BPU Updates Recommendations to New Jersey Solar Successor Program Straw Proposal: Deadline for Written Comments to Proposal Extended to May 27, 2021

Client Alert

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On May 7, 2021, the New Jersey Board of Public Utilities (BPU) issued a Staff Memo updating recommendations to its April 7, 2021 Straw Proposal, which sets forth the BPU Staff's detailed proposal regarding the design and implementation of an economic incentive program (i.e., Successor Program) to replace New Jersey's longstanding Solar Renewable Energy Certificate (SREC) and Transition Incentive (TREC) programs.

The Clean Energy Act of 2018 requires the BPU to replace the SREC program once 5.1% of the total energy sold in New Jersey is being produced by solar electric generation systems, a milestone that was achieved on April 30, 2020. At that time, the BPU closed the SREC program to new entrants and established a TREC program to maintain incentives until the BPU developed a Successor Program. The Straw Proposal is intended to replace the TREC program. BPU states that "[t]he final step in the evolution of New Jersey's solar incentive program is the creation of a long-term, durable solar incentive program (Successor Program)." The Straw Proposal had recommended the adoption of a "bifurcated" incentive program that provides: (1) an administratively determined incentive, similar to the current Transition Incentive program (i.e., TRECs), for behind the meter projects less than 2 MWs and for community solar projects, and (2) a competitive solicitation process for grid-supply projects and net-metered non-residential projects 2 MWs or greater.

Since the release of the Straw Proposal, the BPU Staff has conducted a series of public workshops and informal conferences to receive input from stakeholders and the public. In response to the input it received, the BPU Staff issued a Staff Memo updating and clarifying various aspects of its recommendations contained in the Straw Proposal. By issuing its Staff Memo during the public comment period, the BPU Staff has increased the transparency of the process by providing insight into its "thinking on certain specific items." The issuance of the Staff Memo enables stakeholders to shape their written comments, which are now due on May 27, 2021, to better address the BPU Staff's preliminary recommendations.

The items addressed in the Staff Memo include:

Imposing a Market "Check Up" After Year 1 of the Successor Program

In response to stakeholders' concerns, the BPU Staff supports a review of the incentive program to be conducted one-year after the program is implemented. The purpose of the review is to confirm that the program starts off successfully. After the review, BPU Staff may recommend changes to ensure that the program is operating as intended. The aspects of the program that may be changed based on the review include increases or decreases to the proposed incentive levels, realignment of market segments, or other changes designed to meet the New Jersey's clean energy targets. In the Staff Memo, BPU Staff further commits to conducting a comparable one-year review after the commencement of the competitive solicitation process.

Increasing the Size of Non-Residential Net Metered Projects Eligible for the Administratively Determined Incentive Program

The Staff Memo notes that a significant number of stakeholders support increasing the size of net metered non-residential projects eligible for the administratively determined incentive program. As a result, the BPU Staff recommends that the Board increase the eligibility threshold from projects sized 2 MW or less to projects sized 5 MW or less. Increasing the size of administratively determined net metered projects also addresses concerns that public entities expressed regarding participation in a competitive solicitation while still being subject to public contracts law bidding requirements. BPU Staff also noted that it anticipates that the incentive levels for net metered projects in excess of 2 MW will be lower than for projects of less than 2 MWs. The estimated incentive values are $75/MWh for large ground-mounted non-residential net metered projects, and $70/MWh for large roof-mounted non-residential net metered projects.

Increasing Incentive Levels Associated with Different Market Segments Under the Administratively Determined Incentive Program

The Straw Proposal modeled incentive levels associated with a variety of market segments and then averaged the incentives of certain classes to develop the same $85/MWh incentive level. In response to stakeholder criticism of the averaging approach, the Staff Memo recommends increased differentiation between market segments and proposes to establish distinct incentive levels for the following market segments:

1. Net Metered Residential (all types and sizes);
2. Net Metered Non-Residential 1MW or less (rooftop, carport, canopy);
3. Net Metered Non-Residential 1MW or less (ground mount);
4. Net Metered Non-Residential over 1MW and up to 5MW (rooftop, carport, canopy);
5. Net Metered Non-Residential over 1MW and up to 5MW (ground mount);
6. Community Solar non-Low Moderate Income (LMI), and
7. Community Solar LMI.

The BPU Staff intends to release updated incentive modeling on these market segments when the modeling results become available.

Clarifications Regarding the Design of the Competitive Solicitation Process

In its Staff Memo, the BPU Staff reaffirmed its intention to work with stakeholders to develop the competitive solicitation program design and to address several concerns expressed by stakeholders regarding the operation of the competitive solicitation process. The Staff Memo notes that the Board expects to hire a consultant to work with BPU Staff and stakeholders on the specific program design, and that many of the concerns expressed will be addressed through a collaborative workshop process. The Staff Memo also seeks to assuage stakeholder concerns by emphasizing that the Straw Proposal is intended to be the beginning of the competitive solicitation process, and that it is expected that further input from stakeholders will inform the BPU Staff's final recommendation.

Special Considerations for Projects Located on Contaminated Land

In response to concerns that the proposed incentive level for projects to be constructed on contaminated lands are insufficient, and that it would be difficult for projects located on contaminated lands to compete in a competitive solicitation against other grid supply projects on preferred lands or rooftops, the BPU Staff recommends that a separate market segment in the competitive solicitation be reserved for contaminated lands projects. Contaminated lands are proposed to include landfills, contaminated industrial and commercial land together with their associated disturbed areas. The BPU Staff recognizes that development of projects on contaminated lands is more complicated and time-consuming than for conventional solar projects. To address some of the unique considerations for projects on contaminated land, BPU Staff "intends to propose lower project maturity requirements so that projects can enter the competitive solicitation and, if selected, lock in an incentive level earlier on in the development process." Lastly, the BPU Staff Memo encourages stakeholders to develop consensus recommendations regarding the competitive bidding process.

While the Straw Proposal has already been subject to substantial input by stakeholders, the BPU is still seeking input and comment on its proposal, as revised by the Staff Memo. The next Stakeholder Workshop is **May 14, 2021** and written comments to the proposal are due by close of business on **May 27, 2021**.

We will continue to monitor the BPU's development of the Successor Program.

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