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Irene Kim Asbury, Secretary of the Board
State of New Jersey Board of Public Utilities
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Comments of Center for Resource Solutions (CRS) in Response to the November 27th Questions for Stakeholder Comment on the New Jersey Board of Public Utilities (BPU) Generic Solar Proceeding

Ms. Asbury,

CRS appreciates this opportunity to submit comments in response to the recently published questions for stakeholders to address regarding the New Jersey Generic Solar Proceeding. The intent of these comments is to provide information on industry best practices in regard to the treatment of Renewable Energy Certificates (RECs) and consumer protection standards for solar energy marketing and consumption claims.

Background on CRS & Green-e®

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS has broad expertise in renewable energy policy design and implementation, electricity product disclosures and consumer protection, and greenhouse gas (GHG) reporting and accounting. CRS administers the Green-e programs. Green-e is the leading certification program for voluntary renewable electricity products in North America. For over 20 years, Green-e staff have worked with independent third-party auditors to annually verify renewable energy purchases in the voluntary market and ensure purchasers receive full environmental benefits and sole ownership of each megawatt-hour (MWh) of renewable energy they purchase. Verification procedures ensure there is no double counting between voluntary and compliance markets, and that other renewable energy or carbon policies do not claim any of the environmental benefits of certified renewable energy. In 2016, Green-e certified retail sales of over 48 million MWh, representing over 1.3% of the total U.S. electricity mix. In 2016, there were over 963,000 retail purchasers of Green-e certified renewable energy, including 53,000 businesses.

Implementing Consumer Protection Safeguards

In Section I.iv of the document containing questions for stakeholders to address, the BPU asks,

“Should the Board institute consumer protection safeguards for solar consumers, for hosts of third party owned solar projects, for investors in solar projects, or for ratepayers?”

CRS strongly encourages the BPU to develop and implement safeguards to ensure that both buyers and sellers understand what claims they can make regarding solar energy in New Jersey. Because the exact electrons generated by solar facilities cannot be directly transmitted through the electricity grid to individual customers, RECs must be used to track and account for the specified consumption of renewable

energy. Therefore, if a solar developer in New Jersey sells the electricity from one of its projects to a local business, but then retires the Solar Renewable Energy Certificates (SRECs) for compliance with the Renewable Portfolio Standard (RPS), then the customer purchasing that electricity is not actually purchasing solar energy and is not receiving the environmental attributes associated with the consumption of renewable energy. For this reason, we recommend creating and disseminating educational materials regarding solar claims, as well as instituting marketing and disclosure requirements for solar developers and electricity suppliers that retire SRECs for regulatory compliance and also sell the associated electricity in competitive markets.

The US Federal Trade Commission (FTC) provides substantiation for these types of consumer protection safeguards and the relevant implications for double counting and double claims:

“A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, unless the marketer has matched such non-renewable energy use with renewable energy certificates.”¹

“If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.”²

“[T]he operation of the renewable energy market relies heavily on the expectation of all market participants that these certificates have not been counted or claimed twice (i.e., double counted). Such double-counting can occur, for instance, through [...] renewable energy claims made by a company that already sold the RECs for its renewable generation. [...] Such double counting, in turn, not only risks deceiving consumers but also threatens the integrity of the entire REC market. By selling RECs, a company has transferred its right to characterize its electricity as renewable. Accordingly, the FTC's Green Guides advise that, if ‘a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.’ See 16 C.F.R. § 260.15(d).”³

“In addressing these issues in the Green Guides, the Commission [...] did warn that power providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable, when legally it is not. Accordingly, it advised such generators to exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable.”⁴

CRS has also published guidance on consumer protection and solar claims that might be useful to the BPU as it considers developing its own set of safeguards. The following are examples of relevant materials available on our website:

¹ U.S. Federal Trade Commission (FTC). *Guides for the Use of Environmental Marketing Claims*. (2012). Sec. 260.15(a). Available at: https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf

² *Ibid.* Sec. 260.15(d).

³ US Federal Trade Commission (FTC). *Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C.* February 5, 2015. Available at: https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf

⁴ *Ibid.*

- *REC Best Practices and Claims*. October 17, 2014. Available at: <https://resource-solutions.org/wp-content/uploads/2015/07/REC-Best-Practices-and-Claims.pdf>;
- *Solar Energy on Campus. Part I: Renewable energy Usage Claims*. December 28, 2016. Available at: <https://resource-solutions.org/wp-content/uploads/2016/08/Solar-Energy-on-Campus-I.pdf>;
- *Solar Energy on Campus. Part II: Solar Purchasing Options and Communicating Renewable Energy Use*. December 28, 2016. Available at: <https://resource-solutions.org/wp-content/uploads/2016/09/Solar-Energy-on-Campus-II.pdf>;
- *Solar Energy on Campus. Part III: Key Considerations for Developers Working with Higher Education Institutions*. December 28, 2016. Available at: <https://resource-solutions.org/wp-content/uploads/2016/12/Solar-Energy-on-Campus-III.pdf>; and
- *Solar Energy on Campus. Part IV: Community Purchasing Campaigns and Renewable Energy Usage Claims*. December 28, 2016. Available at: <https://resource-solutions.org/wp-content/uploads/2016/12/Solar-Energy-on-Campus-IV.pdf>.

SREC Issuance and Potential Use of Fractional SRECs

In Section III.iii of the document containing questions for stakeholders to address, the BPU asks,

“Should the utility-scale, grid supply solar segment continue to get SRECs since left unfettered this segment with its economies of scale and relatively lower priced SREC requirements can crowd out residential and C&I market segments? Is the award of fractional SRECS or NJ Class I REC multipliers a feasible means to level the economic incentives needed by different scale solar generation facilities?”

The BPU should clarify what it means in regard to whether or not utility-scale solar facilities will continue to receive SRECs. If it intends for these projects to be ineligible for RPS compliance, then it should state this specifically. As it is written here, it seems as if the BPU may be proposing that these projects should not be issued RECs at all, which could create accounting issues in markets for renewable energy. As noted in the previous section, RECs are used to track and account for renewable energy production and consumption in both compliance and voluntary markets. Therefore, these facilities should continue to receive RECs for their production of renewable energy. State regulation can then dictate whether these RECs may be used toward RPS compliance or would need to be sold exclusively in the voluntary market for renewable energy.

CRS also cautions against the issuance of fractional RECs. Because one REC is universally defined as equivalent to the full suite of environmental attributes associated with one megawatt-hour (MWh) of renewable energy, there is an inherent risk in assigning less than one REC for each MWh of electricity generated. Fractional REC issuance can lead to inaccurate and incorrect accounting of renewable energy production and consumption, and at the very least, increased transaction costs in the voluntary market, where additional steps would be required to verify transactions and exclusive delivery/ownership of the environmental attributes of one MWh of solar energy produced in New Jersey. For example, if a MWh of utility-scale solar is issued only a fraction of a REC, or RECs representing less than the full suite of environmental attributes associated with one MWh of solar generation, and this generation is sold into the voluntary market, it may be unclear to the purchaser how many fractional SRECs are needed to match each MWh of their electricity consumption. To prevent consumer confusion and preserve accurate and consistent accounting, each MWh of solar generation should be issued one SREC, regardless of the facility's size, location, or purpose.

Similarly, we urge caution in the use and application of multipliers. When one MWh of generation corresponds to more than one MWh of compliance credit, it may be more difficult for electricity customers to understand how much renewable energy the system mix actually contains and can therefore become confused about how much additional renewable energy they would need to voluntarily purchase to match 100 percent of their consumption, if they so choose. Also, depending on how a multiplier is accounted for, there may be a risk that these MWh could be double counted within the PJM Generation Attribute Tracking System (GATS), which is also used to track MWh sold in the voluntary market. CRS recently published a paper on the intersection of compliance and voluntary markets for renewable energy, in which the need to avoid disaggregating or splitting RECs and the need to consider the implications of creating multipliers that complicate accounting are discussed in Sections 7 and 8, respectively.⁵

Conclusion

Should the BPU have any additional questions relating to these comments or the suggestions contained herein, CRS would be happy to provide clarifying information and participate further as the Generic Solar Proceeding progresses.

Respectfully submitted,



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⁵ Center for Resource Solutions (CRS), prepared for Clean Energy States Alliance (CESA). Two Markets, Overlapping Goals: Exploring the Intersection of RPS and Voluntary Markets for Renewable Energy. July 1, 2017. Available at: <https://resource-solutions.org/wp-content/uploads/2017/08/RPS-and-Voluntary-Markets.pdf>