



March 15, 2023
VIA ELECTRONIC MAIL

Carmen D. Diaz
Acting Secretary of the Board
44 South Clinton Ave., 1st Floor
PO Box 350 Trenton, NJ 08625-035

RE: In the Matter of Competitive Solar Incentive (“CSI”) Program pursuant to P.L. 2021, C.169, Docket No. QO21101186, Request for Information

Dear Acting Secretary Diaz:

Enel North America, Inc. (“Enel”) is commenting pursuant to the New Jersey Board of Public Utilities (“NJBPU” or “Board”) March 7, 2023 notice in the matter of the Competitive Solar Incentive (“CSI”) program pursuant to P.L. 2021, C.169 for the Request for Information (“RFI”) under Docket No. QO21101186. The attached document includes a summary and explanation of our responses to this RFI.

We appreciate your consideration of these comments. Please do not hesitate to contact me at 978-886-7291 or alex.worsley@enel.com should you have any questions or require additional information regarding this filing.

Respectfully submitted,

Alex Worsley
Senior Manager, Northeast
Regulatory Affairs
Enel North America, Inc.

**BEFORE THE BOARD OF PUBLIC UTILITIES
OF THE STATE OF NEW JERSEY**

**In the Matter of Competitive Solar)
Incentive (“CSI”) Program Pursuant)
to P.L. 2021, C.169)**

Docket No. QO21101186

**Comments of Enel North America, Inc. in response to the Request for Information
 (“RFI”) regarding the requirement to demonstrate electrical and building permits or
 submitted application of those permits with the registration package under the
 Competitive Solar Incentive (“CSI”) Program**

Pursuant to the notice in the matter of the Competitive Solar Incentive (“CSI”) program for the Request for Information (“RFI”)¹, Enel North America, Inc. (“Enel”)² respectfully submits the following comments for consideration to the Staff of the New Jersey Board of Public Utilities (“NJBPU” or “Board”) regarding the requirement for providing documentation for building and electrical permits, or documentation that applications for these permits have been submitted, with the registration package as specified in the Order issued by the Board establishing the CSI Program (“CSI Order”)³. Enel appreciates that Staff is soliciting input on the permitting requirement and understands the importance of sufficient project maturity at the time of registration package. In our comments, we offer

¹ Notice for the Request for Information in the Matter of Competitive Solar Incentive (“CSI”) Program pursuant to P.L. 2021, c.169 (Mar. 8, 2023)

https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1293642

² Enel North America, Inc is a leading renewable energy and demand response provider in North America. Enel Green Power is a leading owner and operator of renewable energy plants with a presence in 14 US states and one Canadian province. The company operates 64 plants with a managed capacity of over 8 GW powered by wind, geothermal and solar energy.

³ In re Competitive Solar Incentive (“CSI”) Program Pursuant to L. 2021, c. 169, 2022 N.J. PUC LEXIS 367, BPU Docket No. QO21101186 (Dec. 7, 2022).

https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1283953

recommendations that will enable project development and competition while respecting the need for such maturity. As currently written, the permitting requirement is misaligned with a typical utility scale solar project development schedule and may create a significant barrier to participation in the CSI program. Enel urges the Board to reconsider this requirement and offers two alternative recommendations. First, instead of requiring a project to provide demonstration of progress towards building and electrical permits at the time of the registration package, Enel recommends that the Board require demonstration of these permits closer to a project's commercial operation date ("COD"). Second, to continue to ensure that projects are sufficiently mature at the time of the registration package, Enel recommends that the Board requires proof of final or conditional land development approval, as applicable in the subject host municipality, with the registration package instead. The following response provides additional details regarding Enel's concerns with the requirement and the rationale for Enel's recommendations.

I. Introduction

In the CSI Order, issued by the Board December 7, 2022, NJBPU Staff recommended that within 30 days of receiving an award in the solicitation, a project would be required to register with the program administrator pursuant to the requirements enumerated in the CSI Order on page 32 and 33. One of the requirements enumerated in this list was for a project developer to provide "electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality."⁴ This specific requirement was not included in the NJBPU's CSI Straw Proposal, released for public

⁴ *Id.* at 32.

comment on April 20, 2022 under the same docket number as referenced above, and parties were unaware that the NJBPU was going to propose such a requirement until issuance of the final CSI Order.

On March 7, 2023, Staff of the NJBPU invited interested parties and the public to provide written responses related to this requirement, specifically seeking input regarding the following two questions:

1. Have you experienced or do you anticipate barriers to submitting applications for electrical and building permits to relevant municipalities within the timeframe in accordance with the requirements of the CSI Program?
2. What if any, changes to the registration requirement do you consider necessary?

We respond to Question 1 in Section II of these comments by explaining how this requirement poses a barrier to participation in the CSI program. We respond to Question 2 in Section III of these comments by offering two recommended changes to the registration requirement that the Board can implement ahead of determining awards and registering projects.

II. Requiring Building and Electrical Permits with Registration will Create Barriers

Under the requirements specified in the CSI Order, a project developer would need to have submitted building and electrical permit applications within 30 days after the NJBPU selects awards under the CSI program. As part of the application for these permits, the developer would need to have provided the municipality a near-final project design, even though the CSI Order allows up to three years thereafter to achieved COD. As explained below, requiring near-final project design and technology choices so far in advance of COD

poses untenable risk and cost on developers. It will discourage competition in the CSI program and unnecessarily increase costs on New Jersey consumers.

Building and electrical permits applications require detailed engineering and technical information regarding a project's design. These engineering and technical details are normally established and refined throughout the course of a lengthy project development schedule and may change as a project optimizes its design and equipment is procured. Solar panel technology improves on a yearly basis, leading to lower project costs and more efficient land use. Normally, a developer will wait until late in the development cycle to make final procurements decisions to account for technology and supply chain changes that occur during the four-to-six-year development timeline. In addition to technology changes, in our experience, engineering firms will not sign-off on a design for application for a construction permit if that design is not construction-ready, so every time a project applies for or modifies a permit, they require a full engineering design package. Therefore, due to the uncertainty in technology changes and the cost of engineering work, under a typical utility scale solar project development schedule, a project will apply for building and electrical permits just prior to construction – after the developer optimizes design based on equipment availability, procures (or commits to purchasing) such equipment (e.g., panels, racking systems, inverters, and main transformers), and completes engineering based on these technology choices.

A developer could theoretically modify or resubmit a permit application if a better technology choice or more optimized design emerged. However, as mentioned above, this would require a redesign by the project's engineering team. Under the current requirement, a project would have already committed a significant amount of capital to engage the engineering for a construction-ready design to apply for the permits. Completing the level of design required for building and electrical permit application more than once jeopardizes a

project's economics and schedule and could pose a significant barrier to participation in a solicitation which enhances this risk. Enel understands that a developer is under no obligation to use the entirety of the three-year eligibility period that is afforded by the CSI Order but revising permits or waiting to apply to the CSI program until after building and electrical permits are secured introduces unnecessary expense and risk without adding any material value to the objective of registration package – demonstrating project maturity and commercial viability.

A project developer who meets the current requirements under the CSI Order by submitting these permits with the registration package would either be locked into their design potentially three years before their COD, which would preclude them from further optimizing the site and design to minimize land usage and equipment costs, or be exposed to the risk and cost of modifying their building and electrical permit applications as supply chains, technology, and designs change. Waiting to apply for these permits until a developer is more certain about their final design would (1) allow a project to avoid having to modify or reapply for a permit due to a design change, which could delay or jeopardize commercial operation of the facility, (2) avoid additional unnecessary engineering costs and procurement risk, and (3) equip a project to submit a lower bid because of the elimination of unnecessary risk and cost exposure, thereby increasing the cost-effectiveness of the solicitation funded by NJ consumers.

While a project will eventually need to obtain these permits with a final design, maturity requirements must strike an appropriate balance between ensuring that projects are sufficiently mature, not speculative, and can be constructed within the program timelines, and ensuring fair competition without imposing undue burden on developers or, indirectly, NJ consumers. Such competition will ensure NJ consumers are receiving the best value from the

CSI program. The requirements in the final CSI Order do not appropriately strike this balance, threatening competitiveness and success of the program.

III. Delaying Building and Electrical Permit Requirements and Requiring Land Development Approvals Will Strike a More Reasonable Balance

Enel recognizes the importance of striking an appropriate balance between ensuring that projects are making progress towards completion and sufficient competition within the auction. Enel also recognizes that project developers will eventually need to obtain building and electrical permits in order to build and operate their facilities. Therefore, accounting for these considerations and the CSI program requirements and deadlines, Enel offers the following two recommendations to Staff :

1. The NJBPU should remove the registration package requirement for projects to include electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality. To keep the process as efficient and straightforward as possible, the NJBPU should instead utilize the conditional registration process to require developers to submit these building and electrical permits or applications at least 12 months prior to the expiration of their notices of conditional registration.
2. The NJBPU should require projects to provide documentation that a project's proposed use or site plan is approved or conditionally approved (e.g., resolution of approval) by the host municipality, as applicable, to ensure sufficient project maturity at the time of the submission of the registration package.

Enel's first recommendation better aligns typical utility-scale solar development schedules with the building and electrical permit requirement specified in the CSI Order. A project does not need to demonstrate progress towards these permits at the time of registration

in order to meet the CSI Order COD requirements. However, a project will need to obtain these permits prior to construction. Therefore, given typical utility-scale solar construction timelines, Enel believes that these permits would need to be obtained at least 12 months before the anticipated commercial operation date. As a project has until 36 months after it is issued a notice of conditional registration in the CSI program to complete its post-construction certification package before the notice expires, Enel believes that a project would need to have obtained or applied for these permits at least 12 months prior to the expiration of the notice of conditional registration in order to meet the post-construction requirements, and proposes that conditional registration remains contingent on a project demonstrating such progress before that point in time. Projects that are confident in their ability to meet all the other CSI Order requirements should be able to achieve this milestone under the proposed timeframe while not imposing an unnecessary requirement on projects following a typical development cycle. This change could increase the competition within the auction.

Enel's second recommendation attempts to balance deferring the building and electrical permitting requirement until a project is closer to its COD by imposing a new permitting requirement that still ensures an appropriate level of project maturity in order to participate in the CSI Program. Land development permits, in the form of municipal approvals of site plans or the proposed use, demonstrate local-level endorsement of the basic project design but require fewer technical details than those needed to apply for building and electrical permits. These permits are important development milestones because they demonstrate that a project is generally compliant with local regulations while also allowing for flexibility in the design process, enabling developers to make changes that improve land usage, project economics, and compatibility with the host community. This type of approval is oftentimes more discretionary and demanding than building and electrical and building permits (which are

typically ministerial), and therefore a more appropriate demonstration of project maturity and stronger indication of permitting compliance. Because these permits are required for development, need fewer engineering details than electrical and building permits, and are more pertinent indicators of permitting compliance and ultimate project viability, Enel believes that demonstration of approval or conditional approval of these permits, as applicable, is a better indicator of whether a project will move forward at the registration stage of the CSI program process; and therefore, along with delaying the building and electrical permit requirement, Enel recommends that the Board to implement this new requirement with the registration package.

IV. Conclusion

As the qualification process for the first cycle of solicitations under the CSI program is still ongoing and projects have not yet submitted their bids, Enel encourages the NJBPU to implement changes to the building and electrical permit registration requirements as expeditiously as possible, such that any approved changes can be effective for all cycles of the CSI Program. Enel believes the recommendations detailed in Section III of this response will appropriately mitigate the concerns outlined in Section II of this response and that these recommended changes could be effectively implemented immediately for the first round of the CSI program.

Enel thanks the Board for their consideration of these comments, and for their continued leadership in New Jersey's commitment to renewable energy. We welcome any discussion or questions, and encourage you to contact Alex Worsley, Senior Manager for Regulatory Affairs for the Northeast for Enel, at (917) 886-7291 or alex.worsley@enel.com for any follow up discussion.

Respectfully,

Alex Worsley
Senior Manager, Northeast
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