



November 12, 2010

VIA REGULAR AND ELECTRONIC MAIL

Hon. Robert Smith
Chairman, Senate Environment and Energy Committee
216 Stelton Rd., Suite E-5
Piscataway, NJ 08854

Re: Senate Bill 2371 – Opposition of Retail Energy Supply Association

Dear Senator Smith:

I am writing on behalf of the Retail Energy Supply Association (“RESA”) in opposition to your recently introduced legislation, Senate Bill 2371. RESA applauds the New Jersey legislature and this Committee for its commitment to renewable energy policy and promoting solar development in particular. RESA supports properly crafted policies that promote solar development in a competitively neutral manner. However, S-2371 may have unintended consequences for both the solar industry and the competitive retail energy market. For example, S-2371 appears to require *only* third-party energy suppliers (“TPSs”) to enter into contracts of 15 years or longer whenever they establish a contract to purchase Solar Renewable Energy Credits (“SRECs”). As you know, SRECs are used by both TPSs and Basic Generation Service (“BGS”) Suppliers (“BGS Suppliers”) to meet their obligations under the State’s Renewable Portfolio Standards (“RPS”). In addition to the consequences S-2371 will have on the cost of SRECs and ultimately the cost to end users, RESA member companies will be faced with a stark competitive disadvantage relative to the exempted BGS Suppliers that provide BGS. Accordingly, while RESA supports the underlying goal of promoting solar development, RESA must oppose S-2371 both for its disparate and anti-competitive impact and for the harm it will cause to the SREC market.

In recent years, the State has established a very attractive market for solar development, including numerous grant and incentive programs and a robust SREC trading market that allows developers and suppliers to enter into bilateral transactions, often for terms of up to five years in duration. Despite this, some solar developers report having difficulties securing long term SREC supply contracts. These developers claim to require such contracts to obtain the financing

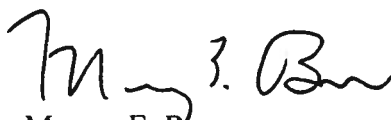
necessary to fund their solar development projects. On the other hand, other solar developers have successfully financed several projects in New Jersey without the need for long term SREC supply contracts. For example, one RESA member company recently broke ground on a 20 MW facility in Pilesgrove, NJ—one of the largest solar projects on the east coast. While S-2371 attempts to address the concerns of those solar developers who claim to require long term SREC supply contracts, it also creates unintended consequences that will harm both the New Jersey retail electric supply market and, to an even greater degree, the State's existing market for SRECs.

RESA's initial concern with S-2371 is the duration of its mandated 15-year contracting requirement. New Jersey's competitive retail electric supply market is dynamic and supplier market share changes from year to year. As a result, TPSs do not, and as responsible businesses cannot, consider contract terms of 15 years or longer for any component of their energy supply costs, including supply arrangements to meet the New Jersey SREC obligations. TPSs generally "hedge" supply for a time horizon that matches up with its retail customer contracts. Such retail contracts typically do not extend past three years. Because of the short to mid-term nature of TPS retail contracts, it is impractical and irresponsible for a TPS to enter into supply arrangements for long term periods. To impose a 15 year energy supply obligation on a dynamic market which fluctuates from year to year would place a significant financial risk on a TPS, effectively precluding them from hedging SRECs to match the term of their load obligations and giving them the choice of entering into long-term speculative purchases or buying short-term or paying the SACP to meet their obligations. Since most companies have specific risk and/or credit policies that preclude them from long term speculative transactions, it is unlikely that any TPSs remaining in the State upon the passage of S-2371 will purchase SRECs at all. Instead TPSs will exercise their right to meet their solar RPS through payment of the Solar Alternative Compliance Payment ("SACP") system. This outcome would, in effect, cripple the entire solar development market that has historically enjoyed robust participation by TPSs, because revenue from the SACP structure must be credited back to ratepayers and does not accrue to solar developers.

RESA is also concerned that S-2371 only targets the retail electric supply segment of the state's overall energy supply market. In New Jersey, BGS Suppliers and TPSs make up the two major segments of businesses that provide energy supply. TPSs provide energy supply directly to end-use customers. According to the Board's December 10, 2001 Order in Docket Nos. Docket No. EX01050303, EO01100654, EO01100655, EO01100656 and EO01100657, BGS Suppliers do not serve end-users, but rather supply the EDCs who, in turn, provide service to end users. S-2371 applies its onerous contract requirement to only "non-utility load serving entities" that serve the electric power needs of "end users." This provision therefore unfairly disadvantages TPSs because of the long term SREC contract obligation and places TPSs on an uneven playing field with BGS when competing for customers.

Currently pending before this Committee is A-2529 which was passed in the Assembly on October 25. This bill, sponsored by Assemblyman Chivukula and supported by the Board of Public Utilities (“BPU”), contains provisions which promote solar development by providing more certainty to TPSs and BGS suppliers in meeting their respective solar obligations. Specifically, A-2529 creates market certainty through a percentage-based SREC calculation method and a clarification to the eligibility requirements for solar projects. RESA would respectfully ask that you post A-2529 for Committee consideration at your next scheduled meeting.

Respectfully submitted,



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Dated: November 12, 2009

cc: Senator Robert M. Gordon
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