



May 27, 2021

VIA EMAIL ONLY

New Jersey Board of Public Utilities
c/o Board Secretary Aida Camacho
board.secretary@bpu.nj.gov

Re: Comments Regarding Docket No QO20020184 - Solar Successor Program

Dear Secretary Camacho and Commissioners

The undersigned serves as Land Development Counsel for CEP Renewables LLC. (hereinafter "CEP") In that capacity, I am submitting written comments to the Board of Public Utilities of the State of New Jersey (hereinafter "BPU") in response to the straw proposal (hereinafter the "Straw Proposal") circulated under the above referenced document number.

1. PREAMBLE

CEP's business plan is to develop utility scale grid supply solar farms on landfills, brownfields and areas of historic fill (hereinafter collectively referred to as "Contaminated Sites").¹ We believe, consistent with the stated legislative intent set forth in the Solar Acts of 2012, 2016 and the Clean Energy Act of 2018, that the Board of Public Utilities should act to encourage investment in Contaminated Sites. The rationale for that position is self-evident given the substantial scale of economies that a utility scale grid supply solar farm bears by virtue of capacity, and a Contaminated Site's unique ability to contribute a large number of MWs DC of solar energy into the grid in furtherance of the State of New Jersey's renewable energy goals understanding the scarcity of large tracts of undeveloped non-farmland in New Jersey. Contaminated Sites should be an integral part of the renewable energy plan in New Jersey.

A Contaminated Site utility scale grid supply solar farm's ability to deliver material amounts of renewable energy is well recognized, it makes a major contribution to employment in the locales in which it is developed, union scale per statute, it makes material contributions in annual real estate tax proceeds without resulting in much if any negative fiscal impact, providing much needed revenue to the municipalities in which they are located, it returns dormant or useless properties into productive contributors to a township's land inventory, it provides a source of funds for the remediation of properties that cannot be remediated by any other means and while

¹ The BPU Straw Proposal creates a new term, "Contaminated Land" to include landfills, brownfields, and historic fill sites. We enjoin the correspondence of Mr. Rodger A. Ferguson, Jr., LSRP, and the recommendation to utilize the term "Contaminated Site" as defined by the New Jersey Department of Environmental Protection.

providing a well-documented beneficial societal impact, it also serves the dual purpose of furthering the States renewable energy goals.

2. GRID SUPPLY SOLAR FARMS ON CONTAMINATED SITES ARE NOT THE SAME AS ROOFTOP AND OTHER NET METERED SYSTEMS AND SHOULD NOT BE TREATED THE SAME

The time required for the development of a grid supply solar system on a Contaminated Site is about 24 to 36 months. The time frame is self-evident as a Contaminated Site must endure a 4 pronged approval process that is not shared by a net metered system, with the Contaminated Site making (a) application to the Pennsylvania Jersey Maryland Interconnection LLC (" PJM") for permission to enter into the grid, a process that is taking longer and longer, up to 24 months or more at present; (b) an approval process and negotiation with the utility company that distributes the electricity (the "EDC") in the area in which the solar farm is to be developed with the EDC charging the Contaminated Site its costs in developing the interconnection and acquiring any offsite easements required for the interconnection (some companies such as First Energy require solar developers to get their offsite easements, a painful, expensive and time consuming process); (c) an application to the BPU for incentive eligibility currently under Paragraph t of the Solar Act, an exercise that creates a multi-agency hurdle that requires the participation of the DEP and the BPU, a time consuming and expensive process that adds to the time it takes to get to construction (if you are awarded a t approval, 4 to 8 months or more) and (d) applications to the municipality, the County and the State for permission to develop a ground mounted grid supply solar farm on a Contaminated Site, every application requiring municipal action, County approvals such as Soil Conservation District, County Planning Board and County Engineering Department, each with independent jurisdiction, and finally at the State of New Jersey Department of Environmental Protection, the greatest hurdle of all, negotiating Administrative Consent Orders wherein CEP takes some of the burden for ongoing operations and maintenance from the State, applications for wetland issues and flood hazard issues, amending the post-closure use plan, obtaining minor and major disruption permits or the soil remedial action work plan, any of which can take up to 12 months to obtain.

3. LAND CONTROL IS ABSOLUTELY ESSENTIAL IN ORDER FOR A UTILITY SCALE CONTAMINATED SITE SOLAR FARM TO BE CONCEIVED AND DEVELOPED

In order to engage in any of the four-pronged approval processes noted above, land control is absolutely essential. Land control can take the form of a contingent lease or purchase agreement. With an orphan site (i.e., an abandoned landfill for which there is no legal owner), there is a redevelopment process and tax sale process that must be undertaken that can take up to 12 months to perfect. Without land control, there is no way to engage the PJM, no way to engage the EDCs, no way to file an application for incentive with the BPU and no way to bring municipal land use applications. In seeking land control, one needs to conduct due diligence on the Contaminated Site to understand the existing condition of the Contaminated Site and the cost to remediate. The cost of undertaking that due diligence can easily exceed \$500,000.00 and take up to six months to a year. In order to sign for land control under any scenario, land or

lease deposits are required. In general, establishing land control can take up to a year and is a \$1,000,000 or more process.

4. IN ITS CURRENT FORM, THE STRAW PROPOSAL WILL ELIMINATE FUTURE DEVELOPMENT OF CONTAMINATED SITES WITH SOLAR FARMS.

In order to commence due diligence at a Contaminated Site, to negotiate land control that gives one access to a site, one needs to negotiate a land control document that will state the amount of money one can pay for the land whether it is a lease payment or a purchase payment. The same would be true if the acquisition is by tax lien certificate sale in the event of an orphan site, the town or holder of the tax lien certificate wanting a price, a payment that will be made as a precondition to the transfer of control or title. In order to develop that cost, one absolutely needs to know the value of the incentive at the outset of the transaction. In as much as the incentive makes up more than 80% of the revenue of any Contaminated Site, it is well-nigh impossible to make commitments to any group without that information. The current form of the Straw Proposal would provide that the solar developer would not know whether he/she has been selected for incentive and the amount of the incentive until the culmination of a bid down process in which the solar developer would bid for the incentive in his/her category. The printed form of the Straw Proposal initially released would have the Contaminated Site competing with Rooftop grid supply systems and net metered systems over 2 MWs. After several stake holders' meetings, the Staff of the BPU have indicated they might consider recommending a change to provide a separate tranche in the competitive bid process for Contaminated Sites given all of the issues discussed above. We believe that change, while welcome, does not cure the issue. It is simply not rationale to think that any developer will take the risks enumerated above, participate in a competitive bid for incentive and assume an incentive value without knowing that it exists. As it stands now, the process for a Contaminated Site is rife with market risk (costs of construction, etc.) and regulatory risk (any of the four prongs could fail notwithstanding the solar developer's best efforts). To add to that process the competitive process for a bid down incentive, would be enough to preclude any rational solar developer from participating and end the placement of solar farms on Contaminated Sites under the program.

5. A SOLUTION

CEP suggests a solution. There should be a separate process for Contaminated Sites where the incentive is administratively set. We suggest that there be a cap of 150 MWs per annum for Contaminated Sites. If one does not make the cap, the application is put off to the following year. CEP suggests that the incentive value be set at 150.00. If the solar developer has extraordinary costs that would cause the project to fall outside of the SAM model of acceptable return on investment, the solar developer would be free to file a petition with the Board setting forth those costs. This process would keep the industry engaged and provide for participation on Contaminated Sites. CEP suggests that our proposed incentive value be subject to Board review and final determination over the Summer of 2021 as the Board completes the development plan for the Successor Program.

Some might argue that there are many Contaminated Sites in New Jersey, many of which are cheaper than others to develop, such that a competitive solicitation would promote cheaper solar on cheaper sites. CEP submits this is a false assumption. There are no cheap sites to remediate, particularly landfills. Each landfill is unique and carries with it expensive issues, none of which are identical. The smaller, older landfills are actually more expensive to remediate as they come without proper landfill caps for the most part and have been lying in a state of disrepair for decades leaking leachate into adjacent wells without any fiscal hope of a way to remediate the landfill. If there are cheaper landfills to develop, CEP would have identified them. That class does not exist. CEP submits that the Board should want to incentivize those projects on sites with the most environmental and public health issues as they further the larger environmental justice goals of the State, far more so than that generated by rooftop projects.

Some might argue that if the Staff does recommend our proposal, that in the end, projects will end up in the same place, where there is no incentive for that given year, and accordingly no project. CEP's response is that if the annual cap is high enough, say 150 MWs per annum, that given the extraordinary costs in working on these projects, that most projects that are conceived will fit inside this cap. That is a different form of risk, where under the present scenario, a developer has no idea as to the ultimate value or if there is in fact an incentive. As practical businessmen and woman, given the past performance of the marketplace and the extraordinary costs of this type of development, CEP is willing to undertake the risk that the cap has been reached. As far as the State is concerned, if the niche is oversubscribed, that would be a good outcome as the State would know this is a proven path for development.

It should be noted that a competitive bid is a departure for New Jersey's current renewable energy process. Contaminated Site solar developers should not be treated as laboratory animals nor their projects as class experiments. CEP respectfully submits that if the BPU desires to undertake this type of process that it creates a 50 MW pilot program and call for competitive bidding inside of the pilot. If the pilot is successfully subscribed, then the BPU would be accomplishing something. If there are no takers, that result would indicate the program has failed without constituting the disaster CEP predicts if the competitive bid process is the only process forward.

6. A FINAL WORD ON TRANSITION.

CEP notes with dismay the latest Staff notice in which they advise that there will be a GAP between the end of the TI program and the beginning of the Successor Program for grid supply projects. In all of the previous discussions on the subject, there was no mention of a gap and in fact, the language used indicated that the Board would continue taking TI applications until the Board was able to take applications under the Successor Program. Looking at the language used in the Board Order of January 8, 2020, Docket No QO19010068, the Board stated,

“The Board HEREBY ORDERS that the Transition Incentive program will remain open to new registrations until the establishment of a registration program for the to-be-determined Successor Program. The Board THEREFORE ORDERS the SRP Administrator to maintain the registration process of the Legacy SRP open until the establishment of a Successor Program registration program. If the Successor Program is not in place at the time the Board determines that the 5.1 % Milestone has been attained, any projects that enter the registration pipeline after

the date of attainment of the 5.1 % Milestone and before the date at which the Board initiates a registration program for the Successor Program, and that remain in compliance with the requirements of the SRP, will be eligible for the Transition Incentive. “

Words have meaning and that the clear intent of these words were that the application process for TI would remain open until the Successor Program is taking applications. There is no mention of a GAP in this Board Order for grid supply.

CEP welcomes staff's recommendation that another three months be added to the closure date after which they would entertain applications under an unannounced incentive value. While that is better than the GAP per se, it is cold solace for those developers that relied on the written words in a Board Order and thereafter made investments in reliance on the printed Board Order. We urge the Board to eliminate the gap and keep the process open until they can make applications under the Successor Program for all participants in the marketplace. We submit that this is the only fair and reasonable path.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark S. Bellin". The signature is fluid and cursive, with a prominent initial "M".

Mark S. Bellin, Esq.