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February 10, 2023

VIA ELECTRONIC MAIL
Carmen D. Diaz, Acting Secretary
New Jersey BPU of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
board.secretary@bpu.nj.gov

Re: I/M/O THE COMMUNITY SOLAR ENERGY PROGRAM
DOCKET NO. QO22030153

Dear Acting Secretary Diaz:

On behalf of our client, CEP Renewables, LLC ("CEP"), please accept this letter as a comment submission in the above captioned matter (the "Community Solar Permanent Program").

CEP is an experienced developer of solar facilities in this State and has substantial expertise "on the ground" in terms of the real-world implementation of solar projects, particularly those on landfills, brownfields, and other contaminated properties. In fact, CEP has recently completed development and is nearing completion of construction on, to our knowledge, the largest community solar facility in the state – the BEMS Southampton landfill project in Southampton, Burlington County. The BEMS project consists of two co-located 5 MW dc arrays in two distinct EDC territories. CEP understands the challenges that these project face and believes that the Board needs to better understand these challenges and account for them in crafting the Community Solar Permanent Program. To make sure that landfill and brownfield projects have a chance to complete for community solar awards with other, less difficult to develop projects, the Board must make certain adjustments to the point scoring system used in Pilot Years 1 and 2.

CEP notes that the Straw Proposal has not yet been released, and thus asks for these comments to be included in the record and considered in full in the development and drafting of that document.

The key concern for CEP regarding the Community Solar program involves the scoring process as it applies to projects proposed to be located on landfills and brownfields. Based upon the current scoring criteria set forth in the Pilot Program documents, landfill and brownfield properties are at a distinct disadvantage, despite the intent of the program to provide these properties the opportunity to participate. CEP believes this should be rectified in the Community Solar Permanent Program so as to put these projects, which the Board has previously characterized as "long be[ing] recognized as providing benefits above and beyond the solar development that they enable,"[1] on equal footing with less challenging projects.

One element of this disadvantage can be seen in the designation of "higher preference" locations for solar development and installation. In the Pilot Program Year 2, the point system noted those areas that the Board and Staff considered worthy of additional points:

> Higher preference, e.g.: landfills, brownfields, areas of historic fill, rooftops, parking lots, parking decks, canopies over impervious surfaces (e.g. walkway), former sand and gravel pits, floating solar on water bodies at sand and gravel pits that have little to no established floral and faunal resources.[2]

While CEP appreciates the inclusion of landfills and brownfields into the higher preference category, CEP nonetheless has a number of concerns with this approach, where landfill and brownfield locations are seen as equivalent to other installation locations, such as rooftops. Specifically, CEP requests that, in implementing the permanent program, the Board and Staff modify the point system to give maximum preference to landfill and brownfield locations over other potential sites. This would require actually giving preference to landfill or brownfield projects; i.e., these projects would receive the maximum possible score for siting whereas other possible locations of projects would not receive the maximum number of points in this category.

Landfills, brownfields, and areas of historic fill should be the highest preference of siting for these projects. By way of example, if projects are eligible to receive a total of 20 points for siting (as with the Pilot Year 1 and Year 2 programs), landfills, brownfields, and historic fill sites should receive 20 points. Other sites, including rooftops, should receive something less than 20

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[1] I/M/O A New Jersey Solar Transition Pursuant to P.L. 2018, C.17, Docket No. QO19010068, dated August 17, 2022, at p.3, available at: https://www.nj.gov/bpu/pdf/boardorders/2022/20220817/8F%20ORDER%20Subsection%20t%20Transition%20Incentive%206%20Month%20Extension.pdf.

[2] Appendix B: Required Attachments Checklist , available from the New Jersey Board of Public Utilities' Office of Clean Energy website at: https://www.njcleanenergy.com/files/file/CommunitySolar/FY21/8C%20Community%20Solar%20Energy%20Pilot%20Program%20Year%202%20Application%20Form%202020-10-01_fillable%20PDF%20Appendices.pdf.

points. We submit that, in order to level the playing field (as discussed in detail below), the maximum number of points those other sites should receive is 15 points.

The State has continually noted its intention to encourage the development of landfill, brownfield, and historical fill sites with solar installations as opposed to other sites. Typically, these sites are not viable for any other use and are therefore not sought out for redevelopment through the investment of private capital. The State's solar programs have offered incentives to those developing on landfills and brownfields. In fact, throughout the development of the solar program in the State, the usage of landfills and brownfield property has been of high importance. The inclusion of the subsection (t) into the Solar Act is just one example of the State making a clear and definite policy statement that the use of these properties for the development of solar energy is beneficial and appropriate. In its August 17, 2022, Order regarding the now-closed "subsection (t)" program, the Board went to great lengths to extoll the virtues of landfill and brownfield projects, noting that these projects "provide a means of utilizing compromised sites that may not have another viable use and, in doing so, relieve some of the pressure for similar development on New Jersey's remaining farmland and open space."[3]

The Board must continue to support the use and development of these underutilized properties. Putting aside the value in developing otherwise unused property for energy production, the use of landfill and brownfields takes otherwise unactive and underused property and converts it into beneficial property for the owner, be that private or public. This use of landfill and brownfield property ensures that other, more productive, land is not used for energy production, and helps to provide a revenue stream and associated obligations to ensure that the property is cleaned, remediated, and no longer presenting a risk to the community or citizens of the State. State programs that incent the redevelopment of these properties with the influx of private capital are doubly important, since it is often the State itself that is left bearing the cost of capping or remediation, as was the case with the BEMS landfill in Southampton.

In fact, many landfill projects are located on formerly municipally-owned properties and the redevelopment of these properties with solar production facilities allows previously unproductive properties to be returned to the local tax rolls. In some cases, such as with the BEMS facility in Southampton or the recently completed Combe Fill North project in Mount Olive (also a CEP project), these projects involve a municipality recouping millions of dollars in back taxes due to the redevelopment of a formerly abandoned landfill or brownfield property that has become a financial drain on both the local municipality and the State. Even where the properties are privately owned, the installation of a solar array and the increased economic production from the facility creates the opportunity for the local municipality to receive additional tax revenue on a year-by-year basis. For larger facilities, such as those developed by CEP, that tax benefit to local municipalities can have a substantial impact on local budgets.

[3] I/M/O A New Jersey Solar Transition Pursuant to P.L. 2018, C.17, supra, at p. 3.

As the Board is well aware, landfill and brownfield properties do not currently have a realistic method for taking advantage of any solar incentive program in the State. The Board closed the subsection (t) program in August 2021, such that development of landfill and brownfield property is effectively dead in the State. The CSI program, recently approved by the Board, is not a practical option for new projects because the Board imposed a threshold requirement that any applicant to that program have a Feasibility Study from PJM as a gating criteria. As the Board is well aware, and as we have detailed in other correspondence, obtaining a Feasibility Study from PJM is a multi-year process, which will not allow projects to satisfy even the baseline requirement necessary to participate in the CSI program. Additionally, the CSI program provides for a 3-year period of construction following a Board award and, again, as we have pointed out on more than one occasion, even if a project meets the threshold criteria to apply to the CSI program, the timing of the award under the CSI program will not provide the project with sufficient time to achieve commercial operation. Accordingly, community solar is likely the only program that allows projects of any substantial size the realistic opportunity to be developed in this State. If the Board is serious about incenting projects to help achieve the State's renewable energy goals, it must take CEP's recommendations seriously and create a scoring system that gives preference to landfill and brownfield projects.

Another concern is that the scoring process provides 5 possible points for "project maturity." This is described as: "Higher preference: project has received all non-ministerial permits; project has completed an interconnection study."[4] This point offering double-counts for rooftop facilities, as the level of permits required for a rooftop system are essentially zero, while the permits required for a landfill or brownfield are significant and unlikely to be in place at the time of the application for Community Solar. This creates a competitive disadvantage for landfill and brownfield developments, and appears to provide a disincentive for what the Board and Staff have identified as a higher preference land use.

By way of example, a rooftop project may well represent that it has received all non-ministerial permits at the time of application and receive 5 total points without doing anything other than routine due diligence, because, very often, a rooftop project is permitted as of right without the need to obtain site plan approval from a local municipality. All that is required in that instance is building permits, which would be considered ministerial. By contrast, a project to be installed on a landfill or brownfield *always* requires not only site plan approval from a local municipality, but often a complex combination of NJDEP permits (including wetlands, flood hazard area, administrative consent order, landfill disruption permit, and the like); county approvals (site plan and subdivision); NJDOT permits (if located on a state highway); regional planning body approvals (from Highlands, Pinelands, or DRCC, as may be applicable); all of

[4] Appendix B: Required Attachments Checklist.

which must be procured before an applicant can indicate that all but ministerial permits have been received. This is a much higher barrier for entry for landfill and brownfield projects.

As seen in the case of BEMS, at the time CEP had received its community solar award from the NJDEP, it had essentially no non-ministerial permits in hand; however it had certainly started the process of obtaining them. The BEMS project required, in no particular order of significance: NJDEP Letter of Interpretation – Wetlands Delineation; NJDEP Flood Hazard Area Jurisdictional Determination; NJDEP Administrative Consent Order; NJDEP Major Landfill Disruption Permit; NJDOT Highway Access Permit; Pinelands Commission Certificate of Filing and Approval; Township Site Plan Approval; Township Road Opening Permits; County Site Plan Approval; and Interconnection Approval from both JCP&L and PSE&G. In practice, it would not be possible for CEP to submit an application for a community solar award with all non-ministerial permits in place, because there is such a complex array of permits required for these sites and the timelines are so lengthy and varied.

If the Board is going to continue with point scoring for receipt of non-ministerial permits, the Board must correct for the fact that rooftop development and landfill/brownfield development are entirely different. Rooftop projects essentially receive 5 points under the prior framework, and, if that framework were to continue, CEP recommends that landfill and brownfield projects should be eligible for the same 5 points if the applicant can establish the list of permits that will be required; have applied for a meeting with NJDEP's Office of Permitting and Project Navigation; submit a certification from a civil engineer as to the non-ministerial permits required; and demonstrate a good faith effort to achieve any required permits as of the date of the application. This would put the two classes of projects on equal footing.

As a final note, CEP recommends that the Board not include that the applicant has received an interconnection study as a basing for awarding application points. In CEP's experience, local EDCs will not accept an application for interconnection until after a community solar award is granted by the Board. It is putting the cart before the horse to require this of an applicant. If anything, the Board should consider more relevant criteria, such as the ancillary community and environmental benefits of the project, in scorings. In this regard, no projects should score higher than landfill and brownfield redevelopment projects, which, as detailed above, are always win-win-win projects for the community, municipality, and the State. The Board should recognize that a landfill or brownfield redevelopment project will contribute significantly to a municipality's tax base – with no corresponding offset in municipal services (essentially found money for each town) – in terms of awarding points.

Accordingly, CEP recommends that Community Solar Permanent Program should identify landfill and brownfield properties as being of the highest preference over other uses, providing a point designation over and above other siting options to provide landfill and brownfield properties with the level of support commensurate with the State's noted commitment to these uses. Likewise, to the extent that the Community Solar Permanent Program intends to

reward entities for Project Maturity, landfill and brownfield projects need to have a pathway to show this and receive similar points absent the presence of permits; for example, based upon proof of agreement or control of the property. Otherwise, rooftop facilities are "double dipping" based upon the lack of need for permits and other maturity elements, thereby blocking the ability for landfill and brownfield projects to participate in the Community Solar program.

CEP believes that it is the intent of the solar incentive program in this State for brownfield and landfill projects to be able to participate under fair and non-discriminatory criteria. As such, CEP respectfully requests that the Community Solar Permanent Program provide the necessary scoring criteria to recognize the value, benefits, and challenges associated with developing Community Solar on landfill and brownfield properties.

If you have any questions or need any additional information, please do not hesitate to let me know.

Very truly yours,

GENOVA BURNS LLC

KENNETH J. SHEEHAN

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