

MURRAY E. BEVAN
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December 10, 2018

VIA ELECTRONIC MAIL

The Honorable Aida Camacho-Welch
Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Trenton, NJ 08625-0350

Re: *I/M/O the Allocation of Renewable Portfolio Standards for Basic Generation Service for the Period Beginning June 1, 2019*
Docket No. EO18111250

Dear Secretary Camacho-Welch:

This firm represents the Retail Energy Supply Association (“RESA”),¹ a diverse group of retail electric and gas suppliers that share a common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than do vertically-integrated, regulated utility providers. RESA provided comments at the December 7 stakeholder meeting in the above captioned matter. These written comments are intended to supplement RESA’s testimony and respond to Questions 1, 2, and 3 in the meeting notice for the above captioned docket.

1. How to allocate the solar RPS obligations of the exempt entities amongst the non-exempt entities. See Attachment A.

It is unclear from the Board’s stakeholder meeting notice how the shortfall in solar renewable portfolio standard (“RPS”) requirements for EY 2019 attributable to the exempt basic generation service provider (“BGSP”) contracts during EY 2019 is proposed to be made-up, but

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

one interpretation could be that such shortfall would not fall upon 2019 and 2020 BGSP contracts at all and that, instead, it would fall upon third party supplier (“TPS”) contracts. If this were to occur (exempting future BGSP contracts from responsibility for the EY 2019 solar shortfall caused by exempting pre-existing BGSP contracts), New Jersey TPS customers would be severely harmed by a requirement that TPSs account for not only their own portion of the increased solar RPS supplier load but also the exempt load of the BGSPs.² This action targeting TPS customers will result in tens of millions of dollars of additional, unanticipated and unforeseen customer charges. Such a result would be in clear violation of the 2018 Clean Energy Act, P.L. 2018, C. 17, which requires that non-exempt BGSPs (i.e., those BGSP contracts entered after the enactment of the Clean Energy Act) account for exempt BGSP load. The statute, cited in part below, clearly requires *providers* to account for the exempt *provider* load.

Such incremental requirements that would have otherwise been imposed on exempt providers **shall be distributed over the providers not subject to the existing supply contract exemption** until such time as existing supply contracts expire and all providers are subject to the new requirement **in a manner that is competitively neutral among all providers and suppliers.**

(emphasis added). N.J.S.A. 48:3-87(d)(3)(c). RESA also notes that this section of the statute requires a “competitively neutral” application of the law. Clearly, requiring TPSs to pay for their own and the BGSP exempt load is contrary to the statute’s competitive neutrality provision.

The Solar Energy Advancement and Fair Competition Act, (“SEAFCA”), P.L. 2009, C. 289, was specifically amended in 2012 to remove the provision requiring TPSs and non-exempt BGSP providers to pay for the BGSP exempt load. Any interpretation by the Board that would require TPSs (“electric power suppliers,” or “suppliers”) to account for exempt BGSP load would not only violate the provision of the current statute requiring non-exempt BGSPs to account for exempt BGSP load, it also violates the requirement for the law to be applied in a “competitively

² By statute, BGSPs are defined as “providers” while TPSs are referred to as “electric power suppliers.” N.J.S.A. 48:3-51.

neutral” manner *and* further violates the provisions of the law prohibiting supplier subsidization of providers. N.J.S.A. 48:3-87(d)(3)(c).

An interpretation of the Act by the Board that would require TPSs to account for exempt BGSP load is particularly perplexing as none of the parties offering testimony at the public hearing on December 7 took the position that TPSs be responsible for their own obligation as well as the exempt BGSP obligation. The Independent Energy Producers of New Jersey (“IEPNJ”) and the Solar Energy Coalition support the same position as RESA – BGSPs should account for the exempt EY 2019 BGSP load in EY 2020. RESA also refers to the final comments filed by the EDCs in the 2019 BGS Auction proceeding which includes a proposed calculation for *providers* to use to account for the exempt *provider* load in the next BGS auction.³

There are additional consequences if the Board adopts the competitively harmful outcome described above. More than six months into EY 2019, Board Staff would have to estimate the BGSP load for 2019 and communicate it to TPSs, and in turn, TPSs would have to modify their billings systems and include the increased cost in their billings to customers. In other words, TPSs will have to go back to their customers – again – and increase their rates to pass through these unknown, unanticipated, and impossible to calculate charges. Realistically, implementation could be delayed until the next Energy Year. In addition, Environmental Information Disclosure (“EID”) labels will have to be modified to show that TPS customers are accounting for a disproportionate share of the renewable energy load in the State. It should also be noted that numerous TPS contracts that spanned into EY 2019 have since expired, and customers have been switched to new TPSs during EY 2019; it would be a logistical nightmare for individual TPSs to attempt to go back and charge TPS customers that they no longer serve for their share of the exempt BGSP solar obligation for EY 2019.

³ I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2019, Docket No. ER18040356, Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company Joint Final Comments, October 12, 2018, at p. 8.

RESA would note that TPS customers are already paying for the EY 2019 solar RPS increase, as required by the 2018 Clean Energy Act. Requiring TPS customers to now pick up the exempt BGSP load, in the middle of the energy year, and in clear violation of the statute would result in unprecedented damage to the competitive market. TPSs do not even know how much BGSP load is exempt and it is simply unrealistic to expect TPSs to pay for unknown load share in direct contravention of the law.

RESA submits that Attachment A to the meeting notice is incorrect and should not be adopted by the Board. First, this document gives the impression that TPSs and BGSPs will share in accounting for the non-exempt BGSP load. All of the existing BGSP contracts are exempt from the EY 2019 increase – meaning that *only* TPSs are responsible for the exempt BGSP load per the instructions in Attachment A (despite clear statutory language to the contrary). Second, the instructions in Attachment A seem to be identical to those instructions adopted after SEAFCA, when non-exempt BGSPs and TPSs had to share the responsibility for exempt BGSP load. This language requiring “supplier” responsibility for “provider” exempt load was removed from the statute in 2012. Therefore, the instructions are not based on current law and it would be contrary to law for the Board to use them.

For EY 2019, TPSs are required to purchase SRECs equal to 4.3% of their retail load. N.J.S.A. 48:3-87(d)(3). Since all BGS contracts are exempt, consistent with the prior statutory obligation, the BGSP share is 3.29% of the BGSP retail sales. BGSPs should account for the exempt EY 2019 load in the next BGS auction. By statute, TPSs are not responsible for the exempt BGSP load. In EY 2020, the Board should follow similar calculations to those it proposed in EY 2014 and 2015, when BGSPs had to account for exempt BGSP load. In this manner, RPS obligations will be fulfilled in a competitively neutral manner that does not require TPSs subsidy to BGSPs.

It is important to understand that RESA is not arguing that the RPS requirements for EY 2019 be avoided or lowered – RESA is advocating for the EY 2019 exempt obligation for BGSPs to be included in the BGSP obligation for EY 2020.

2. What the RPS requirements should be for Energy Year (EY) 2019, EY 2020, EY 2021, and EY 2022. See Attachment B.

RESA is confused by this attachment, as it checked the “totals” for these EYs and it appears the first line for the June 1, 2019 – December 31, 2019 column is incorrect. The correct total proposed percentage for that line should be 23.429%, not 18.53%. Similarly, the first total for the January 1, 2020 – May 31, 2020 line is incorrect – these numbers add up to a total obligation of 28.4%, not 23.5%. RESA encourages the Board to carefully review this attachment.

RESA does not support the adoption of Attachment B. As discussed below, this document does not acknowledge that the solar RPS obligation is a carve out of the overall Class I RPS obligation, and as such, the Class I obligation proposed in this document is too high and should be lowered.

RESA also notes that while the 2018 Clean Energy Act exempted existing BGSPs from the increase in *solar* obligations, there is no similar exemption for changes to the Class I RPS obligation. The total percentage requirements for TPSs and BGSPs, regardless of whether or not the contract is exempt, should be identical.

3. Whether to consider solar obligations to be included within the overall Class I obligations as a carve-out, such that SRECs submitted to satisfy the solar RPS will also be counted toward the satisfaction of the total Class I RPS rather than being considered additive to the Class I RPS. See Attachment B.

RESA maintains its previously stated position that solar is a carve-out of the Class I RPS obligation. The Board’s regulations at N.J.A.C. 14:8-2.3(f)(1) allow suppliers to use solar renewable energy certificates (“SRECs”) in place of Class I RECs to comply with the State’s RPS standards, which supports RESA’s belief that the solar RPS is a carve-out or set-aside of the Class I RPS. In addition, the statutory definition of “Class I renewable energy” includes “electric energy produced from solar technologies, photovoltaic technologies . . .” N.J.S.A. 48:3-51. RESA also points to the Board’s New Jersey Portfolio Standard Rules 2010 Annual Report which notes in

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Appendix 3 that “[t]he Board grandfathered BGS auction winners with pre-existing contracts by exempting their load *from the new solar carve-out requirements.*”⁴ (emphasis added).

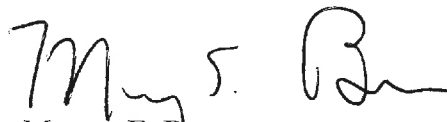
RESA is aware of comments during the December 7 stakeholder session pointing out that offshore wind is an “explicit” carve out of the Class I obligations. Respectfully, RESA submits that solar did not have to be “explicitly” carved out of the Class I RPS obligations because solar is included in the definition of Class I renewable energy, whereas “offshore wind” is not. RESA joins with Rate Counsel and IEPNJ in asserting that solar is a carve out of the Class I RPS obligations.

Assuming this interpretation is correct, only a minimal increase in Class I obligations is required for EY 2020 compliance. Given the leap in the solar obligation, this protects ratepayers from increasing costs as neither BGSPs nor TPSs are exempt from the Class I RPS increase.

RESA is attaching to this filing its June 22, 2018 correspondence (“Attachment A”) and its December 5, 2018 correspondence (“Attachment B”). RESA believes it has raised very serious concerns about the proposal for TPSs to pick up the exempt BGSP load in violation of the 2018 Clean Energy Act, and hopes the Board will adopt a competitively neutral Order, consistent with the law, that does not require TPSs to subsidize BGSPs in direct violation of the Act.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



Murray E. Bevan

Enclosures

⁴ A draft of the 2010 report is available at http://www.njcleanenergy.com/files/file/Renewable_Programs/Draft_2010_Annual_Report_for_New_Jersey_041311_version.pdf; RESA refers to Appendix 3, note 6, on page 32.

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cc: Grace Strom Power
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ATTACHMENT A

MURRAY E. BEVAN
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June 22, 2018

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Ken Sheehan
Director, Office of Economic Development and Emerging Technologies
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Trenton, NJ 08625-0350

Re: Implementation of the 2018 Clean Energy Act, P.L. 2018, c. 17

Dear Mr. Sheehan:

This office is counsel to the Retail Energy Supply Association (“RESA”),¹ a diverse group of retail electric and gas suppliers that share a common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than do vertically-integrated, regulated utility providers.

RESA members, Government Energy Aggregators, most significantly our customers, as well as many other participants in the retail electric market, have urgent concerns regarding the implementation of P.L. 2018, C. 17, the “2018 Clean Energy Law” signed by Governor Murphy on May 23, 2018. This law implements purportedly immediate changes to the renewable portfolio standards (“RPS”) requirements imposed on the State’s third party suppliers (“TPSs”) as well as its default Basic Generation Service Providers (“BGSPs”). RESA requests the Board issue guidance on implementation of the new law, and address the following below concerns as key topics that will immediately impact the retail electric and renewables markets in New Jersey.

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

Implementation of this new law has led to confusion among the various parties in the retail supply industry who are all trying to interpret the law and guidance from the Board would ultimately eliminate customer confusion. Prompt answers to the following issues are needed because without timely direction from the Board, the retail electric supply market and the rates charged to customers will be severely and negatively impacted.

1. The 2018 Clean Energy Law provides language exempting BGSP contracts from the immediate increase in the solar RPS. However, the law also requires the Board to implement changes to the solar RPS “in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.”

RESA believes that requiring TPSs to comply with an immediate increase to the solar RPS requirements directly and immediately harms the competitive retail electric supply industry, in direct contravention to the statutory language cited above, as well as the statutory goals outlined in the Electric Discount and Energy Competition Act (“EDECA”) which, in pertinent part, provides as its statutory purpose to:

Place greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers in greater variety and at lower cost than traditional, bundled public utility service[.]

N.J.S.A. § 48:3-50(a)(2).

The solar RPS requirement for Energy Year (“EY”) 2019 was 3.290% of retail load prior to the enactment of the 2018 Clean Energy Law – it is now 4.300% of retail load. This change represents an overall increase of 30.7% in suppliers’ actual RPS obligation that will presumably be assessed against retail suppliers (those with existing supply contracts as well as those making offers to retail customers for new contracts) but not default BGSPs. This represents an unfair,

competitively harmful cost increase to retail supply customers. Moreover, it directly contradicts the statutory purposes of EDECA, which remains law to this day.

RESA submits that if the Board were to implement the changes to the solar RPS in a truly competitively neutral fashion – as required by the 2018 Clean Energy Law and EDECA, it would exempt TPSs from the increase in EY 2019 and add this increased obligation to TPSs' RPS obligations in EY 2020. This would allow for the required competitively neutral implementation of the 2018 Clean Energy Law. This would also alleviate any concerns over exempting individual TPS contracts, which RESA believes would be an arduous and nearly impossible mechanism to implement. Suppliers can account for the EY 2019 increase in EY 2020, just like the BGSPs, ultimately fulfilling the statutory mandate to account for increased solar RPS requirements in a manner that promotes a level playing field in the competitive electric supply industry. Requiring TPSs to foot the bill for the increase while BGSPs sit unaffected until next year is neither competitively neutral nor an encouragement to further competition in the retail market, contravening the directives in the statute. It simply cannot be overstated that requiring TPSs to pass through increased solar RPS costs to their customers while customers on default service see no change will have a devastating, immediately detrimental impact on the retail electric market in New Jersey. The Board should not sacrifice TPSs and their customers to prop up another industry when the Board can ensure competitively neutral treatment of TPSs without damaging the solar market.

Moreover, in recent years, the State has seen an increase in GEA bids and programs in many municipalities. GEA programs allow municipalities and consortiums of government entities to pool together and solicit bids for energy procurement, allowing savings for many residents and local government entities. In addition, a number of municipalities are attempting to implement Renewable Aggregation (“R-GEA”) programs, which would result in additional solar and renewables sales, above the current RPS standards. However, without competitive neutrality between BGSPs and TPSs, these RGEAs will likely grind to a halt.

As TPSs compete to serve these GEA programs and are the suppliers of electricity under these programs, changes to the solar RPS in the middle of a GEA agreement will have an immediate impact on the contract entered by the TPS and the government entity if TPSs are required to pass through the solar RPS immediately rather than in EY 2020 along with the default BGSPs. If TPSs have to pass through costs now, the possibility of any GEA programs being furthered or created until EY 2020 RPS obligations are applied in a competitively neutral manner is almost non-existent. RESA urges the Board to consider the larger picture of not just TPS costs and implementation, but rather the ultimate disproportionate burden on TPS customers that is manifested when one part of the industry is subjected to increased requirements to subsidize renewables while another part of the industry is allowed to push off the obligation for an entire year.

While the above concern is of paramount importance to RESA, RESA members have two additional questions below on which they hope the Board will provide guidance after the Board provides guidance on the first question.

2. The 2018 Clean Energy Law increases the Class I RPS requirement to 21% by January 1, 2020; to 35% by January 1, 2025, and to 50% by January 1, 2030. Further, the Law increases the Solar RPS to 4.3% in EY 2019 and 4.9% in EY 2020.

RESA highlights this change as it is an item of importance for retail electric suppliers in New Jersey's market. Does the January 1, 2020 implementation date in the legislation act as a deadline for the Board to implement rulemaking changes to update the new Class I RPS percentage requirement? If not, what effect does this date have on the retail electric market? Will the Board implement the Class I RPS increases at regular intervals each Energy Year between 2020 and 2030? Will there be any big jumps in Class I RPS requirements to implement these changes?

Second, RESA requests clarification on whether the solar RPS functions as a true “carve-out” of the Class I RPS requirements. In order to demonstrate its concerns, RESA includes the below chart demonstrating current Class I requirements codified in the Board’s regulations, with the new solar RPS codified in the 2018 Clean Energy Law, for EY 2019-2021.

Energy Year	Current Class I RPS	New Solar RPS	Total
2019	14.175%	4.300%	18.475%
2020	16.029%	4.900%	20.929%
2021	17.880%	5.100%	22.98%

If the solar RPS is a “carve out” of the total Class I RPS requirement, then changes to the individual Class I percentage requirement to meet the statutory target of 21% by 2020 amounts to a small increase of 0.071%. *However*, if the Board does not treat solar as a “carve out” of the Class I RPS, then TPSs are facing additional procurement costs to cover the 4.971% increase from the current EY 2020 Class I requirement of 16.029%.

RESA has generally understood the solar RPS requirement to be a carve-out, or set-aside, of the overall Class I obligation, and no language in the statute supports an alternative understanding. Moreover, the Board’s regulations at N.J.A.C. 14:8-2.3(f)(1) allow suppliers to use solar renewable energy certificates (“SRECs”) in place of Class I RECs to comply with the State’s RPS standards, which supports RESA’s belief that the solar RPS is a carve-out or set-aside of the Class I RPS.

It is important that TPSs receive guidance from the Board as soon as possible on how the Board will treat the solar RPS with respect to overall Class I RPS obligations. Many suppliers are already entering or contemplating contracts well into EY 2020. This information will have a direct impact on price to customers as well as bids, contracts, and spot market purchases of Class I RECs.

3. Prior to the enactment of the 2018 Clean Energy Law, Section d.1 provided as follows:

[The board shall adopt] renewable energy portfolio standards that shall require: (1) that two and one-half percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from **Class I or** Class II renewable energy sources;

(emphasis added).

Under the 2018 Clean Energy Law, the section removes the above bolded language and now provides as follows:

[The board shall adopt] renewable energy portfolio standards that shall require: (1) that two and one-half percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class II renewable energy sources;

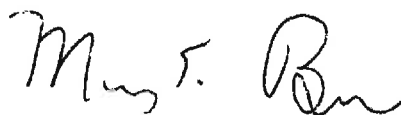
Currently, the Board's regulations at N.J.A.C. 14:8-2.3(f)(2) allow TPSs to utilize Class I RECs to satisfy their annual 2.5% Class II RPS obligations. RESA requests that the Board clarify whether or not the removal of the words "Class I or" from the statute will require TPSs to satisfy Class II obligations solely with Class II RECs. Many suppliers have existing contract and purchase obligations with Class I REC providers in reliance on the current regulatory scheme which allows TPSs to use Class I RECs for Class II compliance. Any changes to this dynamic need to be signaled to the retail supply community as well as to Class I REC providers as soon as possible.

RESA is deeply concerned about the implementation of the 2018 Clean Energy Law, and requests prompt support and guidance from the Board in order to ensure orderly implementation of these new requirements. In the alternative, RESA asks that the Board implement a proceeding

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as soon as possible so stakeholders and Staff can collaborate and implement appropriate solutions that do not harm the competitive market and further the Governor's goals for increased use of renewable energy in New Jersey.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Murray E. Bevan". The signature is fluid and cursive, with the first name "Murray" and the last name "Bevan" clearly distinguishable.

Murray E. Bevan

cc: Grace Strom Power
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ATTACHMENT B

MURRAY E. BEVAN
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December 5, 2018

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Stacy Peterson
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Trenton, NJ 08625-0350

Re: Implementation of the 2018 Clean Energy Act, P.L. 2018, c. 17

Dear Ms. Peterson:

This office is counsel to the Retail Energy Supply Association (“RESA”),¹ a diverse group of retail electric and gas suppliers that share a common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than do vertically-integrated, regulated utility providers. RESA previously wrote to the Board to express concern about implementation of P.L. 2018, C. 17, (the “2018 Clean Energy Act”) and is pleased that the Board will address some of the concerns raised by RESA at its December 7, 2018 stakeholder meeting. Since RESA did not have an opportunity to address the EDCs’ final comments in the BGS proceeding, RESA is providing these comments for consideration prior to the December 7 stakeholder meeting.

Several changes to the State’s renewable portfolio standard (“RPS”) requirements have been implemented over the past decade. In order to provide a more comprehensive picture of the

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most recent RPS changes implemented by the 2018 Clean Energy Act, RESA offers this summary of past legislative changes to the RPS.

In early 2010, the Solar Energy Advancement and Fair Competition Act (“SEAFCA”), P.L. 2009, C. 289, was signed in to law. SEAFCA converted the solar RPS from a percentage requirement (codified in the New Jersey Administrative Code) to a fixed GWh requirement, codified in statute. SEAFCA also exempted existing basic generation service provider (“BGSP”) contracts from the increase in the solar RPS, and required non-exempt BGSP contracts and all third party suppliers (“TPSs”) to account for the exempt BGSP load. The relevant statutory language can be found below.

The board shall exempt **providers’** existing supply contracts that are: (a) effective prior to the date of P.L.2009, c.289; or (b) effective prior to any future increase in the solar renewable portfolio standard beyond the multi-year schedule established in paragraph (3) of this subsection. This exemption shall apply to the number of SRECs that exceeds the number mandated by the solar renewable portfolio standards requirements that were in effect on the date that the providers executed their existing supply contracts. **This limited exemption for providers’ existing supply contracts shall not be construed to lower the Statewide solar purchase requirements set forth in paragraph (3) of this subsection. Such incremental new requirements shall be distributed over the electric power suppliers and providers not subject to the existing supply contract exemption until such time as existing supply contracts expire and all suppliers are subject to the new requirement.**

(emphasis added).²

The RPS compliance instructions for energy year (“EY”) 2011 and 2012 and the solar compliance updates for those years explain the exempt load and the obligations of non-exempt BGSP and TPSs with respect to that exempt load. For EY 2011 compliance, BGSP contracts executed in 2008 and 2009 were exempt from the solar RPS increase.

² The full text of P.L. 2009, C. 289 can be accessed at https://www.njleg.state.nj.us/2008/Bills/PL09/289_PDF. The language cited above can be found on page 11. In addition, please note that the statute separately defines “basic generation service providers” and “electric power suppliers.”

The 2012 Solar Act (P.L. 2012, C. 24), converted the fixed GWh requirement for solar RPS to a percentage-based requirement, effective beginning in EY 2014. The 2012 Solar Act also amended some of the inequity found in SEAFCA – existing BGSP contracts were exempted from the increase in the solar RPS, however, only new BGSP contracts were responsible for the delta. The relevant language exempting existing BGSP contracts, but requiring new BGSP contracts to account for the increase is as follows:

The solar renewable portfolio standards requirements in this paragraph shall exempt those existing supply contracts which are effective prior to the date of enactment of P.L.2012, c.24 from any increase beyond the number of SRECs mandated by the solar renewable portfolio standards requirements that were in effect on the date that the providers executed their existing supply contracts. This limited exemption for providers' existing supply contracts shall not be construed to lower the Statewide solar sourcing requirements set forth in this paragraph. Such incremental requirements that would have otherwise been imposed on exempt providers shall be distributed over the providers not subject to the existing supply contract exemption until such time as existing supply contracts expire and all providers are subject to the new requirement in a manner that is competitively neutral among all providers and suppliers. The board shall implement the provisions of this subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.

(emphasis added).³ This law clearly requires *only* BGSPs to account for exempt BGSP load, in the interest of promoting competition in the electric supply industry.

A review of the RPS compliance instructions for EYs 2014 and 2015 shows that the calculations for BGSPs were more complicated than those for TPSs, as non-exempt BGSPs were required to account for exempt BGSP load. For EY 2014, non-exempt BGSPs had to account for

³ The 2012 Solar Act can be accessed at https://www.njleg.state.nj.us/2012/Bills/PL12/24_.PDF. The language cited above can be found on pages 14-15.

exempt BGSP load from contracts entered in 2011 and 2012.⁴ In EY 2015, non-exempt BGSPs had to account for exempt load from contracts entered in 2012.⁵ Meanwhile, TPSs performed a straightforward calculation based on a percentage of their retail sales.

The most recent changes to the RPS were implemented in the Clean Energy Act. Similar language exempting existing BGSP contracts, but requiring non-exempt BGSPs to account for exempt BGSP load, was included:

The solar renewable portfolio standards requirements in this paragraph shall exempt those existing supply contracts which are effective prior to the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.) from any increase beyond the number of SRECs mandated by the solar renewable energy portfolio standards requirements that were in effect on the date that the providers executed their existing supply contracts. **This limited exemption for providers' existing supply contracts shall not be construed to lower the Statewide solar sourcing requirements set forth in this paragraph. Such incremental requirements that would have otherwise been imposed on exempt providers shall be distributed over the providers not subject to the existing supply contract exemption until such time as existing supply contracts expire and all providers are subject to the new requirement in a manner that is competitively neutral among all providers and suppliers.** Notwithstanding any rule or regulation to the contrary, the board shall recognize these new solar purchase obligations as a change required by operation of law and **implement the provisions of this subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.**

(emphasis added).⁶ The 2018 Clean Energy Act retains the requirement that TPSs not subsidize BGSPs and that the law be implemented to promote competition in the electric power supply industry.

⁴ The EY 2014 RPS update and compliance instructions can be accessed at <http://www.njcleanenergy.com/files/file/rps/NJRPS%20EY14%20Final%20Solar%20Compliance%20Instructions%20100614.pdf>.

⁵ EY 2015 compliance instructions can be accessed at: http://www.njcleanenergy.com/files/file/Renewable_Programs/RPS/ENERGY%20YEAR%202015%20RPS%20REPORTING%20INSTRUCTIONS.pdf.

⁶ The 2018 Clean Energy Act can be accessed at https://www.njleg.state.nj.us/2018/Bills/PL18/17_.PDF. The relevant language can be found on pages 5-6.

RESA believes the 2018 Clean Energy Act is clear that the increase in solar RPS, as it relates to BGSPs, must be covered by non-exempt BGSP contracts. Since all existing BGSP contracts are exempt under the law, the next BGSP solicitation must account for this exempt load. The Board cannot require TPSs to shoulder *any* of the exempted BGSP load. Such a requirement would be contrary to previous interpretations of identical language, damage the competitive market, grind government energy aggregation (“GEA”) programs to a halt, and require that TPSs subsidize BGSPs – meaning such a requirement would be contrary to the clear language in the statute.

The EDCs final comments in the BGS auction offer their opinion that BGSPs should not face increased solar requirements. Unfortunately, this interpretation runs afoul of the 2018 Clean Energy Act’s requirements that the exemption for BGSP contracts cannot be construed to lower the RPS requirements. New BGSP contracts entered next year will have to account for the exempt EY 2019 load. There is no other party, under the statute, that can account for the exempt load, and no other way to ensure that RPS requirements are met as required.

RESA also urges the Board to take notice of the fact that New Jersey’s TPS customers are *already* bearing the cost of this RPS increase, as the law requires the Board to recognize the RPS change as a “change required by operation of law.” Short of exiting the New Jersey market, TPSs had no choice but to pass through these increased costs to their customers. Allowing the BGSPs to shirk the clear requirements of the 2018 Clean Energy Act would further run afoul of the clear statutory requirement for the Board to “implement the provisions of this subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.”

In its June 22 letter, RESA raised concerns regarding implementation of the new Class I increased RPS requirements. In part, RESA opined that the solar RPS requirement is a carve-out, or set-aside, of the overall Class I obligation, and no language in the statute supports an alternative understanding. Moreover, the Board’s regulations at N.J.A.C. 14:8-2.3(f)(1) allow suppliers to use solar renewable energy certificates (“SRECs”) in place of Class I RECs to comply with the

State's RPS standards, which supports RESA's belief that the solar RPS is a carve-out or set-aside of the Class I RPS. RESA notes that the statutory definition of "Class I renewable energy" includes "electric energy produced from solar technologies, photovoltaic technologies . . ." N.J.S.A. 48:3-51.

A contrary interpretation of the increase in Class I requirements would be demonstrably harmful to TPSs. In order to explain its concerns, RESA created the below chart demonstrating current Class I requirements codified in the Board's regulations, with the new solar RPS codified in the 2018 Clean Energy Law, for EY 2019-2021.

Energy Year	Previous Class I RPS	New Solar RPS	Total
2019	14.175%	4.300%	18.475%
2020	16.029%	4.900%	20.929%
2021	17.880%	5.100%	22.98%

If the solar RPS is a "carve out" of the total Class I RPS requirement, as RESA believes it to be, then changes to the individual Class I percentage requirement to meet the statutory target of 21% by 2020 amounts to a small increase of 0.071%. *However*, if the Board does not treat solar as a "carve out" of the Class I RPS, then TPSs (and BGSPs) are facing additional procurement costs to cover the 4.971% increase from the current EY 2020 Class I requirement of 16.029%.

Lastly, RESA notes that while the 2018 Clean Energy Act raises Class I RPS requirements, the Act does not contain a Class I RPS schedule. RESA raised this concern in its June 22 correspondence to the Board. TPSs (and BGSPs) need to know the Class I RPS requirements in advance of each EY so that customer contracts and bids can be appropriately priced. Will the Board implement the Class I RPS increases at regular intervals each year between EY 2020 and

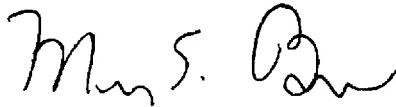
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EY 2030? Will there be large jumps in the Class I RPS requirement to comply with the 2018 Clean Energy Act, or will the Board implement a schedule with a graduated increase?

RESA is pleased that the Board is convening a stakeholder session to address these important questions. RESA urges the Board to not consider steps that would undercut the “competitively neutral” requirements of the Clean Energy Act, and hopes that this correspondence will assist the Board in implementation of the Act.

Please do not hesitate to contact us with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Murray E. Bevan". The signature is fluid and cursive, with the first name "Murray" and last name "Bevan" clearly distinguishable.

Murray E. Bevan

cc: Grace Strom Power
Noreen Giblin
Paul Flanagan
Rachel Boylan
Bethany Rocque-Romaine
Caroline Vachier