



December 13, 2021

VIA EMAIL AND ONLINE SUBMISSION

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RE: *I/M/O Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, C. 169, Docket No. QO21101186*

Dear Ms. Welch:

On November 1, 2021, the New Jersey Board of Public Utilities (“NJBPU”) posted a notice concerning the above-referenced proceeding. The notice solicited responses to several questions posed by NJBPU Staff related to the CSI Program. Please consider this letter to be the formal response by CEP Renewables, LLC (“CEP”) to the questions posed by Staff.

As Staff is aware, CEP is the State’s foremost developer of utility-scale solar projects. CEP recently completed the development of the 26.5 MW dc Mount Olive Solar Farm and the 8 MW dc Holland Solar Farm (which is Phase II of a larger 16 MW dc total project). CEP has several hundred additional MW of solar projects under various stages of development, including most of those pending in the NJBPU’s subsection (t) application program. CEP submits that it is uniquely positioned to help Staff craft the CSI Program as no one has more experience or expertise on development matters pertaining to utility-scale solar projects in the State of New Jersey than does CEP. CEP is facing the types of development challenges being considered by Staff every single day and hopes that Staff will consider CEP and its team of professionals to be a resource in crafting the CSI Program.

Below, please find CEP’s responses to the questions posed by Staff in the November 1, 2021 notice:

1. The Solar Act of 2021 stipulates that “[t]he development of grid supply solar should be directed toward marginal land and the built environment and away from open space, flood zones, and other areas especially vulnerable to climate change.” Staff proposes to implement this requirement mainly through some form of incentive or segmented procurement targeting development on the built environment as well as on contaminated land or landfills. Staff is looking for input on the following questions:
  - a. Do projects on contaminated land and/or landfills need special consideration when it comes to project maturity and Commercial Operation Date (“COD”). If so, why?

**CEP RESPONSE: Contaminated land or landfill projects include special consideration in all aspects of the program, from the initial application and NJBPU approval through the project maturity and Commercial Operation Date. There are significant additional financial risks with the investigation and remediation of these projects that should be considered. CEP recommends that a conditional approval of the application be contemplated by the BPU for both contaminated land and landfill projects and that the timeframes for completion of the project be based upon the receipt of certification from the Licensed Site Remediation Professional (LSRP) for brownfields or contaminated land or written approval by the New Jersey Department of Environmental Protection (NJDEP) for landfills.**

**CEP proposes that all projects should have the following baseline established in terms of project maturity in order to apply for the CSI Program: (a) site control; (b) local preliminary site plan approval; and (c) application submitted for PJM Feasibility/System Impact/Facilities Study process. For contaminated properties, the following additional requirements should apply for project maturity: (i) the developer must have completed a Preliminary Assessment of the property certified by an LSRP; (ii) the developer must have completed a Site Investigation of the property certified by an LSRP; and (iii) the developer must have had a permit coordination meeting with NJDEP’s OPPN.**

**In terms of an award duration relative to COD, the award should be valid for a period of thirty-six (36) months from the date that the developer obtains all necessary construction permits for the facility, including those for interconnection work relative to the proposed facility. There should be available two (2) “as of right” extensions of three (3) months each. The NJBPU should also make available additional extensions for *force majeure* events, interconnection delays, or other good cause shown. It should be *prima facie* evidence of good cause for an additional extension if PJM’s interconnection timeline extends beyond the award timeline or there are other associated delays with either PJM or the EDC in performing the necessary interconnection. In other words, if, through no fault of the**

**developer, the interconnection work will take longer than the award time, the developer should not be penalized by losing the awarded incentive.**

**This longer timeline of approval is required in light of current delays with PJM processing interconnection applications and EDCs completing necessary interconnection work. At present, the award duration (under the current TREC program, for example) is 24 months from the date of the Board Order issuing the award. This timeline is often not related to any project-specific construction timelines and is largely arbitrary, depending on when the Board issues an Order confirming an award. The timeline of the award should be tied to the construction of the facility. This timeline is entirely in the Board's control and should be extended so that developers are not constantly faced with the threat of an expiring award, which necessitates petitions to the Board for extensions. The Board could eliminate this arbitrary element of project development by simply extending the timeline of the incentive award to match the construction timeline.**

b. What additional costs, if any, are associated with development on contaminated land and/or landfills?

**CEP RESPONSE: There are myriad additional costs to consider. These include, but are not limited to:**

- **Substantially increased due diligence and investigation costs;**
- **Increased permitting and approval costs;**  
**Costs associated with remedial action; In the case of landfills, the construction or repairs to of the landfill cap costs of long term maintenance of the landfill cap, costs of air and water monitoring, and potentially costs associated with reimbursing the State for past costs incurred in closing the landfill.**
- **In the case of brownfields and contaminated land, costs associated with implementing remedial action measures (i.e., remediation of the soil and groundwater, including the construction of the engineering controls), long-term monitoring, and the posting of financial assurances with the NJDEP.**

**All told, the additional costs of developing on contaminated sites can run on the order of several millions of dollars versus development on traditional, non-contaminated properties. These properties should receive an additional incentive, over and above a baseline incentive, in light of the substantial additional costs involved.**

c. To the extent that the purpose is to avoid, as much as possible, the development of open space that might otherwise be available for other purposes, are there other siting options, besides the built environment, contaminated land and landfills, that should be given preference.

**CEP RESPONSE: Yes. The NJBPU should consider including in this category the following: mining sites, quarries, and resource extraction operations; former industrial sites; municipally-owned properties; consistent with N.J.S.A. 40:55D-66.11, all sites that are 20 or more contiguous acres located in an industrial district of a municipality; sites that are located in a commercial or non-residential zone of a municipality that have not otherwise been developed with an alternate use; and designated redevelopment or rehabilitation areas pursuant to N.J.S.A. 40A:12A-1.**

**The NJBPU should also relax the siting criteria for these properties. Particularly, if any of these properties are located in a specially-regulated area of the state (i.e., CAFRA, Pinelands, or Highlands), solar development should be permitted so long as the agency with jurisdiction approves the facility as consistent with its planning regulations.**

2. The Solar Act of 2021 stipulates that larger net-metered non-residential projects (over 5 MW) be eligible to participate in the CSI Program.
  - a. Does net metered status provide a benefit that is likely to be reflected in lower-cost bids in response to a competitive SREC solicitation?

**CEP RESPONSE: Yes. Net-metered projects do not participate in PJM's Wholesale Market. As such, the power from these facilities is sold for less than conventional retail rates, but substantially more than wholesale rates. These projects should receive a lower incentive in light of the fact that the sale of power from these projects is more lucrative.**

- b. What kind of project maturity requirements would be appropriate for net metered projects?

**CEP RESPONSE: There should be no distinction between these projects and the project maturity requirements for other sites noted above.**

3. To maximize the competitiveness of the solicitation process, and also to capture additional potential benefits to the public, it is Staff's intention to propose a CSI Program design that facilitates public entities' participation.
  - a. Are there special barriers public entities might face in participating in competitive SREC solicitations? If so, what are they? Are there ways NJBPU could help eliminate barriers.

**CEP RESPONSE: While there are likely special barriers faced by public entities (obtaining complete and meaningful responses to an RFP/RFQ come to mind), CEP defers to any public entities that might desire to submit comments. CEP does offer that any such barriers could be mitigated if the**

**NJBPU is inclined to include rehabilitation and redevelopment projects in the CSI program, such that a municipality is able to partner with a private developer, like CEP, to undertake the development process. This model has worked successfully in the past.**

4. Staff aims to propose a solicitation design that results not only in awards, but in successful project development. To facilitate this, some combination of project pre-qualification requirements, COD requirements, participation fees, and/or escrow requirements are being considered:

- Should Staff consider recommending a requirement that projects have completed a Facilities Study?

**CEP RESPONSE: Absolutely not. PJM's queue and study process is in flux. A Facilities Study, in the best of times, takes, at a minimum, 18 months to complete. A developer should not be in the position of waiting 18 months to obtain a Facilities Study in order to submit an application for incentive to NJBPU. The reality is that all Facilities Studies are being pushed out even farther than 18 months at this point due to a backlog at PJM. To make this a pre-condition to application would be a hardship on developers, particularly in light of the fact that a developer would have to expend a substantial amount to retain site control during that period. A developer would also have to expend funds to perform due diligence and obtain all other approvals during that time period, completely at risk without the certainty of an incentive. This is not a tenable result.**

- What about having a requirement for a completed or draft System Impact Study?

**CEP RESPONSE: No, for essentially the reasons stated above. The PJM queue process should not be a guideline for NJBPU incentives.**

- Are there other PJM queue position requirements that should be considered?

**CEP RESPONSE: No. The PJM queue process should not be considered in determining whether to award an incentive under the NJBPU's CSI Program. The only consideration should be in terms of construction timeline and award duration. CEP's recommendations concerning these issues are stated above.**

- At what point in the process would an SREC-II award provide the most value in terms of preventing projects dropping out of the queue?

**CEP RESPONSE: As early as possible, in light of the other project maturity requirements noted above.**

- What would the impact of other project maturity evidence requirements be (e.g., site control, evidence of ROW control, evidence of community engagement)?

**CEP RESPONSE: CEP's recommendation is stated above. Evidence of ROW control should not be a factor as the ROW is determined late in the PJM/EDC interconnection process. A developer will be required to obtain all ROW in order to satisfy the PJM/EDC construction timeline. Evidence of "community engagement" should not be a relevant consideration as it is a subjective metric that is not easily verified. The CSI Program and awards should be based on objective criteria where all projects can be measured against one another without subjective judgments by NJBPU.**

- NYSERDA requires bid participation fees ranging from \$5,000 to \$100,000 depending on the size of the project. What is the right level for a 5 MW project versus a 20 MW project?

**CEP RESPONSE: CEP recommends an application fee of \$2,500 per MW. This would put the NJBPU CSI Program on par with other governmental agencies, including, for example, CAFRA. CEP also recommends a submission escrow of \$40,000 per MW up to 5 MW and \$20,000 per MW thereafter. This escrow would be posted at the time of application.**

**CEP also recommends that the NJBPU would have 45 days from submission of the application to deem the application complete. Once the application is deemed complete, the NJBPU would have 90 days to act on the application. Once the NJBPU acts on the application, either affirmatively or negatively, the escrow would be refunded to the developer.**

5. New Jersey's current practice is to provide subsidies such as SREC-IIs through administrative rules developed pursuant to statute, not through contracts. Staff requests input from other developers about whether there are any implications on project cost, risk premium or other aspects of project financing purposes to providing incentives through administrative rules versus developing a standard contract.

**CEP RESPONSE: CEP defers to the NJBPU on this point. From a development standpoint, CEP has no objection to the NJBPU continuing its current practice of approving applications by way of Board Order and making the award subject to the NJBPU's regulations.**

6. Staff invites stakeholder comments on how the qualifying life of receiving SREC-IIs impacts project financeability, total cost, and ratepayer risk.

**CEP RESPONSE: Generally speaking, the longer the incentive award, the better, even if that means a lower annual award. The key point here, however, and it cannot be overstated, is that any award must be for a fixed amount for a fixed duration. This is the absolutely most critical component of any new program. The award cannot fluctuate year to year as was the case with the SREC because projects become impossible to finance. Financing partners need the stability and certainty of a fixed amount, fixed duration award.**

On behalf of CEP Renewables, LLC, thank you for your attention to this matter. Please do not hesitate to contact the undersigned with any questions or comments.

Sincerely,



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Gary R. Cicero,  
Managing Member

Cc: Mark S. Bellin, Esq.  
Steven P. Gouin, Esq.

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