

December 22, 2022

**VIA E-FILING & E-MAIL**

Carmen D. Diaz, Acting Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

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

Dear Acting Secretary Diaz,

On behalf of the Mid-Atlantic Renewable Energy Coalition (“MAREC”) and Dakota Power Partners (“Dakota”), attached please find MAREC and Dakota’s Verified Motion for Reconsideration in the above docket.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Murray E. Bevan

Enclosure

cc: Tim Daniels, Dakota Power Partners (via e-mail w/ enc.)  
Bruce Burcat, MAREC (via e-mail w/ enc.)  
Service List (via e-mail w/ enc.)



4. The Board’s order fails to include an escrow fee for bidders into the CSI program, which is required by section 4(c)(7) of the Solar Act of 2021 (P.L. 2021 C. 169), codified as N.J.S.A. 48:3-117(c)(7).
5. This statute states that the competitive solar incentive solicitation process shall “include requirements designed to ensure successful completion of projects, including, but not limited to, the imposition of appropriate escrow fees, bid maturity requirements, required interconnection milestones, and conditions on when a project must achieve commercial operation”.
6. The order also fails to state that it will be establishing an escrow fee at a later date.
7. The Board’s order briefly discusses comments filed by stakeholders regarding an escrow fee, but then decides to only impose a \$1,000 per MW non-refundable solicitation participation fee on solar developers who are bidding into the CSI solicitation.<sup>1</sup> This bid fee is not a statutorily permissible substitute for the required escrow fees.
8. The Board order also states that the purpose of this \$1,000 per MW bid fee “is mainly to discourage bids for projects that have a low likelihood of reaching commercial operation”.<sup>2</sup> However, the bid fee amount that the BPU selected is far too low to adequately discourage speculative solar projects from bidding into the competitive solicitation. Indeed, the lower fee amount encourages speculative projects which will result in unnecessary administrative review by Board Staff of projects which are unlikely to reach commercial operation. It also needlessly delays the State’s progress toward achieving its renewable energy and climate goals. Since there are no verifications by the BPU to confirm project progress, the BPU will not be able to re-open MWs for 3 years (after projects fail to achieve COD).

---

<sup>1</sup> BPU order (December 7, 2022) at 22, 24.

<sup>2</sup> *Id.* at 22.

9. Typical escrow fee requirements for a competitive contract bidding processes that have been successfully run in other states are in the \$20,000-\$50,000/MW range. As a point of comparison, competitive bidding processes managed by large public companies typically require escrow fees in the \$75,000 to \$150,000/MW range.
10. MAREC and Dakota strongly urge the Board to impose a \$40,000 per MW escrow fee, which is approximately what NYSERDA requires. NYSERDA has had a very successful competitive long-term REC contract program for large renewable projects for over 15 years, which is the program that this New Jersey initiative was modeled upon. NYSERDA's non-refundable and reasonably substantive fees discourage speculative projects from clogging up its process.
11. Requiring a reasonably large escrow fee will ensure that solar developers will not bid into the CSI program solicitation unless they have a high degree of confidence in reaching the three -year commercial operation deadline.
12. MAREC filed comments in this docket on December 14, 2022, jointly with the Solar Energy Industries Association ("SEIA") and the New Jersey Solar Energy Coalition ("NJSEC"), advocating for the following escrow fee: "Posting a reward deposit of \$40/kW of DC nameplate capacity of the solar facility in an escrow account to hold allocated CSI capacity to be reimbursed to the applicant in full upon either (i) the project not being awarded a contract through the competitive solicitation, or (ii) upon attainment of permission to operate."<sup>3</sup> The \$40/kW fee they recommended is equal to the \$40,000 per MW fee that MAREC and Dakota are arguing for in this motion.

---

<sup>3</sup> Comments of MAREC, SEIA, and NJSEC at 8.

13. The Board's omission of an escrow fee for bidders in the CSI program, as required by the Solar Act of 2021, is an error of law that must be corrected through reconsideration of the Board's order.
14. The second error in the Board's order pertains to the project maturity requirements. The order allows solar projects that only have a PJM Feasibility Study to bid into the CSI program solicitation.<sup>4</sup> This will result in bidding by some projects, especially large generators (defined as >20 MW by PJM), that could never meet a commercial operation deadline within three years or at least be highly unlikely to do so. The current logjam of PJM interconnection requests combined with PJM queue reform makes it extremely unlikely that projects with only a Feasibility Study will achieve commercial operations within three years. It will only serve to further clog up the BPU's process and delay the State's climate and renewable energy goals.
15. Instead, the BPU should require each solar project to be further along in the interconnection process prior to bidding into the CSI program solicitation. Each project should have a System Impact Study and an executed Facility Study agreement with PJM completed as well as demonstrated site control, right of way ("ROW") control, and evidence of community engagement prior to bidding into the competitive solicitation.
16. On June 20, 2022, Enel, which is a member of MAREC, filed comments in this docket arguing for the same project maturity requirements:

Enel agrees with Board Staff that there should be pre-qualification requirements related to project maturity that must be met by a solar developer to be eligible to bid into the competitive solicitation. Given the desire to ensure more projects can reach commercial operation if they are offered a REC contract, and to avoid speculative bids for projects that will send inaccurate price signals, each project that is being bid into the competitive solicitation should already have a completed System Impact Study and Facility Study. This would provide the greatest assurance to the BPU that a project will be able to reach COD within the three-year

---

<sup>4</sup> BPU order at 22-23.

timeframe following the solicitation award since much of the timing uncertainty regarding the PJM interconnection process will have already been addressed. In PJM, the Interconnection Agreement immediately follows the completion of the Facility Study, but the project's energization date is driven by the transmission owner's ("TO") timeline for building the interconnection facilities and network upgrades. This last construction step can take a substantial amount of time. On average, there is a 12-to-36-month timeframe between the completion of the Facility Study and the project's energization date. More importantly, a project owner should know the timeline once a project has a completed Facility Study and therefore can decide whether to submit a bid that requires an in-service date within 24 months from award. However, the BPU should still consider requests for timeline extensions if there are delays that are outside of the control of the project owner. In addition, each project should be required to demonstrate site control, right of way ("ROW") control, and some evidence of community engagement prior to bidding into the competitive solicitation.

17. The third error in the Board's decision relates to the 5% county limit regarding siting of solar projects on farmland, which conflicts with section 6(f) the Solar Act of 2021.

18. Specifically, the Board stated the following in error:

Staff recommends that Section 6(f) of the Act be implemented independently and that CSI-eligible facilities shall not be allowed to register with the Board if the aggregate solar development on unreserved covered agricultural land within a specific county exceeds 5% of such lands in the county. Staff notes that the definition of land subject to the per-county limit includes the "unreserved" qualifier, while the statewide restriction does not. Thus, the statewide cap is proposed to be calculated by looking at preserved and unreserved farmland, while the per-county cap is proposed to be calculated on the basis of unreserved farmland only.

19. The plain language of section 6(f) of the Solar Act of 2021, codified at N.J.S.A. 48:3-119(f), provides that the 5% county limit only applies to projects seeking a waiver from the BPU.<sup>5</sup> This is different from the 2.5% statewide limit which applies to all projects

---

<sup>5</sup> Section 6(f) provides: "A developer may petition the board for a waiver to site a solar power electric generation facility in an area proscribed by subsection c. of this section. The petition shall set out the unique factors that make the project consistent with the character of the specific parcel, including whether the property is a contaminated site or landfill, otherwise marginal land, or whether the project utilizes existing development or existing areas of impervious coverage. The board shall, in consultation with the Department of Environmental Protection or Secretary of Agriculture, as appropriate, consider the petition and may grant a waiver to a project deemed to be in the public interest. However, in no case shall the projects approved by the board pursuant to this section occupy more than five percent of the unreserved land containing prime agricultural soils and soils of Statewide importance, as identified by

sited on prime agricultural soils, regardless of whether they sought a waiver from the BPU.<sup>6</sup>

20. As Enel argued in its May 25, 2022, comments in this docket: “Section 6 .... does not govern project approvals; approvals are governed by Section 4, N.J.S.A. 48:3-117. Moreover, if the legislature actually intended the 5% County Threshold to serve as an additional limitation, it would have placed it in the enumerated list of restrictions in Section 6(c).”
21. The legislative history also establishes that the 5% County Threshold was not intended to operate concurrent with the 2.5% Statewide Threshold. For example, the Assembly Budget Committee’s Statement of June 22, 2021, notes that “[a]fter the 2.5 percent threshold is reached, a waiver would be required for the remaining 2.5 percent of the lands with agricultural soils until the five percent cap on the use of lands with those soils for solar facilities is reached.” (emphasis added). Here, “those soils” clearly refers to the statewide figure, not to specific counties.
22. Similarly, a Senate statement accompanying the adopted amended language states “[a]fter the 2.5 percent threshold is reached, a waiver would be a required for the remaining 2.5 percent of the lands with prime agricultural soils until the five percent cap on the use of lands with those soils for solar facilities is reached[.]”
23. The 5% County Threshold makes it unlikely that the CSI program will be able to reach the targets established in the statute.

---

the United States Department of Agriculture’s Natural Resources Conservation Service, located within any county’s designated Agricultural Development Area, as determined by the State Agriculture Development Committee.

<sup>6</sup> The provision of the 2.5% was a highly negotiated settlement between the Legislature, Governor, solar developers, agricultural preservation interests, and labor.

## CONCLUSION

For the reasons stated above, MAREC and Dakota respectfully request that the Board modify its December 7, 2022, order as set forth in this motion. If the Board makes these changes to its order launching the CSI program, they will still likely have 400 MW to 500 MW (by MAREC's and Dakota's estimate) of qualified solar projects to bid even in the first solicitation, and therefore the goal of adequate competition will still be achieved. More importantly, the Board will have the comfort of knowing that solar projects that are awarded contracts are likely to actually be built thus allowing the state to meet its targets in a timely manner.

Respectfully submitted,

By:



---

Murray E. Bevan  
Jennifer McCave  
Bevan, Mosca & Giuditta, P.C.  
222 Mount Airy Road, Suite 200  
Basking Ridge, NJ 07920  
Tel: (908) 753-8300  
Fax: (908) 753-8301  
Email: [mbevan@bmg.law](mailto:mbevan@bmg.law)  
Email: [jmccave@bmg.law](mailto:jmccave@bmg.law)

Counsel for Mid-Atlantic Renewable  
Energy Coalition and Dakota Power  
Partners

Dated: December 22, 2022





## SERVICE LIST

### New Jersey Board of Public Utilities

Carmen D. Diaz

[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Bob Brabston, Esq.

[Robert.Brabston@bpu.nj.gov](mailto:Robert.Brabston@bpu.nj.gov)

Stacy Peterson

[Stacy.Peterson@bpu.nj.gov](mailto:Stacy.Peterson@bpu.nj.gov)

Taryn Boland

[Taryn.Boland@bpu.nj.gov](mailto:Taryn.Boland@bpu.nj.gov)

Henry Gajda

[Henry.Gajda@bpu.nj.gov](mailto:Henry.Gajda@bpu.nj.gov)

Abe Silverman, Esq.

[Abe.Silverman@bpu.nj.gov](mailto:Abe.Silverman@bpu.nj.gov)

General Counsel's Office

Michael Beck, Esq.

[Michael.Beck@bpu.nj.gov](mailto:Michael.Beck@bpu.nj.gov)

Carol Artale, Esq.,

[Carol.Artale@bpu.nj.gov](mailto:Carol.Artale@bpu.nj.gov)

Rachel Boylan, Esq.

[Rachel.Boylan@bpu.nj.gov](mailto:Rachel.Boylan@bpu.nj.gov)

James Creech, Esq.

[James.Creech@bpu.nj.gov](mailto:James.Creech@bpu.nj.gov)

Jacqueline Hardy, Esq.

[Jacqueline.Hardy@bpu.nj.gov](mailto:Jacqueline.Hardy@bpu.nj.gov)

Office of the Economist

Dr. Ben Witherell

[Benjamin.Witherell@bpu.nj.gov](mailto:Benjamin.Witherell@bpu.nj.gov)

Division of Clean Energy

Kelly Mooij

[Kelly.Mooij@bpu.nj.gov](mailto:Kelly.Mooij@bpu.nj.gov)

Véronique Oomen

[Veronique.Oomen@bpu.nj.gov](mailto:Veronique.Oomen@bpu.nj.gov)

Scott Hunter

[Benjamin.Hunter@bpu.nj.gov](mailto:Benjamin.Hunter@bpu.nj.gov)

Sawyer Morgan

[Sawyer.Morgan@bpu.nj.gov](mailto:Sawyer.Morgan@bpu.nj.gov)

Diane Watson

[Diane.Watson@bpu.nj.gov](mailto:Diane.Watson@bpu.nj.gov)

Earl Thomas Pierce

[Earl.Pierce@bpu.nj.gov](mailto:Earl.Pierce@bpu.nj.gov)

Saadia Chaudry

[Saadia.Chaudhry@bpu.nj.gov](mailto:Saadia.Chaudhry@bpu.nj.gov)

### New Jersey Division of Rate Counsel

Brian O. Lipman, Esq., Director

[blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)

Maura Caroselli, Esq.

[mcaroselli@rpa.nj.gov](mailto:mcaroselli@rpa.nj.gov)

T. David Wand, Esq.

[dwand@rpa.nj.gov](mailto:dwand@rpa.nj.gov)

Megan Lupo, Esq.

[mlupo@rpa.nj.gov](mailto:mlupo@rpa.nj.gov)

Robert Glover, Esq.

[rglover@rpa.nj.gov](mailto:rglover@rpa.nj.gov)

Carlena Morrison

[cmorrison@rpa.nj.gov](mailto:cmorrison@rpa.nj.gov)

### New Jersey Division of Law

Daren Eppley, Section Chief

[Daren.Eppley@law.njoag.gov](mailto:Daren.Eppley@law.njoag.gov)

Pamela Owen, Assistant Section Chief

[Pamela.Owen@law.njoag.gov](mailto:Pamela.Owen@law.njoag.gov)

Brandon Simmons, DAG

[Brandon.Simmons@law.njoag.gov](mailto:Brandon.Simmons@law.njoag.gov)

## SERVICE LIST

David Apy, Assistant AG  
[David.Apy@law.njoag.gov](mailto:David.Apy@law.njoag.gov)

### **New Jersey DEP**

Megan Brunatti  
[Megan.Brunatti@dep.nj.gov](mailto:Megan.Brunatti@dep.nj.gov)

Paul Orlando  
[Paul.Orlando@dep.nj.gov](mailto:Paul.Orlando@dep.nj.gov)

Robert Kettig  
[Robert.Kettig@dep.nj.gov](mailto:Robert.Kettig@dep.nj.gov)

Stephen Myers  
[Stephen.Myers@dep.nj.gov](mailto:Stephen.Myers@dep.nj.gov)

John Heilferty  
[John.Heilferty@dep.nj.gov](mailto:John.Heilferty@dep.nj.gov)

### **New Jersey Dept. of Agriculture**

Frank Minch  
[Frank.Minch@ag.nj.gov](mailto:Frank.Minch@ag.nj.gov)

### **New Jersey State Agriculture Development Committee**

Susan Payne  
[Susan.payne@ag.nj.gov](mailto:Susan.payne@ag.nj.gov)

Steven Bruder  
[Steven.Bruder@ag.nj.gov](mailto:Steven.Bruder@ag.nj.gov)

### **Joint Solar and Storage Parties**

Ryck Suydam  
New Jersey Farm Bureau

Scott Elias  
Mid-Atlantic SEIA  
[selias@seia.org](mailto:selias@seia.org)

Fred DeSanti  
Solar Energy Coalition (NJSEC)  
[fred.desanti@mc2publicaffairs.com](mailto:fred.desanti@mc2publicaffairs.com)

Bruce Burcat  
Renewable Energy Coalition  
[Actionbburcat@marec.us](mailto:Actionbburcat@marec.us)

David Murray  
Clean Power Association  
[dmurray@cleanpower.org](mailto:dmurray@cleanpower.org)