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December 14, 2021

Via Electronic Mail board.secretary@bpu.nj.gov

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

**Re: In the Matter Competitive Solar Incentive (“CSI”) Program
Pursuant to P.L. 2021, c. 169
BPU Docket No. QO21101186**

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 Notice issued by the Board of Public Utilities (“Board”) in this matter on November 1, 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.

Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.
Director, Division of Rate Counsel

By: /s/ Sarah H. Steindel
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

SHS

Enclosure

cc: Kelly Mooij, BPU
Robert Brabston, BPU
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STATE OF NEW JERSEY
BEFORE THE BOARD OF PUBLIC UTILITIES

In the Matter Competitive Solar)	Docket No. QO21101186
Incentive (“CSI”) Program Pursuant to)	
<u>P.L.</u> 2021, <u>c.</u> 169)	

COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL

December 14, 2021

INTRODUCTION

The Division of Rate Counsel appreciates the opportunity to provide input to the Board of Public Utilities Staff (“Staff”) and its consultant Daymark Energy Advisors (“Daymark”) concerning the Competitive Solar Incentive (“CSI”) Program that is under development in accordance with the Clean Energy Act of 2018, P.L. 2018, c. 17 and the Solar Act of 2021, P.L. 2021, c. 169. Rate Counsel participated in the November 30, 2021 stakeholder meeting in this matter, and is pleased to present additional written input in accordance with the Notice issued by the Board on November 1, 2021.

Rate Counsel is encouraged that the Board is moving forward on a program that will utilize competitive processes to incentivize solar development in the State. Over the years, Rate Counsel has advocated for competitive processes as tools to control the high costs of solar for New Jersey’s utility ratepayers. We strongly support the current effort to let the competitive market take the lead on what levels of subsidies are truly required to meet the State’s renewable energy goals. We are also hopeful that the competitive program will yield information that can inform the Board’s process of setting incentive levels in its Administratively Determined Incentive (“ADI”) Program.

The Board’s Notice states that the current request for input is the beginning of a process that will involve multiple requests for input on the design of the CSI Program. At this time Staff has requested input on some specific issues that have been identified by Daymark. In the comments below Rate Counsel will provide input on the specific questions contained in the Board’s Notice, and certain other issues that were raised during the November 30, 2021 stakeholder meeting. Rate Counsel looks forward to continued participation in this stakeholder process.

RATE COUNSEL COMMENTS

Responses to Staff Questions

1. The Solar Act of 2021 stipulates that “[t]he development of grid supply solar should be directed toward marginal land and the built environment and away from open space, flood zones, and other areas especially vulnerable to climate change.” Staff proposes to implement this requirement mainly through some form of incentive or segmented procurement targeting development on the built environment as well as on contaminated land or landfills. Staff is looking for input on the following questions:
 - a. Do projects on contaminated land and/or landfills need special consideration when it comes to project maturity and Commercial Operation Date (“COD”)? If so, why?
 - b. What additional costs, if any, are associated with development on contaminated land and/or landfills?
 - c. To the extent that the purpose is to avoid, as much as possible, the development of open space that might otherwise be available for other purposes, are there other siting options, besides the built environment, contaminated land and landfills, that should be given preference?

Rate Counsel Comments:

Rate Counsel appreciates Staff’s focus on some of the statutorily identified areas in which New Jersey solar development could be improved. However, Rate Counsel has a number of concerns about the nature and focus of Staff’s inquiry.

First, Rate Counsel has concerns about the limited and somewhat incomplete reference to the Solar Act of 2021 as included in the above question. Rate Counsel notes that the full text of N.J.A.C. 48:3-114(c) notes that:

The development of grid supply solar should be directed toward marginal land and the built environment and away from open space, flood zones, and other areas especially vulnerable to climate change, and a coordinated land use policy for grid supply solar siting is needed to affordably expand New Jersey’s commitment to renewable energy while not compromising the State’s commitment to preserving and protecting open space and farmland;

(emphasis supplied)

The statute states that one of the prerequisites to identifying sound New Jersey solar energy development policy will be through a “coordinated land use policy.” At this point in time, that policy has not been developed. Since the current CSI proposals are not based on a fully developed land use policy, Rate Counsel is concerned that inefficiencies and inappropriate installations may arise as a result. Rate Counsel urges the Board to work with the other relevant state agencies to develop a comprehensive land use policy as expeditiously as possible.

Further, Rate Counsel is concerned that the first series of questions in the Board’s Notice appears to reflect an emphasis on certain types of solar development types at the expense of others. This is an issue that was raised by other solar industry participants in the CSI stakeholder workshop held on November 30, 2021. The statute favors solar development on both marginal lands and the built environment. Staff’s request for input focuses more on the marginal lands and less on the built environment. The built environment may include sites that could be efficient from both a land use and economic perspective. Rate Counsel is concerned that the emphasis on environmentally challenged lands will drive up the cost of the CSI Program and therefore overall ratepayer costs. This is problematic, since the cost of the CSI Program itself is not part of the overall statutorily defined renewable energy cost cap. As a result, the Board needs to take special care in developing a least-cost CSI Program.

The Board’s Notice states that it is Staff’s intention to use “some form of incentive or segmented procurement” While the notice does not specify what is meant by “some form of incentive,” Rate Counsel would discourage the use of “adders.” A program based on “adders” would more closely resemble a modification of the ADI Program than a truly competitive program. To the extent the Board identifies the need for specific types of solar installation, it can offer different competitive bidding tranches or segments, and let the market determine what

levels of subsidies are needed. As the Board is aware, administrative determination of incentives is an imperfect process. While the Board can seek information about costs, solar developers are not regulated, and the Board can never obtain complete information about their cost structures. A key benefit of a competitive program is that the Board need not try to determine the appropriate levels of incentives based on incomplete information. Instead, the Board should work with its consultant to develop a process that will allow incentives to be determined through a robust competitive process.

Rate Counsel recommends that Staff consider the market designs utilized in the SREC-Based Financing Programs conducted by Atlantic City Electric Company (“ACE”) Jersey Central Power & Light Company (“JCP&L”), and Rockland Electric Company (“RECO”).¹ In those programs, the three utilities entered into long-term agreements to purchase SRECs from solar developers that were selected through competitive solicitations. These programs utilized a single solicitation with included capacity targets for some types of installations. However, the Board retained the discretion to reject bids that were too high or if they were dominated by any individual developer. Capacity targets were defined, in part, as “aspirational,” allowing the Board to re-allocate any segment’s capacity. This design allowed the Board to choose less expensive alternatives if cost differentials were too great.

The programs also included several features that were aimed at assuring competitive results that reduced ratepayer costs. The long term SREC contracting solicitations were administered by a professional solicitation manager, which undertook efforts to facilitate and

¹The Solar Financing Programs were originally initiated in 2009. The original programs, known as the “SREC I” programs were approved by the Board for ACE and JCP&L in Orders dated March 27, 2009 in the Board’s Docket Nos. EO08100875 (ACE) and EO08090840 (JCP&L), which were later modified following an appeal and further settlement discussions among the parties in an Order dated September 16, 2009. The SREC I program for RECO was approved by the Board in an Order dated July 31, 2009 in the Board’s Docket No. EO09020097. Following the expiration of the SREC I programs, the three utilities, at the Board’s direction, filed for extensions of the program. The extended programs, known as the “SREC II” programs, were approved by the Board in Orders dated December 31, 2013 in the Board’s Docket Nos. EO12090799 (ACE), EO12080750 (JCP&L) and EO13020118 (RECO).

maximize participation in the solicitations and to assure that only competitive bids received long term SREC contracting opportunities. Each solicitation, and each segment within a solicitation, included a rigorous bid evaluation, including an assessment of whether SREC bids appeared reasonable given current market conditions and expected developer returns, and a review for any evidence of the exercise of market power. The solicitation manager then vetted its proposed awards to Staff, Rate Counsel, and the utilities conducting the solicitation. After receiving confidential feedback from these parties, the independent administrator provided recommendations to the Board, which made the ultimate determination which bids to accept and reject.

The SREC-Based Financing Programs affirmed that a program based on “adders” is not necessary. The use of segmented solicitations will inform the Board about the levels of subsidies that are truly needed for the various installation types. A segmented solicitation will also allow the Board to gauge market interest. Those segments that are undersubscribed would reflect low market interest, whereas oversubscribed segments reflect high interest. This information could be used to reallocate capacity targets for future solicitations.

The SREC-Based Financing Programs also affirmed the merits of awarding the program’s financial supports on an “as-bid” basis, assuring that no single, individual project received a higher level of ratepayer-backed financial support than it needed. This process assured that ratepayers received more “solar capacity for the buck.” The Board should consider adopting this feature for the CSI Program.

Regarding the question of flexibility, the recent CSI Stakeholder workshop indicated, via poll, that most installations participating in this program would likely see development time period of two years. It may be appropriate to allow some degree of flexibility for circumstances

beyond the developer's control. However, deadlines should not be so flexible that they create opportunities for abuse by solar developers. For instance, the program should not be designed in a way that allows developers to "hoard" capacity allocated to an individual segment, and then hold that capacity over an extended period of time thereby potentially squeezing out other projects that may have had better development potential. The potential for abuse can be considerably reduced through maturity and financial requirements such as performance guarantees.

2. The Solar Act of 2021 stipulates that larger net metered non-residential projects (over 5 MW) be eligible to participate in the CSI Program:

- a. Does net metered status provide a benefit that is likely to be reflected in lower-cost bids in response to a competitive SREC solicitation?**
- b. What kind of project maturity requirements would be appropriate for net metered projects?**

Rate Counsel Comments:

Net metering provides an additional revenue stream that should be reflected in bids received in a competitive solicitation. In a solicitation where there is robust competition, net metered projects should offer lower subsidy bids, which, in turn should reduce the overall development and financial support being provided by ratepayers through the CSI Program. The Board's review of bids should include an analysis to assure that this is the case.

As discussed above, Rate Counsel is recommending that the Board conduct solicitations with the assistance of a professional solicitation manager. The solicitation manager's analysis should include an evaluation of specific offer levels relative to an estimated reasonable internal rate of return ("IRR") for project development. This method was utilized in the long term SREC-Based Financing Programs discussed above. The Board and its solicitation manager should consider the revenue stream that net metered projects receive in the form of net metering

credits. Such revenues will vary by type of project, and retail customer class. Net metering revenue streams, like any other subsidy, can help to meet the IRR needed for project development. If these net metering revenue streams are ignored, then the actual IRR will be incorrectly estimated, and the estimate will be lower than the true IRR. Thus, Rate Counsel recommends that these net metering revenues be considered like any other subsidy, federal or state, that contributes to the project's revenue stream.

3. To maximize the competitiveness of the solicitation process, and also to capture additional potential benefits to the public, it is Staff's intention to propose a CSI Program design that facilitates public entities' participation:

- a. Are there special barriers public entities might face in participating in competitive SREC solicitations? If so, what are they? Are there ways NJBPU could help eliminate barriers?**

Rate Counsel Comments:

Rate Counsel believes that segmentation of the solicitation process can remedy at least some challenges with municipal installations. Segmentation by installation type, which in this case would be restricted to municipal bids alone, allows for "like-on-like" competition and creates a more level playing field for certain installation types. Thus, if the Board establishes a municipal category, then that should suffice without any additional incentives; the market will inform the Board what the incentive needs to be. Further, this kind of segmentation will indicate whether there is a market for public installations. Undersubscription will indicate that the appetite is not there, where oversubscription will indicate the opposite.

4. Staff aims to propose a solicitation design that results not only in awards, but in successful project development. To facilitate this, some combination of project pre-qualification requirements, COD requirements, participations fees, and/or escrow requirements are being considered:

- Should Staff consider recommending a requirement that projects have completed a Facilities Study?**
- What about having a requirement for a completed or draft System**

Impact Study?

- **Are there other PJM queue position requirements that should be considered?**
- **At what point in the process would an SREC-II award provide the most value in terms of preventing projects dropping out of the queue?**
- **What would the impact of other project maturity evidence requirements be (e.g. site control, evidence of ROW control, evidence of community engagement)?**
- **NYSERDA requires bid participation fees ranging from \$5,000 to \$100,000 depending on the size of the project. What is the right level for a 5 MW project versus a 20 MW project?**

Rate Counsel Comments:

Rate Counsel was encouraged by the comments expressed across a range of differing stakeholders on this topic during the November 30, 2021 stakeholder meeting. Most parties offering comments on this topic noted the need for both maturity requirements and financial performance payments/assurances. Rate Counsel agrees with these parties on setting reasonable sets of requirements for CSI participants. Rate Counsel requests the Board develop programs in which participants, and not ratepayers, pay for the administrative costs of the program and, in which participants must establish commitment levels that assure only bona fide projects are permitted into any development queue.

- 5. New Jersey's current practice is to provide subsidies such as SREC-IIs through administrative rules developed pursuant to statute, not through contracts. Staff requests input from developers about whether there are any implications on project cost, risk premium or other aspects of project financing purposes to providing incentives through administrative rules versus developing a standard contract.**

Rate Counsel Comments:

Rate Counsel has no input on this issue at this time, but reserves its right to comment on any specific proposals.

- 6. Staff invites stakeholder comments on how the qualifying life for receiving SREC-IIs impacts project financeability, total cost, and ratepayer risk.**

Rate Counsel Comments:

Rate Counsel believes that the qualification life for SRECs and other comparable rights establishing environmental attributes should be set at a level that is comparable to the underlying asset's economic life. This approach keeps annual solar costs reasonable and prevents intergenerational equity issues from arising (i.e., preventing today's ratepayers from overly paying for solar costs that benefit tomorrow's ratepayers).

Comments on Other Issues

Proposals to Solicit Bundled Products/Indexed SRECs.

Some participants in the November 30, 2021 stakeholder meeting suggested the Board consider new types of financial support mechanisms, referred to as "indexed RECs" that are utilized by New York and Illinois. Rate Counsel cannot support the use of these types of alternative solar financial support mechanisms.

First, a bundled product or indexed SRECs appears contrary to the scheme envisioned by the Solar Act of 2021. Under the legislation, the Board is specifically directed to create "a process for the creation and distribution of renewable energy certificates, to be known as 'SREC IIs,'" with values that "shall be measured in dollars per megawatt hour of solar power generation" N.J.S.A. 48:3-115(b). This is a clear expression of the Legislature's intent that the program is to be based on renewable energy certificates that are to be assigned a dollar value. This intent is also apparent from the provisions governing the creation of the CSI Program. These provisions direct the Board to conduct a competitive process to award "SREC II contracts." N.J.S.A. 48:3-117(a). This language is a clear expression of intent that the result of the competitive process is to be a contract for the purchase and sale of SREC IIs, not a bundled product. Indexed SRECs, which would provide the functional equivalent of a bundled product,

also would appear to be contrary to the legislative intent. The legislation contemplates a program based on certificates that represent only the environmental attributes and that are valued in “dollars per megawatt hour of solar generation.” N.J.S.A. 48:3-115(b). Therefore, bundled products and indexed SRECs both appear inconsistent with the program as envisioned by the Legislature.

Second, from a policy perspective, Rate Counsel cannot support bundled or indexed RECs. Such an approach would lead to a bundled “SREC” value that includes not only the value of the environmental attributes of solar, but its energy and capacity value as well. A bundled SREC will place ratepayers in a position of providing solar developers with a no-cost hedge against market energy and capacity prices. This is both inequitable and unnecessary since, to date, no deficiencies in the use of competitive processes in New Jersey have been identified. Thus, ratepayers should not be forced to provide this additional level of financial support and market risk for a problem that currently does not exist. To the extent Staff is interested in such an approach, it should open up an additional proceeding, or workshop with comments and additional research on this topic alone.

Proposals to Expand the ADI Program,

The Board should reject suggestions by some industry representatives to include grid supply projects on landfills or brownfields, net metered projects with capacities of 5 megawatts or more, and municipal projects in the Board’s ADI Program. The Board’s Order establishing the ADI Program was issued following a lengthy stakeholder process in which the Board entertained extensive input on many issues, including input on projects on landfills and brownfields, and whether larger net metered projects should be required to compete for

incentives. I/M/O A Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Dkt. No. QO20020184, Order at 8-9, 56-57, 60-61 (July 28, 2021) (“July 2021 Order”).

In the July 2021 Order the Board determined the scope of the ADI Program. Since the projects on landfills and brownfields that were previously eligible for incentives under N.J.S.A. 48:3-87(t) were not eligible for incentives under the TREC program, administratively determined incentives were made available for these types of projects for an interim period, which were to remain open only “until such time as the Board determines via order to close eligibility, or until the 75 MW block assigned to this interim program is full, whichever occurs first.” July 2021 Order at 21-24, 49. Thereafter the Board determined that these projects would be required to compete for incentives. July 2021 Order at 23, 38-39, 56-57. The July 2021 Order also addressed the eligibility of net metered projects for the ADI Program, determining that only projects with capacities up to 5 MW would be eligible for administratively determined incentives. July 2021 Order at 14, 37, 60-61.

The Board’s rulings in this regard are in accordance with the provisions of the Solar Act of 2021. As the Board stated, the legislation contemplates a two-track program, with one track for administratively determined incentives for net metered facilities with capacities up to 5 megawatts and less and for community solar facilities, and second track for competitively determined incentives for grid supply facilities and net metered facilities with capacities over 5 megawatts. July 2021 Order at 1. The specific statutory language limits the ADI Program to “community solar facilities and net metered solar facilities less than five megawatts in size, as measured in direct current, or another size specified by the board.” N.J.S.A. 48:3-116(a). This language excludes all grid supply projects, including those sited on landfills and brownfields. The statute recognized the challenges of developing solar on these types of sites and provided that

these challenges could be accommodated by establishing a separate bidding category or categories for projects on contaminated land or landfills within the competitive program.

N.J.S.A. 48:3-117(d). The Board's decision to establish a limited interim program to provide administratively determined incentives for projects sited on landfills and brownfields may be justified as a matter of necessity. However, the clear intent of the statute is to require all grid supply projects to compete for incentives.

With regard to net metered projects, the Solar Act of 2021 allows the Board to establish a size cut-off for participation in the ADI Program at a level other than 5 megawatts.

N.J.S.A.48:3-116(a). However, as noted above the Board's July 2021 Order fully considered this issue and adopted its Staff's recommendation to require projects larger than 5 megawatts to compete for incentives. In making its recommendation, Staff explained that projects over 5 megawatts enjoy economies of scale that should allow them to participate in the competitive program, and that that this should result in allowing the development of more solar at a lower cost to consumers. July 2021 Order at 60. No good reason has been presented to re-visit the Board decision to require large net metered projects to compete for incentives.

With regard to municipal projects, as noted above the scope of the ADI Program was established by the Board after a lengthy stakeholder process, and with consideration of the directives in the Solar Act of 2021. Municipal projects can participate in the ADI program if they meet the program criteria. No substantial reason has been presented to exempt all municipal projects from the requirement to compete for incentives. As discussed above Rate Counsel supports the use of segmentation to address the particular challenges of municipal installation. However, the Board should not expand the scope of the ADI Program as defined in the July 2021 Order to include more municipal projects.

Inclusion of Agrivoltaics

The November 30, 2021 stakeholder meeting included suggestions to consider incentives for solar facilities on agricultural land, or “agrivoltaics” as part of this stakeholder process. These suggestions are beyond the proper scope of the current stakeholder proceeding. Specifically, the “Dual Use Act” at P.L. 2021, c. 170, enacted the same day as the Solar Act of 2021, directs the Board to develop a pilot program for agrivoltaics in consultation with the Secretary of Agriculture. N.J.S.A. 48:3-87.13 (a). The Dual Use Act includes detailed direction on how the pilot program is to be conducted, including time frames, capacity limits, qualification criteria for participants, and an application process including criteria for project selection. N.J.S.A. 48:3-87.13. The July 2021 Order at page 35 noted Staff’s recommendation to address agrivoltaics in a separate stakeholder process. During the November 30, 2021 stakeholder meeting Staff confirmed that there would be a separate proceeding. In light of the detailed requirements of the Dual Use Act, incentives for agrivoltaics should be considered in that separate proceeding.

Storage

Daymark’s presentation at the November 30, 2021 stakeholder meeting indicated on slide No. 5 that it was seeking input on “priorities related to storage,” even though this subject was not included in the questions listed in the Board’s Notice. Rate Counsel understands that there will be further opportunities to provide input on this subject. Rate Counsel reserves its right to provide input on storage-related issues at a later date.