, the Transition Incentive Program and the potential Successor Program exist to allow the state to comply with its clean energy goals and the RPS. If municipal utilities are not subject to compliance with the RPS then projects within their service territories should not receive ratepayer-funded incentives.

**15. How can the State most efficiently progress towards the goals set in the Energy Master Plan, while balancing ratepayer costs for solar development in- and out-of-state?**

**Response:**

The State can only efficiently progress toward Energy Master Plan goals by adopting policies that ensure the most efficient, orderly and cost-effective development of solar and renewable energy investments. Going forward this can only be done through a program structured upon rates that have been determined by a competitively bid solicitation.

**Topic 3: Grid Supply Solar**

**16. Should the Board maintain the current subsection (t) and subsection (r) processes for determining incentive eligibility for grid supply projects?**

**If yes, what conditions should be maintained?**

**If no, how should the Board treat grid supply projects?**

**Response:**

If the Successor Program were designed as a competitive auction to ensure the most cost-efficient procurement of solar then the current subsection (t) and subsection (r) processes would be unnecessary. There is no need to maintain multiple separate incentive programs. Any incentives needed for projects of a certain type should be part of the same program with an adder that has been developed to be applied to a competitively determined base incentive rate. Rate Counsel does not support a size cap for projects participating in this program. The focus of any incentive program going forward should be to encourage the most cost-efficient projects at the lowest unit price (\$/MWh). Establishing a cap of project size could run contrary to this goal. Please see Rate Counsel's response to Question 4.

**17. Should the Board set a dedicated incentive value for grid supply projects? If yes, how can the Board best determine the appropriate incentive value (i.e. incentive gap modeling vs. bid process)?**

**Response:**

Please see Rate Counsel's response to Question 16.

**18. Should the Board establish a maximum system size to be eligible for a Successor Incentive? If not, how should economies of scale and the lower incentive gap be accounted for solar electric generation facilities over 20 MW**

**Response:**

Rate Counsel has concerns about the use of a maximum size or any other program limitation that would prevent the development of lower unit cost solar projects. Board Staff is correct in noting that these types of limitations would prevent ratepayers from being able to take advantage of economies of scale and potentially the types of cost reducing technological innovations that can often arise with larger systems.

**19. What is the best means to motivate investment in rooftop grid supply solar facilities where insufficient electricity loads preclude net metering and the wholesale value of electricity generated increases the incentive gap relative to rooftop net metered projects?**

**Response:**

Please see Rate Counsel response to Question 4. This should be applied as an adder to the base incentive rate determined by the market based in a competitively structured program.

**Topic 4: Solar Siting**

**20. How should the Successor Program incentive structure be designed to address the state policy preference for solar located on rooftops, landfills and brownfields versus open space and farmland?**

**Response:**

Please see Rate Counsel response to Question 4. This should be applied as reasonable adder to the base incentive rate determined by the market based in a competitively structured

program. However, the Board should exercise caution to avoid setting incentives at unreasonably high levels. While the CEA may have indicated a preference for incentivizing these types of projects, it does not require supporting them at all costs. The SREC-based financing programs implemented by three of the EDCs showed minimal developer interest in siting solar projects on brownfield, landfill and historic fill sites. While some such sites have been developed under Public Service Electric and Gas Company's Solar 4 All Program, experience from this program has provided evidence that these sites are considerably more expensive than projects on other sites. There is no reason to force these types of projects with inflated incentives.

**21. What land use restrictions and limitations should apply to the Successor program incentive to reflect the siting of solar projects in New Jersey? Please include a specific discussion of solar on farmland and open space, consistent with all applicable New Jersey statutes and regulations.**

**Response:**

Solar projects should not be allowed on preserved farmland and/or open space, and should be subject to applicable state and local zoning and other land use restrictions. Otherwise, the market should allow developers to determine the most efficient and cost-effective project sites.

**22. Aside from the various types of net metered projects and grandfathering a defined set of projects on farmland, the Solar Act of 2012 limited eligibility for SRECs to solar electric generation facilities which demonstrated no adverse impact on open space or those located on properly closed sanitary landfills and brownfields as defined in the Spill Compensation and Control Act. Should the criteria for Successor Program incentives retain these limitations as contained in the statute or be refined to broaden eligibility beyond the footprint of a landfill cap or limits of the brownfield site?**

**Response:**

The Successor Program should retain the limitations in the statute. There is no need to expand eligibility or development footprints. Rate Counsel recommends that the Board focus on developing programs that are market driven, to minimize costs, and not attempt to serve any land use goals that are not part of its regulatory purview and are not part of governing statutes. If

projects on these sites cannot be developed with incentives at a reasonable level, the Board should not increase costs by extending the “adders” for these types of projects beyond the geographic limits contemplated by the statute.