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December 9, 2022

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

Carmen D. Diaz
Acting Secretary of the Board
44 South Clinton Avenue, 1ST Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of the One Year Review of the Administratively
Determined Incentive Program
BPU Docket No. QO20020184**

Dear Acting Board Secretary Diaz:

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 17, 2022. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at board.secretary@bpu.nj.gov.

Carmen D. Diaz, Acting Secretary of the Board

December 9, 2022

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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/ Maura Caroselli*
Maura Caroselli, Esq.
Deputy Rate Counsel

MC

Enclosure

cc: Kelly Mooij, BPU
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STATE OF NEW JERSEY

BEFORE THE BOARD OF PUBLIC UTILITIES

In the Matter of the One Year Review of) Docket No. QO20020184
the Administratively Determined)
Incentive Program)

**COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL
IN RESPONSE TO REQUEST FOR STAKEHOLDER INPUT ON THE ONE-YEAR
REVIEW PROCESS AND POTENTIAL CHANGES IN THE NEW JERSEY SOLAR
ADMINISTRATIVELY DETERMINED INCENTIVE PROGRAM**

DECEMBER 9, 2022

INTRODUCTION

On July 28, 2021 the New Jersey Board of Public Utilities (“Board”) issued an Order in this docket (the “SuSI Order”) establishing New Jersey’s Successor Solar Incentive (“SuSI”) Program. As part of that Order, the Board established the framework for the Administratively Determined Incentive (“ADI”) Program within the SuSI Program, including initial incentive levels and other parameters. In that Order, the Board’s Staff (“Staff”) was directed to:

undertake a review of the ADI Program implementation and the overall health of the relevant portions of the solar market 12 months after the opening of the ADI Program, which shall include a review of the market segments and incentive levels.

SuSI Order at 49.

The purpose of this One Year Review, referred by Staff as the “One-Year Checkup,” is to:

provide an opportunity to examine whether the ADI Program is reasonably on track to meet the targets established by the Board or whether incentives should be adjusted based on the first year of operational experience.

SuSI Order at 22.

On November 17, 2022, Board Staff issued a Notice seeking comments on the procedure for conducting the One-Year Review, and input on a variety of input assumptions and modeling issues and potential changes in the ADI Program. In the comments below, the New Jersey Division of Rate Counsel (“Rate Counsel”) will address serious concerns about the process that is currently envisioned for the One-Year Review, and will then provide response to the specific questions contained in the Notice.

RATE COUNSEL COMMENTS

I. PROCECURAL ISSUES

Rate Counsel has serious concerns about the process that is apparently envisioned for the One-Year Review. It appears that Staff will be considering the oral input provided at the December 2, 2022 stakeholder meeting and written input provided in accordance with the Notice in developing several potential modeling and input changes that will impact the ADI incentive levels, and potentially the respective capacity blocks for each of the market segments. Rate Counsel understands that these changes will be made by Staff's consultants, Cadmus, who will use the collective stakeholder input to make revised modeling runs, which Staff will use to make recommendations on ADI program changes that are to be approved by the Board. Based on the discussion at the December 2, 2022 stakeholder meeting, it appears that Staff does not contemplate any opportunity for further stakeholder comment before the Staff recommendations are submitted to the Board.

This procedure does not comport with the requirements of due process. The New Jersey Supreme Court held in In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339, 344 (2011) ("Basic Generation Service"), the Board has a "basic administrative law obligation to act with transparency through the provision of prior notice and opportunity to comment." Thus, when the Board wishes to consider a change that will affect the rates paid by the State's ratepayers, it has a "duty to provide clear notice that would enable a meaningful opportunity for comment" 205 N.J. at 344.

The procedure envisioned by Staff does not meet the Board's obligation to provide due process because it forces stakeholders to effectively comment on potential ADI program changes without knowing or being allowed to opine on how input changes, changes in assumptions and

other data will impact ADI incentive levels and capacity blocks. While Board Staff and Cadmus have identified several potential modeling changes, such as making adjustments for inflation or supply chain constraints, Staff has not specified what modeling adjustments may be made nor has it proposed any specific changes in ADI incentive levels or capacity blocks. This is simply unfair because it does not afford stakeholders “clear notice that would enable a meaningful opportunity for comment” on proposed changes that will directly affect the amounts of the subsidies that must be paid for by New Jersey ratepayers. Basic Generation Service, 205 N.J. at 344. Indeed, the scope of any one change or the cumulative impact of all the changes may influence a party’s decision to oppose or support the changes, or to comment at all.

As the Board is aware, the initial incentive levels for the ADI Program were established following a lengthy stakeholder process that included multiple opportunities for comments. It would be unfair and prejudicial to effectively undo the entire previously-conducted ADI process and re-set incentives without a more robust process for public comment on specific ADI Program changes. Rate Counsel has previously expressed concerns in this and other proceedings about the flaws inherent in administratively determined incentives. Even if incentives are set following proper procedure, they place the burden of regulatory error on ratepayers. The “expedited” process apparently contemplated by the Board would only magnify the burden on the State’s utility ratepayers.

In order to provide due process, Staff should do the following before offering recommendations to the Board on any ADI Program changes:

- Identify modeling changes offered by stakeholders and accepted by Staff to make ADI Program revisions. Provide a justification and rationale for these changes, and clearly identify the underlying data sources from which these changes are based.

- Conduct sensitivity analyses and provide stakeholders with an understanding of the relative impact that the changes identified above have on the final incentives or capacity blocks for each of the ADI market segments.
- Allow stakeholders to comment on the Board Staff/Cadmus analysis and any proposed changes in the ADI Program.
- Prepare a final One-Year Review recommendation to the Board, to be included in any Board Order, including detailed explanations of the reasons for Staff's adoption or rejection of stakeholder proposals and comments, and supporting analysis for the recommended ADI incentives and capacity blocks.

If a procedure that comports with due process is not feasible within the available time constraints, then either no changes should be made to existing ADI Program incentive levels and market segment capacity blocks or, alternatively, Rate Counsel recommends adjusting the deadlines in the SuSI Order.

II. RESPONSES TO STAFF QUESTIONS

1. **Cadmus proposes to adjust Operational Expenses by annual inflation rates, and to adjust current Capital Expenses by inflation rates and other cost escalators researched from industry data.**
 - a. **Please comment on the proposal to use Bureau of Labor Standards CPI-U data to escalate operational and capital expenses.**

Rate Counsel Response:

Rate Counsel does not support making any inflation adjustment at the current time.

While the U.S. economy has reflected a significant degree of inflation over the past year or more, price levels are starting to moderate, and are expected to continue to moderate as the year progresses. In fact, there is a very strong chance that the U.S. economy could slip into a recession as a result of recent Federal Reserve Bank interest rate hikes designed to temper the

kind of price inflation Board Staff proposes to build into the ADI Program incentive levels. Rate Counsel is concerned that inflating these ADI incentive values now will result in over-incentivizing solar projects as inflation starts to wane due to a slow-down in economic activity.

To the extent Board Staff and Cadmus move forward with making an inflation adjustment, Rate Counsel recommends that the Board utilize the Gross Domestic Product Price Index (“GDP-PI”) as a more appropriate measure of inflation rather than the Consumer Price Index for All Urban Consumers (“CPI-U”). The CPI-U is a survey-based instrument and data series designed to measure changes in household consumer-oriented expenditures that can include such items as toothpaste, cosmetics, medicines, food, and other items that have little to nothing to do with the installation and operation of a solar energy project. If the goal is to develop an economy-wide measure of price inflation, across all goods and services, the GDP-PI is more appropriate measure than the CPI-U. While these values are often similar in magnitude, there are some instances in which they can and do diverge.

b. Please comment on the proposal to utilize industry data to apply a separate supply chain adjustment, and if so, what data range should be used?

Rate Counsel Response:

Rate Counsel does not support the use of private or commercial information to support adjustments to ADI incentive levels that will be funded by retail ratepayers. There is no way this information, as proposed, can be reasonably and independently audited or verified by any stakeholder in this process, particularly given the time allotted for this review. The very nature of this review will leave stakeholders guessing about the specifics of how any outside data is used to adjust ADI incentive levels. Private or commercial information differs from government data coming from such entities as the Bureau of Economic Analysis (“BEA”), the Bureau of

Labor Statistics (“BLS”), or the Energy Information Administration (“EIA”) which are readily available and verifiable by all stakeholders.

It is Rate Counsel’s understanding from the November 17, 2022 Notice that Staff/Cadmus are considering adjustments to ADI incentive levels for supply chain constraints that were developed from third party sources of information including Wood Mackenzie and/or Bloomberg New Energy Finance in the 7 to 14 percent range. No information has been provided to stakeholders on where or how this range was developed, the specific source(s) from which these ranges originate, or the relative weighting of information between sources in developing this range. Staff simply offers no supporting analysis for these potential ADI modeling adjustments and stakeholders are simply left to speculate whether the contemplated adjustment is reasonable.

Second, no context has been provided for this wide range of seven to 14 percent that is being considered for the proposed supply chain adjustment range. It is unclear whether Staff is basing this range of possible adjustments on an historic range or projected range. It is also unclear whether the sources relied upon by Staff considered the inherently transitory nature of supply chain constraints, or whether those sources provided any cautions or sensitivities.

It would be improper to base an adjustment to ADI incentive levels that will be paid for by New Jersey’s ratepayers on such scant information and documentation. The use of privately sourced industry data could very likely result in rates that are not fair, just, and reasonable. Further, the timing of Staff’s proposal to implement an adjustment based on supply chain issues is unreasonable. Supply chain issues and adjustments should have been proffered and examined during the initial ADI stakeholder process at some point during the past year, not at this late juncture. Inflation and supply chain concerns have been in existence since most economies

started recovering from the COVID-19 the pandemic. Addressing these issues now, in a rushed “expedited” review, is simply unreasonable and unfair to New Jersey’s retail ratepayers.

c. Are there market segment-specific considerations when making cost adjustments?

Rate Counsel Response:

The Board should not consider making any market segment-specific adjustments without clearly identifying these adjustments, providing all support and documentation for such adjustments, and giving parties an opportunity to review and comment on such adjustments.

d. Are there additional or alternative data sources that should inform cost adjustments?

Rate Counsel Response:

Rate Counsel does not have any specific recommendations at this time but suggests that any alternative data that may be used be from credible, publicly-available sources. To the extent additional information is used in making any recommendations to adjust any aspect of the ADI Program, stakeholders should have access to that information and should have an opportunity to opine on the data and how incentives or capacity levels are changed given this information.

2. Interest rates have increased in 2022. In addition to cost and tax credit assumptions, Cadmus can adjust the cost of financing from the previous model runs. The cost of financing had been set at between 5.5% and 6.5%, depending on the project type, in the previous Cadmus Capstone report. Should increased interest rates be accounted for in modeling incentive requirements using the NREL’s System Advisor Model? If so, are there suggested data sources for this adjustment?

Rate Counsel Response:

Rate Counsel does not support an interest rate adjustment since current economic data suggest that high relative interest rates are a current period phenomenon that are likely to dissipate quickly over the next 12 months. The business press reports daily on the presence of substantially inverted yield curves, when interest rates on short-term government securities rise

above long-term rates, indicating that markets expect rates to fall over time, and that a recession, or significant economic slowdown may be forthcoming.¹ Thus, there is no need to speculate on this issue at the current time. Rate Counsel suggests Staff continue to monitor this situation in future ADI evaluation periods to see if current interest rate expectations change.

3. Cadmus proposes to adjust investment tax credits for all market segments according to the Inflation Reduction Act, increasing tax credits to 30%. How should the changes in federal tax incentives from the Inflation Reduction Act be accounted for in modeling incentive requirements using the NREL’s System Advisor Model?

a. When adjusting tax credits, are there any considerations for specific market segments?

Rate Counsel Response:

Rate Counsel is not aware of any specific adjustments that may be needed other than potential differences in depreciation allowances for commercial installations relative to residential installations that do not receive these benefits.

b. How should the wage and apprenticeship requirements be considered for tax credit adjustments?

Rate Counsel Response:

The SuSI program includes a “prevailing wage” requirement for all projects one megawatt or larger in size. SuSI Order at 33-34. Thus, the federal wage and apprenticeship requirements should not substantially impact or create doubt as to whether New Jersey solar projects one megawatt or larger will have the ability to receive the full amount of any federal tax incentives tied to such requirements.

¹ See, e.g., Goldfarb, S., “Yield Curve Inversion Reaches New Extremes,” The Wall Street Journal (Nov 29, 2022) (<https://www.wsj.com/articles/yield-curve-inversion-reaches-new-extremes-11669687278>); Brown, A., “What the Inverted Yield Curve Says About the Next Recession,” The Washington Post (Dec. 6, 2022) (https://www.washingtonpost.com/business/what-the-inverted-yield-curve-says-about-the-next-recession/2022/12/06/5367ddb8-755e-11ed-a199-927b334b939f_story.html); Moore, S., “Yield Curve Inversion Deepens, Increasing Likelihood Of 2023 Recession,” Forbes (Nov. 18, 2022). (<https://www.forbes.com/sites/simonmoore/2022/11/18/yield-curve-inversion-deepens-increasing-likelihood-of-2023-recession/?sh=6287c86734eb>).

4. Does potential funding from the Infrastructure Investment Act require adjustment to any inputs in modeling incentive requirements using the NREL’s System Advisor Model?

Rate Counsel Response:

Rate Counsel is not aware of any provisions that allow for a “stacking” of new tax incentives on clean hydrogen and other similar projects with other renewable energy credits like an investment tax credit. Rate Counsel discourages the Board from speculating on how many of these kinds of unique projects would apply for ADI based incentives at the current time. Board Staff should continue to monitor and review projects in case future adjustments are necessary.

5. Does the pace of registration submission into the residential market segment since inception and the likelihood of early subscription of the full 150 MW market segment allocation before the close of Energy Year 2022 support a change in incentive level from the initial value of \$90 per MWh? Should the change in incentive level occur regardless of the modeling results?

Rate Counsel Response:

For the reasons stated above, incentive levels should not be changed in the absence of a procedure that comports with due process. If Staff is considering a change, the likelihood of early subscription suggests that the incentive level is higher than necessary. Rate Counsel notes that the actual interest in the residential program may be even greater than indicated in the Straw Proposal. On November 9, 2022 the Board issued an Order denying numerous requests for extensions of the deadline to achieve commercial operation under the Transition Incentive (“TI”) program, including one blanket request for an extension of the deadline for 149 residential projects. I/M/O a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Dkt. Nos. QO19010068 et al., Order at 17 (Nov. 9, 2022). Under the Board Order, all of these projects may choose to participate in the ADI program, thus further increasing participation in the residential segment. Id. at 17, 45. If any change is being considered for the residential market segment, it should be a decrease.

- 6. Does the relatively slow uptake in registration submission in the non-residential market segments and the existence of excess capacity in this allocation for Energy Year 2022 support a change in incentive levels from the initial values?**

Rate Counsel Response:

For the reasons stated above, incentive levels should not be changed in the absence of a procedure that comports with due process. Further, while the relatively slow pace of non-residential project seeking incentives under the ADI Program might appear to suggest that incentives are too low, this is not the only relevant factor. As was recognized in the Notice, the relatively slow pace of the non-residential participation could be, at least in part, the result of “demand pull” resulting from the significantly higher incentives offered in the Board’s TI Program. As noted in the response to Question 5 above, the Board has recently denied requests for extensions of the deadline to achieve commercial operation under the TI Program, and many of these projects may choose to participate in the ADI Program. It would be premature to conclude that the ADI incentives for commercial projects are inadequate until sufficient time has passed to determine the adequacy of the current incentive levels when a program offering higher incentives is no longer an alternative.

- 7. Assuming the answer to question 5 is yes and the modeling supports a change in the residential market segment incentive value, how and when should modified incentive values in the residential market segment be implemented?**

Rate Counsel Response:

See the responses to Question 5 above.

- 8. Assuming the answer to question 6 is yes and the modeling supports an increase in the non-residential market segment incentive values, how and when should the altered incentive values be implemented?**

Rate Counsel Response:

See the response to Question 6 above. In addition, any proposed change in the non-residential incentive levels should consider the apparent bias in the Cadmus model or inputs noted in the response to Question 7 above.

- 9. What other issues should be considered in the One-Year Program Review?**

Rate Counsel Response:

Rate Counsel has no comment at this time.