## Linda Wetzel

**Subject:** FW: NM Agg. Questions posed in today's NM INX Stakeholder meeting, responses due by COB 02.22.13

**Attachments:** EffiSolar Net Metering Comments 2-22-2013.pdf; HDW Answers for Net Metering Aggregation Questions.pdf; Net Metering and Interconnection Stakeholder Meeting Notes-3 held on 2_15_13 02212013.docx; SEIA ANM comments 022213 Final.pdf; S1925 - Aggregated Net Metering Comments - Garden Solar 2-22-13.doc; 2-22-2013 LRS Solar Act Comments - Net Metering.pdf; IREC Post-Meeting Comments 2-22-13.pdf; NJDRC Aggregated Net Metering Rules Comments.pdf; Joint EDC Letter-Solar Act Requirements.docx

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**From:** Hunter, B [mailto:B.Hunter@bpu.state.nj.us]
**Sent:** Monday, February 25, 2013 2:59 PM
**To:** Linda Wetzel
**Cc:** Boylan, Rachel
**Subject:** re: NM Agg. Questions posed in today's NM INX Stakeholder meeting, responses due by COB 02.22.13

Linda,

Can you post these comments to the NJCEP comments page you have established for these responses?

Thanks in advance,

Scott

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**From:** Neal Zislin [mailto:nzislin@renuenergy.com]
**Sent:** Monday, February 18, 2013 5:34 PM
**To:** OCE
**Subject:** FW: NM Agg. Questions posed in today's NM INX Stakeholder meeting, responses due by COB 02.22.13

Scott:

Please note my highlighted entries below.

Regards,

Neal

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**From:** inx-bounces@njcleanenergy.com [mailto:inx-bounces@njcleanenergy.com] **On Behalf Of** Hunter, B
**Sent:** Friday, February 15, 2013 2:56 PM

**To:** inx@njcep.com
**Subject:** NM Agg. Questions posed in today's NM INX Stakeholder meeting,responses due by COB 02.22.13

**Net Metering and Interconnection Stakeholders:**

Please review and, if inclined, answer the questions posed by staff in today's discussion of the Solar Act requirements for the Board's development of aggregated net metering rules N.J.S.A. 48:3-87(e) 4. Send responses to the OCE@bpu.state.nj.us email address by COB Friday February 22nd.

1. Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice. The question actually raises two issues; 1) eligibility for treatment of electricity pricing under net metering and 2) individual meters and accounts. To address #1, Page 26, line 14 of the S1925 V4 document uses the term facility and property interchangeably. Lines 11-16 of page 26 states that "All electricity used by the customer's qualified facilities with the exception of the facility or property on which the solar electric power generation is installed, shall be billed at the full retail rate pursuant to the electric public utility…" The interpretation of this language may lead one to reasonably deduce that electricity used by the customer on the facility or property on which the solar power generation is installed may be accorded full retail price credit under net metering. Administering this arrangement addresses #2. All of the power demands on the property accommodating the solar installation would either have to be physically connected to flow through one meter or the various meters on the property of the solar installation would have to be designated to the EDC that these meters are linked to the solar installation under aggregated net metering. By the way, according to the definition of same property, any contiguous property separated by public easements or rights-of-way would also be considered as same property and any meters located on this contiguous property would also be eligible for inclusion under net metering compensation.

2. What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs? Interconnection costs appear to be adequately handled through the existing interconnection procedures. The scope and cost to provide a facility upgrade on the utility side is identified through a phase 3 study for which the party requesting the interconnection pays. That party also is expected to fund the design, procurement and installation of the new equipment on the utility side. Under aggregated net metering, there still remains only one interconnection point. Based on this observation, there should not be any "incremental costs" incurred by the EDC for interconnection. Potential incremental costs that may be eligible for reimbursement consideration under aggregated net metering would relate to upfront system programming and administrative costs needed to link multiple meters for purposes of reimbursement at the wholesale price for electricity generated beyond the demands of the property hosting the solar installation. Referring back to the item #2 response in point #1, if it were decided that all meters located on the hosting property could be linked under the provisions of net metering and not need be physically connected, then there would be additional system programming and administrative costs incurred and subject to reimbursement consideration also.

3. Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public

entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice. Page 25, lines 14-19 make reference to "…in order to qualify for net metering aggregation, the customer must operate a solar electric power generation system using a net metering billing account, which system is located on property owned by the customer, …" On page 26, lines 27-29 make reference to "A customer may contract with a third party to operate a solar electric power generation system, for the purpose of net metering aggregation." One can interpret this language to conclude that the necessary requirements to quality under aggregated net metering is that the utility customer, belonging to the eligible class as described earlier in the statute, has a solar power generation system operating on its property and that it has an electric billing account with the utility company. It would appear that the statute is not restrictive with respect to ownership of the solar electric generation system since the statute does not explicitly address asset ownership and operations of that solar system can be contracted to a third-party.

4. May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)? The statute appears to reference all properties (host plus satellite properties) associated with the eligible utility customer as qualified customer properties or facilities. Page 25, lines 39-44 state that "…the customer's solar electric power generation system shall be sized so that its annual generation does not exceed the combined metered annual energy usage of the qualified customer facilities, and the qualified customer facilities shall all be in the same customer rate class under the applicable electric public utility tariff." The interpretation of this statute provision indicates that aggregated net metering applies to all electric power demand from the qualified customer properties (host plus satellite) under one utility tariff.

5. May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class? There is no explicit language within the statute that defines what constitutes a single customer. However, the utilities distinguish one customer from another by the customer account number. All meters measuring electricity consumed by one customer are linked together under this customer account number. If a public entity as a school district has meters located at one property under a different name than meters at another property location, perhaps to be associated with a location or function for purposes of internal administrative management, and the customer account numbers are different, the utility would manage these meters as two distinct customer accounts. To leverage the benefits of aggregated net metering, the school district ought to instruct the utility company to apply the same customer account number to these accounts before completing the aggregated net metering process.

Thanks in advance!

Scott

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22 February 2013

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Re: Responses **to questions posed by staff regarding aggregated net metering**

Dear Mr. Hunter:

We have reviewed the questions posed by the BPU staff in the February 15, 2013 discussion of the Solar Act requirements for the Board's development of aggregated net metering rules N.J.S.A. 48:3-87(e) 4. We have prepared answers to these questions together with observations that are related to these issues.

1. Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice.

The indisputable answer is yes. This conclusion is based on the legislation itself.

The language in the bill states that net metering aggregation standards require electric public utilities to provide net metering aggregation to single electric public utility customers that operate a solar electric power generation system installed at either (1) the customer's facility **or** (2) property on which the solar electric generation system is installed.

The use of the words "customer's facility or property" on which the system is installed is clearly meant to allow all the meters on the "property" to be accounted for under the net metering provision.

If it were not to be considered multiple accounts, then it would contravene the intent of the statue, that of achieving the benefits of net metering aggregation

Furthermore there is no black letter wording in statue law that specifically dictates that the Host Shall be one and only one physical meter. The absence of any wording specifically limiting the Host to one meter indicates that it was not the intent of the statue to limit the Host to one meter.

Thus, in the absence of the Statue clearly spelling out that the Host may only be considered one (1) physical meter, then it should be reasonably concluded that the intent of the provision is true to the concept of Aggregated Net Metering, and that multiple meters on the same property of the same rate class, served by the same LDC, BGS supplier or Electric Supplier shall be considered the Host.

2. What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?

The concept of Aggregate Net Metering is that it is a scheme based on journal entrees. No real energy is sold to the qualified customer sites. There is no provision for the reimbursement of T and D costs. The only real incremental costs are those related to the billing functions which, in reality, do not significantly change at all. Interconnection costs should be left to interconnection approvals. So where and what are these costs? There are no incremental costs.

3. Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.

The Statute explicitly states that "A customer may contract with a third party to operate a solar electric power generation system, for the purpose of net metering aggregation." There would be no other way to install and operate the system as the public entities cannot take advantage of any of the tax attributes or tax equity incentives that empower the development of solar. The Statute only requires that the system be developed on land owned by the public entity. One would have to insert language into the Statute and the regulations to provide that only the public entity can own the system.

In practice, the benefits of net metering to the customer derive from the fact they do not incur any capital expenditures or operational risks.

4. May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?

The Statute specifically states "The standards shall provide that in order to qualify for net metering aggregation, … and the qualified customer facilities shall all be in the same customer rate class under the applicable electric public utility tariff." We see this restriction as an unnecessary impediment to the creation of the aggregation scale intended by the legislation. The Statute does not say that the host site must have the same rate class and tariff as the qualified customer facilities. In order to get to that interpretation, one would have to insert that language into the Statute and the regulations. Such an insertion, whether in fact or in practice, would severely limit aggregate net metering in a manner not intended by the legislature. There would be no ability for a State, County or Township entity to utilize paragraph E 4 for landfills, brown fields, vacant surplus or underutilized lands, purposes often stated as the intention of the legislation. The requirement that all of the qualified customer facilities have to be in the same rate class is already a severely limiting requirement, and one that may well be unintended. To take the initiative of extending that treatment to the host facility would effectively eliminate aggregated net metering in all but a few highly unusual circumstances.

5. May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?

Yes. A school district is clearly referred to as a customer in the Statute. The Statute refers to customer's qualified facilities. Under any interpretation of the language, the school district would be considered a single customer for the purposes of the Statute.

Although it was not selected to be a specific question for which comments were asked, the issue of the physical location of the solar facility was discussed during the Stakeholders meeting on February 15, 2013, and we would like to take this opportunity to provide further comments.

The question was asked at the meeting, "how is the Staff currently interpreting the Statue with respect to having the solar facility located on one piece of property owned by the government body, but connected to the grid, and not physically connected to the Host?" The answer at the meeting reflected the current Staff interpretation that the solar facility must be connected directly to the Host.

We believe that there the following points from the Statute itself dispute this interpretation and in fact support the ability for a facility to "designate" or "nominate" a Host as opposed to a physical connection to a Host.

1. The Statute does not state that the solar facility must be physically tied into the Host meter. As a consequence, the clear inference is that the solar facility can be remote and able to designate or nominate a Host as its "net metered billing account."
2. The Statute does state: "The standards shall provide that, in order to qualify for net metering aggregation, the customer must operate a solar electric power generation system using a net metering billing account, which system is located on property owned by the customer."

We understand that the current interpretation requires that the solar system must use a net metering "billing account."

We are confident that this is not the correct interpretation of the Statute. We believe that when the Statute refers to a "billing account," the intent is to allow a solar system that is located on the customer's property to designate the Host, which Host would become the net meter "billing account"

3. The Statute also seems to recognize that it is quite likely that the solar facility may be located at a customer-owned property that does not have a Host physically located at the same customer property on which the Host is located.

This is found in Section 4a, which states that the land cannot be "farmland," unless the municipality waives this requirement. The fact that the Statute has a built-in waiver for farmland, would seem to recognize that it is highly likely that some solar facilities will be on farmland, which by extension would not have a Host located on it. As a consequence such Host would be a designated net metering "billing account".

As you evaluate our responses, we would like you to take the following additional observations into account:

Through its actions and statements regarding what it perceives as its mandate relating to the Solar Act, the BPU appears to be taking the position that it must manage or even manipulate the market price for SRECs. While the SREC value in an unregulated market would depend on the laws of supply and demand, this market is not open and requires legislative or regulatory intersession. The Legislature decided to intercede by providing for a pull up in the RPS to force the EDCs to purchase more SRECs which would, in theory, raise prices.

This is a good junction to consider what the objectives were for the Legislation and for the solar program as a whole. We believe the Legislature was focused on restoring and maintaining a healthy and prosperous solar industry, not solely on managing the market value of the SREC. One cannot create and sustain a viable industry solely by protecting SREC value, which is only one indicator of the health of the market. The aim should be to promote opportunity and job growth in the industry, to increase value and reduce costs to the rate payer and to accomplish

the purposes of the Energy Master Plan by achieving the Renewable Portfolio Standard on or before the date required by the Solar Act. The focus should not be on repressing growth or adopting regulations as a means of artificially sustaining the SREC value because such efforts are already having adverse economic impacts on what was a thriving solar industry. If BPU actions suppress solar growth, fewer projects will get built and SREC prices will rise. But higher SREC prices **cannot be an end in itself** since jobs will be lost, companies will continue to leave the state or close, electricity costs will rise for rate payers, millions of dollars of capital already invested will be stranded, future investments now on the sidelines will be fatally discouraged, and the achievable RPS goals for lower carbon emissions and a cleaner environment will not be met.

We believe that the BPU should manage and encourage the health and growth of the industry, not the value of the SREC. If the RPS needs to be adjusted to accommodate growth and promote market stability, the Board already has the power to make those adjustments. There is strong justification for the BPUs adoption of a more far-reaching interpretation of the Solar Act that is in accord with the intention of the lawmakers of supporting the solar industry.

Instead of fearing an oversupply and a crash in the SREC market again, the BPU should rely on all of its regulatory authority to manage the growth in the solar industry. In this regard, the BPU has the legislative authority to intercede and increase the RPS when it believes that intervention is warranted. This tool is given to the Board in A3520, the Solar Energy Advancement and Fair Competition Act, Section O, whereby it states:

“o. The board, in consultation with the Department of Environmental Protection, electric public utilities, the Division of Rate Counsel in the Department of the Public Advocate, affected members of the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in subsection d. of this section, taking into account the cost impacts and public benefits of such increases including….”

If the Board was convinced that aggregated net metering projects would create an oversupply, it could increase the renewable portfolio standards. This would allow more viable projects to be built and the industry to thrive instead of sending the message that the State of New Jersey is no longer committed to maintaining the solar industry its far-reaching planning produced. The Board not only has the power to adjust the demand for SRECs, it has the obligation to do so.

Thank you for the opportunity to present our comments.

Sincerely yours,

Lawrence Neuman
President
EffiSolar Development LLC

Hawkins
DELAFIELD & WOOD LLP

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February 22, 2013

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44 S. Clinton Ave., POB 350
Trenton, NJ 08625-0350

Re: Questions Posed to Net Metering and Interconnection Stakeholders

Dear Mr. Hunter:

Thank you for the opportunity to provide the following comments and responses to the questions posed at the February 15, 2013 Net Metering and Interconnection Stakeholders Meeting.

The first question is whether all of the meters at a host site for a solar electric power generation system with multiple metered accounts on the site could be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis. The Solar Act of 2012 states that the public entity should receive the same benefits as customer which are currently net metering pursuant to N.J.S.A. 48:3-87(e)(1). In essence this means that the public entity should receive retail credits "[f]or the customer's facility or property on which the solar electric generation system is installed." N.J.S.A. 48:3-87(e)(4). "Property" is not defined in the Solar Act or anywhere else in the New Jersey statutes or administrative code. The legislative history is also unclear because "or property" was added as a last minute addendum to the bill without comment from the legislature. A definition which may provide guidance is the definition of "real property" which is consistently defined throughout the New Jersey statutes governing counties and/or municipalities as meaning lands both within and without the State, and improvements thereof or thereon, or any rights or interests therein. The term property certainly should include solar projects on the ground, rather than merely those on rooftops, which are connected to on-site facilities, e.g. a

solar project installed on a properly closed landfill that is connected to an on-site materials processing and recovery facility. By its late insertion of "or property," the legislature intended to broaden the ability to receive retail credit to on-site facilities that are not physically connected to the solar electric power generation system. Because property itself has no electricity demand, the legislature must have been referring to other facilities located on-site when it included "property" with the exception for "[a]ll electricity used by the customer's qualified facilities, with the exception of the facility **or property** on which the solar electric power generation system is installed." Id. (emphasis added). We note that "the overriding goal [of statutory interpretation] is to determine, as best we can, the intent of the Legislature, and to give effect to that intent. To accomplish that end, we adhere to the belief that the best indicator of [legislative] intent is the plain language chosen by the Legislature." State v. Hudson, 209 N.J. 513, 529 (2012) (internal citations omitted). Since only off-site facilities are to be billed at the retail rate but only credited at the wholesale rate, we believe the best interpretation is to use the plain meaning of "property" such that all facilities located on the same property as the solar electric generation system should be credited at retail rate rather than wholesale rate. The Office of Clean Energy indicated that a definition for "host site" will be included in the regulations, which will be useful for these determinations, but the regulations also should explicitly define "property" as applied to net metering aggregation.

The second question is which costs should be deemed "incremental costs" incurred by the EDC for aggregated net metering and whether such costs should be restricted to net metering excluding interconnection costs. The Solar Act, its legislative history, and contextual background do not provide an answer to this query.

The third question is whether the statute allows a solar electric power generation system qualifying for net metering aggregation to be owned by a third party rather than by the public entity customer. This question arises because, although either the facility or the property on which the solar system is located clearly must be owned by the government entity, the ownership of the solar system and its equipment is ambiguous. The Solar Act provides that a public entity customer may "contract with a third party to operate a solar electric power generation system." N.J.S.A. 48:3-87(e)(4). The exception for third-party operators was added, without comment, to the second reprint of Solar Act. The intent of this clause, like the intent of the Solar Act as a whole, is to encourage publicly-sponsored solar project development by providing public entities the benefits of net metering aggregation. "Operate" is not defined in the Solar Act, but an informative definition of "operate" and "operation" is included in Title 40, Chapter 48B of the New Jersey statutes (Municipalities and Counties: Consolidated and Joint Service Projects):

> "Operate" and "operation" shall mean and include acquisition, construction, maintenance, management and administration of any lands, public improvements, works, facilities, services or undertakings. N.J.S.A. 40:48B-1.1.

Ownership is inherently included in that definition of operation because of the inclusion of "acquisition." Accordingly, it is reasonable for the regulations to interpret "third party to operate" to mean operation of its own system or customer-owned solar electric power generation system. If the legislature meant for operations to be exclusively for customer-owned solar systems, the Solar Act would have said so.

The fourth question is whether the host site facility's metered consumption, where the proposed generator is to be located, may be in a different rate class and tariff than the qualified customer facilities. We do not have any comments on this query.

The final question is whether a public entity customer such as a school district should be deemed a single customer if all its accounts are in the same rate class. Because net metering aggregation applies to "school districts" and not to individual schools, a school district should be considered a single customer so long as all of the net metering billing accounts are in the same rate class. N.J.S.A. 48:3-51.

Sincerely,

Andrew Thurmond

**SOLAR ENERGY INDUSTRIES ASSOCIATION (SEIA) RESPONSES TO STAFF QUESTIONS OF FEBRUARY 15, 2013 REGARDING DEVELOPMENT OF AGGREGATED NET METERING RULES PURSUANT TO N.J.S.A.48:3-87(e) 4**

SEIA appreciates the opportunity to submit additional comments, based on questions asked by BPU Staff at the February 15, 2013 Interconnection and Net Metering Stakeholder Meeting. SEIA looks forward to continued participation in this proceeding.

**Question 1: Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice.**

Yes, multiple metered accounts on a single host site are required to receive full retail crediting under section e. of the Solar Energy Act of 2012.

The operative distinction for purposes of net metering credit valuation is between "the customer's facilities" and "property owned by the customer" on the one hand; and other of the customer's "qualified facilities." Under the structure of section e., it is clear that "[f]or the customer's facility or property on which the solar electric generation system is installed the electricity generated from the customer's solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1) of this subsection"; that is, consistent with traditional principles of net metering that enable: 1) monthly netting at full retail; 2) rollover of any excess generation at the end of the month; and 3) net excess generation at the end of the annualized period at the utility's avoided cost.

By contrast, the customer's other "qualified facilities"; i.e., those facilities eligible for aggregated net metering, "*excluding* the customer's facility or property on which the solar electric power generation facility is installed", are to be billed at the full retail rate.

The statute thus draws a clear line of demarcation. So long as the solar electric generating system is situated on the customer's facility or property, that facility or property's metered accounts shall receive the more favored crediting treatment under the Solar Advancement Act. By contrast, there is general agreement by stakeholders that the final legislative language does not contemplate retail credit for off-site loads.

Although the Solar Advancement Act does not define the terms "facility" or "property", these terms should be given their commonsense meaning. Webster defines facility as "something that is built, installed, or established to serve a particular purpose" and property as "something to which a person or business has a legal title".[1] Under common parlance, any governmental structure or site – be it a school, town hall, police station, public housing unit, office complex, or campus consistent of multiple government facilities intended to fulfill governmental functions – is entitled to retail crediting irrespective of the number of metered accounts associated with that facility.

Similarly, as SEIA has previously argued in its November 23, 2012 comments in this matter, Staff has the ability to and should define "property" as expansively as permitted under New Jersey law to maximize the aggregated net metering opportunity and its utility to governmental entities. We propose that the operative terms "facility" and "property" be defined broadly to encompass a contiguous piece of land under common ownership. This is in keeping with Staff's view that the legislation is meant to be an evolutionary, rather than a revolutionary, approach to aggregated net metering by enabling a narrow set of new potential project sites.

Beyond the clear letter of the law, more favorable treatment of all metered accounts served by an on-site generation system may be gleaned from legislative intent. It may be presumed that the legislature understood that all metered load behind the utility's service drops, would be served by an on-site solar electric generation system without export to and use of the grid.

**Question 2: What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?**

The Solar Advancement Act authorizes the timely recovery of the utility's 'incremental costs' in implementing aggregated net metering. SEIA agrees with Staff's interpretation, as stated at the February 15, 2013 Interconnection/Net Metering Meeting, that the following three categories may possibly be deemed 'incremental costs'. These categories are 1) sizing of the solar system 2) billing, and 3) accounting.

As stated below, SEIA seriously questions whether the utility's implementation costs within these three categories are material. In any event, the utility must demonstrate the magnitude of these costs, if any, and the Board may prescribe the manner by which the utility may recover such costs.

*Process associated with sizing the system:* The use of historical load from 'qualified facilities' to calculate the maximum size of the solar system is a very straightforward activity and the utility's time and expense associated with this activity should be *de minimis.*

*Billing and accounting costs:* If Staff interprets the host site narrowly to allow for only one meter, then there would be no incremental billing or accounting costs. However, even if Staff uses a more expansive definition of the terms 'facility' and 'property' to allow for multiple meters in a given building or campus, an interpretation advocated by SEIA in its response to Question 1 above, SEIA still believes that any incremental costs would be marginal. This is further supported by comments from the February 15, 2013 IX/NEM where one utility participant stated that their experiences with aggregated net metering in other states have shown that billing and accounting costs are not significant.

*Interconnection costs:* With regards to interconnection, these costs are generally borne by the solar developer rather than the utility and thus need not be addressed within the context of a cost recovery mechanism to recover incremental aggregated net metering costs.

**Question 3: Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.**

Yes, the statute most assuredly allows solar generation systems to be owned by a third party and still qualify for aggregated net metering. This is borne out most clearly in the definition of "net metering aggregation" as set forth in the Solar Energy Act:

> "Net metering aggregation" means a procedure for calculating the combination of the annual energy usage for all facilities *owned* by a single customer where such customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority, and which are *served* by a solar electric power generating facility as provided pursuant to paragraph (4) of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87) (italics added).

On the one hand, the "facilities" receiving net metering aggregation service must be *owned by* the host governmental entity. On the other hand, the statute only requires the host to be *served by* the solar electric generation facility. Clearly, the legislature was cognizant of the distinction between ownership and service, and only required the former with respect to the host facility. Had the legislature intended to limit net metering aggregation to situations where the governmental authority owned the solar electric generation system, it would have done so explicitly.

Some may point to the clause within subsection e(4), wherein it is stated that "A customer may contract with a third party to operate a solar electric power generation system, for the purpose of net metering aggregation" as demonstrating a legislative intent to limit aggregation where the system is owned by the public entity. However, this language is permissive only with regards to

operation and is wholly silent with respect to system ownership. Indeed, this section can just as easily be read to sanction the typical third party arrangement where the developer provides a complete turnkey solution to the municipality.

Moreover, a narrower reading would be inconsistent with the legislative intent to establish a more permissive framework for aggregated net metering. The Board has consistently allowed third party ownership for traditional net metering situations. The focus of the inquiry has been on the customer's *usage* of electric output from a qualified Class I renewable energy source[2]; this inquiry is agnostic as to ownership of the Class I renewable energy source or business model.

A narrower reading would also be inconsistent with clear trends in the solar industry, of which the legislature should be presumed to be cognizant. Third party ownership has quickly become a key form of solar development[3], and is particularly well suited to systems serving governmental entities for two major reasons: 1) they may lack the necessary resources and expertise to own and operate such systems, and 2) third-party ownership is necessary for government entities to capture the value of the Federal Investment Tax Credit[4].

**Question 5: May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?**

Yes, a public entity customer such as a school district may be deemed a single customer. This is clearly spelled out in the Solar Advancement Act: "provided that any such customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority".

Respectfully Submitted on February 22, 2013,

Katie Bolcar Rever
Director, Mid-Atlantic States
Solar Energy Industries Association
krever@seia.org

[2] *See*, N.J.A.C. 14:8-4.3 (a): "All electric distribution companies (EDCs) and supplier/providers, as defined at N.J.A.C. 14:4-1.2 and 14:8-1.2, respectively, shall offer net metering to their customers that generate electricity on the customer's side of the meter, using class I renewable energy sources…"

[3] Where data is available, third party ownership accounts for the majority of residential installations and roughly half of non-residential installations.

[4] See also the fact sheet by the National Renewable Energy Lab regarding PPAs and government entities. http://www.nrel.gov/docs/fy10osti/46668.pdf

Comments to BPU Staff ("Staff") concerning 5 questions posed at the February 22, 2013, Stakeholder Meeting Regarding Aggregated Net Metering

Background:

Garden Solar agrees with staff that the aggregated net metering provisions of the Solar Act ("Act") are a step in the right direction; however, the question of Legislative "intent" of the Act should be first addressed by Staff. It is important that the Board's implementation of the Act be harmonized with the Legislature's intent. This is particularly true where, as here, the Legislature undertook substantial effort in drafting of the Aggregated Net Metering Section of the Act. Therefore it would seem counterproductive that they enact a bill which would so narrow a focus as to so drastically limit the implementation of subparagraph e., aggregated net metering. It is expected that the intention of subparagraph e. was to enhance the benefits of the solar program to municipalities and state entities to facilitate energy cost savings; thereby resulting in savings to ratepayers.

We have surveyed a variety of municipal entities that are excited to participate in aggregated net metering. None of these parties are situated to accommodate a system being installed behind a meter of a facility large enough to generate enough electricity to offset their aggregated load of their CQFs. Garden Solar believes that Staff should interpret the Act to advance the interests of the municipalities and state agencies, whose constituents directly subsidize the program even when they cannot participate directly and not interpret in such a restrictive manner that provides no meaningful change to current practices and prohibits these cost saving opportunities. It seems clear that the Act was intended to allow governmental customers to aggregate load and receive avoided wholesale cost reimbursement for adding distributive renewable generation capacity to the local system which would meet the goals of the NJ Energy Master Plan and result in public sector cost savings.

A primary responsibility of the Board of Public Utilities, among other purposes, is to protect the ratepayer interests as captive customers of the franchise utility monopoly. Since the Act allows for the aggregation of load(s) to one of any of the meters of the customer, it would seem that the EDCs would not incur an incremental cost in aggregated accounting and billing or monitoring, as in the Red Skyes Pilot, or otherwise. The customer should simply be able to certify annually that the system installed has not supplied more capacity than the aggregated load for the CQFs.

Before addressing the questions soliciting comment, we urge Staff to interpret the meaning of "or" in the following excerpt of the Act; "(4) net metering aggregation

standards to require electric public utilities to provide net metering aggregation to single electric public utility customers that operate ***a solar electric power generation system installed at one of the customer's facilities <u>or</u> on property owned by the customer,*** provided that any such customer is a…" and also reiterated later in the same paragraph; "…the standards shall provide that, in order to qualify for net metering aggregation, the customer must operate a solar electric power generation system ***using a net metering billing account***, which ***<u>system is located on property</u>*** owned by the customer, provided that:…(a)-(d)"

It is our interpretation of the Act that a net metering billing account should be able to be established at a property owned by the customer, for the purpose of net metering the aggregated load of the customer's qualified facilities (CQFs). The Act states "**<u>the qualified customer facilities</u>** shall all be in the same customer rate class under the applicable electric public utility tariff"; the Act does not state that the meter at the site of the solar generating system be in the same rate class anywhere within the Act. Any other interpretation would significantly limit the customer's ability to aggregate loads of the same rate class AND have the solar system installed behind the meter at a CQF, within the same rate class in order for the remainder of the facilities to be aggregated. This would appear to make this potentially progressive provision of the Act unable to be implemented. . We request Staff to provide an example of where a single customer, as defined, would be able to meet either of those narrow criteria. (i.e. a customer with enough land or viable interconnection capacity, behind an existing meter, without impeding network safety and reliability, to install a system that could offset their aggregated load of their CQFs.)

If the Act was to be interpreted as requiring the net metering billing account to only be applicable where a facility is located, then why would there have been the need to include a provision of the municipal planning board to waive the farmland provision of the Act in subparagraph (a) of paragraph e.? Via the Act, allowing the system to be installed on property owned by the customer, the property then having a meter installed becomes, by the definition in subparagraph 1) "…,on the customer's side of the meter,…". A meter is required for interconnection; the Act does not differentiate between the different types of meters. In either instance of meter type, load is supplied to the meter in operational hours for SCADA system monitoring and remote trip transfer capability and in non operational hours for emergency lighting and or security systems.

1. Q: Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metered billing account for the purposes of receiving a retail credit against their consumption on an annualized basis?

   The Act: (e. 4. (d.))
   All electricity used by the customer's qualified facilities, with the exception of the facility or property on which the solar electric power generation system is installed, shall be billed at the full retail rate pursuant to the electric public utility tariff applicable to the customer class of the customer using the electricity

Comment: The Act does not define the "facility" as limited to one meter, thus Staff may reasonably interpret a "facility" as being multiple meters on one property or that the multiple meters constitute one meter. Nothing prevents Staff from adopting rules, construing this provision, to allow for all of the meters, if the chosen net metering billing account is to be located at a facility with more than one meter, from receiving less than full retail credit for all of the meters on that property. The Act permits aggregating loads to a meter at the same facility, but does not limit the Staff's ability to determine all meters on that property as being eligible to be measured as the host, irrespective of which meter is actually replaced with a revenue grade bi-directional meter.

2. Q: What type of costs should be deemed "incremental costs" incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?

   The Act: (e. 4. (d))
   Any incremental cost to an electric public utility for net metering aggregation shall be fully and timely recovered in a manner to be determined by the board

   Comment: This question is only answered after the determination of how or where a system can be interconnected. The electric public utility should be allowed to recover all of the costs it reasonably incurs from aggregated net metering, subject to proof that costs are incurred. Given the Act's ability to be interpreted to allow a "system" to be installed at a property owned by the customer and that that meter not expressly be attached to or at a facility, a CQF, as a net metered billing account, the EDC should be permitted to recover T&D at a rate deemed appropriate for a capital recovery charge and line maintenance. This recovery should not be determined without adequate proof of costs. Interconnection of a generating system to the electric distribution system is already required to be recovered by the EDC via FERC SGIP and PJM Manual 14. Remote monitoring SCADA and revenue grade metering is required to be installed for any system interconnecting to the distribution system. Since a wholesale market participant does not pay T&D to the EDC for wholesale generation, and in effect the installed capacity is explicitly sized to offset no more than aggregated annualized CQF load, then perhaps T&D should be excluded from recoverable "incremental costs". An aggregated net metering system operator would have similar privileges as a system operator under our proposed interpretation of the Act and would be generating energy as governed and permitted by the NJBPU as a provision of the Act within its rights provided within any adopted rules. The Staff's implementation of the Act should promote aggregated net metering while fairly compensating the EDCs, -but not compensating them in a manner that caused aggregated net metering to be uneconomic.

3. Q: Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the stature? Or alternatively does the law require public entity ownership?

   The Act: (e. 4. (d))
   Any contractual relationship entered into for operation of a solar electric power generation system related to net metering aggregation shall include contractual protections that provide for adequate performance and provision for construction and operation for the term of the contract, including any appropriate bonding or escrow requirements.

   Comment: The law does not prohibit third-party ownership. Thus, it is permitted implicitly. Moreover, nothing in the Act prohibits a governmental entity to contract for solar facilities used for aggregated net metering. Thus, a governmental entity may enter into such a contract as long as there are "contractual protections". Suitable contractual protections, such as liquidated damages for non-performance, could be identified by Staff in a rule making. ..

4. Q: May the host site facility's metered consumption, where proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?

   The Act: (e. 4. (d))
   …the qualified customer facilities shall all be in the same customer rate class under the applicable electric public utility tariff. For the customer's facility or property on which the solar electric generation system is installed, the electricity generated from the customer's solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1)

   Comment: Emphasis should be placed on "facilities" in answering this question. The facilities must be in the same rate class. Garden Solar asserts that the meter where the net metering billing account location is to be designated, notwithstanding that this may be on property owned by the customer, need not be in the same rate class and tariff. The Act provides for no guidance to the contrary and any other interpretation would be unreasonably restrictive.

5. Q: May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?

   The Act: (e. 4.) and (e. 4. (c))
   …single electric public utility customers that operate a solar electric power generation system installed at one of the customer's facilities or on property owned by the customer, provided that any such customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority.
   And

(c) all of the facilities of the single customer combined for the purpose of net metering aggregation are facilities owned or operated by the single customer and are located within its territorial jurisdiction except that all of the facilities of a State entity engaged in net metering aggregation shall be located within five miles of one another,

Comment: Yes. A school district clearly is a single customer where all accounts are in the same rate class and each school is owned by the District. An issue may arise however, within a sending district because the District may not necessarily "own" or "operate" a facility within its sending district. However the definition of "operate" should be construed to mean asserting control (akin to ownership) and thus all load from schools included in a sending school district could be aggregated.

Regarding Ownership of the property; it seems to be further limiting that a single customer wholly owns the parcel where the system is to be installed. Ownership, for the purpose of the Act should be expanded to encompass a long-term property lease, including a lease to own. Lessees under long-term leases control the property and are frequently treated as they are owners in fee. To suggest that long-term leaseholds would not meet the "ownership" requirement would mean that very few qualifying participants will ever own vacant land upon which enough solar could be installed to match their aggregated CQF's annualized load.

Garden Solar appreciates the opportunity to submit these comments and looks forward to the providing additional input as this matter progresses.

Respectfully,

Tim Ferguson, C.O.O.
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(908) 284-2600
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22 February 2013

Office of Clean Energy
Division of Economic Development and Energy Policy
New Jersey Board of Public Utilities
44 S. Clinton Avenue, POB 350
Trenton, NJ 08625-0350

Attn: B. Scott Hunter at OCE@bpu.state.nj.us
Renewable Energy Program Administrator

Re: Comments on Solar Act of 2012
Aggregated Net Metering (N.J.S.A. 48:3-87(e)

Mr. Hunter:

On behalf of Land Resource Solutions, a New Jersey based brownfield and landfill redevelopment company, we appreciate the opportunity to submit comments on the Solar Act of 2012 (the "Solar Act"). Our comments presented herein are regarding implementation of subsection (e) of the Solar Act, which addresses "net metering standards for electric power suppliers and basic generation service providers".

These comments are submitted in response to the questions posed in your email solicitation to the Net Metering and Interconnection Stakeholders dated February 15, 2013. The questions/comments from your email are repeated below followed by our responses and comments in **bold**:

1. Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do a reference to the explicit language within the law that leads you to conclude the law enables this practice.

   **LRS Response:** **Perhaps we do not fully understand this question, but it would appear irrelevant. In accordance with the Solar Act subsection (e) (4), the multiple meters would be required to be on property owned by a single public entity customer and all meters would therefore presumably be owned by the same owner. If the owner wished to allocate the credit to multiple meters on the property, it could easily do so.**

2. What type of costs should be deemed incremental costs incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs.

**LRS Response:** **Based on review of the statute, "...any incremental cost..." appears to include all costs to the electric public utility to implement and manage the net metering aggregation program. This would appear to include administrative costs as well as any other cost incurred by the electric public utility. If interconnection costs are incurred by the electric public utility to implement the program, they would appear to be covered.**

3. Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.

   **LRS Response:** **We believe the statute allows the solar generation system to be owned by a third party. The statute language requires only that the system to be located on a public entity customer's facility or on property owned by the public entity customer.**

4. May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?

   **LRS Response:** **Yes. The statute is silent on requirements for the rate class of the public entity customer facility on which the solar generation facility is located and requires only that the qualified customer facilities be in the same customer rate class.**

5. May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?

   **LRS Response:** **Again, perhaps we no not fully understand the question context, but this question would appear to only be relevant if multiple solar generation facilities were contemplated at different customer facilities for the purpose of aggregated net metering. In that context, we do not see the benefit or detriment in having all accounts considered a single customer, rendering the issue moot.**

We appreciate the opportunity to comment on the Solar Act and offer our assistance to staff in the implementation of the Solar Act.

LRS would also like to seek clarification from the staff regarding subsection (e) (4). The statute indicates that :

> "For the customer's facility or property on which the solar electric generation system is installed, the electricity generated from the customer's solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1) of this subsection to provide that the electricity generated in excess of the electricity supplied by the electric power supplier or the basic generation service provider, as the case may be, for the customer's facility on which the solar

> electric generation system is installed, over the annualized period, is credited at the electric power supplier's or the basic generation service provider's avoided cost of wholesale power or the PJM electric power pool real-time locational marginal pricing rate."

In order to qualify for aggregate net metering, the system may not be an on-site generation facility as defined in the Solar Act **[see subsection (e) (4) (b)]**. We do not understand how the provisions of paragraph (1) of subsection (e) would therefore apply and any clarification of this issue would be greatly appreciated.

Thank you.

Sincerely;
**LAND RESOURCE SOLUTIONS, LLC**

Trevan J Houser
President

Public Comments of the Interstate Renewable Energy Council on the Solar Act
February 22, 2013

Interstate Renewable Energy Council, Inc.'s comments on Staff's post-meeting questions on implementation New Jersey's **Solar Act of 2012, Senate, No. 1925 (L. 2012, c. 24):** Net Metering Aggregation *Submitted via electronic mail (OCE@bpu.state.nj.us)*

## Introduction

The Interstate Renewable Energy Council, Inc. (IREC), appreciates the opportunity to provide additional comments in response to the questions Staff circulated to stakeholders following the February 15, 2013 Net Metering and Interconnection Standards Working Group. These questions identify mostly minor ambiguities in the Solar Act that will need to be addressed in implementation, with the exception of the central issue of how a "host-site" will be interpreted. IREC encourages Staff to interpret "host-site" to include all accounts located on the host's contiguous property. Resolving this ambiguity in favor of permitting aggregation of host-site loads against on-site production may represent only a small incremental improvement from the status quo, but it does provide a real benefit to a slice of customers (public entities) that are the intended beneficiaries of the law.

## IREC's Responses to Staff's Questions

> **Q1: Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice.**

The above-suggested interpretation of the Solar Act is not precluded by New Jersey law and is within the authority of the Board of Public Utilities (BPU). At this point, there is a consensus among stakeholders that "qualified customer facilities" (i.e., off-site accounts) do not receive any billing credit for generation from the host-site solar system. Accordingly, interpreting a "host-site" to include all accounts on the same property as the solar generation system is the only reasonable path to accomplishing, in an incremental fashion, a policy that more closely reflects what IREC considers to be aggregate net metering (ANM): a method to provide net metering accounting methods to more than one customer account.

IREC and other stakeholders previously suggested that this type of accounting could be accomplished for customers with multiple accounts on a single property by giving the word "property" a broad reading. The Solar Act provides for full net metering accounting ("pursuant to paragraph (1)") for the "facility or property" where the solar generation system is located. *N.J. Stat. § 48:3-87(e)(4)*. IREC supports Staff's introduction of the term "host-site" into its net metering aggregation rules, as this more clearly delineates between on-site and off-site accounts. IREC does not see any inconsistency in using the term "host-site" to reflect the statutory requirement that net metering accounting be limited to the "facility or property" where the solar generation system is located.

Moreover, the Solar Act does not fetter the BPU's ability to interpret the term "host-site" in a manner that allows meters within the host-site to be construed as a single net metering billing account for the purposes of accounting for solar generation system production and on-site usage. The statutory term "net metering billing account" is not defined in New Jersey Statutes or in the Administrative Code. It is, thus, reasonable for the BPU to give a construction to this term in a manner that advances the purpose of the Solar Act to provide benefits to state, county and local governmental entities.

**Q2: What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?**

IREC appreciates and supports Staff's suggestion at the meeting that "incremental costs" should be limited to billing, accounting and sizing. Of course, the impact on these cost categories will vary depending on which interpretation of "host-site" Staff ultimately chooses. If the "host-site" includes only the single account that is associated with the solar generation system, then the incremental costs of net metering aggregation should be virtually nonexistent. As several parties noted at the meeting, Staff's interpretation is basically a reiteration of existing net metering, albeit with a system that is oversized in proportion to the load from the host account. Accordingly, the only incremental cost would be from the initial "sizing" determination and is likely to be so small that no EDC would find it practical to make a cost showing before the BPU to seek cost recovery.

However, if all accounts on a "host-site" are considered to be one net metering billing account, then IREC would expect marginally more incremental costs to be associated with accounting for credits among multiple accounts or meters and the execution of billing for those accounts. Given the limited applicability of this version of net metering aggregation, the incremental expense is also likely to be minimal. Again, IREC doubts that seeking cost recovery of these incremental costs will be practical for EDCs.

IREC sees no reason for interconnection of a system that will offset loads measured by multiple meters to cost any more than interconnection of a traditional net metered system that offsets only the load measured by the meter to which it is interconnected. The same process will be followed by the utility in either case and the same upgrades, if any, will be required for a given system size. Therefore, it seems inappropriate to consider interconnection costs as an incremental cost of implementing net metering aggregation.

**Q3: Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.**

The Solar Act does not directly prescribe ownership of the solar generation system as a condition

for eligibility in net metering aggregation. Paragraph (4) of subsection (e) states that "in order to qualify for net metering aggregation, the customer must *operate* a solar electric power generation system." *N.J. Stat. § 48:3-87(e)(4)*. The definition of "net metering aggregation" does not address ownership and only states that the eligible customer is "*served by* a solar electric power generating facility…." *N.J. Stat. § 48:3-51*. There simply is no ownership requirement or limitation in the Solar Act. The key definitional question is whether a customer that enters into a power purchase agreement (PPA) is *operating* that system and is eligible for net metering aggregation.

A common sense approach to defining the term *operate* suggests that third-party PPAs should be allowed. If the legislature intended to limit ownership to the public entities, it would have used the term "own" instead of "operate" and would have said in the definition of net metering aggregation that the eligible customer owns the facility rather than saying the customer is "served by" the facility. A customer that has opted to contract to have a third-party perform the necessary maintenance and ensure the system's efficient operation is still logically operating the system. If it were not for the customer's performance of its contractual obligations, the system would not "operate." IREC suggests that the Staff can interpret the phrase "operate" to include customers that contract for a third-party to perform the actual functions associated with ensuring continued operation. The Pennsylvania Public Utilities Commission recently interpreted "operate" to allow third-party PPAs in regards to determining eligibility to engage in net metering. *See Docket M-2011-2249441* (Order on March 29, 2012).

Consistent with the long-standing practice allowing third-party ownership of net metering systems in New Jersey, IREC encourages Staff to clarify that public entities do not need to own the solar generation system that they host, and can instead operate that system under a contract with a third-party owner.

**Q4: May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?**

The language of the statute is clear in regards to the requirement that all "qualified customer facilities" (i.e., non-host-site accounts) must be in the same rate class under the applicable utility's tariff. The statute does not explicitly address whether the host-site account must also be in the same rate class or on the same tariff. Instead, the requirement for the host-site account is that it be a net metering billing account. This leaves open the possibility that the net metering billing account could be on a different tariff than the "qualified customer facilities," so long as all of the "qualified customer facilities" are on the same utility tariff. IREC does not expect this situation to commonly occur, but encourages Staff to adopt maximum flexibility in addressing this ambiguity. Given the fact that no excess generation credits will be shared between the host-site account and off-site accounts, there is little policy need to require the host-site to be on the same tariff as the off-site accounts.

In the event that Staff adopts a broad definition of "host-site" that allows all accounts or meters on a property to be considered part of a single net metering billing account, it is reasonable to require that all accounts or meters on that host-site be on the same tariff. Indeed, it is in this

situation that the requirement to be on the same rate class makes sense: where kWh credits are shared among those accounts creating the potential for inter-class cost shifts. If all accounts other than the net metering billing account are merely used to justify the size of a system, then the requirement that all accounts be on the same rate class appears to make little difference.

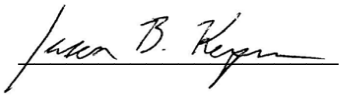
**Q5: May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?**

Under the net metering aggregation provisions of the Solar Act, the language of the statute is explicit in regards to whether a school district is a "single customer." As provided in the definition of "net metering aggregation," this process means "a procedure for calculating the combination of the annual energy usage for all facilities owned by a single customer where such customer is **a** State entity, **school district**, county, county agency, county authority, municipality, municipal agency, or municipal authority…." *N.J. Stat. § 48:3-51*. The plain language reading is that a school district is a single customer. All of the accounts in the same rate class that are not part of the host-site, consistent with IREC's suggestion in its answer to Q4, should be "qualified customer facilities."

## Conclusion

IREC appreciates the opportunity to participate in this working group and to submit these comments. IREC looks forward to its continued participation in this process.

Respectfully Submitted on February 22, 2013,



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*Governor*

KIM GUADAGNO
*Lt. Governor*

STEFANIE A. BRAND
*Director*

February 22, 2013

**Via Overnight Delivery and Electronic Mail**
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: Comments of the New Jersey Division of Rate Counsel**
**Aggregated Net Metering Rules Pursuant to**
**N.J.S.A. 48:3-87(e)(4)**

Dear Secretary Izzo:

Enclosed please find an original and ten copies of the 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.

Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: Sarah H. Steindel

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

c: OCE@bpu.state.nj.us
Elizabeth Ackerman, BPU
Michael Winka, BPU
Scott Hunter, BPU
Ann Marie McShea, BPU
Tricia Caliguire, Esq., BPU
John Teague, BPU
Marisa Slaten, DAG

**Comments of the New Jersey Division of Rate Counsel**
**Re. Aggregated Net Metering Rules Pursuant to N.J.S.A. 48:3-87(e)(4)**
**February 22, 2013**

The Division of Rate Counsel ("Rate Counsel") would like to thank the Office of Clean Energy ("OCE" or "Staff") for the opportunity to present comments regarding the Board of Public Utilities' ("BPU" or "Board") efforts to enact new standards regarding Aggregated Net Metering as outlined in the Solar Energy Act of 2012, L. 2012 c. 24 (the "Solar Act"), N.J.S.A. 48:3-87(e)(4). Rate Counsel's response to each section laid out by the OCE in its February, 15, 2013 e-mail, as well as an additional proposal for discussion is provided below.

## I. Response of Rate Counsel to OCE Questions.

1. *Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice.*

Rate Counsel believes the language of N.J.S.A. 48:3-87(e)(4) prohibits allowing multiple metered accounts on a site to be deemed to constitute one net metering billing account. N.J.S.A. 48:3-87(e)(4) specifically states that:

> For the customer's facility or property on which the solar electric generation system is installed, the electricity generated from the customer's solar electric generation system shall be accounted for pursuant to the provisions of paragraph (1) of this subsection to provide that the electricity generated in excess of the electricity supplied by the electric power supplier or the electricity supplied by the electric power supplier or the basic generation service provider, as the case may be, for the customer's facility on which the solar electric generation system is installed, over the annualized period, is credited at the electric power supplier's or the basic generation service provider's avoided cost of wholesale power or the PJM electric power pool real-time locational marginal pricing rate. (Emphasis supplied.)

The statute thus recognizes that the opportunity cost of generation is best reflected by some measure of a wholesale rate, not something akin to a fully-bundled retail rate, and therefore places strict limits on the scope of the allowable "retail credit," limiting such credit to the "facility or property" where the generation is installed.

The Board should reject suggestions that the word "property" be given a broad definition that would extend the retail credit to separately metered accounts on a large campus-like setting. Such a suggestion was made by the Solar Energy Industries Association ("SEIA") at the November 9, 2012 Public Hearing regarding the overall provisions of the Solar Act. On November 21, 2012 Rate Counsel submitted comments opposing such a practice as inconsistent with the statutory intent of N.J.S.A. 48:3-87(e)(4.). As explained in Rate Counsel's earlier comments, the word "or property" as it appears in the statue was intended to cover situations in which the solar generating equipment is not installed on a roof or otherwise made part of an existing structure, but instead is installed adjacent to one of the customer's facilities on the same property. Rate Counsel believes the statute intended for a host facility to be limited to just that--one metered facility, and not all separately metered accounts owed by the governmental agency on contiguous land in a campus-like setting. It was not intended to extend the "retail" net metering credit to multiple buildings served by multiple meters. The carefully limited statutory language was extensively debated. The Board should not interpret the language in a way that alters the outcome of those debates.

2. *What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?*

N.J.S.A. 48:3-87(e)(4) is unclear regarding its intended purpose for the provision that "Any incremental cost to an electric public utility for net metering aggregation shall be fully and timely recovered in a manner to be determined by the board." Rate Counsel believes cost recovery associated with any "incremental costs" should be handled in a manner similar to how the Board currently permits recovery of costs associated with net metering per N.J.S.A. 48:3-87(e)(2):

> Such standards or rules (adopted by the Board) shall take into consideration the goals of the New Jersey Energy Master Plan, applicable industry standards, and the standards of other states and the Institute of Electrical and Electronic Engineers. The board shall allow electric public utilities to recover the costs of any new net meters, upgraded net meters, system reinforcements or upgrades, and interconnection costs through either their regulated rates or from the net metering customer-generator. (Emphasis supplied.)

Rate Counsel stresses that in keeping with the principle of cost-causation, direct costs associated with any aggregated net metered project, such as interconnection costs, should be recovered directly from the applicable public entity rather than through regulated rates. This prevents important cross-subsidization between rate classes, and is furthermore consistent with current practices regarding standard net metering.

Rate Counsel also believes it is important for all participating parties and the Board to fully understand the incremental costs associated with aggregated net metering before creating any policy regarding cost recovery. Rate Counsel supports the general purpose of OCE's question seeking information regarding the nature of such costs, but believes the OCE should go a step farther and actively seek input from the State's electric distribution companies ("EDCs") regarding the scope and nature of any such costs before the next convening of the Net Metering and Interconnection Stakeholders Committee.

3. *Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.*

Rate Counsel believes N.J.S.A. 48:3-87(e)(4) prohibits solar generation systems being owned by a third party in the context of aggregated net metering, requiring instead that the system to be owned by the aggregated public entity. The statute states that the public entity customer may "contract" with a third party to "operate" a solar generation system, but omits to include references to ownership. This omission is noteworthy as the phrase "owned or operated" appears in several other locations in the Solar Act, indicating that the omission of a reference to ownership is intentional.[1] The lack of a provision permitting third-party ownership, together with the specific requirement that the system be located "on property owned by the customer," is a clear indication that the statute was intended to permit third party operation but not ownership. Rate Counsel further suggests that the Legislature may have prohibited ownership by third parties in order to prevent large grid-supply projects from circumventing Board oversight by partnering with a public entity through aggregated net metering.

4. *May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?*

N.J.S.A. 48:3-87(e)(4) states that: "The standards shall provide that in order to qualify for net metering aggregation, the customer's solar electric power generation system shall be sized so that its annual generation does not exceed the combine metered annual energy usage of the qualified customer facilities, and the qualified customer facilities shall all be in the same customer rate class under the applicable electric public utility tariff." (Emphasis supplied.) Rate Counsel furthermore notes that it is clear that the term "qualified customer facilities" is intend to

[1] In addition to appearing elsewhere in N.J.S.A. 48:3-87(e)(4), the phrase "owned or operated" appears in the new definition of "Connected to the distribution system," N.J.S.A. 43:3-49, and in N.J.S.A. 48:3-87 (t)(1) (twice), -87(t)(2), -87(w) (twice) and -87(x).

apply to both host and satellite sites: "All electricity used by the customer's qualified facilities, with the exception of the facility or property on which the solar electric power generation system is installed, shall be billed at the full retail rate pursuant to the electric public utility tariff applicable to the customer class of the customer using the electricity." (Emphasis supplied.) Thus, the statue is clear in requiring the customer's host site facility and all satellite facilities to be in the same rate class.

5. *May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?*

It is unclear whether Staff's question is intended to refer to qualifications for retail credit or to qualifications for aggregated net metering in general. As discussed under item 1 above, the statue limits the retail credit to a single metered facility. Regarding the general qualifications for aggregated net metering, N.J.S.A. 48:3-87(e)(4) refers to a customer as "a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority." Rate Counsel believes that this statutory language allows a school district to construct a solar generation system at one of its facilities sized against the metered annual energy usage of all of its facilities receiving service from the same provider under the same utility rate class. Annual generation in excess of the electric usage of the host site facility would be credited "at the electric power supplier's or the basic generation service provider's avoided cost of wholesale power or the PJM electric power pool real-time location marginal pricing rate."

## II. Adoption of Criteria for Future Projects

Rate Counsel believes any discussion regarding aggregated net metering should be cognizant of the current predicament of the solar energy markets within New Jersey. Solar energy markets have changed considerably from just a couple years ago when New Jersey was consistently experiencing shortfalls in the number of available Solar Energy Renewable Certificates ("SRECs"). The global economic contraction, combined with the increase in solar panel manufacturing, have led to what some renewable energy market analysts have referred to as a "new normal" in the New Jersey solar energy markets. Gone are the days of consistent undersupply and SREC prices traded at or near the Solar Alternative Compliance Payment. The "new normal" for the New Jersey solar market consists of relatively steady and strong solar installation rates with lower and more stable SREC prices.

In recognizing the changing nature of the solar energy market, the recently passed Solar Act included a section requiring the Board to "investigate approaches to mitigate solar development volatility." The OCE through its Renewable Energy Committee is currently seeking input from parties regarding just this question posed by the Legislature. Rate Counsel cautions the Board against developing overly generous aggregated net metering standards or using broad language in its development, as such standards may ultimately undermine other Board policies intended to

bring the current solar market into balance and reduce solar development volatility per the Solar Act.

Rate Counsel recommends that in light of the Solar Act's intention to reduce volatility within the solar development market, the Board should adopt within its rulemaking criteria governing approval of future aggregated net metering projects. Such criteria could alleviate or manage the possibility of overloading an already inundated market by allowing the granting of approval for such projects only when it is deemed such projects are necessary for the New Jersey to reach its renewable energy generation requirement under the State's Renewable Portfolio Standard. This would prevent such development from adversely affecting the existing solar energy market.

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February 21, 2013

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New Jersey Board of Public Utilities
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RE: Responses to Questions Posed by Board Staff on the Solar Act Requirements for the Board's Development of Aggregated Net Metering Rules

Dear Mr. Hunter:

This letter is submitted to the Board of Public Utilities ("Board"), Office of Clean Energy, on behalf of Rockland Electric Company ("RECO"), Atlantic City Electric Company ("ACE"), Public Service Electric and Gas Company ("PSE&G"), and Jersey Central Power & Light Company ("JCP&L")(collectively, the "EDCs") in response to Board Staff's request for responses to certain questions that arose at a recent stakeholder meeting in connection with the "Solar Act" requirements for the Board's development of aggregated net metering rules at N.J.S.A. 48:3-87(e) 4.

1. **Assume a host site for a solar generation system has multiple metered accounts on the site, could all of those meters be deemed to constitute one net metering billing account for purposes of receiving a retail credit against their consumption on an annualized basis? Please do not address the desirability or financial need for this treatment but do provide a reference to the explicit language within the law that leads you to conclude the law enables this practice.**

   **EDCs' Response:**

   The EDCs believe that only the facility and single net metering billing account to which the solar generation system is physically interconnected can net meter and receive a retail credit against their consumption on an annualized basis.

   The Solar Act states that "in order to qualify for net metering aggregation, the customer must operate a solar electric power generation system using a net metering

billing account".[1] The EDCs establish individual net metering accounts for individual premises that are metered, consistent with our tariffs. Additionally, the Solar Act states that "[f]or the customer's facility or property on which the solar electric generation system is installed, the electricity generated ... shall be accounted for pursuant to the provisions of paragraph (1) of this subsection ... for the customer's facility on which the solar electric generation system is installed".[2]

The referenced paragraph (1) sets forth the net metering process for individual customers (that was in place prior to the amendments that incorporated net metering aggregation), and taken collectively, the referenced language in paragraph (4) retains the process whereby (only) the customer facility on which the solar energy generation system is located will be eligible to net meter utilizing the EDC's net metering billing account that is established for that facility.

Supportive of this prior interpretation, the Solar Act also states that "[a]ll electricity used by the customer's qualified facilities, with the exception of the facility or property on which the solar electric power generation system is installed, shall be billed at the full retail rate pursuant to the electric public utility tariff..."[3] Assuming that the "customer's qualified facilities" have separate billing accounts with an EDC, this language makes it clear that these facilities would be required to pay the full retail rate.

2. **What type of costs should be deemed 'incremental costs' incurred by the EDC in the context of aggregated net metering? Additionally, should the costs be restricted to net metering and exclude interconnection costs?**

**EDCs' Response:**

The EDCs would generally define such costs as all those incurred to implement net metering aggregation incremental to costs assumed in the EDCs' most recent electric rate case, in cases where an alternative (Board approved) mechanism to recover such costs does not exist. An example of such costs could be system costs incurred to implement net metering aggregation (if incurred), including incremental billing related costs. Another example could be costs to install interval metering on other aggregated accounts to determine coincidental peak load demands or reductions. However, costs related to interconnecting the solar electric generation system to an EDC's distribution system would not be considered incremental, to the extent that such costs are recoverable through existing Board approved interconnection agreements and/or an EDC tariff.

3. **Does the statute allow a solar generation system to be owned by a third party rather than by the public entity customers defined in the statute? Or alternatively does the law require public entity ownership? Again please refrain**

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[1] Senate Bill 1925, enacted as P.L. 2012, c. 24 ("Solar Energy Law of 2012"), July 23, 2012, p. 17 (emphasis added).
[2] *Id.*
[3] *Id.*

**from addressing the desirability of the practice but reference the language within the law that leads you to conclude the law enables this practice.**

**EDCs' Response:**

The EDCs note that there does not appear to be a restriction on a third party owning the solar generation system used for net metering aggregation. However, certain requirements in the Solar Act should be consulted when considering third party ownership. The facility and/or property on which the solar generation system is installed must be owned by the customer:

> "[N]et metering aggregation standards to require electric public utilities to provide net metering aggregation to single electric public utility customers that operate a solar … system installed at one of the customer's facilities or on property owned by the customer…"[4]

> "[A]ll of the facilities of the single customer combined for the purpose of net metering aggregation are facilities owned or operated by the single customer…"[5]

Moreover, any contractual relationship should include the required provisions set forth in the law:

> A customer may contract with a third party to operate a solar electric power generation system, for the purpose of net metering aggregation. Any contractual relationship entered into for operation of a solar electric power generation system related to net metering aggregation shall include contractual protections that provide for adequate performance and provision for construction and operation for the term of the contract, including any appropriate bonding or escrow requirements.[6]

4. **May the host site facility's metered consumption, where the proposed generator is to be located, be in a different rate class and tariff than the qualified customer facilities (i.e., the satellite sites' metered consumption)?**

**EDCs' Response:**

The EDCs believe that the Solar Act requires all customer facilities that are involved or aggregated for the purposes of net metering aggregation, including the facility or property, on which a solar generating system is installed, be on the same specific rate class as defined by the respective EDC's tariff.

The Solar Act's definition of Net Metering Aggregation includes reference to "all facilities owned by a single customer … which are served by a solar electric

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[4] *Id.*, p. 16.
[5] *Id.*, p 17.
[6] *Id.*

power generating facility as provided pursuant to paragraph (4) of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87)."[7]

Paragraph (4) of the law repeatedly references "all" of the facilities when setting forth requirements that "all" are: "owned or operated by the single customer,"[8] "are within the service territory of a single electric public utility;"[9] ..."served by the same basic generation service provider or by the same electric power supplier."[10] Consistent with these requirements, the Solar Act also states that "the qualified customer facilities shall **all** be in the same customer rate class under the applicable electric public utility tariff".[11]

Related to the latter, consistent with and supportive of the presumption that the facility on which the solar generation system is located is considered as one of the 'qualified facilities', the Solar Act also states the following: "All electricity used by the customer's qualified facilities, with the exception of the facility or property on which the solar electric power generation system is installed, shall be billed at the full retail rate pursuant to the electric public utility tariff applicable to the customer class of the customer using the electricity."[12]

5. **May a public entity customer such as a school district be deemed a single customer if all its accounts are in the same rate class?**

**EDCs' Response:**

Consistent with the response to question 4 above, the EDCs believe that the Solar Act would permit a school district (the "single electric public utility customers"[13]) to aggregate its facilities for the purpose of net metering aggregation provided that all of the participating facilities, inclusive of the facility or property on which the solar generating system is installed be located, are served on "the same customer rate class under the applicable electric public utility tariff".[14]

If the question was intended to reference a "single site", please see response to question 1.

Thank you for the opportunity to respond to these questions.

Very truly yours,

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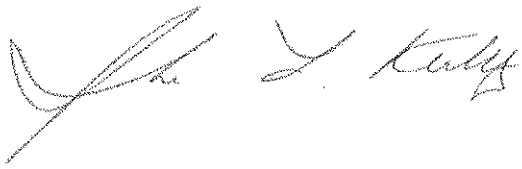
[7] Id., p. 7.
[8] *Id.*, p. 17.
[9] *Id.*
[10] *Id.*
[11] *Id.* (emphasis added).
[12] *Id.*
[13] *Id.*, p. 16.
[14] *Id.*, p17.



Sheree L. Kelly

SLK/dcb