

March 20, 2020

Filed Electronically via solar.transitions@bpu.nj.gov

Aida Camacho-Welch, Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Re: Successor Program March 20 Comments of Dakota Power Partners

Dear Secretary Camacho-Welch:

Please accept the following comments of Dakota Power Partners, LLC (“Dakota”) in response to the February 28, 2020 Notice in Docket Nos. QO19010068 and QO20020184 – *In the Matter of a Solar Successor Incentive Program Pursuant to P.L. 2018, C.17*.

I. Overview of Dakota Power Partners

Dakota appreciates the opportunity to provide comments on the Solar Successor Incentive Program. Dakota is one of the most experienced developers of large-scale renewable energy projects in the United States. Dakota Power Partners and its investors have been direct participants in developing and funding over 10,000 MW of large-scale solar and wind projects now in operation nationwide. Dakota is currently developing 1,000 megawatts of utility-scale solar and energy storage systems in New Jersey. Dakota expects to achieve commercial operations on its first projects in New Jersey by 2021.

II. Responses to Questions in the February 28 Notice

Topic 2, Question 15: How can the State most efficiently progress towards the goals set in the Energy Master Plan, while balancing ratepayer costs for solar development in- and out-of-state?

In order to cost-effectively achieve its clean energy goals, New Jersey must balance higher priced solar incentives that encourage development of smaller, more-distributed solar resources on sites such as rooftops and brownfields with larger, dramatically lower-cost utility-scale solar resources that can cost-effectively produce clean energy at scale. The Board can accomplish this by (1) enabling all solar, including utility-scale solar (i.e., projects too large to qualify for SRECs) located both in- and out-of-state to qualify for Class I RECs, (2) establish a competitive bidding program for low-cost, in-state utility-scale solar, and (3) use successor incentives to encourage development of smaller, more-distributed solar resources on sites such as rooftops and brownfields.

a. New Jersey cannot embark on the least-cost pathway identified by the Energy Master Plan without critical regulatory reforms that enable utility-scale solar and out-of-state solar to contribute to the State’s renewable portfolio standard.

New Jersey utility-scale solar is an essential resource for achieving the State’s ambitious clean energy transition at the lowest cost and greatest benefit to the State. The 2019 Energy Master Plan (“EMP”) found that New Jersey can achieve its 100% clean energy and 80% greenhouse gas reduction goals with little added cost—and net savings when health benefits and climate change mitigation benefits are taken into account—by maximizing the development of in-state renewable energy generation, including 17,000 MW of solar energy by 2035 and 32,000 MW of in-state solar by 2050. Under the least cost path identified by the EMP, New Jersey solar will meet 34% of the State’s clean energy needs by 2050. To embark on this least cost path, the State will have to add approximately 1,000 MW of in-state solar per year through 2035.¹

New Jersey cannot cost-effectively achieve its clean energy goals with only small-scale distributed solar resources that are considered “connected to the distribution system” (i.e., solar resources that qualify for SRECs or their successor) because of their high cost and inability to achieve the necessary scale. There simply are not enough rooftops and brownfield sites to build 32,000 MW of solar by 2050. By comparison, utility-scale solar is roughly one-third the cost of commercial and industrial rooftop solar and roughly one-fifth the cost of residential rooftop solar. Utility-scale solar is not only the least-cost clean energy resource available, it is also a proven resource that can be deployed rapidly and at great scale without the need for massive new investments in the distribution system, custom-built deep water ports, and a fleet of special purpose ocean vessels that will be required for the creation of a new offshore wind industry in the US. New Jersey will need to deploy significant in-state utility scale solar resources to achieve its clean energy goals efficiently and cost-effectively.

Importantly, New Jersey cannot embark on the least-cost pathway identified by the EMP without critical regulatory reforms because Board regulations currently prohibit both in-state utility-scale solar and all out-of-state solar resources from contributing to the State’s renewable portfolio standard (“RPS”). Indeed, while New Jersey law, N.J.S.A. 48:3-51, defines “Class I renewable energy” to include, without condition, electric energy produced from solar technologies and photovoltaic technologies, the Board’s regulations have limited solar energy’s qualification as renewable energy to solar resources that are “connected to the distribution system in New Jersey.” Specifically, under N.J.A.C. 14:8-2.5(b), the only type of solar energy that qualifies as Class I renewable energy for compliance with the state’s renewable portfolio standard is solar electric generation in the form of solar renewable energy certificates (i.e., SRECs) or solar generation that was certified to receive SRECs after the facility’s qualification life for SRECs has ended. Under N.J.A.C. 14:8-2.2, “SREC” is defined as “a certificate issued by the Board or its designee, which represents one megawatt-hour (MWh) of solar energy that is generated by a facility connected to the distribution system in New Jersey, and has value based upon, and driven by, the energy market.” (Emphasis added). Under N.J.A.C. 14:8-1.2, any solar electric power generation facility connected at 69 kilovolts or above is not considered “connected to the distribution system.”

The effect of the Board’s regulations is to prohibit in-state utility-scale solar and all out-of-state solar from qualifying as Class I renewable energy and, thus, from contributing to the State’s RPS

¹ 1,000 MW each year for 2021-2035 plus 3,000 MW of existing resources in order to achieve 17,000 MW by 2035.

because neither is connected to the distribution system in New Jersey. Of note, the prohibition of out-of-state solar simply serves to reduce competition and therefore *increase* the cost of Class I RECs produced by out-of-state wind, thereby inflating the cost of out-of-state Class I renewable energy for New Jersey customers. Ultimately, the Board must revise its regulations to allow utility-scale solar and out-of-state solar to qualify as Class I renewable energy in order to efficiently and cost-effectively progress towards the goals set in the Energy Master Plan.

Dakota has filed a Petition for Rulemaking² with the Board to realign the Board's regulations with the statutory scheme to enable low-cost utility-scale solar facilities to qualify as Class I renewable energy for the purposes of issuance of Class I RECs usable for compliance with the RPS. Specifically, Dakota's Petition for Rulemaking proposes that the Board amend the list of resources that qualify as Class I renewable energy under N.J.A.C. 14:8-2.5(b) to include: Electricity derived from solar technologies or photovoltaic technologies. As amended, N.J.A.C. 14:8-2.5(b) would provide:

(b) The following qualify as Class I renewable energy for the purposes of this subchapter, with no prior approval required:

1. Electricity derived from solar technologies or photovoltaic technologies;
2. Electricity derived from wind energy;
3. Electricity derived from wave or tidal action;
4. Electricity that is geothermal energy, as defined in N.J.A.C. 14:8-2.2;
5. Electricity generated by the combustion of methane gas captured from a landfill;
6. Electricity generated by a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel. Electricity generated by a fuel cell powered by a fossil fuel shall not qualify as Class I renewable energy for the purposes of this subchapter; and
7. Electricity generated by the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility. (Emphasis added on proposed language).

This rule revision would enable those solar electric generation facilities that do not qualify for SRECs or their successor because they are not considered "connected to the distribution system" to instead qualify for Class I RECs, and thus, contribute to the State's requirement for 50% renewable energy supply by 2030 and its goal of 100% renewable energy supply by 2050. This rule revision would also continue to allow any facility that was certified to produce SRECs to qualify for Class I RECs after the facility's qualification life for producing SRECs has ended. The proposed rule would benefit New Jersey ratepayers by materially lowering the cost of compliance with the RPS targets and would ensure that all solar energy produced in New Jersey could be used to meet the State's ambitious renewable energy targets. The Board should approve Dakota's Petition for Rulemaking.

² Docket No. QX20010047 – *In the Matter of the Verified Petition of Dakota Power Partners, LLC for a Rulemaking Proceeding to Establish Utility-Scale Solar Resources to Qualify for Class I Renewable Energy Credits.*

b. The Board should establish a competitive bidding program to encourage investment in New Jersey utility-scale solar.

Utility-scale solar development has lagged in New Jersey because *no state program exists* to encourage investment in it. New Jersey needs a competitive procurement program to identify the most cost effective in-state utility-scale solar resources. Critically, the solar resources identified under the program should be eligible for long-term power purchase agreements (“PPAs”), which would enable them to obtain least-cost financing, thereby creating savings for New Jersey consumers. Long-term contracting programs have been implemented with great success as a means of encouraging development of utility-scale solar in many states throughout the US including the New England states, New York, and California. Dakota proposes, and has developed proposed legislation that would establish, a competitive procurement program to develop 3,000 MW of utility-scale solar by 2030 within the following framework:

- The program would be available to in-state utility-scale solar resources greater than 10 MW (i.e., those solar resources that are too large to qualify for SRECs or their successor).
- Each year, the Board would establish (1) a procurement target of at least 375 MW, and (2) a cost cap for eligible bids based on the forecasted 20-year market price of energy, capacity, and Class-I RECs. This cost cap would ensure that the program categorically *reduces costs* for New Jersey ratepayers.
- Qualifying projects are identified by accepting the lowest price bids until the total amount of projects reaches the annual procurement target.
- The Board would direct utilities to negotiate 20-year PPAs for the energy, capacity, and Class-I RECs produced by the qualifying projects. The PPAs would be subject to FERC review and approval, which negates preemption and commerce clause risk. The PPAs (and bid price) would include:
 - The State’s prevailing wage requirements for labor;
 - An annual remuneration to the utility of up to 2.5% of the annual payments under the PPA to compensate it for accepting the financial obligation of the long-term contract; and
 - An annual remuneration of 1% of the annual payments under the PPA to the Garden State Preservation Trust. Although 3,000 MW of utility-scale solar would encumber *less than 1%* of all of the agricultural acres in New Jersey, this payment is designed to mitigate any land use concerns by generating approximately \$3 million per year or \$60.7 million over the 20-year PPAs for the 3,000 MW program to fund permanent land preservation, development of recreational resources, and the preservation of crucial historic sites in New Jersey.

Topic 3, Question 16: Should the Board maintain the current subsection (t) and subsection (r) processes for determining incentive eligibility for grid supply projects?

To the extent that it has the authority to do so, the Board should provide Successor Incentives for grid supply projects that are located on sites that do not have other productive uses such as contaminated sites and restricted areas around airports. Another category of grid supply projects that should qualify are “dual-use” projects that enable solar and agricultural production to coexist on the same plot of land.

Importantly, the Board’s authority under subsection (r) appears to have been restricted by the Clean Energy Act of 2018. Under subsection (r) of P.L. 2012, c. 24 (the "Solar Act"), the Board had the following authority:

(1) For all proposed solar electric power generation facility projects except for those solar electric power generation facility projects approved pursuant to subsection q of this section and for all projects proposed in each energy year following energy year 2016, a proposed solar electric power generation facility, may be considered "connected to the distribution system" only upon designation as such by the board, after notice to the public and opportunity for public comment or hearing. . . (Emphasis added).

Of note, subsection q applies to solar projects during the energy years of 2014, 2015, and 2016 that are not: (a) net metered; (b) an on-site generation facility; (c) qualified for net metering aggregation; or (d) certified as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. Accordingly, subsection (r) of the Solar Act provided the Board with authority to designate grid scale projects that interconnect at 69 kV or less as “connected to the distribution system” for “all projects proposed in each energy year following energy year 2016”.

However, the Clean Energy Act of 2018 amended the Solar Act and significantly limited the Board’s authority under subsection (r). Specifically, under subsection (r) as amended by the Clean Energy Act of 2018—that is, under current N.J.S.A. 48:3-87(r):

(1) For all proposed solar electric power generation facility projects except for those solar electric power generation facility projects approved pursuant to subsection q. of this section, and for all projects proposed in energy year 2019 and energy year 2020, the board may approve projects for up to 50 megawatts annually in auctioned capacity in two auctions per year as long as the board is accepting applications. If the board approves projects for less than 50 megawatts in energy year 2019 or less than 50 megawatts in energy year 2020, the difference in each year shall be carried over into the successive energy year until 100 megawatts of auctioned capacity has been approved by the board pursuant to this subsection. A proposed solar electric power generation facility that is neither net metered nor an on-site generation facility, may be considered “connected to the distribution system” only upon designation as such by the board, after notice to the public and opportunity for public comment or hearing. (Emphasis added).

Accordingly, under current law, the Board seems to only have authority to designate grid scale solar projects as “connected to the distribution system designation” for projects proposed in energy year 2019 and energy year 2020 and furthermore, only until 100 megawatts of auctioned capacity has been approved.

Topic 3, Question 18: Should the Board establish a maximum system size to be eligible for a Successor Incentive? If not, how should economies of scale and the lower incentive gap be accounted for solar electric generation facilities over 20 MW?

For regulatory clarity, the Board should establish a maximum system size to be eligible for a Successor Incentive. However, the maximum system size should not apply to projects that are located on sites that have no other productive uses or on “dual use” sites.

To account for economies of scale and the lower incentive gap for larger projects, the Board should also establish factorized incentives for grid supply projects, as it did for the Transition Incentive; however these factors should be adjusted based on the land use of the project to encourage projects located on a site that has no other productive uses as well as “dual-use” grid supply projects that enable solar and agricultural production to coexist on the same plot of land.

Topic 3, Question 20: How should the Successor Program incentive structure be designed to address the state policy preference for solar located on rooftops, landfills and brownfields versus open space and farmland?

Dakota believes that New Jersey should balance higher priced solar incentives that encourage development of smaller, more-distributed solar resources on preferred sites such as rooftops and brownfields with larger, significantly lower-cost utility-scale solar resources that can cost-effectively produce clean energy at scale.

To the extent that the Board retains authority to provide Successor Incentives to grid supply projects, it should do so for projects that are located on sites that do not have other productive uses as well as for “dual-use” grid supply projects that enable solar and agricultural production to coexist on the same plot of land.

III. Conclusion

Dakota appreciates the opportunity to provide these comments in response to the February 28, 2019 Notice. We look forward to working with the Board and Staff to help New Jersey embark on the least-cost path to achieving its clean energy goals.

Very truly yours,

/S/

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