

June 24, 2024

VIA ELECTRONIC FILING

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

Re: In the Matter of the Dual-Use Solar Energy Pilot Program, Docket No. QO23090679, Comments on draft regulations

Dear Secretary Golden:

Thank you for the opportunity to provide written comments in the above referenced proceeding, Docket No. QO23090679. We, the Agrivoltaics Stakeholders (Stakeholders), applaud the New Jersey Board of Public Utilities (the Board) for the release of the dual-use solar energy pilot program draft regulations, and we look forward to the implementation of the pilot program.

In New Jersey, most agrivoltaics developers have project sites with a variety of proposed crops and in a variety of geographic regions. These sites are typically under 5 megawatts (MWs) due to small parcel sizes and the limited agricultural opportunity for large scale farms in New Jersey. The Stakeholders are diligently working with New Jersey's Farm Bureau, the American Farmland Trust, and entities such as the Pinelands Commission to communicate the benefits of preferred siting methods like agrivoltaics to both New Jersey's clean energy goals and farmers. We are some of the first developers in the country actively offering this model of community solar development and we are eager to provide the following input to the Board regarding the dual-use solar energy pilot program draft regulations. While we are glad to see the Board is near to ending a 2-and-a-half-year delay in implementing the dual-use pilot program, the Stakeholders have two primary and serious concerns with the draft regulations as currently written.

First, and as stated in previous comments, the proposed control area unnecessarily limits and restricts farmers and presents significant threats to the viability of mature dual-use projects based on land constraints. The Stakeholders believe that requiring a 3-acre control area is inconsistent with current Rutgers and National Renewable Energy Lab research practices for dual-use sites. Requiring such a large control plot does not aid in scientific validity and will severely limit the number and the diversity of farmers who will be able to accommodate such a large control plot and restriction on their farming practices outside of the array. Hamstringing farmers should not be the intent of these regulations. The Stakeholders would also like to reiterate that the sites with available interconnection capacity (both distributed and transmission) are smaller sites, as the majority of family farms in New Jersey are on small acreage farms.

More holistically, the Stakeholders would like to highlight for the Board that finding willing landowners and/or tenant farmers and a site with feasible interconnection logistics presents an enormous challenge to the dual-use pilot program. Requiring a large, 3-acre control area for all sites will force developers to focus on larger parcels of land and will reduce the positive benefits of dual-use sites. It will also discourage the participation of smaller family farmers, who arguably need farm viability tools like agrivoltaics the most. Farmers simply cannot financially forfeit the use of that acreage for a control site for research purposes. Our farmers must be able to remain flexible as the market changes. Additionally, the Stakeholders urge the Board to consider more flexible requirements for fencing control plots, as this may hinder a farmer's ability to farm areas adjacent to the control plot.

From the Stakeholder's perspective, we respectfully suggest that it would be more appropriate to require a minimum control plot size based on the total project site of the farmer's land in question. We propose that the rules be amended to require control plots to be 15% of the total project site acreage, but not less than a .5 acre and maximum of 3 acres. Other commenters will be providing input on their first-hand experience of control sites on dual-use sites and how it does not impact the statistical significance of the data.

As currently proposed, the Board seemingly allows for dual-use projects to participate in both the ADI and CSI programs. But, according to stakeholders that have been in touch with the BPU, it is still the intention of BPU Staff to limit dual-use projects from participating in the CSEP program. If this is the case, the Stakeholders are confused as to why the Board would insist that dual-use projects must use the CSI program, which currently is only open "... to qualifying grid supply solar facilities, non-residential net metered solar installations with a capacity greater than five (5) megawatts ("MW"), and to eligible grid supply solar facilities installed in combination with energy storage."

Most developers interested and engaged in the dual-use pilot program thus far develop projects at the community scale (1 to 5 MWs). Frankly, utility scale developers are not prepared to pivot their existing projects to dual-use and will not be able to participate in the next 3 years either due to already being past the point of 5% design or because of interconnection restrictions, it is very rare to find a 5MW+ interconnection capacity at the distributed generation level and PJM transmission studies have been on a pause for the last two years. The Stakeholders are disappointed to see an arbitrary minimum size imposed on dual-use projects and cautions the Board that this requirement to use the CSI program is not in line with the legislative intent which established this program.

The Stakeholders are also concerned that the next CSI bid selection process is not due to occur until next year, which would create additional and unnecessary delay in implementing this program. If we were to submit projects into the application process for the dual-use program without a confirmed CSI award, then the submitted financials would be an estimate that would account for the risk of not receiving an award through the CSI program. While net metering

presents an alternative to the CSI program, the Stakeholders are unaware of any project or developer that would be able to qualify for that program with a dual-use project due to lack of on-site usage for the type of parcels that farmers are willing to use for agrivoltaics.

Since the majority of known potential agrivoltaics sites would not be eligible for net metering and the CSI program due to size, the Stakeholders strongly urge the Board to allow dual-use pilot projects to be eligible for the Community Solar Energy Program (CSEP) up to their full allowable size of 10 MWs. The pilot program draft regulations propose a strong prequalification process (Expression of Interest) and other metrics specific to dual-use projects to gather information. Community solar offers a variety of additional benefits, including guaranteed energy bill savings and a focus on serving low- and moderate-income people. The developers with the most mature potential projects and skills in agrivoltaics reside primarily within the community solar space. Allowing dual-use projects to participate in the CSEP would allow the pilot program to move forward expeditiously. Furthermore, if no change occurs, developers whose projects are 5MW+ will eventually be forced to accommodate for the extremely competitive bids for the CSI program in their adder requests, which will be an unnecessary expense for the pilot program and would not serve to demonstrate the scalability and commercial viability of agrivoltaics in New Jersey. Again, we want to reiterate that as the proposed rule is currently written that there is no pathway for smaller projects to participate.

The Stakeholders seek clarification of how the process for CSI award and dual-use application would coincide. If our projects were large enough to compete in the CSI program, then there is a risk that our projects would not be able to compete with the non-agPV utility scale bids. Additionally, if we were to be awarded under the CSI program, the projects would be taking up capacity under CSI and not the dual-use program. The legislation is clear that the dual-use program is to be additional MW capacity for New Jersey solar goals. For ease of administration, the BPU should set an ADI for dual-use projects for the pilot program and allow for additional adder if needed. For reference, in Europe developers are designing and installing agrivoltaic arrays for 100 Euro/MWh all in.

As additional points of feedback, the Stakeholders encourage the Board:

- to provide additional guidance on how research should be coordinated amongst parties or centralized at the BPU. Lack of guidance on necessary roles and responsibilities will create a high risk of incompatibility of research data and a poor comparison of outcomes, despite strong minimum research standards. Costs associated with research will be hard to estimate in project applications without more clarity.
- to direct the utilities to process interconnection applications for dual use projects now so that developers have the necessary information about project viability when applying to this program.
- to clarify the definition of "farmer", which may exclude nonprofits from participating as written.
- to change the application requirements to allow any form of site control, not solely a lease, to meet program entry requirements before having the guarantee of incentive qualification.

- to provide clarity on how projects will operate past the 3-year research commitment. Specifically, what standard of reporting is required? Is continued farmland tax assessment qualification sufficient?
- to change the reporting requirements, which as written, require that the landowner is responsible for notifying the Board of certain changes. All COMPR updates about owner/operator changes should just be the responsibility of the project team.
- To provide a clearer definition of application review criteria, especially the term "robustness", so that developers may better understand how these projects will be selected in a transparent manner.

To conclude, the Stakeholders believe that the Board has the authority under subsection (r) of the Solar Act of 2012 to allow for dual-use projects to be eligible for the CSEP program as stated: " ...the approval of the designation of the proposed facility would not significantly impact the preservation of open space in this State." Per the Dual-Use Act of 2021, agrivoltaics may not be sited on preserved agricultural land, projects will be in consultation with the Department of Agriculture and would qualify for farmland tax assessment just as a non-agrivoltaics farm would based on their agricultural production activities. Agrivoltaics, by definition, would be preserving agricultural production for the life of the solar project.

Thank you for the opportunity to provide these comments in relation to Docket No. QO23090679. The Stakeholders strongly urge the Board to act expeditiously to incorporate stakeholder comments and to move forward with a 2024 dual-use pilot program application process. If you have any questions or need additional information, please contact us.

Sincerely,

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