



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

May 27, 2021

By Electronic Mail

Honorable Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: Comments New Jersey 2019/2020 Solar Transition Solar Successor
Program: Staff Straw Proposal
BPU Docket No. QO20020184**

Dear Secretary Camacho-Welch:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in accordance with the Revised Notice issued by the Board of Public Utilities ("Board") in this matter on May 5, 2021. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at board.secretary@bpu.nj.gov.

Please acknowledge receipt of these comments.

Honorable Aida Camacho-Welch, Secretary
May 27, 2021
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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
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

Enclosure

cc: Paul E. Flanagan, BPU
Kelly Mooij, BPU
Abe Silverman, BPU
Ariane Benrey, BPU
B. Scott Hunter, BPU
Ben Witherell, BPU
Crystal Pruitt, BPU
Pamela Owen, DAG, ASC

STATE OF NEW JERSEY

BEFORE THE BOARD OF PUBLIC UTILITIES

New Jersey 2019/2020 Solar Transition)
Solar Successor Program:) **Docket No. QO20020184**
Staff Straw Proposal)

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

May 27, 2021

INTRODUCTION

Rate Counsel appreciates the opportunity to comment on the Staff Solar Successor Program Straw Proposal (hereinafter “Straw Proposal”). The Clean Energy Act of 2018, L. 2018, c. 17 (“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 Solar Renewable Energy Certificate or “SREC” program. The CEA was critical of this program, as Rate Counsel had been over several years, since the SREC construct had 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 to need more and more financial support and subsidies. Likewise, the solar industry has claimed that the level of financial support must not just continue, but must expand to avoid the decimation, it not the total destruction, of the industry in New Jersey. In the past, the Legislature and the Board have fallen prey to many of these threats and fears by increasing the state’s overall solar energy commitments, in terms of both annual solar capacity development targets and the level of ratepayer-funded financial subsidies that have flowed into a very small sector of the New Jersey economy. This consistently increasing level of financial commitment has led to the point where New Jersey ratepayers have spent billions of dollars for what is now a little over five percent of total New Jersey electricity load.

The provisions of the CEA were a clear message from the Legislature that it is time to rein in solar energy development costs. Other states, such as Pennsylvania and Maryland in the Mid-Atlantic alone, have managed to develop thriving solar industries that are more

economically efficient and are not based upon exorbitant SREC prices that, despite cost decreases and supply gluts, are still above \$250 on a regular basis. New Jersey's historic approach to solar energy development is not sustainable and cannot be allowed to continue. Based upon data collected by SNL, Maryland reports recent SREC prices that are in the \$78/SREC range whereas Pennsylvania reports SREC prices around \$34/SREC.¹

The accumulated inefficiencies that have been allowed to develop in New Jersey solar markets are not abstractions but are real costs that have been entirely paid for by New Jersey ratepayers. This fact was clearly recognized in the CEA. Thus, the CEA requires the Board to place a renewed and stronger emphasis on minimizing the rate impact of solar market development particularly through the Solar Successor Program.

Equity is another overarching public policy consideration that the Board has to incorporate in its Solar Successor Program decisions. Governor Murphy has certainly set ambitious goals for 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 do². Of all the ways we pay for clean energy in New Jersey, recovering those costs through our utility rates is by far the most regressive and inequitable method. Clearly, there are societal benefits to New Jersey's clean energy programs, and utility rates should reflect some of the costs of securing those benefits. However, it is becoming increasingly important for New Jersey to contain the overall costs of this development and assure that those costs are recovered from those that receive the greatest benefits.

¹S&P Global Market Intelligence. Renewable Energy Credits. Available at: <https://platform.marketintelligence.spglobal.com/web/client?auth=inherit&ignoreIDMContext=1#markets/rec>.

²State of New Jersey, Executive Order No. 23, Governor Phillip D. Murphy.

The Board's Community Solar program is an effort to alleviate some of these equity issues. However, the Board must also consider the overall financial implications of continuing to use ever larger levels of ratepayer funding to support a program in which generous profits are being passed along to private and publicly traded capital, yet financially backstopped (and "de-risked") by low- and moderate-income households. The Community Solar program, and other initiatives to increase low- and moderate-income participation in the Board's programs, are not sufficient to assure equity. The Board must also take concrete steps to drive down costs.

The CEA attempts to address the high costs of New Jersey's solar energy program with two related mechanisms that are not adequately reflected in the Staff Straw proposal. First, the CEA includes a cost cap that limits future ratepayer responsibility for solar energy funding. Second, the CEA focuses on the use of competitive bidding and competitive markets to ensure the least cost development of solar energy in New Jersey. These two remedies together were intended to assure that solar energy is advanced at a reasonable cost to ratepayers. Unfortunately, the Straw Proposal is inconsistent with the CEA in both of these important areas. As explained in more detail below, the Straw Proposal improperly inflates the cost cap, and relies too heavily on administratively set incentives.

Rate Counsel's written comments are organized to focus on these two paramount concerns with the Staff straw proposal. Our written comments also address many of the individual topics and specific questions posed by Staff to the parties, regarding the straw proposal and the solar transition, generally. Each section of our comments below is cross-referenced to these individual staff inquiries. Rate Counsel is not providing specific comments at this time on questions not enumerated below but urges the Board to make economy and ratepayer equity a priority in all decisions regarding the Successor Program.

RATE COUNSEL COMMENTS

I. Cost Cap Issues and Concerns

A. Introduction

As recognized in the Straw Proposal, the CEA establishes a straightforward formula for the cost cap:

Notwithstanding the requirements of this subsection, the board shall ensure that the cost to customers of the Class I renewable energy requirement imposed pursuant to this subsection 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 shall not exceed 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).

Under this formulation, the costs ratepayers can be required to pay for compliance with the Class I renewable energy portfolio standard (“RPS”), including the solar RPS, may not exceed nine percent of the total paid for electricity for each energy year through energy year 2021, and seven percent thereafter. The only exception is that the costs of offshore wind (“OSW”) are excluded. Id. A later amendment allowed a limited amount of “banking”—the cost cap for energy years 2022 through 2024 can be increased to the extent expenditures are lower than the cap for energy year 2019 through 2021. Id.

The Board needs to be cognizant that the levels afforded under the CEA rate cap are considerable in and of themselves without any modifications. Rate Counsel has calculated the allowed levels under the rate impact cap, using information provided in the various tables of the Staff Straw Proposal. Table 1 below shows that even Staff estimates an annual rate cap spend allowance that ranges between \$700 million to almost \$900 million in any given year. Over the entire time period, the annual average allowed spend under the CEA is a very generous \$784

million. Rate Counsel believes this level of spending (excluding OSW) should be adequate to meet New Jersey’s clean energy goals.

	Revenue From Sales	Behind The Meter (BTM)	OREC Costs	Total Cost of Electricity to Customers	Rate Cap Percent	CEA Rate Cap
	----- (\$ Million) -----					----- (\$ Million) -----
2019	\$10,010.0	\$74.8	\$0.0	\$10,084.8	9%	\$907.6
2020	\$9,837.0	\$82.6	\$0.0	\$9,919.6	9%	\$892.8
2021	\$9,886.2	\$78.7	\$0.0	\$9,964.9	9%	\$896.8
2022	\$9,935.6	\$80.4	\$0.0	\$10,016.1	7%	\$701.1
2023	\$9,985.3	\$89.9	\$0.0	\$10,075.2	7%	\$705.3
2024	\$10,035.2	\$103.6	\$53.7	\$10,192.5	7%	\$713.5
2025	\$10,085.4	\$117.4	\$107.4	\$10,310.1	7%	\$721.7
2026	\$10,135.8	\$129.2	\$161.1	\$10,426.1	7%	\$729.8
2027	\$10,186.5	\$137.8	\$276.1	\$10,600.5	7%	\$742.0
2028	\$10,237.4	\$144.2	\$391.2	\$10,772.8	7%	\$754.1
2029	\$10,288.6	\$147.4	\$506.2	\$10,942.3	7%	\$766.0
2030	\$10,340.1	\$148.8	\$613.6	\$11,102.4	7%	\$777.2
2031	\$10,391.8	\$163.9	\$721.0	\$11,276.7	7%	\$789.4
2032	\$10,443.7	\$179.5	\$828.4	\$11,451.7	7%	\$801.6
2033	\$10,495.9	\$195.2	\$935.8	\$11,626.9	7%	\$813.9
2034	\$10,548.4	\$210.7	\$1,043.2	\$11,802.3	7%	\$826.2

Table 1: Estimation of CEA Rate Impact Cap

However, the Straw Proposal does not follow the CEA’s direction and instead, changes how the rate cap is calculated. First, Staff is proposing to offset “demand reduction induced price effects” or “DRIPE” and is considering also offsetting other benefits such as the social costs of carbon against the costs of the Class I RPS. This would convert the CEA’s clearly defined rate impact cap both conceptually and mathematically into a “cost-benefit” or “net benefits” test. Second, Staff is proposing to carry over budget surpluses and deficits in perpetuity, in violation of the CEA’s provisions allowing only limited “banking” of surpluses. Third, the Straw does not include a “true-up” mechanism to assure compliance with the cost cap based on actual results. These flaws are discussed in more detail in the sections below.

B. Inclusion of DRIPE and other benefits in the cap (Questions 30a, 30b, 33)

Under the CEA’s cost cap provisions, the total cost of the Class I RPS—i.e., the costs of all Renewable Energy Certificates (“RECs”) for Class I renewable resources, including Class I RECs, Solar RECs (“SRECs”) issued under the Board’s legacy solar program, Transition RECs (“TRECs”) issued under the Board’s Transition Incentive (“TI”) Program, and the RECs (“SREC-IIs”) to be issued under the Successor Program—may not exceed the above budgets for each energy year. Staff is proposing to depart from this simple formula by re-defining “costs” as the “net costs of the programs to customers....” Specifically, Staff proposes to offset total Class I RE costs with a set of “benefits” referred to as “demand reduction induced price effects” or “DRIPE,” designed to account for the broader market benefits created by renewable energy deployment.

These DRIPE benefits represent a major adjustment not provided for or permitted by the plain language of the statute. In total, these DRIPE benefits are significant and are estimated by Staff to average around \$110 million per year, over the 2022 to 2034 time period. The effect of this is to increase Staff’s estimates of the expenditures allowed under the cost cap on a dollar-for-dollar basis, i.e. by an average of \$110 million per year. Rate Counsel objects to this rewriting of the statutory language and the use of these forecasted benefits to lower the CEA-required price cap.

Further, during the workshops held in this matter representatives of the solar industry have suggested offsetting the cost cap even more, by deducting the social cost of carbon, economic development benefits, hedge benefits, and even the savings realized by some customers as a result of the subsidies paid by others. Workshop #2 Replay at 4:33:43 to 4:34:43, 4:40:38 to 4:42:15, 4:48:21 to 4:50:04, 4:58:23 to 4:59:02, 5:02:57 to 5:06:27. All of these proposals are directly contrary to both the language and intent of the CEA. The cost cap

numerator is specifically defined in the CEA as “the cost to customers of the Class I renewable energy requirement imposed pursuant to this subsection” N.J.S.A. 48:3-87(d)(2). This language could not be clearer. The numerator is the amount paid for Class I RECs, SRECs, TRECs, and SREC-IIs. There is no provision for offsetting benefits, real or purported, against these costs.

The impropriety of deducting forecasted “benefits” from the cost cap numerator is even clearer given that the Legislature did not choose to include all of the costs of solar in the calculation. As Staff itself recognizes in the Straw Proposal, the costs included in the cost cap numerator are not comprehensive. The numerator includes the costs of RECs for Class I resources, but it does not include other sources of subsidies for solar, such as net metering credits, federal investment tax credits (“ITCs”) and other financial support mechanisms such as lower cost loans, or any other potential societal cost such as the socialized costs of the infrastructure required to accommodate renewable energy. See Straw Proposal at 24. If the statutory definition were to be administratively modified, fairness would dictate that all the costs should be included before any “benefits” are deducted. Instead, the proposals of Staff and others to reflect DRIPE and other benefits in the cost cap numerator are not only inconsistent with the limited definition of the cost cap in the CEA, these proposals also clearly place an unfair thumb on the scale to inflate the cost cap enacted in the CEA to protect ratepayers.

If the Legislature had intended to allow benefits to be considered in the cost cap calculation, it could have so provided. In fact, another provision in the CEA did just that. With regard to the energy efficiency and peak demand reduction programs mandated by the CEA for the State’s electric and gas utilities, the Legislature provided as follows:

The energy efficiency programs and peak demand reduction programs shall have a benefit-to-cost ratio greater than or equal to 1.0 at the portfolio level, considering both economic and environmental factors,

N.J.S.A. 48:3-87.9(d)(2).

Thus, the Legislature specifically provided that the Board could consider economic and environmental benefits in evaluating the reasonableness of the costs of the utilities' energy efficiency and peak demand reduction programs. This is a clear indication that, if the Legislature had intended benefits to be considered in calculating the costs cap for Class I renewables, it would have so provided.

Further, allowing the offsetting of benefits would be contrary to common sense. If benefits are offset against costs, this effectively increases the budget for Class I RPS compliance by the same amount. The result is that ratepayers could be required to spend an amount equal to the value of the benefits of the Class I RPS, plus an additional amount equal to 7% or 9% of total expenditures for electricity.

Table 2 below provides Rate Counsel's estimates of the impact that the inclusion of DRIPE benefits has on Staff's estimate of expenditures allowed under the cost cap. The table shows that these benefits increase Staff's estimated budget by as much as \$114.7 million, effectively allowing Staff to develop additional RE program costs of a comparable level that would otherwise, exceed the CEA rate cap. The addition of these "benefits" simply "discount" by as much as 17 percent (on average) Staff's proposed Class I REC costs. In other words, these "benefits" mask, and effectively hide a meaningful portion of the close to \$1 billion in Class I REC program costs proposed by Board Staff. These total Class I REC costs include legacy, transition, and Successor Program costs.

	Total Class I RE Costs (Legacy, TREC & Successor)	DRIPE Benefits			Staff Proposed Total Net Costs	DRIPE Impacts to RPS Costs
		Energy	Capacity	Total		
----- (\$ Million) -----						
2019	\$676.3	-\$2.0	-\$75.1	-\$77.1	\$599.2	-11.41%
2020	\$809.0	-\$2.3	-\$83.7	-\$86.0	\$723.0	-10.63%
2021	\$851.0	-\$2.5	-\$90.8	-\$93.3	\$757.7	-10.96%
2022	\$903.6	-\$2.7	-\$99.9	-\$102.6	\$801.1	-11.35%
2023	\$909.8	-\$2.9	-\$105.4	-\$108.2	\$801.6	-11.89%
2024	\$922.3	-\$2.9	-\$106.2	-\$109.1	\$813.2	-11.83%
2025	\$926.7	-\$2.9	-\$106.7	-\$109.6	\$817.1	-11.83%
2026	\$835.5	-\$2.9	-\$107.3	-\$110.2	\$725.3	-13.19%
2027	\$713.3	-\$2.9	-\$107.8	-\$110.7	\$602.6	-15.52%
2028	\$581.7	-\$2.9	-\$108.3	-\$111.3	\$470.5	-19.13%
2029	\$478.8	-\$3.0	-\$108.9	-\$111.8	\$367.0	-23.36%
2030	\$555.6	-\$3.0	-\$109.4	-\$112.4	\$443.2	-20.23%
2031	\$492.7	-\$3.0	-\$110.0	-\$113.0	\$379.7	-22.93%
2032	\$434.3	-\$3.0	-\$110.5	-\$113.5	\$320.8	-26.14%
2033	\$380.4	-\$3.0	-\$111.1	-\$114.1	\$266.4	-29.99%
2034	\$344.8	-\$3.0	-\$111.6	-\$114.7	\$230.1	-33.25%

Table 2: Estimation of Staff Straw Proposed RE Program Costs with DRIPE

Rate Counsel has also estimated the impact that the inclusion of these DRIPE benefits have on the amount available to expend on the Successor Program (i.e., difference between the annual CEA rate impact cap and the forecast costs for Class I RECs, legacy SRECS and TRECs, referred to in the Straw proposal as “headroom”) in Table 3 below. The estimated “over/under,” using the Staff DRIPE proposal, is provided in the columns on the left-hand side of the table whereas the “over/under” allowed under the CEA rate cap (without DRIPE benefits) is provided on the right-hand side of the table. The table shows that the Staff proposal will exceed the allowed CEA annual rate cap in years 2022 to 2025 by close to \$100 million,³ whereas a more appropriate estimate of program RE cost (excluding DRIPE benefits) shows that the Staff

³Note, these estimates do not include Staff’s proposed carry-over provisions that would “smooth” the overages by an even greater amount. Rate Counsel’s concerns and analysis regarding the carry-over is provided in a later subsection of our comments.

proposals will exceed the cap during 2022-2026, and in some years will exceed that cap by over \$200 million.

Another significant challenge, highlighted in Table 2, is that the use of DRIPE benefits will allow Staff to sustain an artificially high RE program budget from 2026 to 2034. Consider that during the years 2022 to 2026, Staff's proposed RE program costs (all legacy, transition and Successor Program costs), are over budget by about \$100 million per year (i.e., for 2022, Staff proposes to spend \$105.6 million more than the CEA rate cap allows).

However, in the years after 2027, the use of DRIPE benefits leads to a CEA rate cap overage, or surplus, that starts at \$129.8 million (2027) and increases to \$581.3 million (2034). Thus, the use of the DRIPE will give Staff the ability to spend over \$100 million per year without ever touching the CEA imposed rate cap. Thus, the use of DRIPE benefits to reduce overall RE program costs considerably changes the nature of the CEA cost cap and undermines the CEA's objective of limiting the costs of ratepayer-funded subsidies for the solar industry.

	Staff Proposal (no Carry-Over)					CEA Allowed		
	Class I REC, SREC & TREC Costs	DRIPE Benefits	Program Net Costs	Program Cap	Successor Program Over/Under	Class I REC, SREC & TREC Costs	Program Cap	Successor Program Over/Under
	----- (\$ Millions) -----							
2019	\$676.3	\$77.1	\$599.2	\$900.9	-\$301.7	\$676.3	\$900.9	-\$224.6
2020	\$809.0	\$86.0	\$723.0	\$885.3	-\$162.3	\$809.0	\$885.3	-\$76.3
2021	\$851.0	\$93.3	\$757.7	\$889.8	-\$132.1	\$851.0	\$889.8	-\$38.8
2022	\$903.6	\$102.6	\$801.1	\$695.5	\$105.6	\$903.6	\$695.5	\$208.1
2023	\$909.8	\$108.2	\$801.6	\$699.0	\$102.6	\$909.8	\$699.0	\$210.8
2024	\$922.3	\$109.1	\$813.2	\$706.2	\$106.9	\$922.3	\$706.2	\$216.0
2025	\$926.7	\$109.6	\$817.1	\$713.5	\$103.6	\$926.7	\$713.5	\$213.2
2026	\$835.5	\$110.2	\$725.3	\$720.8	\$4.5	\$835.5	\$720.8	\$114.7
2027	\$713.3	\$110.7	\$602.6	\$732.4	-\$129.8	\$713.3	\$732.4	-\$19.1
2028	\$581.7	\$111.3	\$470.5	\$744.0	-\$273.5	\$581.7	\$744.0	-\$162.3
2029	\$478.8	\$111.8	\$367.0	\$755.6	-\$388.7	\$478.8	\$755.6	-\$276.8
2030	\$555.6	\$112.4	\$443.2	\$766.8	-\$323.6	\$555.6	\$766.8	-\$211.2
2031	\$492.7	\$113.0	\$379.7	\$777.9	-\$398.2	\$492.7	\$777.9	-\$285.2
2032	\$434.3	\$113.5	\$320.8	\$789.0	-\$468.3	\$434.3	\$789.0	-\$354.7
2033	\$380.4	\$114.1	\$266.4	\$800.2	-\$533.9	\$380.4	\$800.2	-\$419.8
2034	\$344.8	\$114.7	\$230.1	\$811.4	-\$581.3	\$344.8	\$811.4	-\$466.6

Table 3: Comparison of Headroom With and Without DRIPE Benefits

Rate Counsel is also concerned that Staff is overcounting the benefits of renewable energy in the proposed DRIPE adjustment to total Class I RE program costs. All of the forecast DRIPE benefits (capacity, energy) proposed by Staff are based upon current wholesale market conditions. However, it is becoming increasingly well recognized that these wholesale energy market benefits (from renewable energy) do exhibit diminishing returns.⁴ In other words, the marginal benefits of renewable energy deployment will decrease as more and more renewable energy capacity is developed.

Staff's estimated DRIPE benefits are based upon current market observations and are then extrapolated over a longer-term time horizon to generate long term renewable energy

⁴See, for instance, O'Shaughnessy, Eric (May 2018); "The Effects of Market Concentration on Residential Solar PV Prices: Competition, Installer Scale, and Soft Costs;" National Renewable Energy Laboratory; Penrod, Emma (April 20, 2020); "Diminishing returns: Why an upcoming Utah rate case may signal the end of net metering;" Utility Dive; "A Primer on Wind and Solar Value Deflation (July 2019);" Electric Power Research Institute.

benefits. The problem with this approach is that it assumes benefits will be generated on a constant returns basis (i.e., the marginal benefit is fixed and the same for each year in Staff's planning horizon) rather than decreasing over time to reflect these diminishing marginal benefits. The use of such overstated DRIPE benefits is inappropriate and does nothing more than to artificially increase the difference, or delta, between the amount Staff will be allowed to spend on RE and the amount allowed under the CEA rate cap. This is a particular concern because Staff has offered no mechanism nor method of reconciling these currently estimated DRIPE benefits to future actual results.

Lastly, while the current Straw Proposal does not include environmental benefits as a potential offset to program costs, it does discuss this possibility and other parties have raised the issue of their potential inclusion. Rate Counsel is opposed to the inclusion of these benefits, since (1) they are not included in the CEA; (2) there are considerably wide ranges in the value of these societal benefits, particularly the social costs of air emissions and pollutants; and (3) the use of such societal benefits could lead to very large offsets that would make the CEA rate impact limitation meaningless. Further, and equally important, is that the simple "overlay" of a societal value for CO² and other air pollutants fails to recognize that at least a large part of the mitigation costs embedded in this societal value are already recognized in regional energy prices that are paid through retail electricity rates. Regional power generators are subject to a variety of EPA regulations that require them to either install mitigation equipment, or purchase offsets, for acid rain and other air emissions. New Jersey has also re-joined RGGI and the costs of participating in this market are also already embedded in retail rates (through wholesale pass-throughs). Failure to account for these mitigation costs will result in double counting.

The impact that the use of societal values, in addition to DRIPE benefits, may have on CEA allowed costs are provided in Table 4 below.⁵ The table shows that inclusion of these societal values for various air emissions will artificially reduce the stated costs of the Class I RE program by as much as \$164 million per year, on average, for the period 2021 to 2034. This effectively inflates the cost cap since the offsetting of these benefits understates the amount the Board's RE spending.

	Total Class 1 RPS Costs	DRIPE Benefits	Avoided Environmental Costs			Total Offsets	Potential Total Net Costs	Impacts to RPS Costs
			SO ₂ Emissions	NO _x Emissions	CO ₂ Emissions			
----- (\$ Million) -----								
2020	\$809.0	-\$86.0	-\$21.3	-\$5.8	-\$64.9	-\$178.1	\$630.9	-22.01%
2021	\$851.0	-\$93.3	-\$58.3	-\$6.3	-\$71.4	-\$229.3	\$621.7	-26.95%
2022	\$903.6	-\$102.6	-\$85.6	-\$6.9	-\$79.7	-\$274.7	\$628.9	-30.40%
2023	\$909.8	-\$108.2	-\$70.2	-\$7.3	-\$85.2	-\$270.9	\$638.9	-29.77%
2024	\$922.3	-\$109.1	-\$54.0	-\$7.3	-\$87.1	-\$257.4	\$664.8	-27.91%
2025	\$926.7	-\$109.6	-\$58.3	-\$8.5	-\$88.6	-\$265.0	\$661.7	-28.60%
2026	\$835.5	-\$110.2	-\$66.2	-\$8.5	-\$90.5	-\$275.4	\$560.1	-32.96%
2027	\$713.3	-\$110.7	-\$67.9	-\$8.5	-\$92.4	-\$279.5	\$433.8	-39.19%
2028	\$581.7	-\$111.3	-\$68.9	-\$8.5	-\$94.3	-\$283.0	\$298.8	-48.64%
2029	\$478.8	-\$111.8	-\$72.6	-\$8.5	-\$96.2	-\$289.1	\$189.7	-60.38%
2030	\$555.6	-\$112.4	-\$72.8	-\$9.3	-\$98.1	-\$292.6	\$263.0	-52.66%
2031	\$492.7	-\$113.0	-\$72.1	-\$9.3	-\$99.7	-\$294.1	\$198.6	-59.69%
2032	\$434.3	-\$113.5	-\$68.3	-\$9.3	-\$101.3	-\$292.4	\$141.9	-67.32%
2033	\$380.4	-\$114.1	-\$73.0	-\$9.3	-\$102.9	-\$299.3	\$81.1	-78.67%
2034	\$344.8	-\$114.7	-\$75.7	-\$9.3	-\$104.5	-\$304.1	\$40.7	-88.20%

Table 4: Estimate of Net RE Costs with Societal Air Emissions Benefits

In summary, Rate Counsel is opposed to the use of DRIPE and societal benefits in the CEA rate cap calculation since they are not called for in the CEA and they have the ability to dramatically increase future Class I RE budgets to levels well above what was envisioned in the CEA. Rather than a nine to seven percent cap, which limits spending to around \$789 million per

⁵These estimates are developed using forecast avoided air emissions from the AEO 2021 for PJM-East region. Avoided emissions costs associated with CO₂ and NO_x emissions are derived from the February 2021 Technical Support Document on social cost of carbon, methane, and nitrous oxide, while avoided emissions costs associated with SO₂ are derived from EPA's November 15, 2015 analysis of the Cross-State Air Pollution Updated Rule.

year, Staff would be afforded an opportunity to spend as much as \$1.0 billion per year through the use of DRIPE and societal air emissions benefits. The additional “spend” opportunities created by the Staff Straw calculations are provided in Table 5 below.

	Total Class 1 RPS Costs	CEA Rate Cap	Over/ Under	DRIPE Benefits	Societal Air Benefits	RE Excess Spending Opportunities
----- (\$ Million) -----						
2020	\$809.0	\$907.6	\$98.6	\$86.0	\$92.1	\$1,085.7
2021	\$851.0	\$892.8	\$41.8	\$93.3	\$136.0	\$1,122.1
2022	\$903.6	\$896.8	-\$6.8	\$102.6	\$172.2	\$1,171.6
2023	\$909.8	\$701.1	-\$208.7	\$108.2	\$162.6	\$972.0
2024	\$922.3	\$705.3	-\$217.0	\$109.1	\$148.4	\$962.7
2025	\$926.7	\$713.5	-\$213.2	\$109.6	\$155.4	\$978.5
2026	\$835.5	\$721.7	-\$113.7	\$110.2	\$165.2	\$997.1
2027	\$713.3	\$729.8	\$16.5	\$110.7	\$168.8	\$1,009.3
2028	\$581.7	\$742.0	\$160.3	\$111.3	\$171.7	\$1,025.0
2029	\$478.8	\$754.1	\$275.3	\$111.8	\$177.3	\$1,043.2
2030	\$555.6	\$766.0	\$210.4	\$112.4	\$180.2	\$1,058.5
2031	\$492.7	\$777.2	\$284.5	\$113.0	\$181.1	\$1,071.2
2032	\$434.3	\$789.4	\$355.1	\$113.5	\$178.9	\$1,081.8
2033	\$380.4	\$801.6	\$421.2	\$114.1	\$185.2	\$1,100.9
2034	\$344.8	\$813.9	\$469.1	\$114.7	\$189.5	\$1,118.0

Table 5: Additional Class I RE Spend Opportunities Created by the Staff Straw Proposal

In addition to the proposals to offset various societal benefits against the costs in the cost cap numerator, there was one proposal to offset the costs with the savings realized by individual customers that have solar. This proposed adjustment to the cost cap does not withstand the most basic scrutiny. Individual customers are able to realize savings from solar because they receive both solar RECs and net metering credits. As stated on page 24 of the Straw Proposal, the cost cap numerator includes the costs of Class I and solar RECs. It does not include the costs of net metering credits that are borne by other ratepayers. It makes no sense to reflect bill savings

realized by customers with solar, when the corresponding costs to the customers funding the subsidy are not reflected as additional costs.

C. Concerns about the carry-over proposals (Questions 30, 31)

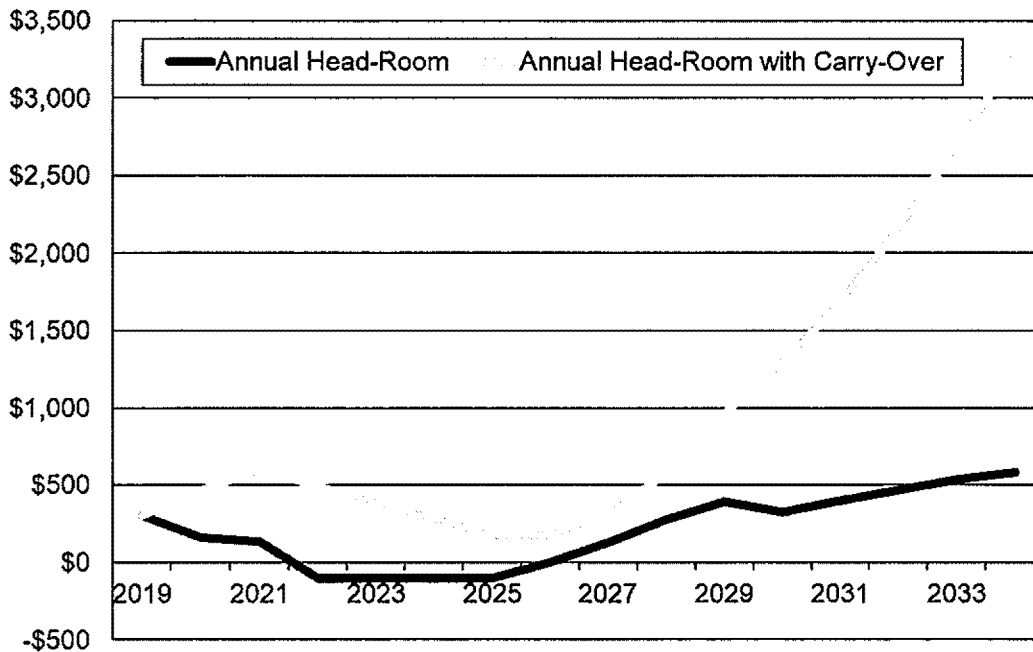
At pages 36 and 37 of the Straw Proposal, Staff describes its proposal for managing the available budget for the Successor Program. The narrative description and accompanying Table 8 appear to suggest that it is Staff's intent to carry over both budget surpluses and deficits from one year to the next, on a cumulative basis up to the year 2034. In effect, this proposal would allow for a cumulative "banking" of surpluses and "borrowing" from future years' budgets without restriction. This proposal is inconsistent with the CEA. While it is true that later amendments to the CEA have allowed for some banking, it was only for a select number of years, *i.e.* expenditures below the cap in Energy Years 2019 through 2021 were allowed to be used in Energy Years 2022 to 2024. N.J.S.A. 48:3-87(d)(2). The CEA does not allow "banking" to extend into perpetuity, and does not allow any "borrowing" against future years, as Staff is proposing. If the Legislature had wanted to allow unlimited "banking" of surpluses for longer periods of time, or if it wanted to allow "borrowing," it could have done that. Instead, the Legislature has allowed only limited "banking."

Table 6 below, and Figure 1 after the Table, provides Rate Counsel's estimates of how those carryovers will be allowed to accumulate under the Staff Straw Proposal.

	Annual Head-Room	Annual Head-Room with Carry-Over	Carry-Over Impact
	----- (\$ Millions) -----		
2019	\$301.7	\$301.7	\$0.0
2020	\$162.3	\$464.1	\$301.7
2021	\$132.1	\$596.2	\$464.1
2022	-\$105.6	\$490.6	\$596.2
2023	-\$102.6	\$388.0	\$490.6
2024	-\$106.9	\$281.0	\$388.0
2025	-\$103.6	\$177.5	\$281.0
2026	-\$4.5	\$173.0	\$177.5
2027	\$129.8	\$302.8	\$173.0
2028	\$273.5	\$576.3	\$302.8
2029	\$388.7	\$965.0	\$576.3
2030	\$323.6	\$1,288.5	\$965.0
2031	\$398.2	\$1,686.7	\$1,288.5
2032	\$468.3	\$2,155.0	\$1,686.7
2033	\$533.9	\$2,688.9	\$2,155.0
2034	\$581.3	\$3,270.1	\$2,688.9

Table 6: Impacts of Staff Proposed Carry-Overs

Figure 1: Annual Impacts of Staff Proposed Carryovers



Rate Counsel strongly objects to a method that does nothing more than inflate the budget for renewable 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.

D. Lack of a true-up mechanism

In her presentation at the first stakeholder workshop held in this matter, Hannah Thonet, Policy Advisor to the Governor, stated that the estimated cost caps “will be adjusted via a true-up at the end of each Energy Year.” Workshop #1 Slide Presentation, Slide 20. However, the Straw Proposal does not define any annual “true-up” or “reconciliation” mechanism.

A true-up mechanism is essential to assure compliance with the cost cap. The CEA provides that the “cost to customers” of the Class I RPS may not exceed the specified percentages of “the total paid for electricity” in each energy year. This language refers to actual costs, not estimates or forecasts. In order to comply with the cost cap, the Board must assure that the actual costs of compliance with the Class I RPS do not exceed the specified percentage of actual amounts paid for electricity in each energy year. While estimates and forecasts may be necessary for planning purposes, compliance with the cost cap must be based upon actual retail electric expenditures and the actual costs of Class I and solar RECs, not forecasts. The Straw Proposal should be amended to include a process to review compliance with the cost cap based on actual costs, and to adjust budgeted expenditures as needed to assure that the costs cap is not exceeded

II. Successor Program Design Issues and Concerns

A. Overreliance on administratively determined incentives (Questions 1 to 7, 9)

The Staff Straw proposal relies too heavily on inefficient administratively determined prices that will lead to gamesmanship and excessive ratepayer-supported costs. Under the Straw Proposal, as amended by Staff’s May 7, 2021 memorandum, only net metered projects over 5

megawatts and grid supply projects would have to compete for incentives. Incentives for all other projects would be administratively set by the Board.

Staff has not provided a breakdown of the capacity targets and budgets for the administratively determined and competitive components of its proposed program as currently proposed. However, there was such a breakdown in the Straw Proposal as originally issued by Staff. In the originally filed proposal, the competitive program, which included grid supply projects and net metered projects over 2 megawatts, represented 300 megawatts, or 40 percent of the initial annual 750 megawatt solar development target, and about \$21.7 million, or about 32.5 percent of the estimated \$66.7 million initial budget. Since Staff is not proposing to expand the “administratively determined” program to include net metered projects between 2 and 5 megawatts, the competitive program now represents an even smaller share of the total program. This is not only inconsistent with the CEA, but with prior Board policies that have repeatedly rejected administratively determined incentives and pricing for solar energy development and recognized the problems that can arise from such methods.⁶ For instance, in the past, the Board has been presented with numerous opportunities to adopt “feed-in tariffs” or “FITs” as a means of promoting solar energy. The Board, however, has rejected such proposals given the difficulty of setting appropriate incentives/payments and the potential risk of over-incenting solar development. Staff’s administrative program, however, is very comparable to fixed, uniform incentive payments used in FITs (despite the fact that there are segmented markets with their own set of unique FIT-type incentives).

⁶The Board has issued several decisions indicating that that it did not support the use of feed-in tariffs to promote solar energy development. See, for instance, the December 2, 2007 Order (page 20) in Docket No., EO06100744 affirming this position and the later July 30, 2008 order in the same Docket affirming the Board’s policies on administratively-determined feed-in tariffs (page 8).

The problems inherent in administratively determined programs are well known. The stakeholder processes used to determine the incentives are consistently dominated by solar developers. The opportunities for gamesmanship in the development of administratively determined incentive payments, both today and in future three-year evaluations periods, 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 stakeholder process that preceded 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 transition proposal, the representatives of the solar industry complained that these values were too low. The solar industry repeatedly requested Staff to “calibrate” the analysis upon which these administratively determined incentives were set. Unsurprisingly, a few weeks later, a new set of incentive values were proposed by Staff that were, on average around 20 percent higher than the original administratively determined proposals.

The domination by the solar industry has continued in this stakeholder proceeding. In both the workshops held by Staff and in the public hearing convened by the Board, a large majority of the speakers were representatives of the solar industry seeking more and higher incentives. Uniformly, these industry representatives have asked for more and higher incentives. The results will inevitably be biased toward higher incentives.

Further, since the proposed administratively determined incentives would be awarded on a “first-come, first-served,” basis, there is likelihood that this approach will create another “run

on the bank” where developers rush to claim incentives as soon as they become available, and some are inevitably left out. Staff appears to have recognized the potential for this type of gamesmanship. Question 6, for instance, asks parties to comment on what to do about potential “ghost projects” and “queue sitters.” It is time to end this cycle that has cost ratepayers so much and inhibited the full potential of New Jersey’s solar program. The best way to do so is through competition. When developers are required to compete, better prices are achieved and more projects can be built within the cost cap. Decisions are made based on merit and value.

This was recognized in the CEA, which rejected the administrative approach in favor of competition. The Board is explicitly directed to “utilize competitive processes such as competitive procurement and long-term contracts where possible” whenever ratepayers are required to subsidize solar facilities. N.J.S.A. 48:3-87(d)(2). The CEA affirmed an earlier enactment that required the Board to “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.” L. 2009, c. 289, N.J.S.A. 48:3-87(l)(1). Clearly basing incentives for more than 60 percent of the targeted capacity in the Solar Successor Program, and an even larger share of estimated costs, on administratively set incentives is inconsistent with setting prices that rely on “competitive markets,” and, furthermore, such administratively determined prices in no way fosters the CEA’s clearly articulated goal of encouraging “price competition.”

While the Staff Straw proposal includes some competitive bidding for larger scale projects, 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. Rate Counsel continues to recommend that the Board reconsider certain “tranches” and types of installations that it currently has defined for the administrative part of its program and move them to the competitive solicitation part of the program. Further, the Board Straw proposal does not anticipate, or strive to move certain administratively set programs into a more competitive framework in future years. At minimum, even if the Board accepts some version of these expansive programs, it should lay out a roadmap to ultimately transition them to more competitive processes.

Rate Counsel also notes that, despite its opposition to the scale and scope of the administrative programs, we do believe the Staff’s proposed incentive levels appear reasonable based on the analysis that Staff has made publicly available and should remain at the proposed levels. Rate Counsel is concerned, however, that these proposed administratively determined incentives will essentially be gamed by industry at ratepayers’ expense. Rate Counsel also supports the continuation of 15-year qualification lives.

B. Unnecessary market segmentation (Questions 2, 9, 27 to 29)

Rate Counsel has historically been opposed to high degrees of solar market segmentation for a variety of reasons. However, as part of its market segmentation questions, the Staff asked parties to opine on whether its market segmentation is adequate and how Staff will know, in the future, whether or not the capacity allocations in the various segments and incentives associated with each are effective.

Basic economic theory suggests that when these administratively determined incentive levels for individual market segments are set too high, there will be excess demand within that category and vice versa. The degree of that excess demand will, in large part, be a function of just how “wrong” Staff is in setting its incentive levels. Excess demand, in this instance,

suggests over-incentivizing development, and also suggests that ratepayers are paying too much for solar development: an outcome the CEA attempts to avoid by using competitive rather than regulatory outcomes. Thus, Staff needs to watch the participation levels closely and use over-subscriptions as a clear indicator that financial incentive levels should be reduced.

C. Adders and additional incentives (Questions 35 to 38)

Staff also asks parties to consider the use of “adders” and “subtractors” to its current set of proposed incentives. Rate Counsel urges caution in the use of adders and subtractors since, they also suffer from the same problems and challenges as administratively determined incentives themselves: these adders and subtractors can be wrong and will under-incentivize some market segments and over-incentivize others. Staff should use caution with these types of mechanisms to assure (1) it can minimize administrative inefficiencies since these inefficiencies represent an additional cost that has to be paid for through these programs, (2) minimize any additional level of gamesmanship by solar energy developers; and (3) avoid making an already complicated program more administratively complex and burdensome to various stakeholders since such a system of additional incentives will require monitoring, updating, and change/modification.

D. Community solar, equity and underrepresented groups (Questions 37 to 41)

Rate Counsel supports the continued use of community solar as a means of facilitating the state’s goal of reaching difficult to reach communities and low to moderate income households. Rate Counsel is opposed to changing the current program format and continues to support the use of competitive bidding for the program and would point to this as an example of how the use of competitive markets and the promotion of social and policy goals are not mutually exclusive. Rate Counsel strongly opposes any suggestion, as noted in Staff Question 39, that the competitive bidding process for these resources be discontinued and substituted with

an administrative process. Lastly, Rate Counsel continues to support the use of a single location for solar installations as a qualification requirement for this program.

E. Competitive market design (Questions 11 to 16)

As noted earlier, Rate Counsel supports the competitive processes proposed by Staff for larger grid connected projects and recommends that more, not fewer, market segments be subjected to similar competitive bidding processes. Rate Counsel is not opposed to the use of various tranches for these competitive bids and recognizes the need to develop these tranches in order to develop a reasonable set of diverse resources. Staff should be focusing on expanding the competitive program to include additional tranches, not on determining subsidy levels for administratively set programs.

Rate Counsel supports Staff's proposal to conduct annual solicitations, however, it could be the case that a twice a year solicitation may be possible. Quarterly solicitations may be difficult given the number of tranches that are currently being proposed. Further, Rate Counsel strongly recommends that all solicitations be awarded on an "as bid" basis, not by a single highest price. This is consistent with past competitive solicitations held by the Board for solar energy, like the long-term SREC contracting program. Rate Counsel also supports 15-year contract terms. Rate Counsel also supports a pilot-based program for hybrid solar/storage systems so long as such a program is based upon competitive bidding.

CONCLUSIONS

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. There is a lot to do to reach our clean energy goals. Even as of this date, New Jersey ratepayers have not been specifically informed about how much the Energy

Master Plan (“EMP”) goals will cost. The one thing that is known, is that, generally, these clean energy goals will be costly.

To make matters worse, this is a difficult economic time to saddle ratepayers with additional energy costs. Today, over a million customers are unable to keep up with their bills. If New Jersey overpays and continues to provide windfalls to solar developers as we has been the case for so long, then we will never be able to reach our clean energy goals and still have a healthy economy in this state. The 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, and not costs minus benefits – should not exceed seven percent of the amount paid for electricity. 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.

Rate Counsel thanks 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 the formally articulated policies of the legislature. Rate Counsel looks forward to working with the Board in developing a solution that achieves the appropriate balance.