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January 16, 2025

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

Sherri L. Golden
Secretary of the Board
44 South Clinton Avenue, 1ST Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: I/M/O Dual-Use Solar Energy Pilot Program
Notice of Proposed Substantial Changes Upon Adoption to Proposed
Amendments and New Rules
Proposed Amendments: N.J.A.C. 14:8-1.2 and 11.4
Proposed New Rules: N.J.A.C. 14:8-13
BPU Docket Number: QX24080597**

Dear Secretary Golden:

Please accept this letter as the comments of the New Jersey Division of Rate Counsel ("Rate Counsel") regarding the above-referenced rulemaking, published in the December 2, 2024 New Jersey Register by the New Jersey Board of Public Utilities ("BPU" or "Board"). In accordance with the New Jersey Register Notice, these comments are being submitted by electronic mail only. Please acknowledge receipt of these comments. Thank you for your consideration and attention to this matter.

INTRODUCTION

The BPU issued the above-referenced rule proposal to amend its existing solar energy rules to establish the Dual-Use Solar Energy Pilot Program (“Pilot Program”) and integrate it with the larger Successor Solar Incentive (“SuSI”) Program set forth at N.J.A.C. 14:8-11. The Board established the parameters of the Pilot Program in an Order dated October 23, 2024, I/M/O the Dual-Use Solar Energy Pilot Program, BPU Docket. No. QO23090679, Order Launching the Dual-Use Solar Energy Pilot Program (“Dual-Use Order”). The Pilot Program was developed in accordance with the requirements of the Dual-Use Solar Energy Act of 2021, P.L. 2021, c. 170 (the “Act”).

Rate Counsel supports the development of rules that will facilitate the development of dual-use solar facilities, also referred to as agrivoltaics (“AV”). These facilities offer a number of potential benefits, including increased production of clean energy, increased revenues for farmers and rural landowners, and more efficient use of agricultural land (especially in comparison to utility-scale solar, which is usually sole, rather than, dual purpose). The Pilot Program creates an opportunity for all New Jersey stakeholders to assess these potential AV benefits, as well as the costs, and possible unintended consequences. The use of a pilot program, with a limited capacity target, will help to reduce the impact of unanticipated outcomes, and likely reduce ratepayer costs while helping to provide important information on how a permanent AV program can be developed.

Rate Counsel reminds the Board that while the Pilot Program is legislatively-mandated state policy, the manner in which this policy is implemented will have important impacts to New Jersey ratepayers, many of whom face a high energy burden that has significantly increased because of recent inflation and other programs implemented by the Board and Legislature.

Indeed, this Pilot Program is one of several disparate solar energy programs financially backed by New Jersey ratepayers. To date, the cumulative costs of these programs, particularly the legacy Solar Renewable Energy Certificate (“SREC”) program, is considerable, amounting to billions of dollars that New Jersey ratepayers cannot financially avoid. While the capacity and costs dedicated to this pilot may be small, the Board needs to recognize even small additional incremental rate increases are burdensome to New Jersey households and businesses. Thus, Pilot Program costs need to be assessed closely and, as we will note later in our comments, rate impacts and costs must be a part of any pilot program review process.

Rate Counsel strongly supports the Board’s mandate that the Pilot Program utilize competitive market mechanisms to evaluate and score eligible projects and to use market forces to guide the establishment of financial incentives, which¹ reduces delivered solar costs to ratepayers financing the Pilot Program.

COMMENTS ON SPECIFIC PROVISIONS

SUBCHAPTER 1: RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

N.J.A.C. 14:8-1.2 Definitions

The Board is proposing to include the addition of the following definitions:

“Adder” means an additional financial incentive on top of a base incentive provided as a SREC-II within the Successor Solar Incentive (SuSI) Program at N.J.A.C. 14:8-11.

“Dual-Use Solar Energy Pilot Program” or “Pilot Program” refers to the program established at N.J.A.C. 14:8-13.

“Dual-Use Solar Energy Project” means the energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unpreserved farmland in agricultural or

¹ Dual Use Order at pp. 16-17 and 31.

horticultural production that ensures the continued simultaneous use of the land below and adjacent to the panels for agricultural or horticultural use.

Rate Counsel approves of the additional definitions with one exception. For the “Dual-Use Solar Energy Project” definition, we recommend the language be revised to match N.J.S.A. 48:3-87.3(h) by using the revised definition below:

“Dual-Use Solar Energy Project” means the energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unpreserved farmland in agricultural or horticultural production that ensures the continued simultaneous use of the land below and adjacent to the panels for agricultural or horticultural production.

Rate Counsel’s revised definition requires that the land utilized for dual-use energy projects be simultaneously used for agricultural or horticultural “production” rather than “use.” This more precise definition would mitigate the possibility that land not used for agricultural or horticultural production would meet the qualification standards.

SUBCHAPTER 11: SUCCESSOR SOLAR INCENTIVE PROGRAM

N.J.A.C. 14:8-11.4 Successor Solar Incentive eligibility

Rate Counsel has no specific opinion or recommendation on this topic at this time.

SUBCHAPTER 13: DUAL-USE SOLAR ENERGY PILOT PROGRAM

N.J.A.C. 14:8-13.1 Purpose and scope

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14:8-13.2 Definitions

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14:8-13.3 Pilot Program structure

Subsection (k) specifies that the Pilot Program will provide an adder, the value of which will be determined through a solicitation process. Rate Counsel continues to advocate for a cap on the incentives available to each participant. Implementing a reasonable cap serves as a critical safeguard for ratepayers while aligning with the Act's objective of leveraging competitive mechanisms to minimize ratepayer costs. Moreover, the cap can be adjusted incrementally in subsequent solicitations if it is determined that the incentive limits hinder adequate participation in the pilot program.

N.J.A.C. 14:8-13.4 Pilot Program capacity targets and limits

Subsection (b) establishes a Pilot Program capacity limit of 200 megawatts ("MW"), with provisions allowing the Board to increase this limit by up to 50 MW during each of the two permitted 12-month extension periods. While Rate Counsel does not oppose extending program years to address unfulfilled capacity within the original 200 MW limit, we strongly advise against expanding the Pilot Program's total capacity beyond this initial limit.

Although the statute allows for an additional 50 MW per year during extensions (with approval from the Secretary of Agriculture), Rate Counsel cautions that such increases represent a substantial capacity expansion. Over two extensions, these additions would total 100 MW or 50 percent of the original program capacity. This substantial increase would undermine key objectives of the Pilot Program by burdening ratepayers without the benefit of lessons learned. Rate Counsel recommends that the Board provide a compelling justification before pursuing any capacity increase beyond the 200 MW cap.

Subsection (e) allows the Board to establish capacity set-asides for specific project types. Rate Counsel opposes this practice because set-asides can fragment markets, create confusion about program goals, encourage unsolicited capacity additions, and lead to higher costs for

ratepayers. Avoiding set-asides will ensure that the Pilot Program remains cohesive, transparent, and focused on achieving its intended outcomes.

N.J.A.C. 14.8-13.5 Pilot Program eligibility

Rate Counsel supports using a competitive solicitation process to select participants for the Pilot Program. To maximize the effectiveness of this process, Rate Counsel recommends that the scoring rubric prioritize applications requesting lower incentive amounts, with a minimum weighting of 50 percent assigned to this critical criterion. By heavily weighting the incentive amount, the Pilot Program can achieve greater cost efficiencies while aligning with its competitive goals.

Subsection (f) limits eligibility for the Pilot Program to new Administratively Determined Incentive and Competitive Solar Incentive -eligible facilities. Rate Counsel recommends broadening this requirement to include existing AV projects affiliated with state or federal governmental or educational institutions, consistent with our previously filed comments. These facilities can significantly contribute to the Pilot Program's research objectives and success without the need for additional ratepayer-funded incentives, thereby reducing the financial burden on ratepayers while leveraging existing resources.

Subsection (i) prohibits electric distribution companies ("EDCs") from developing, owning, or operating projects under the Pilot Program. While Rate Counsel supports this restriction as it pertains to EDCs, the prohibition should be expanded to further minimize potential conflicts of interest. Rate Counsel suggests deeming all public utilities—and their affiliates, employees, and immediate family members of utility employees—ineligible for participation in the Pilot Program. This broader exclusion will enhance fairness and public trust in the Pilot Program's administration.

N.J.A.C. 14.8-13.6 Project siting requirements

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14.8-13.7 Pilot Program solicitation process

Subsections (a) (3) and (4) specify the information potential applicants must include, such as sources of financial support. For instance, subsection (a)(4)(vii) requires applicants to disclose whether the project will be net metered. While Rate Counsel supports these requirements, we recommend expanding them to include a more comprehensive condition. Specifically, each prospective applicant should be required to provide a detailed breakdown of all sources of project financial support. This requirement would ensure greater transparency in the application process, facilitate a more accurate assessment of financial need, and help avoid over-subsidizing projects that already have significant funding sources.

Subsection (e) allows Board Staff to establish a standard form of application, detailed evaluation criteria, and application fees for each application period. As stated in our previous comments, Rate Counsel supports a deposit requirement as part of the minimum criteria in the Notice of Incentive Availability issued by Board Staff. Requiring an initial deposit with the application submission discourages uncommitted applicants, while an additional deposit upon project selection would help ensure that developers remain dedicated and have secured the necessary capital to move forward.

N.J.A.C. 14.8-13.8 Conditions for a project awarded an incentive

This section details the conditions required of incentive awardees. It is important to keep in mind that ratepayers subsidize the development of the New Jersey solar industry and therefore, at a minimum, the public is entitled to an idea of how these programs will impact their utility bills. , The Board and Rate Counsel, as the statutory representative of the state's

ratepayers, should have the ability to examine the accounting books of dual solar project developers receiving incentives in relation to the specific projects receiving incentives, and we recommend adding this as a condition required of incentive awardees.

N.J.A.C. 14.8-13.9 Installation, construction, and operational requirements

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14.8-13.10 Monitoring and research requirements

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14.8-13.11 Compliance and remediation

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14.8-13.12 Decommissioning procedures

Rate Counsel has no specific opinion or recommendation on this topic at this time.

N.J.A.C. 14.8-13.13 Reporting and recordkeeping

Rate Counsel has no specific opinion or recommendation on this topic at this time.

CONCLUSION

Rate Counsel thanks the Board for the opportunity to provide these comments.

Respectfully submitted,

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BY: _____



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