



May 31, 2022

Via Board's External Access Portal only

New Jersey Board of Public Utilities

c/o Board Secretary Aida Camacho

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Board.secretary@bpu.nj.gov

Re: Comments Regarding Docket No QO21101186 - Competitive Solar Incentive ("CSI") Program

Dear Secretary Aida Camacho and Commissioners,

CS Energy is pleased to submit the following comments on the CSI Solar Siting Staff Straw Proposal (Straw Proposal). We appreciate the hard work and leadership from BPU, NJDA and SADC staff in developing the Straw Proposal and appreciate having the opportunity to provide comment. We look forward to working with the BPU to ensure that a successful CSI program is developed that brings investment and clean energy efficiently to New Jersey.

Headquartered in Edison, NJ, CS Energy is the industry-leading engineering, procurement and construction (EPC) energy firm that designs and builds optimized projects in solar, energy storage, and emerging energy industries. We have been a long-standing participant in the NJ markets since 2007 and have installed many flagship projects in the State including the largest single interconnection project under Subsection (r), multiple subsection (t) projects, along with the operational Linden Hawk Community Solar Project. CS Energy has successfully designed and installed over 1.35 GW of solar projects across the United States, including nearly 300 MW's in NJ. We are proud to be a part of the fight against climate change and of NJ's transition to a cleaner future.

CS Energy is a participating member of the New Jersey Solar Energy Coalition ("NJSEC"), SEIA, and the Mid-Atlantic Renewable Energy Coalition ("MAREC") and has collaborated with these organizations in development of their comments. Given the importance of creating a successful CSI program and our specific experience in solar project design and construction in the state we are compelled to submit the enclosed comments to provide additional specific suggestions.

Building a Cleaner Future

The siting criteria, GIS procedures, and Agricultural Mitigation Guidelines are extremely important aspects of the CSI program. We are pleased that Staff extended the deadline for comments on this Docket to allow for review of the Siting Criteria in conjunction with the Straw Proposal from Daymark/Staff on the CSI Program's structure ("Structure Straw Proposal").

1 COMMENTS ON SOLAR SITING CRITERIA

1.1 SITING OF MAIN PROJECT EQUIPMENT VS. SUPPORTING INFRASTRUCTURE AND EASEMENTS

Well sited solar projects balance many different competing interests including impacts to agricultural resources, visual and viewshed impacts, species and habitat impacts, and many other factors. We believe the intent of the legislation was to prohibit development whereby the main project areas associated with solar panels, inverter and equipment pads and solar collection substations are prohibited from occupying restricted categories of land, such as Pinelands or Highlands preservation areas, forested lands, wetlands or preserved farmlands. We support this restriction generally, but we urge BPU staff to defer to local review and approval and other state and federal permitting processes and procedures for ancillary project infrastructure, such as access roads and utility easements. A well-sited solar facility may require construction of supporting infrastructure involving stream crossings, or limited clearing of wooded areas. State and local permitting processes already require prudence and sound engineering practices to limit impacts to these resources. A prohibition on impacting any restricted categories of land, even if it is only for supporting infrastructure, will result in unwarranted constraints to solar project siting and at a minimum excessive applications for waivers for minor impacts clearly not intended by the Act. We would note that in the proposed definition for Tranche 3 projects, the Structure Straw Proposal includes a concept for allowing up to 10% of the total land area targeted for solar development to be utilized for "associated disturbed areas." This position by Staff seems to recognize a similar concern, and provides clarity for developers.

Therefore, we strongly recommend that ancillary impacts including easements and supporting project infrastructure, or "associated disturbed areas" that are managed under other discretionary permitting authorities should be affirmatively allowed without requiring waivers.

1.2 CLARIFICATION ON PROGRAM APPLICATION TO PROJECTS OUTSIDE SUSI

We do not concur with Staff's interpretation in Section III.A of the Straw Proposal that all grid supply and net metered solar projects over 5 MW's in size should be considered under the siting rules, regardless of SuSI Program participation. The purpose of the Act is very clearly outlined in Section 1 where it is established that the SREC-II program is a way to incentivize investment into renewable energy at the lowest cost to the consumers to meet the renewable energy goals. It is obvious that the act is considering to set out rules governing the *SREC-II program* and projects that seek such incentives, not the entire solar industry. Staff's interpretation that projects that do not seek to participate in the SREC-II incentive but are nonetheless solar projects that exist within the State's borders must follow the siting rules and count

towards 2.5% development thresholds is not represented in the Act. By comparison, any other generation facility that does not participate in State incentives and receives all revenue from commodity markets need only acquire the necessary Federal, State, and Local approvals to build such a facility on the land proposed for the facility.

This is best illustrated by providing an extreme example of how Staff's interpretation could increase program costs. Hypothetically, if a project does not wish to participate in the SREC-II Program, and has acquired all required permits to become a generating facility within New Jersey state lines, Staff's interpretation is that this project, which again has acquired all permits to be placed on the land and generate clean energy that could count to RPS goals, would not be authorized by the BPU to be built if it did not meet the siting criteria of a State incentive that it is not seeking. This would compel the developer to seek the SREC-II incentive, which would then make it eligible for compensation by a rate payer funded incentive.

Additionally, the Act very clearly adopts the siting rules as a compromise and mitigation in response to concerns from various stakeholders about how the SREC-II programs incentives development that adversely impacts other resources. If the legislature was concerned about other market forces or developments spurring development that is outside the SREC-II market they would have moved to address that issue.

Therefore, we strongly urge the Solar Siting Criteria should be limited to the intent of the legislation, as a mitigating response to developments spurred by SREC-II incentives and that projects that do not participate in the SREC-II incentive are not counted toward 2.5% development thresholds.

1.3 LEGACY PROJECTS AND THE STATEWIDE THRESHOLD OR COUNTY DEVELOPMENT LIMITS

Additionally, we believe that the intent of the legislature was to limit impacts moving forward for new solar project investments, and not to address legacy projects that moved forward under the various programs NJ has put forward to incentivize solar development in the past.

Staff should clarify that solar projects that moved forward prior to the SuSI program are not included in calculations related to the Statewide Threshold or County Development Limits described in Section III.B.5.a of the Straw Proposal. This comment can also be applied to Section III.B.5.c of the Straw Proposal.

1.4 CLARIFICATION ON SITING CRITERIA FOR FORESTED LAND

Section III.B.3 of the Straw Proposal addresses siting of solar facilities on forested lands. We would encourage staff to make the following clarifications. Abandoned or underutilized agricultural areas and other desirable siting locations may contain recent tree growth that could approach or exceed the 10 percent canopy cover defined in this section. While NJDEP has considered all trees for forested land surveys and programs in the past, we would encourage staff to include a tree maturity threshold in the definition, such as a 5-inch diameter at breast height to provide clarity and further align the intent of this section with the interest of abating and sequestering CO₂ emissions.

NJBPU should work in consultation with the NJDEP, as allowed under the Act, to include a tree maturity threshold in addition to the canopy cover constraint.

1.5 CLARIFICATION ON APPLICATION OF THE 5% COUNTY DEVELOPMENT LIMIT

We would note that the clear intent of the Solar Act of 2021 is limiting impacts to NJ's agricultural resources. We disagree with Staff's interpretation excluding Highlands, Pinelands, Green Acres, and State, Local, and Nonprofit Open Space in arriving at its 5% County Development Limit. The Act very explicitly identifies Preserved Farmland in its list of exclusions and very clearly is intended to address lands in ADA's. These other land uses are in fact preserved by many different NJ statutes and programs, but the use of preserved and unpreserved as adjectives in the Act is clearly tied to farmland. In the instances where an ADA overlaps with other restricted land uses, there is likely some overlapping agricultural use and the 5% threshold should include these lands if the intent is to assess agricultural viability impacts in a specific County ADA. We believe Staff should revise Section III.B.5.a as follows to be consistent with the Act:

“For determining the county-by-county 5% County Development Limit, the Board will determine the Prime Soils and Soils of Statewide Importance within each ADA that are assigned an agricultural designation in the most recent land use/land cover maps, and then exclude areas designated as Preserved Farmland, ~~Highlands, Pinelands, Green Acres, and State, Local, and Nonprofit Open Space~~. Staff will then aggregate these designated land areas by county and multiply each county value by 0.05.”

We concur with SEIA and NJSEC that the Act only applies the County Development Limit for the CSI program in instances where a waiver is being sought after the BPU establishes that the 2.5% Statewide Threshold has been exceeded. The text of the Act clearly intends for the 5% County Development Limit to be a constraint under the waiver process that applies after the 2.5% Statewide Threshold has been reached.

BPU Staff should revise the Straw Proposal to make the 5% County Development Limit not concurrent with the 2.5% Statewide Limit.

2 COMMENTS ON GIS DATA SOURCES & ANALYSIS PROCEDURE IN APPENDIX A

We find the procedures to be thorough and understandable.

2.1 INCLUSION OF “PRIME SOILS IF DRAINED”

We would encourage Staff to consider inclusion of soils identified as “Prime Soils if Drained” in the dataset. When combined with Staff's inclusion and use of the Land Use / Land Cover data, it would seem that inclusion of these soils would be applicable in an effort to assess impacts to the integrity of individual County ADA's. Additionally, Staff included these soils in its construction mitigation provisions

in Appendix B. It would stand to reason that if efforts are being made to protect these soils under the protection provisions, they should be part of the development limits calculations.

Staff's intent to identify properties in agricultural production clearly warrants that "Prime Soils if Drained" should be included in the BPU's analysis of the 2.5% Statewide and 5% County thresholds.

2.2 CLARIFICATION ON APPLICATION OF THE 5% COUNTY DEVELOPMENT LIMIT

Additionally, we would apply our comments in 1.5 above regarding the application of the other types of land preservations to the County 5% Development Limits. Again, if there is overlap in agricultural use into another type of preserved land that can be shown in the Land Use / Land Cover dataset, that overlapping land should be considered in an assessment of the integrity of individual County ADA.

Outside the Preserved Farmland excluded by the text of the Act, Staff should not exclude lands that may overlap as another resource and that are identified for agricultural use.

3 COMMENTS ON AGRICULTURAL MITIGATION GUIDELINES FOR GRID SCALE SOLAR CONSTRUCTION IN APPENDIX B

We support generally applicable standards that will be equally applied to all projects across the state in an effort to preserve and mitigate potential impacts to NJ's agricultural resources and want to see Staff leverage the experience and knowledge of industry stakeholders to ensure that these guidelines are both feasible and effective. While we appreciate having the opportunity to comment on these guidelines as part of the Straw Proposal process, we think these guidelines need to be thoroughly reviewed section by section in consultation with both solar and agricultural industry representatives.

Well sited solar projects balance many different competing interests including impacts to agricultural resources, visual and viewshed impacts, species and habitat impacts, and many other factors. We are concerned that the mitigation guidelines as proposed value agricultural impacts over and above all others and that this inherent inflexibility will result in poor project designs, a more expensive overall program, and perversely in design and construction decisions that will likely end up impacting a greater quantity of land than is necessary.

3.1 CLARIFICATION ON THE PROHIBITION OF CUT AND FILL ACTIVITIES

For example, in Section (f) of Appendix B the proposed guidelines prohibit cut and fill on all prime and statewide importance farmland. We'll note that activities defined as Cut and fill is often required for access roads, pads, stormwater controls and other pieces of infrastructure. We think flexibility on this work needs to be allowed, while suggesting best management practices for minimization of impacts in consultation with the Project Inspector. Additionally, in our experience minor grading can result in more compact and efficient solar projects, particularly with single-axis trackers. We would encourage topsoil segregation with oversight by the project inspector, so that cut and fill can be utilized to keep project

designs efficient and compact. Otherwise we're likely to see gaps and areas that cannot be utilized in the middle of project sites. The siting restrictions already greatly limit impact to prime soils, and we think this additional restriction will end up in more land being impacted than might otherwise be necessary when following best management practices and with careful oversight.

We would encourage BPU to allow cut and fill in these areas, subject to best management practices and oversight by the Project Inspector.

3.2 CLARIFICATION ON TIMBER MATS AND TOPSOIL STRIPPING

Section (f) also requires timber mats or topsoil stripping across the entire occupied area. This is inconsistent with the prohibitive restriction on cut and fill addressed in 3.1. We would encourage review of the construction standards developed for NY solar projects that allow low-ground pressure vehicles or track vehicles commonly used on solar sites to be allowed without timber mats or topsoil removal in conjunction with post-construction decompaction requirements for temporarily impacted areas and following project decommissioning for NY's equivalent of "occupied areas". Timber mats should be used where heavy vehicles such as cranes and delivery trucks cannot utilize project roads. NY's standards only require topsoil stripping where grading or trenching occurs. Stripping topsoil from the entire solar panel area, or just in the travel lanes between panel rows is not feasible for the size of projects contemplated by this program.

We strongly encourage that BPU and NJDA staff engage with industry representatives to revise many of the provisions included in this Appendix on the application of timber mats and topsoil stripping.

3.3 PROVISIONS TO ADDRESS RUTTING AND COMPACTION

Section (f) proposes to not allow "work" when soil moisture is excessive. We acknowledge the intent to minimize rutting and compaction. As a leading constructor of ground-mounted solar projects we find this restriction to be infeasible. Large solar project construction involves coordination of contractors from multiple trades and offloading and distributing equipment and materials delivered to the site, in conjunction with weather management. We rely on our staff and subcontracting partners to find ways to work through and around the challenges proposed by mother nature. Prohibiting "work" for potentially lengthy periods of time subject to weather could be incredibly detrimental to projects. We would note that there is extensive effort elsewhere in the Act and in this Appendix to limit impacts to soils, and to address compaction and rutting post-construction.

We strongly encourage that BPU and NJDA staff engage with industry representatives to place the burden on managing and mitigating rutting and compaction impacts on the project and Project Inspector.

3.4 GENERAL CONCERNS AND INCONSISTENCIES

The guidelines have some areas that are inconsistent or require clarification:

- The “Occupied Area” discussed in several places throughout the document should be defined. We would consider “areas occupied by permanent roads, swales and other stormwater management features, and any areas enclosed by the solar project’s fence and/or involving other features required to support permitting or other design requirements, such as project landscaping features, etc.”
- A “Temporary Impact Area” should be defined and utilized. We would site a definition relating to the following, “any area temporarily impacted by construction activities that is expected to be returned to agricultural operations during the operating life of the solar facility following the completion of construction.
- Commercial arrangements for timber removal and compensation between projects and host landowners are discussed in Section (e) and are an important part of property leasing arrangements. While we encourage the BPU and NJDA to publicize guidance for landowners considering solar leases on this matter, we don’t think it is appropriate for this document to be a mechanism for requiring a certain commercial approach.
- Section (f) discusses gully erosion concerns. While this is important, we have seen many instances where gully features are considered USACE regulated WOTUS, and would discourage strict requirements if/when other permitting authorities may assert jurisdiction over mediation activities.
- The Monitoring and Remediation section is not specifically numbered, but an effort should be made to very clearly identify whether this section applies to areas that were temporarily impacted by construction, Temporary Impact Areas. We would find it problematic to perform some of the suggested activities in the “Occupied Area” and would recommend that this be clarified. The baseline soil compaction data should be maintained so that the Occupied Areas can be returned to their pre-existing use following decommissioning of the solar project.

Again, we would encourage that a significant effort be led by the NJBPU to engage stakeholders on the entirety of Appendix B. We were pleased to be included in the development and review of similar standards for solar projects in New York and would welcome the opportunity to be a part of a similar effort in NJ. A process that takes portions of the comments contributed as part of the Straw Proposal process in isolation is likely to include inconsistencies and challenges that would limit the policy’s feasibility or effectiveness.

Conclusion

As a leading solar developer and EPC in New Jersey we wish for success of all the SUSI-related programs and initiatives. This Straw Proposal is a strong first step in the stakeholder process that has helped make NJ's solar programs a success in the past. We look forward to the upcoming stakeholder meetings on the Structure Straw Proposal and would welcome the opportunity to engage further on the comments we have brought forward as part of this submission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Tripoli'.

Matt Tripoli

Director, Project Development

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