BPU Staff Proposes Major Revisions to Solar Incentive Program and Fast Tracks Request for Comments; Stakeholder Workshops Begin April 21

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On April 7, 2021 the New Jersey Board of Public Utilities (BPU) released the BPU Staff's long-awaited recommendation for the adoption of a solar generation economic incentive program to replace the state's highly successful Solar Renewable Energy Certificate (SREC) and Transition Renewable Energy Certificate (TREC) programs. The SREC and TREC programs have spurred the widespread deployment of solar generation systems throughout New Jersey, resulting in the state having the seventh-largest installed solar capacity in the country. Despite this success, New Jersey has a long way to go to reach its Energy Master Plan goal of 100% clean energy by 2050. The effectiveness of the new incentive program will be critical to whether the state can achieve its ambitious clean energy goals.

The new program proposal, referred to as the **New Jersey Solar Successor Program Straw Proposal**, sets forth the BPU Staff's preliminary recommendation regarding the design and implementation of a new incentive program required by the New Jersey Clean Energy Act of 2018. The Straw Proposal recommends 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 community solar projects, and (2) a competitive solicitation process for grid-supply projects and net-metered non-residential projects 2 MWs or greater.

The approval process is on a fast track. Coincident with its release of the Straw Proposal, the BPU issued a notice that it would be conducting four stakeholder meetings over a twelve-day period beginning on **April 21, 2021** to receive input from interested parties regarding the Straw Proposal. The BPU's notice encourages interested parties to submit

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written comments on the topics addressed in the Straw Proposal, which must be filed with the BPU no later than **May 15, 2021**.

The stakeholder workshops are as follows: Wed. April 21 10:00 a.m. Workshop 1: *Incentive Program Design* Mon. April 26 10:00 a.m. Workshop 2: *Community Solar, Cost Cap, and Capacity Targets* Wed. April 28 5:00 and 7:00 p.m. Workshop 3: *Solar Equity and Inclusion* (open to general public) Mon. May 3 1:00 p.m. Workshop 4: *Review of Final Decisions and Program Transition*

In addition, up until April 30th the BPU Staff will make itself available to meet and speak directly with stakeholders interested in solar policy, equity and inclusion.

Significantly, the BPU has indicated that it plans to move expeditiously with its evaluation, possible modification, and approval of the Straw Proposal. Upon the conclusion of the stakeholder process, the Board intends to "issue an Order directing Staff to provide 30 days' notice of the close of the Transition Incentive (TI) Program." At that same time, the BPU will issue an order establishing the level of the incentives and the requirements of the Successor Program and will propose regulations governing the program. Upon the close of the TI program, only projects that have successfully completed the incentive registration process will remain eligible for TRECs. All other solar projects will be eligible for the Successor Program incentives.

Background

The Clean Energy Act of 2018 requires the BPU to replace the SREC program when 5.1% of the total energy sold in New Jersey is produced by solar electric generation systems. Under the SREC program, solar generators are awarded one SREC for each MW hour of solar energy generated. Energy suppliers in New Jersey are required to purchase a certain percentage of SRECs each year. While the SREC program was highly effective in encouraging solar development, it became very costly given the substantial number of solar generation facilities installed in the state and the high value of SRECs under the state's renewable portfolio standards program (RPS).

On April 30, 2020 the SREC program was closed to new entrants because the 5.1% threshold was attained. At that time, the BPU established a Transition Incentive (TI or TREC) program to maintain incentives until the BPU developed a successor program. The TI program awards fixed price Transition RECS to solar generators for each MW hour of electricity generated. The Successor Program is intended to replace the TREC program and to balance state interests more permanently. BPU provides: "[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) that puts the State on a path toward meeting its goal of 100% clean energy by 2050, balances ratepayer impacts, and supports a thriving and stable solar industry."

Successor Program: Net-Metered Projects Less Than 2 MWs and Community Solar Projects (Administratively Set Payment)

The Straw Proposal recommends two different forms of economic incentives based upon the size or type of solar project that is being developed. The first form of incentive is an administratively fixed payment (like the TREC) that is available for behind-the-meter projects of 2 MWs or less and community solar projects. For this incentive, the Straw Proposal states that the BPU intends to "build upon the successful" TI Program by including several key elements of the TI Program into the Successor Program.

Like the TI Program, the Straw Proposal includes a fixed incentive payment for each MW hour of solar electricity generated for a term of fifteen (15) years. Further, the incentive amount under the TI Program and the Straw Proposal is based upon the project type, characteristics (e.g., ground mount, rooftop, canopy) and market segmentation. The purpose of basing the actual incentive payment upon project type is to better align the incentive required with the actual costs of the particular types of projects.

The Straw Proposal recommends that the program incentive amount be reviewed and reset every three years, if appropriate, based upon market circumstances. The initial Successor Program payment amounts for net-metered projects of less than 2 MWs and community solar projects, together with the comparable TREC amounts are as follows: **PROJECT TYPE SUCCESSOR PROGRAM**
REC Amount CURRENT TREC
Amount - $152 as factored Net Metered Residential (all types and sizes) $85.00 $91.20 (0.6 factor) Net Metered Non-Residential 2MW or less (rooftop, carport, canopy) $85.00 $152 (1.0 factor) Net Metered Non-Residential 2MW or less (ground mount) $85.00 $91.20 (0.6 factor) Community Solar non-Low Moderate Income (LMI) $70.00 $129.20 (0.85 factor) Community Solar LMI $90.00 $129.20 (0.85 factor)

As part of the Successor Program, the BPU will establish solar development capacity targets for each market segment based upon the total amount of budget dollars that are assigned in each Energy Year. The market segment targets will be set based on three-month windows intended to reduce the likelihood that a given market segment will fill up upon opening, causing qualified projects to have to wait an inordinate amount of time until the window reopens.

Despite the establishment of market segment capacity targets, based upon historical build rates the Straw Proposal does not anticipate that the targets for the windows will be exceeded. Community Solar programs, however, will continue to be allocated based upon the requirements of the existing Community Solar Pilot Program or the permanent community solar program once it is established. For Community Solar Pilot Program Years 1 and 2, the number of MW's proposed by program applicants have far exceeded the pilot program's annual capacity.

Under the Straw Proposal, projects will be registered on a first-come, first-served basis. In order to ensure that the project market segments are not oversubscribed due to the submission of speculative or immature projects, only projects that have satisfied various developmental milestones will be accepted for program registration. Such milestones include "minimum maturity requirements" such as a contract for installation of the system, a fee paid to the program administrator to cover the costs of administering the program, and copies of permits or permit applications.

Projects must be completed within twelve months after program approval. If a program participant requires a project completion extension, a deposit of 10% of the project cost must be provided to the BPU. The deposit will be returned if the project reaches commercial operation but will be forfeited if the project is not completed. When determining whether to grant a project extension, the BPU will take into consideration the milestones achieved by the project, such as interconnection approval, federal, state and local permits approved, and the extent of construction completed.

Successor Program: Grid-Supply and Net-Metered Projects 2 MWs or More (Competitive Solicitation Model)

The Straw Proposal seek to establish an annual "competitive solicitation model" for grid-supply projects and net-metered projects in excess of 2 MWs. Under the competitive solicitation process, a fixed incentive payment would be paid to successful bidders for each MW hour of solar electricity generated over a fifteen year qualification life. The solicitation process will be conducted annually and will involve four tranches in each solicitation. Each tranche will have its own "clearing price" for: (1) basic grid supply projects; (2) grid supply projects located on targeted desirable land uses (e.g., rooftops, parking lots, landfills, and contaminated areas); (3) solar plus storage projects, and (4) net metered non-residential projects above 2 MWs.

For each tranche, the BPU will establish a budget-based cap and project developers will bid an incentive amount for the market segment tranche in which they seek to participate. The incentive competitive bid process is similar to the Offshore Wind Renewable Energy Certificate (OREC) program, under which wind energy generation developers are required to propose a project-specific OREC price to the BPU as part of a competitive bidding process for the award of offshore wind projects. The program administrator overseeing the bids will establish a maximum bid price (i.e., clearing price) for each tranche. Offers will be ranked from least to most expensive and be selected until the tranche budget-based cap is reached. Under the Straw Proposal, projects will receive "a fixed-term, per MWh incentive value in the amount that they bid, such that the aggregated value of the total selected offers would be below the budget cap." Selected projects will receive a contract for the sale of Successor Program RECs to the state's four electric distribution companies (EDCs).

Bids in the competitive solicitation program will be required to meet minimum project maturity standards to discourage deficient projects from entering the bidding process, plus substantial financial assurances, proof of site control, and interconnection milestone requirements. The minimum requirements are intended to discourage projects that are less likely to reach commercial operation from unduly burdening the administration of the competitive solicitation process. Approved projects will be required to achieve permission to operate (PTO) within twenty-four months of program approval, with the opportunity for one twelve-month extension that is "accompanied by additional financial security guarantees." If the project does not attain PTO during the extension period, the deposit will be forfeited.

Other Issues Addressed in the Successor Program Proposal

The BPU's request for comments on the Straw Proposal seeks input from stakeholders regarding the development of new programs and technologies to be incorporated into the Successor Program. The proposed programs include the development of a grid-supply plus storage program with an emphasis on storage being used to reduce transmission load and to "peak shave." The BPU Staff also seeks input regarding the development of dual-use agriculture (agrivoltaics) projects that allow the simultaneous use of productive agricultural land and the installation of solar panels.

The Straw Proposal seeks comment from stakeholders regarding the siting of solar facilities, asserting that it seeks to uphold the state's policies of expanding New Jersey's commitment to affordable renewable energy while also preserving and protecting open space and farmland. The Straw Proposal contends that solar development should be encouraged on the "built environment and marginal lands and away from open space, flood zones, forested lands, high value agricultural lands and other areas especially vulnerable to climate change."

The Successor Program proposal also seeks comment regarding the calculation of "megawatt targets" for the program: the calculation of the program cost cap, and considerations for the establishment of a permanent Community Solar Program.

The Stakeholder workshops addressing the structuring of the Successor Program that begin in earnest on April 21, and the written stakeholder comments that are due on May 15, will be critical in shaping the future and the success of solar development in New Jersey.

We will continue to monitor the BPU's development of the Successor Program. Please contact the author of this Alert, **Barbara J. Koonz** bkoonz@greenbaumlaw.com | 973.577.1894 with questions or to discuss your specific circumstances. Ms. Koonz is Chair of the firm's **Energy, Renewable Resources & Sustainable Development Practice Group**.