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April 24, 2023

Via Electronic Mail
Ms. Sherri Golden, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350
Board.Secretary@rpa.nj.gov

Re: I/M/O New Jersey Grid Modernization Interconnection Process
BPU Docket No. QO21010085

Dear Secretary Golden:

Please accept for filing these comments of the Division of Rate Counsel ("Rate Counsel") regarding the above-referenced matter. Consistent with the March 19, 2020, *Order of the New Jersey Board of Public Utilities ("Board") in I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations*, BPU Docket No. EO20030254, copies of this comment letter are being filed electronically with the Secretary of the Board and provided electronically to the relevant parties. No paper copies will follow. Please acknowledge receipt of this comment letter.

Thank you for your attention and consideration in this matter.

Very truly yours,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ *David Wand*
T. David Wand, Esq.
Deputy Rate Counsel

I/M/O New Jersey Grid Modernization

Interconnection Process

BPU Docket No. QO21010085

Grid Modernization Study: New Jersey Board of Public Utilities

Comments of the Division of Rate Counsel

April 24, 2023

I. Introduction

The Division of Rate Counsel ("Rate Counsel") is pleased to provide these comments to the Board of Public Utilities (the "Board" or "BPU") pursuant to the January 27, 2023 Board Notice and the November 9, 2022 Board Order Accepting the Grid Modernization Consultant Report and Initiating Rulemaking, in *I/M/O Modernizing New Jersey's Interconnection Rules, Processes, and Metrics*, BPU Docket No. QO21010085. On June 28, 2022, Guidehouse and Board Staff issued a draft final Report, *Grid Modernization Study: New Jersey Board of Public Utilities*.

Interested parties, including Rate Counsel, submitted written comments on the draft final Report. Rate Counsel expressed agreement with many of Guidehouse's draft recommendations, which could potentially improve the interconnection process for all stakeholders and lead to the interconnection of additional renewable energy resources within the State. However, Rate Counsel expressed concern about some of the recommendations. In particular, Rate Counsel expressed strong opposition to those Guidehouse recommendations that would impose additional costs on ratepayers to upgrade the electric grid to accommodate new renewable energy projects. Rate Counsel also strongly insisted that allocation of any grid interconnection costs must comply with traditional cost-causation utility ratemaking principles. The Board must find that rates charged to customers are just and reasonable. Rate Counsel continues to have those same concerns.

Guidehouse and Staff then presented the Final Report to the Board during its November 9, 2022 agenda meeting.[1] The Final Report included recommendations on nine different topic areas, the first four being near term recommendations and the other five being longer term. Guidehouse and Staff considered the longer term recommendations as "generally more complex because of deeper process changes, conflicting business model impacts, financial assessment and accounting, and system integration," and observed that "they will require additional analysis and stakeholder input prior to being implemented."[2]

The Board accepted the Final Report, found that the near term recommendations, numbered 1 through 4, are ready to be implemented, and directed Staff to implement them expeditiously and to release for public comment a draft of the proposed rule changes. The Board also found that the longer term recommendations, numbered 5 through 9, would benefit from additional analysis and stakeholder input, and directed Staff to initiate a process to obtain the analysis and stakeholder input needed to initiate a rulemaking process for those recommendations in a timely manner.[3]

On January 27, 2023, the Board issued notice of a virtual stakeholder meeting to discuss proposed changes to New Jersey's process for interconnection rules. The virtual stakeholder meeting was held on February 10, 2023, with comments due by March 10, 2023. On March 2, 2023, the Board issued an amended notice that changed the comment due date to April 24, 2023.

Rate Counsel has concerns that these proposed rules exceed the Board's directive with regard to the first four near-term recommendations. Guidehouse's recommendations discussed updating the Board's interconnection technical requirements and references, streamlining the application process through software, improving transparency through uniform and improved hosting capacity mapping, and better feedback on interconnection applications. Guidehouse's near-term recommendations do not discuss or recommend the

[1] Guidehouse Inc. "Grid Modernization Study: New Jersey Board of Public Utilities," August 24, 2022.
[2] I/M/O Modernizing New Jersey's Interconnection Rules, Processes, and Metrics, BPU Docket No. QO21010085, Board Order Accepting the Grid Modernization Consultant Report and Initiating Rulemaking, Nov. 9, 2022, p. 3.
[3] Id.

cost and risk shifting contained in the currently proposed rules. Rather, Guidehouse noted in Finding #7 that BPU "does not currently have a mechanism to rapidly evaluate innovative cost allocation and cost recovery options that could enable NJ to meet state renewable energy goals" and recommended that "BPU should establish a steering committee and working groups" to look at additional options beyond the cost-causer approach.

Rate Counsel agrees with the Board's decision not to implement the five longer term recommendations at this time. Rate Counsel reiterates its concern that those five long-term recommendations risk imposing additional costs on ratepayers to upgrade the electric grid to accommodate new distributed generation resources, also known as Distributed Energy Resources ("DER"), and may allocate grid interconnection costs onto ratepayers that do not comply with traditional cost-causation utility ratemaking principles. Shifting the cost of DER development from the project developers to utility customers is inappropriate and acts as an additional subsidy for an already heavily subsidized and unregulated industry. Any discussion of additional subsidies must include a holistic re-evaluation of the current subsidies being provided. The current rule proposal does not accomplish this, yet nonetheless, seeks to levy additional costs and risks onto the ratepayers.

The January 27, 2023 Board Notice released for public comment a draft of the proposed changes and additions to the Board rules for interconnecting DER resources to the electric grid in New Jersey. Rate Counsel thanks the Board for the opportunity to comment on these proposed draft rules.

II. Legal Principles

Rate Counsel is generally supportive of the Board's decision to implement some of the four near term recommendations in the Final Report. However, Rate Counsel has some concerns about the rules' implementation of those broad recommendations. As a threshold matter, Rate Counsel strongly opposes the provisions in these proposed rules that would allow additional costs to be imposed on ratepayers but only serve to upgrade the electric grid for accommodation of new DER projects and shift additional risks

relating to those interconnections from the project developers to utility customers. Allocation of any grid interconnection costs should comply with traditional cost-causation utility ratemaking principles. The Board also is obliged to ensure that its decisions on cost recovery result in utility rates that are just and reasonable.[4]

New Jersey deregulated electric generation by statute over twenty years ago.[5] Ratepayers are not partners or investors in such unregulated ventures. Under the regulatory model established by the Electric Discount and Energy Competition Act ("EDECA"), an investor uses its own capital and hopes to earn a return on that investment. Since these privately-funded DER projects benefit from access to the utility's grid, the interconnection upgrades required for DER projects should be borne by the projects causing the need for the utility plant investment. Otherwise, ratepayers will proactively fund projects that only provide a benefit to unregulated investors. This would result in ratepayers funding the DER project and bearing the risk but, to the extent the project succeeds, not sharing in the financial benefit that a private entity will reap. Therefore, if ratepayers must pay for costs to upgrade the grid to accommodate DER projects, then the subsidies that ratepayers already pay for DER project development under existing renewable energy programs should be reduced proportionately.[6] Imposing additional costs on ratepayers, in addition to the subsidies such projects already receive, to supplement the profitability of unregulated investments, is simply unfair.

Similarly, Rate Counsel questions whether accelerated recovery of the EDCs' costs to replace working equipment to accommodate DER projects is necessary or prudent at this time. The Board has already approved, or is reviewing, proposals by each

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[4] N.J.S.A. 48:2-21.

[5] Electric Discount and Energy Competition Act, ("EDECA"), N.J.S.A. 48:3-49 et seq.

[6] Ratepayers pay substantial subsidies for solar distributed energy resource ("DER") projects in the form of Solar Renewable Energy Certificates ("SRECs"), Transition Renewable Energy Certificates ("TRECs") and Solar Renewable Energy Certificate IIs ("SREC-IIs"), and provide additional subsidies in the form of net metering credits for behind-the-meter solar and Community Solar facilities. According to estimates prepared by the Board's Clean Energy staff, the cost of the SREC and TREC programs in Energy Year 2021 was nearly $880 million. See, "Energy Year 2021 RPS Compliance Results 2004 to 2021," available at: https://njcleanenergy.com/files/file/rps/EY21/EY21%20RPS%20Compliance%20Results%202004%20to%202021%20Final%202022_05_17.pdf. These costs will only increase as SREC-II projects come online. Further, Staff's estimate does not include the substantial additional subsidies that ratepayers provide in the form of net metering credits for behind-the-meter solar and Community Solar facilities.

EDC (as well as by gas utilities) for projects that it considers necessary and appropriate for accelerated recovery to improve the safety, security, and reliability of utility infrastructure. Additional accelerated recovery is unneeded and unnecessarily burdensome on the State's ratepayers. Rather, the public utilities should continue to perform their duty of providing safe, adequate, and proper service by replacing equipment as needed in the normal course of business, and recovering their costs through the traditional utility ratemaking process which evaluates the utility revenue requirement as a whole.

The cost-shifting proposed in these rules, from unregulated private investors onto utility ratepayers, is inconsistent with the deregulation of electric generation under EDECA, whereby the functions and costs of generation were unbundled from the regulated utility industry, and ratepayers were relieved of the responsibility to guarantee recovery of the costs of generation investors. Additionally, under the governing ratemaking principle of cost-causation, the costs caused by DER projects should be borne by the unregulated investors through their application fees or other payment mechanism proposed by the Board. Moreover, with ratepayers taking on the risk, DER projects that are otherwise uneconomic or inappropriately sited may be built anyways, ultimately resulting in higher ratepayer costs without any real, demonstrable financial benefit to New Jersey residents or the utility's ratepayers' electric service. Basically, ratepayers should not be a free source of capital for unregulated private ventures.[7] The Board has a duty to ensure that utility rates remain just and reasonable, the utility's primary purpose of providing electric distribution service is not co-opted by speculative, private interests in search of more profits.

These proposed rules also raise some concerns about the rulemaking process required by the Administrative Procedure Act.[8] This proposal does not provide factual

[7] Indeed, ratepayers are being asked to provide capital to support these private ventures with no idea what return they are earning or if these additional subsidies are even needed. If the Board insists on providing ratepayer monies to private investors, these investors must be willing to provide accounting proof of their actual need, just as utilities do in a base rate case.

[8] N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23; see Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 328 (1984) ("A critical aspect of this definition is the 'general applicability and continuing effect' of the pronouncement."); In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339 (2011); N.J.S.A. 52:14B-2(e).

support for limiting the costs for investors in DER projects that are already heavily subsidized by ratepayers; any quantification of the benefits or costs to ratepayers of increasing their utility bills; or the impact of those increased costs on the New Jersey economy. Higher electric rates can cause numerous effects on the economy: households overall will have less discretionary income, if any, and employers will have higher overhead costs, which may lead to hard financial decisions such as choosing to relocate out-of-state or reductions in their New Jersey workforces. For example, during 2021, U.S. retail electricity rates rose at the fastest rate since 2008.[9] Similarly, the True Poverty Report noted that nearly 3 million New Jersey residents were living below the Poverty Research Institute standard for New Jersey's cost-of-living-sensitive threshold. Affordability of utility rates is imperative and is not discussed or apparently considered in this rule proposal.[10]

As noted in detail in our comments below, several of the rule proposals will require additional discussion to ensure that all stakeholders have a common set of definitions and parameters to avoid duplicative or conflicting efforts across the EDCs. Rate Counsel recommends that the Board place a higher value on consistency and comparability of policies and plans across the EDCs.

Rate Counsel provides detailed comments on the proposed rules below.

[9] U.S. Energy Information Administration, "During 2021, U.S. retail electricity prices rose at fastest rate since 2008" (Mar. 1, 2022) (available at https://www.eia.gov/todayinenergy/detail.php?id=51438#). See also EIA expects significant increases in wholesale electricity prices this summer (June 16, 2022) (available at https://www.eia.gov/todayinenergy/detail.php?id=52798).

[10] Legal Services of New Jersey Poverty Research Institute, True Poverty What It Takes to Avoid Poverty and Deprivation in the Garden State (July 2021) (available at https://proxy.lsnj.org/rcenter/GetPublicDocument/00b5ccde-9b51-48de-abe3-55dd767a685a)

III. Discussion

SUBCHAPTER 4. NET METERING FOR CLASS I RENEWABLE ENERGY SYSTEMS

14:8-4.2 Net metering definitions

The Board proposes to amend the definition of a "customer-generator" to include customers whose facilities are aggregated for purposes of net metering, but are not located contiguously.

> "Customer-generator" means an electricity customer that generates electricity on the customer's side of the meter, using a class I renewable energy source, that stores electricity, or that involves multiple sources of generation that includes a class I renewable energy source, whether separately or as part of an aggregated resource. The Board may deem a pair of entities acting together - that is, a net metering generator and a net metering customer - to constitute one Customer-generator for the purpose of net metering.

Rate Counsel has concerns with this definition because, it is unclear what is intended by the proposed change to the Customer-generator definition or what situations are being addressed by expanding the definition to only "include" a class I renewable energy source. Indeed, the language could be read to include a large fossil fuel generation unit combined with a relatively small solar facility. Rate Counsel recommends that, before adopting this proposed rule amendment, the Board further explain how this rule change is expected to increase the number or capacity of class I renewable energy resources (and other types of DER resources). In the alternative, Rate Counsel believes it would be preferable to add the new language to the proposed amended definition to "customer-generator." The intended function of this new language would be to state that, notwithstanding the proposed expansion of the term "customer-generator" the additional types of facilities propose to be included do not qualify for net metering. This can be accomplished by the following changes:

> "Customer-generator" means an electricity customer that generates electricity on the customer's side of the meter, using a class I renewable energy source, that stores electricity, or that involves multiple sources of generation that includes a class I renewable energy source, whether

> separately or as part of an aggregated resource; provided, however, that only the electricity produced by the class I renewable energy sources shall be eligible for Net metering treatment. The Board may deem a pair of entities acting together - that is, a net metering generator and a net metering customer - to constitute one Customer-generator for the purpose of net metering.

Rate Counsel generally supports the proposed amendment to the definition of a "customer-generator facility." That proposed amendment would expand the definition to include "energy storage devices" and "vehicle to grid devices."

> "Customer-generator facility" means the equipment used by a Customer-generator to generate, store, manage, and/or monitor electricity. A Customer-generator facility typically includes an electric generator, energy storage device, vehicle to grid device, and/or interconnection equipment that connects the Customer-generator facility directly to the customer, whether separately or as part of an aggregated resource.

Expanding the interconnection process to include storage devices could facilitate the integration of storage in the State's electric grid. This is consistent with Strategy #2 in the New Jersey Energy Master Plan ("EMP"), to build 2,500 MW of energy storage by 2035.[11]

However, Rate Counsel notes that neither the terms "energy storage device" nor "vehicle to grid device" are defined. Clear definitions are needed here because of the wide range of technologies used for energy storage and for electric powered motor vehicles ("EVs").[12] Additionally, EVs are already the subject of separate proceedings by each of the EDCs in New Jersey. Rate Counsel respectfully requests that the Board address any EV-related issues in a separate stakeholder proceeding where technical issues, costs and benefits may be carefully considered with EV industry stakeholders.

[11] EMP at p. 13.

[12] For example, two manufacturers (Channing Street Copper Company and Impulse) have announced the availability of major home appliances equipped with an energy storage device: induction stoves equipped with batteries, with storage capacity in excess of 3 kWh. *These new induction stoves want to convince you to ditch gas*, Fast Company, (November 22, 2022), available at https://www.fastcompany.com/90814918/these-new-induction-stoves-want-to-convince-you-to-ditch-gas.

Rate Counsel supports the proposed amendment to the definition of a "Net metering generator," to clarify that only the electricity produced by the class I renewable energy sources shall be eligible for Net metering treatment.

> "Net metering generator" means an entity that owns and/or operates a class I renewable energy generation facility, the electricity from which is delivered to a Net metering customer; provided that only the electricity produced by the class I renewable energy sources shall be eligible for Net metering treatment. The Net metering generator may or may not be the same entity as the Net metering customer; and may or may not be located on the same property as the Net metering customer.

Rate Counsel supports the addition of this language to clarify that the draft rule proposal would no change the Board's existing regulations or policies regarding the facilities that qualify for net metering.

SUBCHAPTER 5. INTERCONNECTION OF CLASS I RENEWABLE ENERGY SYSTEMS

14:8-5.1 Interconnection definitions

Rate Counsel does not support adding the proposed new term "AGIR" or "Authority Governing Interconnect Requirements."

> "AGIR" or "Authority Governing Interconnect Requirements" means the agency that has authority for setting interconnection rules to the state-jurisdictional electric system, as set forth in IEEE 1547 Standard or subsequent standard as identified in a Board order. The term AGIR is functionally equivalent to the term "Relevant Electric Retail Regulatory Authority."

Adding to the already crowded vocabulary of renewable energy terms and acronyms risks adding further confusion and opacity. This is especially true when considering issues of authority and accountability. Rate Counsel recommends that the Board identify the agency to whom it intends to refer by simply stating, for example, "PJM" or "the Board," "…and any legally determined future successor."

Rate Counsel is concerned with some of the language in the proposed new definition, "DER Aggregation":

> "DER Aggregation" means a grouping of discrete interconnected Customer-generator facilities or behind the meter load modifying resources working as a combined or coordinated group for purposes of providing energy, grid services, or other value stream, on an aggregated basis, whether for the purposes of participating in retail or wholesale markets, including those established under Order No. 2222 or otherwise.

The definition includes several types of activities included within DER aggregation, but then refers to "…or other value stream." Rate Counsel opposes use of the term "value stream" in this definition. It is not defined or quantified, and it does not state who will receive that value or who will pay for it. Rate Counsel recommends substituting "value stream" with "functions."

Rate Counsel also notes that the proposed rule amendments refer at times to "Order No. 2222" and at others to "FERC Order No. 2222." These are the same order, but for purposes of consistency, we recommend a consistent term of reference. We also recommend clarifying the term "…or otherwise." It is unclear whether this refers to a specific federal or State legal authority. Rate Counsel recommends instead referring either to a specific legal authority or generally to "applicable federal or State statutes, rules and orders."

Rate Counsel's concern about potentially inappropriate cost-shifting arises again in the new definition, "EDC grid flexibility services," which characterizes such services as "compensated by the EDC." The rule proposal also provides no description of these services; no information on their technical functioning, necessity, advisability, or alternatives; and no data on costs, benefits, who will pay, who will benefit, or in what amount. Without such guidance, it is likely that the costs will fall on ratepayers, with no way to ensure that they receive benefits greater than the costs paid.

Rate Counsel also advises against the final sentence in the definition of "EDC grid flexibility services", which states: "Volt VAR provided by smart inverters is one example." The cost-effectiveness of Volt VAR measures have not been adequately addressed in a proceeding before the Board. A stakeholder process on voltage

optimization began over three years ago.[13] The EDCs submitted reports on various technical issues relating to implementing Volt VAR measures on their systems. Some of those EDC filings expressed concern about the "highly variable and limited" potential benefits, the cost of implementing such measures and whether they are technically ready for implementation.[14] However, the Board did not notify stakeholders of any intended action on Volt VAR and did not solicit comments from stakeholders on any proposal. Thus, significant questions remain unaddressed about the viability and cost of Volt VAR measures. If the Board intends to include voltage optimization measures in its grid interconnection rules, Rate Counsel respectfully recommends that the Board first hold a stakeholder process that considers and decides the technical and financial issues currently unresolved.

Rate Counsel does not support including "Rule 21," a regulation of the California Public Utilities Commission, in this rule proposal, as a definition or otherwise. Incorporating and relying on a regulation from another state into the New Jersey Administrative Code is inappropriate because it would violate several legal principles: 1) the scope of the Board's delegated powers from the New Jersey legislature[15] to an administrative agency in a different state; 2) the Board's rulemaking obligations;[16] and 3) the due process obligations of the Board, to give New Jersey residents notice of its proposed actions and the opportunity to be heard. If the Board intends to promulgate a regulation modeled on California's Rule 21, or any other state's regulation, it must do so using the well-established legal processes set forth in New Jersey law.

Rate Counsel recommends specifying, in the new definition, "system impact study," that, to the extent this study is necessary to determine whether a proposed project would harm the safety and reliability of the EDC's electric grid, the costs of the study should be paid by the applicant applying for an interconnection to the grid.

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[13] I/M/O the New Jersey Board of Public Utilities - A Study to Determine the Optimal Voltage for Use in the Distribution Systems of Each Electric Public Utility in the State, BPU Docket No. EO19040499.
[14] E.g., Jan. 15, 2020 Report on Study of Optimal Voltage by JCP&L.
[15] N.J.S.A. 48:2-16 et seq.
[16] See Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 328 (1984) ("A critical aspect of this definition is the 'general applicability and continuing effect' of the pronouncement."); In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339 (2011); N.J.S.A. 52:14B-2(e).

14:8-5.2 General interconnection provisions

14:8-5.2(b):

Rate Counsel notes that the Board has not provided a factual basis for allowing an applicant to rely on the use of non-exporting technology to enable their facilities to qualify for a less stringent level of interconnection review. ,

14:8-5.2(e):

Rate Counsel strongly objects to proposed new N.J.A.C. 14:8-5.2(e), which mandates that the entire cost of establishing, operating and maintaining the CIAP, portal and software will be imposed upon ratepayers. "The cost of implementing the CIAP portal and related costs shall be recovered by each EDC as part of its base rates or through an approved Infrastructure Investment Program, pursuant to N.J.A.C. 14:3-2A.2" (emphases added).

First, this proposal violates well-established ratemaking principles. Any utility cost sought to be recovered in rates must be reasonable, prudently incurred, and result in just and reasonable rates. This proposed new rule does not include any of the review standards that are legally required before allowing any utility investment to be included in its rate base and to ensure that the resulting rates are just and reasonable. Such standards include, without limitation, determining whether the investment is prudent, used and useful, and necessary to provide safe, adequate and proper service.[17] The Board may not abdicate its duty to review utility investments, and may not delegate to the EDCs or to private investors, the Board's authority to determine which investments may be included in the EDC's rate base. Utility investments must be reviewed for prudency and other traditional ratemaking criteria, before being placed into rates.[18]

Additionally, imposing the CIAP portal costs carte blanche onto customers would be inappropriate and would represent an additional subsidy paid by ratepayers to private

[17] See N.J.S.A. 48:2-21.

[18] See Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 328 (1984) ("A critical aspect of this definition is the 'general applicability and continuing effect' of the pronouncement."); In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339 (2011); N.J.S.A. 52:14B-2(e).

investors in renewable DER projects, without any corresponding, quantifiable financial benefit to ratepayers. Access to the electric grid is a valuable benefit for which renewable DER projects should pay their fair share. This proposed new rule would shift the costs and risks of achieving grid access onto ratepayers. However, all profits from the project would still be retained by the investors in the DER project. Well-established ratemaking principles indicate that the costs of connecting to the grid must be borne by the party who requests the grid connection.

Moreover, the costs of installing, maintaining and updating the CIAP are potentially large and may significantly increase customer rates. The result will be an open-ended commitment of ratepayer funds to pay for investments in unregulated DER projects. Accordingly, the costs of the CIAP and its portal and software should be recovered through the fees charged to the applicants for the benefit of a grid interconnection, and not from ratepayers.

14:8-5.2(e)(3)

Rate Counsel does not support this proposal as written, which would require the ratepayer-funded CIAP portal to include grid integration software for solar projects that are "selected and implemented jointly by the EDCs, and approved by the Board." This proposal does not include any procedural requirements for stakeholder input. Additionally, to the extent every electric utility will seek recovery of software costs, Rate Counsel recommends promulgating applicable standards by rule to comply with principles governing rate-setting and administrative law.

14:8-5.2(o),

This proposed new rule would require each EDC, on an annual basis, to

> make a Proactive System Upgrade Planning filing in which the EDC identifies targeted proactive circuit and system upgrades aimed at expanding opportunities for Customer-generator facilities and detail the costs and benefits of the proposed upgrades, as set forth at N.J.A.C. 14:8-5.15.

Rate Counsel has three concerns with this proposed rule. First, this proposed rule does not state who will be responsible to ultimately pay for the EDC's preparation of the

Proactive System Upgrade Planning filing and for the proposed upgrades if implemented. Second, this appears to prematurely implement Guidehouse's Recommendation #8, which advises the BPU to "consult [with] industry experts as necessary to gain insights as they develop guidance." Finally, this proposed rule refers to N.J.A.C. 14:8-5.15, which does not exist.

Rate Counsel respectfully recommends amending proposed new N.J.A.C. 14:8-5.2(o) to state that the fees paid by applicants for a grid connection will be set at a level to cover the EDC's cost of preparation of the Proactive System Upgrade Planning filing.[19] Rate Counsel reserves the right to comment on N.J.A.C. 14:8-5.15 if and when it is proposed.

14:8-5.2(p):

This proposed rule describes a process to facilitate the participation of "entities with interconnection agreements" in DER aggregations. That process requires, among other measures, that the EDC will receive only 10 days' written notice before the entity initiates the DER aggregation, and the EDC will have only 10 business days after receiving notice either to approve the DER aggregation or to issue a formal letter of objection. If the EDC issues a formal letter of objection, the parties must engage in a dispute resolution process.

Rate Counsel is concerned that proposed new N.J.A.C. 14:8-5.2(p) will require the EDCs to incur additional costs, manage the additional work and that the short time frames. The rule fails to explain why 10 days is the appropriate timeframe for notice and 10 business days is appropriate for review. EDCs are in the best position to address the appropriate timeframes for notice and review of DER aggregations. Rate Counsel recommends that any incremental costs reasonably incurred by EDCs to comply with this rule be borne by the applicants through an application fee.

Rate Counsel also notes that the reference to the rule setting forth the applicable dispute resolution process should be amended to cite N.J.A.C. 14:8-5.13.

14:8-5.2(q):

[19] Rate Counsel also recommends that the Board propose its preferred method(s) of structuring grid interconnection application fees. These fees could be pooled, shared or allocated among DER grid interconnection applicants.

This proposed new rule establishes a reporting obligation for EDCs if they miss a deadline applicable to connecting DER projects to the grid. The rule states that the methodology will be established by Board order. Due to the universal applicability of this rule, the methodology for reporting a missed deadline should be established by regulation, not by individualized Board orders.[20]

14:8-5.2(s):

Rate Counsel has several concerns about this proposed new rule, which reads:

> In conducting studies pursuant to this chapter, each EDC shall plan its system to allow for reverse power flow through substations where minor changes to the substation's control system allow for such flows in a safe and reliable manner and shall prioritize upgrading such control systems in response to interconnection applications that would benefit from such reverse flows.

This rule proposal would require EDCs to plan and upgrade their systems to allow for reverse power flow through its substations, in response to interconnection applications that "would benefit" from such reverse flows. The costs would evidently be imposed upon the EDC, which would presumably in turn seek to recover those costs from ratepayers. This appears to exceed the Board's directive on implementing Guidehouse's near-term recommendations. This proposal also violates several well-established rules governing ratemaking and cost causation principles, which require that the beneficiary should pay for costs that it causes. To the extent this planning and upgrading "would benefit" a particular DER project requesting a grid connection, the associated costs should be recovered from the project developers.[21] Further, if these investments are ultimately not used to provide utility service, they could become "stranded" assets whose costs are not recoverable from ratepayers. It is unfair to impose the costs of such speculative and imprudent investments on ratepayers or on the EDCs. This transfer of developer costs and risks onto ratepayers and EDCs represents another subsidy to the

[20] See Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 328 (1984) ("A critical aspect of this definition is the 'general applicability and continuing effect' of the pronouncement."); In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339 (2011); N.J.S.A. 52:14B-2(e).

[21] See In re Intrastate Industrial Sand Rates, 66 N.J. 12, 22 (1974).

DER investors that will increase utility costs for all ratepayers. Additionally, it is not clear that these investments would be reasonable without DER investor contributions because the reverse flows will not support the utility's provision of safe, adequate and proper service but rather only benefit specific applicants' access to the grid for their private gain. Rate Counsel recommends amending proposed new N.J.A.C. 14:8-5.2(s) to clarify that recovery of costs incurred to upgrade substations for the accommodation of reverse power flows will comport with well-established cost-causation principles.

14:8-5.3:

This rule amends the criteria for certification of Customer-generator interconnection equipment. Rate Counsel has concerns with this amended rule. In N.J.A.C. 14:8-5.3(a)3, Rate Counsel does not support directing the Board to approve equipment for operation using "California's Rule 21 process." "Rule 21" is a regulation of the California Public Utilities Commission. Incorporating and relying on a regulation from another state into the New Jersey Administrative Code is inappropriate because it would violate several legal principles: 1) the scope of the Board's delegated powers from the New Jersey legislature[22] to an administrative agency in a different state; 2) the Board's rulemaking obligations;[23] and 3) the due process obligations of the Board to give New Jersey residents notice of its proposed actions and the opportunity to be heard. If the Board intends to promulgate a regulation modeled on Rule 21, or any other state's regulation, it must do so using well established legal processes. Accordingly, Rate Counsel respectfully recommends revising proposed new N.J.A.C. 14:8-5.3(a)3 to remove its reliance on Rule 21.

[22] N.J.S.A. 48:2-16 et seq.

[23] See Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 328 (1984) ("A critical aspect of this definition is the 'general applicability and continuing effect' of the pronouncement."); In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339 (2011); N.J.S.A. 52:14B-2(e).

14:8-5.4:

This rule amends the criteria for Level 1 interconnection review. Rate Counsel has several concerns with this amended rule.

N.J.A.C. 14:8-5.4(b) proposes to limit the application fee, not to exceed $100 "or other value established by Board order." First, this statement is vague and confusing as to whether there is a specific limit on the application fee. Second, the proposal to continue to limit the application fee to a sum certain must arise from a rulemaking process that sets forth supporting facts and explains the reasoning for its establishment; this proposal includes neither. Third, if this proposal contemplates limiting the application fee to $100, it does not explain whether this amount will pay for the application and interconnection costs that the Level 1 interconnection will impose on the EDC and ratepayers. Without such foundation, it is impossible to assess the reasonableness of the fee amount. Application fees should cover all costs caused by the interconnection of a DER project to the electric grid. There is no basis to impose those costs onto other ratepayers. Accordingly, Rate Counsel respectfully recommends revising N.J.A.C. 14:8-5.4(b) either to remove the application fee cap or to require that application fees should set at a level that covers all costs related to the interconnection of a DER project to the utility's system.

N.J.A.C. 14:8-5.4(p)1 would require the EDC to review on an expedited basis amended Level 1 applications denied because they did not meet applicable criteria in N.J.A.C. 14:8-5.4. Rate Counsel recommends revising this proposal to state that expediting these reviews should not compromise the EDC conducting an appropriate engineering review to ensure the interconnection would not present a risk to safe and reliable utility service. Moreover, if EDCs must hire more staff or incur other costs to expedite DER interconnection requests, application fees should be structured to ensure that applicants, not ratepayers, pay for these costs.

14:8-5.5:

This amendment to N.J.A.C. 14:8-5.5(n) would specify that, after receiving the Pre-Application Verification/Evaluation ("PAVE") report for a Level 2 interconnection, the Customer-generator may elect to make changes to its application without incurring additional expense. Rate Counsel objects to this provision to the extent that application fees are not structured to cover the additional costs EDCs may incur through this pre-application process.

14:8-5.6: Level 3 Interconnection Review

This rule amends the criteria for Level 3 interconnection review. New N.J.A.C. 14:8-5.6(c) would cap application fees for a Level 3 interconnection application at an amount not to exceed $2,000. Rate Counsel objects to this provision. To the extent that the cost of processing an application for a Level 3 interconnection exceeds $2,000, this proposal would shift onto ratepayers certain costs that are caused by and the responsibility of the applicant requesting to connect their DER project to the grid. As stated above regarding each of these cost-shifting proposals, this violates cost-causation principles of rate-making and unreasonably shifts the risk of interconnection onto ratepayers. Applicants should cover their costs to the EDC in their interconnection application fees. Further, the rule proposal provides no facts on how much a Level 3 interconnection application review is assumed to cost, which could help stakeholders understand whether this fee cap will cover the EDC's costs to process a Level 3 application. Rate Counsel respectfully recommends revising this proposed new rule to state that, "An Application fee shall set by the EDC based on its historic, actual costs incurred per a Level 3 application" In the alternative, Rate Counsel respectfully suggests that the Board hold a stakeholder proceeding to solicit facts from the EDCs and other interested parties as to the actual cost to review an application for a Level 3 interconnection and how those costs could be successfully collected through application fees.

New N.J.A.C. 14:8-5.6(j) sets certain limits on the costs that the interconnection applicant must pay for a System Impact Study and system upgrades required to

accommodate the proposed interconnection. These limits include whether the cost is less than $200,000 or the EDC determines the modifications are "not substantial." Rate Counsel objects to this cost-shifting proposal because limiting the applicant's responsibility to pay for the costs it directly causes violates cost-causation principles of rate-making, is contrary to the purpose of the unbundling and deregulation of electric generation in the State, and may result in rates that are not just and reasonable. Interconnection application fees should cover all costs to the EDC to process the application, otherwise an additional subsidy will result. Moreover, this proposal does not provide any facts about the cumulative cost to ratepayers of paying up to $200,000 toward the cost of grid upgrades needed to accommodate the grid connection for each Customer-generator DER project. Rate Counsel respectfully recommends revising this proposed new rule to add this sentence: "The Customer-generator will be responsible to pay the costs of any system upgrades needed to connect its proposed DER facility to the EDC's grid."

Rate Counsel respectfully recommends revising proposed new N.J.A.C. 14:8-5.6(m) to state that the interconnection applicant must agree to pay all costs of any system upgrades needed to connect its proposed DER facility to the EDC's grid.

Rate Counsel supports proposed new N.J.A.C. 14:8-5.6(q), which sets forth the process for the Customer-generator to pay for the costs necessitated by interconnecting its DER project to the EDC's grid.

14:8-5.7: Interconnection fees

Rate Counsel strongly objects to the proposed amendments to N.J.A.C. 14:8-5.7, which sets limits on the amounts that EDCs may charge for application fees, engineering review of applications, connecting to the grid or operating a customer's grid-connected facility. Rate Counsel has several concerns with this amended rule. Primarily, to the extent that the EDC's fees are less than the actual cost to the EDC of reviewing, operating and maintaining the customer's connection to the grid, this proposed rule would seek to impose these costs upon ratepayers.

N.J.A.C. 14:8-5.7(a) proposes to limit the fee to review a Level 1 interconnection application, to an amount not to exceed $100 "or other value established by Board order."

Similarly, N.J.A.C. 14:8-5.7(b) proposes to limit the fee to review a Level 2 interconnection application, to an amount of up to $50 plus $1 per kilowatt of the Customer-generator facility's capacity "or such other value established by Board order." Proposed N.J.A.C. 14:8-5.7(b) also would limit costs for engineering work to review the application to a maximum of $100 per hour.

Similarly, N.J.A.C. 14:8-5.7(c) proposes to limit the fee to review a Level 3 interconnection application, to an amount not to exceed $100 plus $10 per kilowatt of the facility's nameplate rating. Proposed N.J.A.C. 14:8-5.7(c) also would limit costs for engineering work done as part of a System impact study or Facilities study to a maximum of $100 per hour.

First, the statement "or other value established by Board order" in N.J.A.C. 14:8-5.7(a) and N.J.A.C. 14:8-5.7(b) is too vague as to the specific limit on the application fee. Second, any proposed limit on the application fee must arise from a rulemaking process that sets forth supporting facts and explains the reasoning for its establishment. None of N.J.A.C. 14:8-5.7(a), N.J.A.C. 14:8-5.7(b) or N.J.A.C. 14:8-5.7(c) provides facts or explanations to support the amounts proposed, or whether they need to be updated to reflect current costs.[24] Third, none of these three proposed rule revisions explains whether the proposed limits would enable the EDCs to charge an application fee sufficient to pay for the costs that the interconnection application will impose on the EDC and ratepayers. Without such foundation, a $100 application fee cap may violate principles of cost causation and rulemaking, and may be arbitrary and capricious. Application fees should cover all costs caused by the interconnection of a DER project to the electric grid, including the cost to review the application. There is no basis to impose those costs onto ratepayers.

[24] For example, how does a maximum rate of $100 per hour compare with the typical amount currently charged by a qualified engineer to review a grid interconnection for a DER project in New Jersey?

Proposed N.J.A.C. 14:8-5.4(d) compounds these errors by prohibiting EDCs from charging any fee or charge, other than as set forth in this rule proposal, for a DER project to connect to the EDC's electric grid.

Accordingly, Rate Counsel respectfully recommends revising N.J.A.C. 14:8-5.4(a), (b) and (c) either to remove the application fee cap or to require application fees that cover all costs caused by the interconnection of a DER project to the electric grid. Proposed N.J.A.C. 14:8-5.4(d) should limit application fees to the EDC's actual costs to review the application and any other costs imposed on the EDC by the application or the interconnection itself.

However, Rate Counsel supports the provision in N.J.A.C. 14:8-5.7(c) stating that, "[i]f the EDC must install facilities in order to accommodate the interconnection of the Customer-generator facility, the cost of such facilities shall be the responsibility of the Applicant." This statement merely reflects well-established cost-causation principles.

14:8-5.9: Interconnection reporting requirements for EDCs

Rate Counsel questions whether quarterly reporting is necessary or whether annual or semi-annual reporting may be more appropriate. The Board should explain why quarterly reporting is more advantageous to less frequent reporting and why the additional administrative costs for the utility and Board Staff are justified. Also, it is not clear whether N.J.A.C. 14:8-5.9 requires a standardized reporting format for the monthly data to allow comparison between EDCs. At minimum, requiring submittal of interconnection tracking metrics in a standardized spreadsheet file would facilitate tracking and verification of EDC performance. Reporting requirements should include maximum, mean, and median processing times from receipt of request to issuance of report for each level of applications.

14:8-5.9(c)(10) requires reporting on hybrid interconnection projects. Rate Counsel suggests that this reporting should specify whether individual components of such projects are export limited or otherwise constrained to meet Level 1, 2 or 3 approval criteria.

The annual report required by 14:8-5.9(d) does not require EDC reporting of costs associated with implementation of interconnection applications, CIAP operation, engineering studies, or whether application fees are covering interconnection review expenses. Rate Counsel respectfully requests that the EDCs should be required to report this information, to ensure that fees remain appropriately set.

14:8-5.9 does not require EDCs to report their costs to prepare and update the Hosting Capacity Maps that would be required by proposed new 14:8-5.11. Rate Counsel respectfully recommends including reporting of those costs along with all the other costs associated with connecting DER projects to the grid.

14:8-5.10: Pre-Application Verification/Evaluation Process

Rate Counsel objects to proposed new N.J.A.C. 14:8-5.10(a), which limits the amounts an EDC may charge for the "Pre-Application Verification/Evaluation ("PAVE") process, for a "qualified" Level 2 or Level 3 project, to a fee of $300 or "such alternative fee as the Board shall establish by order." Rate Counsel has a number of concerns with this proposed rule. Primarily, to the extent that the EDC's fees are less than the actual cost to the EDC of the PAVE process, the EDC would seek to impose these costs upon its ratepayers. This flaw is compounded by N.J.A.C. 14:8-5.10(b), which requires the EDC to provide extensive information within 10 business days. Such expedited reporting may require the EDC to hire additional staff or retain additional consulting services. To the extent that the $300 application fee is insufficient to cover the EDC's costs of providing this information on an expedited basis, these costs too may be imposed on ratepayers. The Board should make clear that the costs associated with the PAVE process must be recovered through the applicants' fees.

14:8-5.11: Hosting Capacity Maps

Proposed new N.J.A.C. 14:8-5.11(a) requires each EDC, by January 1, 2024, to file a tariff that includes "a common Hosting capacity mapping process to aid Customer-generators. Hosting capacity maps shall indicate locations on the distribution [grid] with spare capacity and which locations are likely to require additional upgrades."

Proposed new N.J.A.C. 14:8-5.11(b) and (c) require each EDC to:

- update its hosting maps at least quarterly, with data at the circuit and substation level;
- calculate the hosting capacity values for each circuit using a common methodology;
- present the hosting capacity values in a consistent manner across all EDCs;
- update and summarize and changes to the data and coincidentally post it on the EDC's website and its subscriber e-mail list;
- label maps with a common legend and lexicon;
- integrate the maps with GIS systems;
- present all system data for substations, feeders and related distribution assets; and
- allow prospective applicants to easily determine detailed information by entering a street address; and
- specifies the detailed information that each EDC must provide with its Hosting capacity maps.

Proposed new N.J.A.C. 14:8-5.11(d) requires each EDC to include a process for validating capacity models, publishing the hosting capacity, and collecting and compiling customer feedback on its Hosting capacity mapping process. Finally, proposed new N.J.A.C. 14:8-5.11(e) requires each EDC to provide data based on a static grid and operational flexibility.

Rate Counsel is supportive of the proposal to require standardized hosting maps across the State's EDCs. Hosting maps that are uniformly similar across EDCs would be helpful for stakeholders, as would complete, accurate, and timely information. Moreover, access to the most current information will hopefully facilitate the successful, more cost-effective location of DER. The Board should also require all EDCs to provide timely information on any closed circuits and to set a date by which all EDCs will provide the requested information. Rate Counsel concurs that consistent labeling across the EDCs may facilitate the identification of closed circuits by interested parties. The EDCs should also explore if all of the maps can be hosted on a single site for the entire state. This may reduce costs and be more convenient and economical than multiple websites.

Rate Counsel agrees that the EDCs should present information on equipment

required for system upgrades in a consistent manner across the EDCs. However, as noted above, Rate Counsel opposes requiring ratepayers to pay the costs to prepare and update these hosting capacity maps and to upgrade the electric grid or replace equipment to subsidize unregulated DER projects. This is especially true where ratepayers would pay an additional amount in rates, on top of the subsidies ratepayers already pay for DER projects, to supplement the profitability of an investment by an unregulated industry. The responsibility to pay the costs to prepare and update these hosting capacity maps and to upgrade the grid to accommodate new DER projects should remain with the entity proposing the DER project and benefitting from its access to the grid.

The Board should adhere to cost-causation regulatory principles to protect ratepayers from paying charges for interconnection services that do not provide financial benefits to them. Insulating unregulated DER developers from the actual costs of interconnection can lead to imprudent utility infrastructure, unnecessary spending, poorly-sited facilities, and stranded assets that are not used and useful in the provision of utility service. None of these risks – nor the associated costs – should be passed on to ratepayers. Such cost-shifting would be contrary to the deregulation of electric generation in New Jersey, to well-established cost causation principles and to the Board's directives on the near-term recommendations.

14:8-5.12: Proactive System Upgrade Planning

Rate Counsel does not support requiring the EDCs to perform the "PSUP." Further, Rate Counsel strongly opposes imposing the costs of upgrades, requested by unregulated DER project developers, upon EDCs and their ratepayers. The purpose of the PSUP is for the EDC to identify "congested areas on each EDC system that are significantly limiting the ability to interconnect" new DER projects and "proposed grid upgrades that would 'proactively' alleviate" that congestion. Using this proposed new rule to impose this obligation onto EDCs and their ratepayers violates several administrative law and ratemaking principles:

This proposed new rule provides no facts on the costs or benefits of this proposal. For example, in preparing a list of PSUP upgrades so that unregulated DER projects may

interconnect with the EDC's grid, N.J.A.C. 14:8-5.12(b)d would require each EDC to focus on proposed upgrades that would upgrade "facilities costing over $2 million that are unlikely to be funded on a participant-funded basis." This rule proposal provides no factual or legal basis to assume that investors in unregulated DER projects are unlikely to pay for their interconnection costs, or to impose unregulated project costs of over $2 million on ratepayers. Moreover, if DER investors are unwilling to invest in the costs to connect their project to the grid, it is unfair to impose the costs of such predictably unprofitable ventures onto ratepayers.

Since this PSUP filing will identify future opportunities to expand Customer-generator facilities, the associated costs are not "used and useful" in providing utility services. Accordingly, such costs should not be imposed on ratepayers until they are used and useful. Rate Counsel respectfully recommends that the Board revise this proposed new rule to clarify that all costs related to the PSUP should not be imposed on ratepayers but should be reasonably apportioned among DER projects applying for a grid interconnection.

Conclusion

Rate Counsel opposes a cost allocation and cost recovery process that shifts the costs of grid planning and upgrading to accommodate DER projects to ratepayers to further subsidize private, unregulated developers. Attribution of interconnection costs to the cost-causer has been a normal cost of doing business for over a century. Rate Counsel has concerns about an open-ended grid upgrade investment process that insulates unregulated DER developers from the actual costs of their projects. Such a policy does not send accurate price signals to developers on the most efficient and economical type of or location for renewable generation, nor does it provide any additional benefits to ratepayers. Rather, ratepayers will likely be asked to subsidize imprudent utility infrastructure, unnecessary spending, poorly-sited facilities, and stranded assets that are not used and useful in the provision of utility service. Further, it shifts the risk of these projects not being completed or being unprofitable onto ratepayers with no commensurate benefit. Once ratepayers fund the upgrade, there is no guarantee the DER

project will be built. If it is built, the profits (which will be higher based on lower required initial capital investment) will be retained by the private unregulated entity. None of these risks – nor the associated costs – should be passed on to ratepayers; indeed, they could be deemed imprudent for purposes of rate recovery.

Rate Counsel supports maintaining the current traditional utility ratemaking process. Rate Counsel's position reflects well-established law. Otherwise, any new cost sharing mechanism would enter a new paradigm where ratepayers, including the most economically vulnerable, would essentially subsidize the startup costs of well-funded and sophisticated for-profit ventures, with no sharing of the profits, or any mechanism to determine whether these subsidies are even needed. The result would be regulated utility rates that are not just and reasonable. Since DER projects already receive an array of ratepayer-subsidized subsidies, the result would be highly unfair to ratepayers.

Rate Counsel thanks the Board for this opportunity to provide these comments on the proposed new and amended rules for N.J.A.C. 14:8-5, and looks forward to working with all parties throughout this Grid Modernization proceeding.