



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

BRIAN O. LIPMAN
Director

May 4, 2022

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

Secretary of the Board
44 South Clinton Avenue, 1th 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
BPU Docket No. QO20020184**

Dear Secretary:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel in accordance with the Notice issued by the Board of Public Utilities (“Board”) in this matter on April 7, 2022. 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 Steindel*
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

Enclosure

cc: Kelly Mooij, BPU
B. Scott Hunter, BPU
Arianne Benrey, BPU
Robert Brabston, BPU
Stacy Peterson, BPU
Mike Kammer, BPU
Abe Silverman, BPU
Pamela Owen, DAG, ASC

INTRODUCTION

The Division of Rate Counsel (“Rate Counsel”) appreciates the opportunity to provide input to the Board of Public Utilities (“Board”) Staff (“Staff”) concerning the proposed changes to the ADI Program disclosure forms provided in Attachment 1 (New Proposed ADI Disclosure Forms) that was issued with the Board’s April 7, 2022 Notice (“Notice”) in this matter. Rate Counsel participated in the April 20, 2022 stakeholder meeting, and is pleased to present additional written input in accordance with the Board’s Notice.

Solar contracting is complicated and can obligate solar consumers to invest or repay large sums of money for an extended period of time. Rate Counsel supports Staff’s initiative to remedy issues that have been observed pertaining to the solar Installers’¹ submission of the ADI disclosure forms in order to ensure a more transparent and fair process. In the comments below, Rate Counsel will address some specific issues raised by Staff related to the Installers’ use of the disclosure forms and the proposed recommendations.

RATE COUNSEL COMMENTS

In the Notice, Staff first expresses a concern that ADI registration packages are being submitted with disclosure forms that have been modified by the Installers. In some instances, Staff notes that the changes made by the Installers pertain to boxes in the current forms that require fixed numbers such as rates per kilowatt hour (“kWh”), late fees and the costs associated with removal and reinstallation of a system, which may not be applicable to the contract terms offered by some Installers. As an example, Staff cites one installer that provides systems for a fixed monthly rate rather than a rate per kWh. Notice at 2-3. Accordingly, Staff has recommended certain changes to the disclosure forms to address these specific issues, such as

¹ The Notice collectively defines Installers as installers, developers, and other contractors. Notice at 2.

providing fields to allow for the insertion of descriptive language in lieu of filling in a box with a number, and other minor clarification modifications. Notice at 3. Rate Counsel agrees with all of these recommendations made by Staff. The proposed changes will afford the Installers with flexibility to provide accurate disclosure of contract terms that are different from those contemplated in the current forms.

Once the amended forms are issued, Staff proposes to prohibit applicants to the ADI Program from altering the disclosure forms. This prohibition is proposed in order to remedy the issue of Installers modifying the forms without a legitimate business purpose. Rate Counsel also agrees with Staff that the revised forms should be sufficient to allow disclosure of contract terms that are consistent with legitimate business purposes, and that accordingly there should be no further need for Installers to modify the approved forms.

The Notice also indicates that Staff will continue to accept ADI disclosure forms with the types of changes previously mentioned for 15 business days after the date the Board approves the revised disclosure forms. After the expiration of the 15-business day time period, any non-compliant disclosure forms will be rejected. Notice at 3. At the April 20, 2022 stakeholder meeting, some of the Installers expressed a concern over this proposed time period and requested that the Board permit at least 60 business days for Installers to submit disclosure forms with the changes before rejecting the same. Rate Counsel defers to Staff to establish an appropriate grace period that will allow installers sufficient time to implement the revised forms.

Staff further recommends that the ADI registration processing team continue to reject registrations, including those registrations currently pending, which contain a Transition Incentive (“TI”) disclosure form, a disclosure form that does not include the ADI heading, as well as any disclosure form embedded in the solar contract. Staff suggests that the disclosure

forms must be provided and executed as separate documents in addition to the solar contract. Notice at 4. Rate Counsel also supports these recommendations made by Staff, as they will afford solar consumers an additional safeguard against misleading or inaccurate representations.

Finally, Staff recommends that the ADI processing team periodically conduct an audit of a sample of the filed disclosure forms to ensure that they are being filled out properly and without modifications made by the Installers. Notice at 4. Staff indicates that if any noncompliant disclosure forms are identified, the associated registrations will be rejected and could result in the commencement of the Board-approved process for remediating and/or sanctioning misbehavior (e.g., Contractor Remediation Procedures) and/or other enforcement and/or disciplinary actions. Ibid. Rate Counsel supports these recommendations, as they provide greater assurance that Installers will ensure that the forms are filled out correctly and on a consistent basis, while providing additional oversight in the event the forms are found to be not in compliance. In order to assure that issues are identified on a timely basis, Rate Counsel recommends that auditing be a continuing function. For example, the Board could state that it will select a specified number or percentage of the forms from each installer each week or other period. In addition to assuring prompt identification of any improper practices, this would more evenly distribute the workload for Staff over time.

CONCLUSION

Rate Counsel thanks Staff for the opportunity to provide comments on their proposed modifications and recommendations pertaining to the ADI disclosure forms. We also thank Staff for their diligence in conducting a stakeholder meeting that has given Installers and other

stakeholders opportunities to discuss the recommendations and look forward to Staff's issuance of the final version of the revised ADI disclosure forms.