



December 13, 2023

*Via E-mail*

Sherri L. Golden  
Secretary of the Board  
New Jersey Board of Public Utilities  
44 South Clinton Ave., 1st Floor  
PO Box 350  
Trenton, NJ 08625-0350

**RE: IN THE MATTER OF THE NEW JERSEY DUAL-USE SOLAR ENERGY PILOT PROGRAM. DOCKET NO. QO23090679**

Dear Secretary Golden:

The Solar Energy Industries Association ("SEIA"), New Jersey Solar Energy Coalition ("NJSEC"), Coalition for Community Solar Access ("CCSA"), and Vote Solar appreciate the opportunity to provide input on the Board of Public Utilities' ("BPU" or "the Board") Dual-Use Solar Energy Pilot Straw Proposal ("Straw Proposal") and thank the Board for their significant work in developing the Dual-Use Solar Energy Pilot Program ("Pilot Program" or "Program"), which is being implemented pursuant to the New Jersey Dual-Use Solar Energy Act of 2021 ("Dual-Use Act" or "Act"). In the Straw Proposal, BPU Staff requested stakeholder feedback on thirteen questions, which SEIA, NJSEC, CCSA, and Vote Solar (together "we" for the purposes of these comments) have responded to below.

We look forward to reviewing proposed program rules that the Board anticipates issuing after reviewing stakeholders' responses to the questions posed by Staff.

Respectfully submitted,

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## **NJSEC, SEIA, CCSA, and Vote Solar Background**

SEIA is the national trade association for the United States solar industry. As the voice of the industry, SEIA works to support solar as it becomes a mainstream and significant energy source by expanding markets, reducing costs, increasing reliability, removing market barriers, and providing education on the benefits of solar energy and energy storage. SEIA works with its 1,000 member companies and other strategic partners to advocate for policies that create jobs and shape fair market rules that promote competition and the growth of reliable, low-cost solar power. SEIA's member companies range from manufacturers, residential, community solar, commercial, and utility-scale solar developers, installers, construction firms, investment firms, and service providers. SEIA has nearly 50 member companies located in New Jersey with several more national firms also conducting business in the state.

NJSEC was formed to create public policy support for New Jersey's solar industry. NJSEC works in legislative outreach, education, and the development of realistic public policy alternatives that align with the fiscal and social circumstances that are unique to New Jersey. NJSEC members include local and national developers, renewable energy credit market traders and analysts, engineers, and legal and accounting professionals supporting all phases of New Jersey's solar industry.

CCSA is a national, business-led trade organization, composed of over 100 member companies, that works to expand access to clean, local, affordable energy nationwide through the development of robust community solar programs. Its members range from pure-play project developers to companies focused on customer engagement, and everything in between. CCSA and its members – of which there are over thirty engaged in New Jersey - are actively participating in the development and implementation of the State's Pilot and Permanent Community Solar programs. Dual-use solar development is a rapidly growing segment of the community solar industry throughout markets across the country.

Vote Solar is a non-profit policy advocacy organization with the mission of making solar more accessible and affordable across the United States. The organization works at the state-level in 27 states to drive the transition to a just 100% clean energy future. Vote

Solar is a team of solar advocates using a winning combination of deep policy expertise, coalition building, and public engagement to power just and equitable clean energy progress in states nationwide. Our team advances clean energy progress in state legislative and regulatory arenas, where most decisions about electricity are made. Since 2002, Vote Solar has brought our winning combination of deep policy and technical expertise, coalition building, and public engagement to drive meaningful progress.

## **SEIA, NJSEC, CCSA, and Vote Solar Responses to Staff Questions**

We are pleased to respond to the following questions put forward in the Notice for this docket.

### **1. What additional pre-solar conditions of the farm parcel proposed for a solar array should be documented?**

The purpose of the Pilot Program is to encourage the development of dual-use solar facilities, also known as agrivoltaics, and specifically demonstrate and study the compatibility of agricultural or horticultural production and solar photovoltaic infrastructure on the same land.<sup>1</sup> We recommend that the farm parcel's continued eligibility for the agricultural tax assessment program should be the baseline for determining continued use. In the project applicant's documentation of pre-solar conditions, the applicant should provide information pertaining to the previous agricultural yield of the site in order to best understand the overall economic impact of the proposed project. If there are any conservation, or other land-preservation easements, the applicant should also provide documentation of the easement terms and maps.

### **2. What additional information should be collected to enable an evaluation of solar construction and operational impacts on the land beneath and adjacent to the solar array?**

BPU Staff proposes that "each dual-use solar energy project must contain a dedicated array of solar panels, balance of system equipment, with an accompanying research control area identical in size to the area under and adjacent to the solar panels."<sup>2</sup> We believe that requiring a 50% control area would render potential Pilot projects economically and practically infeasible. We urge the Board to consider other options that still provide access and data collection for research purposes. While a 10% control area would certainly be more manageable, the Board may also consider awarding extra

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<sup>1</sup> New Jersey Board of Public Utilities. *In the Matter of the Dual-Use Solar Energy Pilot Program*. Docket No. QO23090679.

<sup>2</sup> *Ibid.*

points on its scoring rubric to projects that have a control area, rather than requiring all projects to incorporate this design element.

**3. Which of the alternative approaches to awarding an incentive to a dual-use solar energy project eligible for the CSI Program provide the most competitive, efficient, and effective outcome at the least cost to ratepayers?**

We support Staff's recommendation that the existing Successor Solar Incentive ("SuSI") Program, including the Administratively Determined Incentive ("ADI") Program, the Competitive Solar Incentive ("CSI") Program, and their associated SREC-IIs, serve as the primary source of incentive for dual-use projects, and that an individual project's proposed system size, utility service territory for interconnection and sale of electricity will determine program eligibility for a dual-use project may be using the ADI and CSI Program rules.

Given the additional requirements placed on agrivoltaics, we can reasonably expect costs to be higher than other similarly sized and sited projects and therefore strongly encourage BPU to institute a fixed incentive for dual-use projects in addition to the base level of incentive provided through the CSI or ADI Program. The Board should move quickly to establish the value of the dual use adder and take stakeholder comment and feedback on the proposal prior to releasing the proposed Program rules. BPU could hire an outside firm to analyze the increased costs associated with dual-use projects, or could conduct its own survey research to better understand these costs. Failure to set the adder at the correct level may not drive industry interest in agrivoltaics projects and may jeopardize the BPU's ability to successfully implement the law. Furthermore, as an alternative to giving applicants the option to request such an adder, the BPU could give additional weight to projects waiving the dual-use adder in making their awards to the Program.

Furthermore, dual-use projects up to 10MW should be able to leverage capacity from the dual-use program and while also being able to participate in the community solar permanent program in order to provide savings to these residential and low-income customers while meeting the state's goals of preserving farmland and efficiently using ratepayer funds. This approach is in line with New Jersey's Energy Master Plan, which prioritizes access for communities that have been historically left out of the clean energy transition.

For all solar projects to work financially, including dual-use projects, it is important to layer both offtake revenues (whether that is behind-the-meter, community solar or wholesale) with any incentive revenues from the ADI or CSI programs. Without the ability to participate in community solar, dual-use projects will be limited to offsetting load on-site. Given the nature of farming operations, where these projects would be located, that on-site load is likely to be minimal. Without a viable offtake strategy, these projects will be forced to rely heavily on ADI or CSI incentives in order to pencil.

**4. In addition to scoring an application based on its status in the interconnection process, should a minimum level of project maturity within the interconnection planning process be required of an applicant?**

No, at this stage of the Pilot Program, we do not recommend establishing a minimum level of project maturity within the interconnection planning process as this would likely significantly reduce the number of potential applicants by adding unnecessary costs to the application process ahead of evaluation. Dual-use projects are currently unable to progress in the interconnection queue, placing them at increasing risk of delay while other ADI projects move forward. Pilot Program applicants should include information about costs and feasibility into their applications once a feasibility study has been conducted by the interconnecting utility or regional transmission organization (“RTO”). To achieve appropriate project maturity, the Board should immediately direct the utilities to begin processing dual-use interconnection applications. Project maturity requirements would serve no useful purpose. Project maturity milestones, if necessary, could be added in after the project has been approved. We recommend requiring applications to provide evidence only of having made application to the appropriate interconnection authority.

**5. What stage should a project have achieved in the PJM interconnection queue or in the NJ EDC interconnection application process to be considered eligible to apply in the Pilot Program?**

In order to be considered eligible to apply to the Pilot Program, we recommend that the Board require applicants to provide evidence of having filed an application with the appropriate interconnection authority. Projects could be weighted or scored based on their progress through the queue but should be allowed to apply for interconnection and program participation simultaneously as both processes may be quite lengthy.

**6. What additional information pertaining to techniques for minimizing the negative impacts to farmland would be useful for including in the Pilot Program for the purposes of informing a future, permanent dual-use program design?**

The Dual-Use Act includes several provisions aimed at minimizing the negative impacts to farmland. These include a prohibition on siting dual-use projects on prime agricultural soils and soils of statewide importance, unless the project is in association with a research study undertaken in coordination with a New Jersey public research institution of higher education as approved by the Board in consultation with the Secretary of Agriculture.<sup>3</sup> The Act also prohibits siting dual-use projects on coastal or freshwater wetlands, in certain areas within the Pinelands and in the Highlands

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<sup>3</sup> N.J.S.A. 48:3-87.13(b)(4).

preservation area, unless granted a waiver by the Board.<sup>4</sup> We believe these prohibitions are sufficient for minimizing the negative impacts to farmland throughout the three year term of the Pilot Program and that it would be premature to place additional restrictions on applicants to the Program not already found in the Dual-Use Act or the BPU's Straw Proposal.

The Straw Proposal identifies that dual-use projects are considered a permitted use within every municipality. The final program rules should further specify that dual-use projects do not require a special use or conditional use permit in accordance with statute. With thoughtful planning, localities can simultaneously expand and strengthen solar infrastructure while conserving farmland, generating ecological benefits, and supporting rural communities.

**7. What additional information pertaining to techniques for addressing decommissioning would be useful in the Pilot Program for the purposes of informing a future, permanent dual-use program design?**

Solar developers should present localities with a bond or financial surety to cover decommissioning costs at the end of the array's life. The surety amount would cover the cost of returning the site to a predevelopment state and should include the cost for removing the photovoltaic system, including the array and the balance of system equipment. If any utility-owned equipment was installed on the site, including utility poles, drop lines, transformers, or other associated infrastructure, the utility will be required to decommission those components in accordance with all applicable statutes at the time of decommissioning. The removal of all equipment (including underground conduit) and restoration of the surface grade will allow landowners to easily return given areas to full-scale agricultural production or, if desired, other uses.

**8. What additional information pertaining to techniques for managing stormwater impacts from impervious coverage and optimizing water management would be useful for considering in the Pilot Program for the purposes of informing a future, permanent dual-use program design? Is there a certain panel density below which we can anticipate minimal environmental impact, including but not limited to those from stormwater runoff?**

Many factors can influence stormwater runoff including slope, topography, underlying soil types, and surrounding vegetation. Part of the purpose of a pilot program is to study these many factors in a real-life setting. We generally support the implementation of policies and practices to protect natural resources and ensure opportunities for future farming on the parcel. We also recommend that the Board not pre-determine a universal

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<sup>4</sup> N.J.S.A. 48:3-87.13(b)(5).

panel density because an acceptable panel density and row spacing can vary greatly depending on slope and terrain. Instead, we recommend that factors such as panel density, row spacing, and placement be determined as conditions may dictate during the design and permitting of the project considering factors such as slope. Current storm water regulations are sufficient to protect agricultural soils on these sites, and we hope to learn more as the Program progresses. We further recommend that factors such as panel density, placement, the slope of the terrain, row spacing, and height continue to be recorded on site plans (as they currently are) so that the impact to storm water can be evaluated as the Program progresses.

**9. What additional information pertaining to technical feasibility and technical innovation would be useful for the purposes of informing a future, permanent dual-use program design?**

At this juncture, it is not possible for Program applicants to accurately estimate the cost of actively participating in the ongoing research as well estimating the associated costs of collecting and providing data to support the ongoing research. This will make it very difficult for any applicant to accurately determine the overall level of incentive required for their participation. The Board should, in consultation with the Department of Agriculture, develop and publish estimates of these costs on unit scalable basis. This would BPU with a fairer way to judge each applicant's incentive bid in a fairer way that would result in a more meaningful and leveled evaluation of the merits of each project. Leaving applicants to essentially guess at these research costs will be counterproductive to selecting the best projects.

One option would be for the BPU to issue an open RFP for project environmental and agricultural impact study. The winning firm could then design and carry out data collection, analysis, and reporting for the whole program. The costs of the study could be allocated to the program rather than to individual projects. This approach would standardize data collection, ensure that data are high quality and consistent, and provide high-level generalizable recommendations for a longer-term program. There are many environmental consulting firms, and research institutions such as universities, conducting similar studies that could provide high-quality third-party data. The development of the potential study design should happen with the input of stakeholders in front of the BPU.

**10. What challenges or obstacles do you foresee that could prevent a project applicant from providing research results within the timeframe of the Pilot Program?**

The Act directs the Board to establish annual capacity targets not to exceed a total of 200 MW over the first three years of the Pilot Program.<sup>5</sup> In the Straw Proposal, BPU Staff propose setting an initial annual capacity target for the first program year at 30 MW. However, given pent-up market demand since 2021, and the delays facing dual-use projects discussed above, the Board should release larger buckets of capacity on an expedited basis. We strongly recommend issuing two solicitations for 100 MW each in order to efficiently review applications and get projects in the ground as soon as possible.

**11. What additional criteria, if any, should the Board consider in making its awards?**

Given the Program's pilot status, we recommend that the Board not consider any additional criteria in making its awards.

**12. If so, how should those additional criteria be weighted?**

We recommend that the Board not consider implementing any additional criteria not currently outlined in the Straw Proposal for the duration of the Pilot's three year term.

**13. The Act gives the Board the authority to designate additional criteria in reviewing and making decisions about dual-use projects. What additional information pertaining to diversity of size and productivity would be useful for the purposes of future permanent dual-use program design?**

The Pilot Program should avoid a narrow focus on exact crop yield comparison between array and non-array conditions. We recommend that the Program instead be designed for outcomes that demonstrate how farmers change their practices in an agrivoltaic array and how those practices influence farm viability. Results from this approach will translate to real-world insight that can be used to inform the permanent program. The program evaluation should also consider the overall revenue to farmers, including any lease or incentive payment they receive from the array. Even if a dual-use array slightly reduces crop yield, or causes a switch to a different crop type, the overall revenue to farmers generally increases thereby boosting farms and providing valuable stabilizing income. The Pilot Program should consider overall farm viability with a broad focus.

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We appreciate the opportunity to provide input on the Dual Use Solar Energy Pilot Straw Proposal and look forward to continuing our involvement in this and other important New Jersey proceedings.

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<sup>5</sup> N.J.S.A. 48:3-87.13(b)(2).