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April 11, 2014

Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
CN 350  
Trenton, NJ 08625-0350

Re: **In the Matter of the Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(d)(3)(b) - A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility, BPU Docket No. EO12090860V – OCE Request for Comments on Draft Solar Development Volatility Report**

Dear Secretary Izzo:

Please accept this original and ten copies of as Comments submitted on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) in connection with the above-captioned matter. Copies of the comments are being provided to all parties on the e-service list by electronic mail and hard copies will be provided upon request to our office.

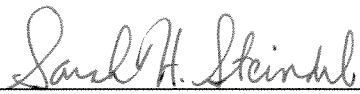
We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Kristi Izzo, Secretary  
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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

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**In the Matter of the Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(d)(3)(b)  
A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility, BPU  
Docket No. EO12090860V  
OCE Request for Comments On Draft Solar Development Volatility Report**

**Comments of the New Jersey Division of Rate Counsel**

**April 11, 2014**

**INTRODUCTION**

The New Jersey Division of Rate Counsel (“Rate Counsel”) appreciates the opportunity to provide comments to the Board of Public Utilities (“BPU” or “Board”) Office of Clean Energy (“OCE”) concerning the draft report on Solar Development Volatility (“Draft Report”) dated March 2014 and issued by OCE on March 26, 2014.

The Draft Report was prepared as part of the proceedings convened by the BPU in accordance with a provision of the Solar Energy Act of 2012, P.L. 2012, c. 24 (“SEA”), that required the Board to investigate approaches to mitigate solar development volatility in New Jersey. As provided in the SEA:

No more than 24 months following the date of enactment of P.L. 2012, c.24, the board shall complete a proceeding to investigate approaches to mitigate solar development volatility and prepare and submit, pursuant to section 2 of P.L. 1991, c.164 (C.52:14-19.1), a report to the Legislature, detailing its findings and recommendations. As part of the proceeding, the board shall evaluate other techniques used nationally and internationally.

N.J.S.A. 48:3-87(d)(3)(b). The SEA was enacted on July 23, 2012 and the Board’s report to the Legislature accordingly is due on July 23, 2014.

Pursuant to an earlier request from OCE, Rate Counsel and other stakeholders submitted comments in this proceeding on or about July 1, 2013. On March 19, 2014 OCE issued a notice that the Draft Report would be made available to stakeholders on March 26, 2014. The Notice further stated that a public presentation would take place on April 1, 2014, and that written

comments would be accepted through April 11, 2014. The Draft Report was posted on OCE's website on March 26, 2014 and circulated by e-mail to OCE's Renewable Energy Committee listserv the following day. At the April 1, 2014 public meeting OCE and its consultants disclosed as part of a PowerPoint presentation (the "April 1 PowerPoint") that four "Tentative Potential NJ Policy Options" were under consideration. *April 1 PowerPoint*, Slides 47-60. The April 1 PowerPoint was circulated by e-mail to members of the Board's Renewable Energy Committee on April 2, 2014, but to date has not been posted on OCE's website.

Rate Counsel is submitting these comments in accordance with the April 11, 2014 deadline established in OCE's notice. However, Rate Counsel emphasizes the short time provided to review the Draft Report and the April 1 PowerPoint. Further, as noted by a stakeholder at the April 1, 2014 public meeting, there has been no clear statement of the Board's policy objectives with regard to the further development of the State's solar energy market. Specifically, the Board has not made clear whether its primary objective is meeting the State's solar Renewable Portfolio Standard ("RPS") in a way that is least costly and most beneficial to ratepayers, or whether the Board's priority is providing financial support to particular segments of the solar industry. For these reasons, the comments that follow are necessarily preliminary.

Rate Counsel respectfully suggests that an additional opportunity for comment would be appropriate following the issuance of a more complete report, including recommended policy objectives and specific draft recommendations to the Legislature. Rate Counsel further reserves its right to supplement these comments based on further developments that may occur prior to the Board's submission of the final report to the Legislature.

## RATE COUNSEL COMMENTS

In its comments filed in this matter on July 1, 2013, Rate Counsel presented a detailed analysis of the history and current status of New Jersey's solar development market and an analysis of whether or not there is a need to implement measures to mitigate volatility in that market. In summary, Rate Counsel's earlier comments showed the following:

- The SEA requirement for a report to the Legislature was intended to address solar development volatility, i.e., dramatic variations in the number of installations of solar facilities, rather than volatility in Solar Renewable Energy Certificate ("SREC") prices. *Rate Counsel July 2013 Comments*, p. 12-13.
- New Jersey's solar development market is not unusually volatile based on objective measures, and is no more volatile than other energy-related markets. *Id.*, p. 12-23.
- While a supply-demand mismatch developed in Energy Year 2012, this was the result of many years of financial support by ratepayers, as well as exogenous factors including the great economic recession of 2008, falling costs of solar components due to oversupply in the global solar module market, and generous federal tax credits. This mismatch, and the subsequent fall in SREC market prices, are not indicative of a fundamentally volatile market. *Id.*, p. 5-8, 14-18.
- The Board, and, more recently, the Legislature through the SEA, have already taken steps to address the recent supply-demand mismatch. The SEA reflects a compromise between the interests of the solar industry and ratepayers. The SEA aimed to "rebalance" the market by increasing the solar RPS requirements for Energy Years 2014 through 2023, and allowing SRECs to be "banked" for five years. Ratepayers benefit from reduction in the RPS requirements after year 2023, and long-term reductions in Solar Alternative

Compliance Payments (“SACPs”), which function as a ceiling on the cost of RPS compliance. *Id.*, p. 8-10.

- No additional steps are needed at this time. Further interventions in the solar development market would upset the careful balance of interests reflected in the SEA, and would undermine two important BPU policies, namely facilitating competitive renewable energy markets and reducing regulatory uncertainty. *Id.*, p. 8-12, 36-37.

As noted in Rate Counsel’s earlier comments, while market stability is certainly important the Board should avoid “rushing too quickly to adopt changes in policy in the mistaken desire to promote market stability.” *Rate Counsel July 2013 Comments*, p. 37. Such changes can themselves be destabilizing because market participants will lose confidence in the Board’s willingness to allow the competitive forces of supply and demand run their course. *Id.* Rate Counsel therefore recommended that the Board maintain its current course and refrain from any further attempts to actively manage the market. *Id.*, p. 37-38.

The Draft Report confirms many elements of Rate Counsel’s earlier analysis. Initially, the Draft Report agrees with Rate Counsel that, based on the plain language of the SEA, the proper focus is the stability of the solar development market, not SREC prices. *Draft Report*, p. 15. The Draft Report affirms that the solar development “boom” that occurred during Energy Year 2012 was largely the result of falling prices for solar components and enhanced federal incentives. *Draft Report*, p. 11, 16. The Draft Report also confirms that New Jersey maintains an active solar development market notwithstanding falling SREC prices. Specifically, the Draft Report notes that, despite recent reductions in the level of solar installations since Energy Year 2012, New Jersey still ranked fifth among the States in capacity installed in 2013. *Id.*, p. 10. Further, multi-month moving averages have remained consistently above 10 megawatts per

month over the past several years. *Id.*, p. 15. The Draft Report also recognizes the mitigating impact of the SEA. *Id.*, p. 15.

The discussion at pages 31-32, of the Draft Report expresses concern about potential future volatility as existing solar facilities lose their eligibility to generate SRECs after 15 years. Figure 16, appearing at page 32, shows another potential solar development “boom” peaking in 2027, as new facilities are built to replace existing facilities with expiring SREC eligibility. However, as recognized in the report itself, New Jersey law now permits SRECs to be “banked” for five years. *Draft Report*, p. 32. This should allow developers to anticipate the need for capacity additions to replace the facilities that will lose their SREC eligibility, thus “effectively smoothing out the buildout required to meet this erratic demand profile.” *Id.* Thus, Figure 16 overstates the potential for solar development volatility in the future.

The April 1 PowerPoint includes further support for Rate Counsel’s analysis and recommendations. Slide 18 notes the consensus view among stakeholders that SREC prices have stabilized since the enactment of the SEA. This is an indication that the SEA is performing its intended objective of “soaking up” excess supply. Slide 19 notes comments by some stakeholders that market transparency has improved.

As noted above, the April 1 PowerPoint presents four “Tentative Potential NJ Policy Options.” The first option is “No Future Policy Intervention.” *April 1 PowerPoint*, Slides 49-51. For the reasons stated above and in Rate Counsel’s earlier comments, Rate Counsel supports this option. The presentation correctly states the reasons for this option: it “[e]nhances regulatory certainty,” recognizes that the SEA “has reduced potential solar market development volatility,” will protect “existing system owners and market stakeholders ... from regulatory change,” and “[a]cknowledges [the] perspective of many stakeholders.” *April 1 PowerPoint*, Slide 50.

Rate Counsel opposes the other three options. Initially, as noted by a stakeholder at the April 1, 2014 public meeting, there has been no analysis of the costs of the second, third and fourth options. The costs to ratepayers of implementing these options may render them economically unjustified, even if they offer some benefits.

The second option, entitled “Policy Intervention with Complementary Policies,” could include expansion of the electric distribution companies’ (“EDCs”) existing solar financing program, and implementation of a “green bank” to finance solar projects. *April 1 PowerPoint*, Slide 52. Both of these suggested policies would stimulate additional project development, thus undermining the SEA’s objective of mitigating oversupply. Both also would provide unneeded financial incentives, contrary to the important policy objective of increasing reliance on competitive markets.

The third option, entitled “Moderate Intervention Within Current Market Framework,” would involve implementation of a “supply-responsive demand curve” with or without an SREC price floor. *April 1 PowerPoint*, Slide 55. Under this approach, the RPS would be subject to modification in response to changes in SREC prices. *Draft Report*, p. 47. This approach would be completely counterproductive. It would create regulatory uncertainty, as market participants would be unable to predict future RPS requirements. An SREC floor price would exacerbate any oversupply, by providing incentives to build more facilities than the market can support.

The fourth option, entitled “Implement Quantity Incentive,” would involve dismantling the current market structure and converting to a system wherein a central procurement entity or entities would procure SRECs through a competitive process, or by means of a “standard offer contract with volume-based price.” *April 1 PowerPoint*, Slide 58. As noted in the April 1 Power Point, this option would be “disruptive to existing business models” and would pose significant



implementation challenges. *Id.*, Slide 60. The “standard offer” model is particularly problematic. Under this model, the procurement entity would offer solar developers long-term fixed-price contracts at administratively determined prices, which would vary based on market conditions. *Draft Report*, p. 52-53. This model would create regulatory uncertainty, and, because prices would not be competitively set, could expose ratepayers to higher-than-necessary SREC prices over the long term.

In another proceeding, the Board is considering the feasibility of removing the RPS obligation from electric generation service providers and transferring that obligation to the EDCs. *I/M/O the Renewable Portfolio Standard (“RPS”) as it Relates to Basic Generation Service*, BPU Docket No. ER13090861. In comments filed in that matter on November 4, 2013, (“Nov. 4 Comments”) Rate Counsel expressed the view that this approach holds promise for reducing the cost of RPS compliance. *Nov. 4 Comments*, p. 1-2. However, those same comments noted that implementation would involve administrative changes and costs for the EDCs, which would have to take on new responsibilities. *Id.* Further, there would be other implementation challenges including the mechanics of accommodating existing long-term contracts. *Id.* p. 3. Rate Counsel supports continued investigation of this approach, but notes that implementation, if feasible, will require significant regulatory changes.

### **CONCLUSION**

For the reasons stated above and in Rate Counsel’s earlier comments, there should be no further intervention in the solar development market at this time. Rate Counsel supports continued exploration of the possibility of transferring the RPS obligation to the EDCs, but notes that this is an option for the longer term. Rate Counsel reserves its right to comment further, as appropriate, at a future date.