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Director

November 5, 2015

By Hand Delivery and Electronic Mail

Honorable Irene Kim Asbury, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource
Analysis for Fiscal Year 2016 Clean Energy Program
BPU Docket No.: QO15040476**

**I/M/O the Clean Energy Programs and Budget for the Fiscal Year 2016
BPU Docket No.: QO15040477**

**Proposed NJCEP Fiscal Year 2016 True Up Budget (Request for Comments
dated October 22, 2015)**

Dear Secretary Asbury:

Please accept this original and ten copies of 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.

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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
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**I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for
Fiscal Year 2016 Clean Energy Program
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**Proposed NJCEP Fiscal Year 2016 True Up Budget
(Request for Comments dated October 22, 2015)**

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

November 5, 2015

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“BPU” or “the Board”) for the opportunity to present comments on the proposed revisions to the Board-approved Fiscal Year 2016 (“FY16”) Clean Energy Program (“CEP”) program budget, which were circulated to stakeholders for comment by the Board’s Office of Clean Energy (“OCE”) in an e-mailed notice issued October 22, 2015 (“Request for Comments”). Rate Counsel’s comments and recommendations regarding the Request for Comments are set forth below.

Rate Counsel Comments

The budget revisions were proposed in order to allocate higher-than-projected carryovers from Fiscal Year 2015 (“FY15”) and several sources of new funds. As explained in the Request for Comments, for the majority of the New Jersey Clean Energy Program (“NJCEP”) budget programs OCE is proposing to make offsetting adjustments so that the FY16 budgets for these programs remain the same. Some of the available additional funds are being allocated to programs that needed additional funds to meet existing contractual obligations, or to accommodate an increase in new applications. Rate Counsel does not object to these allocations.

Rate Counsel has concerns about OCE's proposal to allocate at total of \$7.157 million to two new budget line items. The Request for Comments and the accompanying Excel workbook ("FY16 True Up Budget workbook") do not provide adequate justification for the proposed budget allocations. The Request for Comments describes these two items as follows:

The Board is awaiting the release of an RFP to engage a new NJCEP Marketing and Website Contractor and is planning the transition to a new Program Administrator. In the proposed FY16 True Up Budget, Staff has created a separate marketing line item and allocated \$6 million for the new Marketing/Website contract. Similarly, Staff has created a separate line item for Transition expenses and allocated \$1.126 million.¹

The two new line items are shown as part of OCE's proposed budget for NJCEP Administration in the FY16 True Up Budget workbook. Based on the workbook, actual amount being allocated to "Program Transition" is \$1,157,694.04 rather than \$1.126 million.²

The quoted text in the Request for Comments and the two line items shown in the Excel workbook are the only justification provided for OCE's proposal to expend \$7.157 million. OCE has not provided any further breakdown of the proposed budget amounts, and has provided no other explanation of how these budget items would be expended, what objectives are to be achieved through the expenditures, or why the proposed budget amounts are considered reasonable. This is not a sufficient basis in the record to support the Board's approval of the proposed budgeted amounts. See, N.J. Soc. for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 384-85 (2008), In re Petition for Rulemaking, 117 N.J. 311, 325 (1989). OCE should provide better justification of the two new budget line items and there should be an additional opportunity for public comment before these items are included in the NJCEP budget.

¹ Request for Comments, p. 2.

² FY16 True Up Budget workbook, page entitled "Revised FY16 NJCEP Administration Budget," "New Marketing Contract" and "Program Transition" budget lines.

In addition, OCE should provide a better explanation of the sources of the proposed \$6 million in funding to be provided to the Temporary Relief for Utility Expenses (“TRUE”) program during FY16 and Fiscal Year 2017. The TRUE program is not an energy efficiency or renewable energy program. The Board’s authorization to allocate NJCEP funds to this program is found in L. 2009, c. 207, which directed the BPU to allocate \$25 million of available funds from the Societal Benefits Charge toward utility assistance grants for households seeking temporary assistance in paying their electric and gas utility bills.³ Based on the May 5, 2015 Staff Straw Proposal for FY16 NJCEP funding levels, \$19,725,400 of the \$25 million was expended through FY15, leaving a balance of \$5,274,600.⁴ Consistent with the foregoing calculation, the FY16 True Up Budget workbook indicates that the originally adopted FY 16 budget included \$5,374,500 for the TRUE program.⁵ Rate Counsel has carefully reviewed OCE’s original and true up budget proposals as well as the Board’s NJCEP budget order and has not found a clear explanation reconciling the \$6 million balance referenced in the Request for Comments with the \$5,374,500 balance based on previously provided information on actual expenditures. Such a reconciliation should be made available for public review.

Conclusions

For the foregoing reasons, the Board should (1) provide better justification for the proposed allocation of \$6 million for a “Marketing/Website contract” and approximately \$1.158 million for “Transition expenses,” and provide an additional opportunity for public comment before including these items in the NJCEP budget, and (2) provide for public review a reconciliation of the proposed \$6 million cited as the remaining balance available for the TRUE

³ L. 2009, c. 207, sec. 1.

⁴ Office of Clean Energy - Comprehensive Resource Analysis – Staff Straw Proposal – New Jersey Clean Energy Program Proposed Funding Levels FY16, p. 20, Table 6 (May 5, 2015).

⁵ FY 16 True Up Budget workbook, page entitled “FY16 True Up Budget.”

program with \$5,374,500 balance that would appear to exist based on previously provided information on actual expenditures for this program. Rate Counsel does not object to OCE's other proposed modifications to the FY16 NJCEP budget.



November 5, 2015

VIA ELECTRONIC MAIL

The Honorable Irene Kim Asbury
Secretary, New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
publiccomments@njcleanenergy.com

Re: Proposed FY 2016 "True Up Budget"

Dear Secretary Asbury:

Please accept these comments from the Bloom Energy Corporation ("Bloom Energy") regarding the New Jersey Clean Energy Program ("NJCEP") proposed Fiscal Year ("FY") 2016 "True Up" Budget released for public comment on October 22, 2015. As an active participant in the NJCEP Combined Heat and Power ("CHP") and Fuel Cell Program ("CHP/Fuel Cell Program"), Bloom Energy very much appreciates the Board of Public Utilities' ("Board's") efforts to identify new sources of program funding, both in the "true up" process and the impending "re-allocation" process.

Participants in the CHP/Fuel Cell Program necessarily rely upon the budget information published by the Board and its agents for purposes of business planning and making investment decisions. The development of a CHP/Fuel Cell project requires a series of synchronized financial, engineering, construction, permitting, utility interconnection, and incentive program components of a project - in addition to the core business operations of the end-use customer.

In May 2015, Board Staff published a proposal to reduce the CHP/Fuel Cell Program funding from approximately \$40.4 million in FY 2015 to approximately \$14.4 million in FY 2016 - a reduction of nearly 65 percent. At the time a number of parties, including Bloom Energy, submitted comments stating that there was a high degree of interest in the New Jersey distributed generation market and that the proposed \$14.4 million budget would be insufficient to meet customer demand. On June 17, 2015, the Board ultimately approved a FY 2016 budget of \$20,618,267 for the CHP/Fuel Cell program.

It is reasonable to expect that program participants would interpret the release of the FY 2016 budget to mean that there was, at the time the budget was adopted, \$20,618,267 available for eligible CHP/Fuel Cell projects. It is clear in hindsight that this could not have been the case, since applications that were submitted *even before the budget was adopted* received informal notification in late August, 2015 that FY 2016 program funds had already been exhausted. It remains unclear how much funding was actually available for new projects at the time the FY 2016 budget was adopted.

On October 13, 2015, updated budget figures for the CHP/Fuel Cell program were released for purposes of the Energy Efficiency Stakeholder process, including commitments of \$15,963,438 and an “available budget” of \$3,653,713. To be clear, the \$3,653,713 “available budget” figure was communicated to program participants at a time when there was in fact no available budget.

The FY 2016 “True Up” Budget released on October 22, 2016, includes an entry of \$8,065,206 entitled “Revised FY 2016 Budget Less Commitments” reflecting commitments as of September 30, 2016. A reasonable reading of the “True Up” Budget document seems to indicate that as of September 30, 2016 there was \$8,065,206 available for eligible CHP/Fuel Cell projects. Again, this cannot be the case since the program funding was at that point exhausted.

The lack of clarity in communicating the actual available budget has had a serious negative impact on program participants, including important

New Jersey customers. Many project developers and electric customers committed significant capital and human resources based upon program budget information that appears to have been erroneously or unclearly communicated.

The actual amount of available funding should be communicated to program participants on a regular basis in a format that clearly indicates how much funding is actually available for projects at a given point in time. Better communication will enhance the Board's efforts to promote clean, reliable distributed generation projects in the State of New Jersey.

Bloom Energy appreciates the opportunity to comment on this important matter and looks forward to working cooperatively to advance the objectives of the CHP/Fuel Cell Program.

Very truly yours,

/s/

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