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The logo for PSEG Services Corporation, featuring a stylized orange sunburst icon to the left of the text "PSEG" in a bold, sans-serif font, with "Services Corporation" in a smaller, italicized font below it.

May 31, 2022

**In the Matter of Competitive Solar Incentive (“CSI”) Program  
Pursuant to P.L. 2021, C.169  
BPU Docket No. QO21101186**

**Via Electronic Mail**

Acting Secretary of the Board  
Board of Public Utilities  
44 South Clinton Ave., 1<sup>st</sup> Floor  
PO Box 350  
Trenton, NJ 08625-0350  
[board.secretary@bpu.gov](mailto:board.secretary@bpu.gov)

Dear Acting Secretary Diaz:

Consistent with the Board’s March 16, 2022 Notice and updated on April 20, 2022, in the above-captioned docket, Public Service Electric and Gas Company respectfully submits the following attached comments on the implementation of Section 6 of the Solar Act of 2021.

Very truly yours,

A handwritten signature in black ink that reads "Aaron I. Karp". The signature is written in a cursive, slightly stylized font.

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Aaron I. Karp

Attachment

**I/M/O Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, C.169 Docket  
No. QO21101186**

**Public Service Electric and Gas Company Comments on the Design and Establishment of  
Siting Rules Applicable to All Projects Eligible to Participate in the CSI Program**

Public Service Electric and Gas Company (“PSE&G”) appreciates the opportunity to provide input in Board Staff’s stakeholder process regarding Section 6 of the Solar Act of 2021 (L. 2021, c. 169, or “Act”) governing the design and establishment of siting rules applicable to all projects eligible to participate in the Competitive Solar Incentive (“CSI”) Program portion of the Successor Solar Incentive (“SuSI”) Program.

PSEG strongly supports the policy objectives of the State of New Jersey and Governor Murphy to significantly reduce greenhouse gas emissions, with the goal of 50% renewable energy by 2030 and 100% clean energy by 2050. These policy objectives are necessary to address climate change, perhaps the most significant long-term threat to the State of New Jersey. We commend the Board for soliciting stakeholder input on all components of the SuSI Program and putting the solar market on a path to a Successor Program that cost effectively achieves the State’s clean energy goals.

PSE&G has significant experience in siting solar projects as part of its Solar 4 All® Program, which has developed 158 MW of solar generation since 2010. PSE&G’s Solar 4 All® Program targets landfills and contaminated sites (such as brownfields) for development: sites that are generally difficult to develop for the private market due to the complexity and challenges of meeting New Jersey Department of Environmental Protection requirements, local permitting and a long development cycle (approximately 2-3 years). Through the Solar 4 All® program, PSE&G has become a national leader in developing these difficult sites, with approximately 40% of all landfill/contaminated site solar capacity in the State. This model can and should be expanded to allow utilities to build and own solar on additional unproductive landfill and contaminated sites. PSEG supports the Board’s goal to protect New Jersey’s open and agricultural space, as discussed in the Siting Stakeholder Meetings. Those goals can be aligned with the CSI Program’s goals by expanding solar development on lands other than open or agricultural space, including by establishing a target for utility ownership and operation of sites located instead on landfills and contaminated sites, as PSE&G’s Solar 4 All® Program has done.

Thank you again for this opportunity to provide comments on the siting rules for projects eligible to participate in the CSI Program. We look forward to working with the Board, Rate Counsel and interested stakeholders to continue to develop a Successor Solar Incentive Program that achieves the important goals set forth in the Clean Energy Act of 2018.



**VIA ELECTRONIC SUBMISSION**

May 31, 2022

Ms. Aida Camacho-Welch  
Secretary  
New Jersey Board of Public Utilities  
P.O. Box 350  
Trenton, NJ 08625-0350

**RE: IN THE MATTER OF COMPETITIVE SOLAR INCENTIVE ("CSI") PROGRAM PURSUANT TO P.L.  
2021,C.169, Docket No. QO21101186**

The American Farmland Trust (AFT) submits the following comments concerning the Competitive Solar Incentive Program in response to the March 15, 2022 release of the New Jersey Solar Siting Staff Straw Proposal and the New Jersey's Board of Public Utilities (BPU) Stakeholder notice dated March 16, 2022.

AFT appreciates the opportunity provided by the BPU to comment on the Staff Solar Siting Staff Straw Proposal for the CSI Program. Founded in 1980, AFT is the only national organization that takes a holistic approach to agriculture, focusing on keeping land in farming, supporting the adoption of sound farming practices, and keeping farmers on the land. With this holistic perspective, AFT is uniquely positioned to offer recommendations for how the BPU can pursue solar siting goals and objectives that advances New Jersey's adoption of renewable energy, while minimizing impacts on the states working lands and achieving the state's climate and decarbonization goals.

As an organization dedicated to keeping farmers on the land and mitigating the impacts of climate change, AFT is supportive of the BPU's efforts to increase the adoption of renewable energy and buildout of infrastructure to support this goal. We recognize that New Jersey will need significant renewable energy buildout, specifically solar generation, across the state to deploy more efficient and cost-effective technologies benefitting customers and industry.

However, poorly planned renewable energy generation siting, such as solar development, could represent a major impact to the agricultural land that we depend on to produce food, feed, fiber, and fuel, as well as to provide ecosystem services such as habitat, carbon sequestration, water filtration, and more. AFT's 2020 [Farms Under Threat: The State of the States](#) report showed that we are already losing 2,000 acres of agricultural land *every single day* in the United States, a trend that would only be exacerbated by poorly planned renewable energy development siting and planning.

Achieving the goals of 100% clean energy and 80% carbon emission reductions by 2050 in New Jersey are important drivers for the development of renewable energy and solar generation. The Solar Act of 2021 was an important step forward to further accelerate the deployment of 3,750 MW of new solar generation by 2050 in New Jersey. The Successor Solar Incentive (SuSI) Program creates the pathway to achieve these goals. Both the Administratively Determined Incentive Program (ADI) and the Competitive Solar Incentive Program (CSI) are complementary to each other, yet offer unique opportunities to advance solar development across New Jersey's diverse landscape by reducing land use conflict and preserving the most important agricultural and forested lands, maintaining agricultural productivity and soil health throughout the construction and life of the project, and implementing new solar technologies that can allow for both preservation of agricultural lands and solar development.

AFT applauds the work that the BPU and Staff, along with the New Jersey Department of Environmental Protection (DEP) and the New Jersey Department of Agriculture, to establish solar siting rules through the Siting Straw Proposal for implementation of Section 6 of the Solar Act of 2021. The comments below express support for the BPU and the Staff's work to develop these standards and offer recommendations to further improve and reduce environmental and agricultural land impacts in order for New Jersey to protect and maintain the most "productive, versatile, and resilient" lands for agricultural production.

Regarding the "Solar Siting Criteria" being developed by Staff, AFT appreciates consideration of developing criteria that considers costs and that all land is not created equal when siting solar energy development. AFT agrees that any solar development project over 5 MW, regardless of the project's participation in the SuSI program, should adhere to the same solar siting rules that preserve and maintain New Jersey's most productive agricultural lands, preserves open space, allows the BPU to track



and monitor all solar development facilities under the siting provisions of Section 6 of the Solar Act of 2021.

Additionally, AFT agrees that limiting solar development on specific and defined lands is a key element of the program and preserving the state's most productive and important agricultural lands until the pilot program is complete and impacts can be further analyzed. AFT believes that the utilization of the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) prime and soils of statewide importance is an important first step when siting solar development on farmland. AFT views this as one component of "Smart Solar Siting" practices that help to better understand the impacts on farmland and farm communities of where solar is sited, and how smart solar siting can lead to the strengthening of farm economies, and maximizes the protection of our most productive, versatile, and resilient farmland.

AFT also commends the BPU, the State Agriculture Development Committee (SADC) and the New Jersey Department of Agriculture (NJDA) for their recommendations regarding mitigation guidelines and construction requirements within "Appendix B" of the solar siting straw proposal. AFT offers the following recommendations for proposed mitigation guidelines best management practices for construction.

### **Project Planning**

#### ***a) Project Inspector***

AFT strongly believes that an "environmental inspector" to monitor projects during construction is critical to ensure compliance and adhering to Best Management Practices (BMPs) for construction, during use, and when returning the land back to agricultural production. AFT also recommends utilizing environmental and agricultural inspectors that have experience in the development of solar facilities on agricultural lands, knowledge of soil testing, removal, and vegetation management. AFT believes that proper BMPs will better inform how solar projects should be built on farmland to preserve soil and water health and minimize impacts of development for when land returns to agricultural use.

**b) Resource Identification:**

**i. Agricultural Lands**

Regarding the recommendation for Resource Identification, AFT would recommend utilizing analyses that are informed by USDA soil designations of Prime and Statewide Importance in addition to recognition of New Jersey's best agricultural lands for growing food crops and requiring special consideration. Specifically, AFT, through the [Farms Under Threat: State of the States](#) report, has developed a method to assess the suitability of agricultural land for long-term cultivation and food production. This method uses three factors that provide relevant information about the land's "productivity, versatility, and resiliency" (PVR) in different ways.

The PVR analysis utilizes three factors: 1) soil suitability, 2) crop type and growing season length, and 3) land cover/use type. These factors are quantified and mapped using high-quality national spatial datasets and identifies Nationally Significant Land, as well as identifying each state's "best land" to provide more information at the state level. The PVR analysis identifies "best land" in New Jersey by mapping the agricultural lands with PVR values above the state median. This identification allows each state to better identify their "best land" when compared to other lands within the state.

AFT would strongly recommend the BPU and Staff review the [Farms Under Threat: State of the States](#) PVR analysis to identify New Jersey's "best land" when analyzing prime farmland and soils of Statewide Importance within Agricultural Development Areas and resource identification for soils requiring special consideration. AFT believes this analysis will further enhance the protection of New Jersey's most productive, versatile, and resilient farmland when compared to all agricultural lands within the state, and not just at a national level comparison.

**iii. Soil Compaction Baseline**

AFT appreciates the inclusion of soil baseline testing and recordation of those measurements. However, we do recommend that the BPU's clarify "bulk density testing" and testing using a "penetrometer." Bulk testing is typically done in a laboratory setting from samples taken from the field. In contrast, penetrometer testing is done in the field. Both methods of testing provide baseline information to inform compaction. The two testing methods are used interchangeably in the "Soil Compaction Baseline," however they are separate tests and should be distinguished from each

other and clarification is needed regarding the requirement of either “bulk density testing,” “penetrometer testing,” or both.

Additionally, AFT would like clarification regarding soil compaction baseline testing results and how this data is collected and shared with the landowner, communities, and other state agencies. AFT hopes that this information will be made publicly available, in aggregate to protect privacy, for analysis, comparison following decommissioning and restoration, and preservation if ownership or developer changes occur over the lifespan of the solar facility.

### **Construction and Restoration**

#### **f) Soil Protection**

AFT agrees that minimizing soil disturbance and impacts during the construction of solar facilities is an important step in preserving the productivity of the soil and agricultural lands. This includes the utilization of alternative footing technologies, other than concrete footings, to minimally impact the soil during construction and decommissioning. Additionally, AFT has concerns regarding the removal or grading of topsoil; this practice should be strongly discouraged and avoided on productive farmland. Any disturbance or movement, such as stockpiling, of topsoil can change the structure and health of the soil, which will forever change the productivity of prime farmland soils. By utilizing current and developing technologies, New Jersey can continue to lead the nation by setting BMPs for construction, which will minimize the impact on prime farmland and retain soil health and structure for future use.

#### **j) Revegetation and Weed Control**

Regarding the seeding of disturbed areas, AFT recommends changing the “7 day” requirement to a “3 day” requirement for soil erosion and sediment controls. Exposed soils, especially prime farmland soils, are greatly impacted when exposed, even for just a few days. Additionally, seed variety should be made through consultation with both the landowner and the conservation district, with an emphasis on seeding with native, pollinator-friendly species, which reduces the likelihood of introducing invasive, or non-native, plant species into the local ecosystem. The [National Seed Strategy for Rehabilitation and Restoration](#) is a program through The Plant Conservation Alliance, which is chaired by the United States Bureau of Land Management (BLM), and supported by United States Department of Agriculture, other federal agencies, and private sector partners to protect

native plants, support local ecosystems for animals, pollinators and people. The National Seed Strategy for Rehabilitation and Restoration provides a framework and strategy for establishing native plant species during ecological restoration and conservation of habitats on public and private lands. Utilizing this or comparable native plant strategy will encourage developers, landowners, and farmers to adhere to a standard practice that is both environmentally and agriculturally friendly.

### **Monitoring and Remediation**

AFT agrees with the Staff's proposal for a 6-year monitoring period on an annual basis. Additionally, AFT would recommend that additional monitoring take place every 5 years, following the initial 6-year annual evaluations. Doing so will allow for continued data collection to better assess the impact of native ground cover revegetation, ecosystems, and the impact to surrounding areas, in the short-term, long-term, and when returning land to agricultural production. Additionally, AFT would like to seek clarification regarding the annual evaluations and how this data is collected, by whom, and shared with the landowner, communities, and other state agencies. AFT hopes that this information will be made publicly available, in aggregate, to protect privacy, for analysis, comparison, and preservation if ownership or developer changes occur over the lifespan of the facility. AFT strongly encourages project-level vegetation performance data collection and platforms to enable accessibility for research purposes.

### **Record Keeping**

As mentioned above, and in the Staff Straw Proposal, AFT would like to seek clarification regarding record keeping and how this data is collected, by whom, and shared with the landowner, communities, and other state agencies. AFT hopes that this information will be made publicly available, in aggregate, for analysis, comparison, and preservation if ownership or developer changes occur over the lifespan of the facility.

Finally, AFT would recommend the consideration and inclusion of dual-use and agrivoltaic technologies in the BPU's Solar Siting Straw Proposal when siting solar development on farmland. Dual-use and agrivoltaic technologies support agricultural landowners, communities, and farmland production, while allowing the co-development, or co-location, of solar generation on agricultural lands. Exploring the deployment of dual-use or agrivoltaic technologies to produce solar energy and agricultural products on the same acreage increases land use efficiency and sustains viable agricultural enterprises. Utilization

of dual-use practices and agrivoltaics can also provide additional benefits to soil health, water quality, and economic benefits to farmers, while maintaining agricultural production.

Additionally, AFT would recommend prioritization in the approval process for the siting of and participation in the CSI program, as well as a streamlined waiver process once the 2.5 percent statewide threshold has been met for projects that utilize dual-use or agrivoltaic technologies. Agricultural dual use solar technologies and practices allow for continued agricultural production, such as grazing, large livestock co-location, and crop production while generating energy on the same parcel, with the intention of avoiding the negative displacement impact of solar development on active agricultural lands. Furthermore, AFT would recommend that solar development on farmland utilizing rigorous dual-use or agrivoltaics practices should not be counted in the same way as non-dual use CSI projects when factoring the statewide threshold on “on prime agricultural soils or soils of Statewide importance.” AFT believes that allowing for the utilization of dual-use and agrivoltaic technologies on projects in the CSI program will reduce the impacts of solar development on farmland, and ought not further delay the deployment of dual-use and agrivoltaic technologies while the BPU continues to develop a dual-use solar energy pilot program, pursuant to the “Dual Use Solar Act of 2021.”

### **Conclusion**

The American Farmland Trust (AFT) appreciate the BPU’s thoughtful and inclusive consideration of New Jersey’s approach to siting solar on farmland and lands of statewide importance. AFT also appreciates the opportunity to provide comments, recommendations, and work collaboratively with the BPU in advancing the Competitive Solar Incentive Program and Solar Siting Straw Proposal. We hope that the recommendations included in the above comments will support the BPU’s efforts and allow for New Jersey to continue to lead our nation in achieving our clean energy, climate, and decarbonization goals.

Ethan Winter  
Northeast Solar Specialist  
American Farmland Trust  
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May 31, 2022

Secretary of the Board  
NJ Board of Public Utilities  
44 South Clinton Avenue, 1st Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Re: Docket No. QO21101186

Dear Secretary of the Board,

New Jersey Conservation Foundation and the NJ League of Conservation Voters support the continued growth of cost-effective, well-sited solar energy as one of numerous strategies needed to achieve 100% clean energy. In general, we commend the staff proposed solar siting rule as consistent with the underlying statute, and in keeping with the goals of advancing solar energy while respecting the state's long-standing commitment to open space and farmland preservation, and natural resource protection. We offer the following specific comments and concerns.

Our primary concern is with the waiver provisions. The waiver process has the potential to become an enormous loophole that completely undermines the otherwise generally sound siting provisions unless it is more tightly defined than the current staff recommendation.

In addition to considering waiver requests in consultation with the NJ DEP and Secretary of Agriculture, the Board should make public any requested waivers and provide an opportunity for impacted and interested parties to comment on these waivers before the Board acts upon them. The 'public interest' can't be determined without a provision for input from the public. Furthermore, a more detailed definition of 'public interest' should be developed. This could be based upon the public interest determination under the NJ Freshwater Wetlands Act and Regulations.

In considering mitigation measures proposed by project proponents, mitigation should not become the default mechanism to approve all requested waivers. Mitigation may be appropriate in instances where a project is determined to be in the public interest but would result in impacts to critical natural resources. But mitigation should not be an excuse for granting a waiver to a project that is not in the public interest and would cause unacceptable impacts to critical natural resources. The board should adopt mitigation requirements similar to those required under the Green Acres diversion rules.

We support the staff recommendation to require that all solar facilities, regardless of whether they seek to participate in the CSI Program, must register their respective solar projects with the Board. Similarly, we support the recommendation that all grid support or net metered projects over 5 MW in size be required to meet the siting criteria. These steps will enable the board to

more fully track solar development in the state and, as the draft rule notes, “ensures that the State’s interest in preserving open space and agricultural lands will be applied to all solar projects, on an equal basis.” Applying the rules only to projects seeking state incentives would result in piecemeal, ineffective implementation of the siting goals.

We support the Board’s policy preference of promoting solar on impervious surfaces and the built environment, and the staff recommendation to provide an expedited siting process for projects sited on impervious land cover or surfaces that meet the solar siting criteria. Solar developers should get clear signals that such locations are desirable sites for projects and benefit from expedited review.

We support the staff recommendation that the Board establish rules that prohibit the siting of solar facilities on forested lands, and for the clear recognition that clearing forests that sequester carbon for solar development undermines the clean energy goals that solar development is designed to address. NJ DEP’s Global Warming Response Act 80x50 report sets a goal to maintain and increase carbon stored in forests and other lands in order to meet 2050 emissions targets. Clearing forests for solar development would directly undermine one of the state’s strategies for meeting 2050 emissions targets.

We have concerns about the proposal to calculate the 2.5% statewide threshold set forth in 6(f) based upon all Prime Soils and Soils of Statewide Importance within Agricultural Development Areas (ADAs). In our view this exemption should not have been provided in the legislation, especially given the provision for a waiver process that allows developers to seek exemptions. The waiver process would provide a suitable mechanism for determining whether the sound siting guidelines should be waived, whereas simply exempting 2.5% of the most important farmland in New Jersey, the most densely populated state in the nation (approx. 8,500 acres), could result in very poorly sited projects without any review.

At minimum, a more conservative calculation should be utilized, such as excluding any preserved farmland from the calculation in the same manner that the 5% development limit in each county will be calculated, so that taxpayer preserved farmland does not add to the amount of non-preserved farmland exempted. It is irresponsible to exempt nearly 8,500 acres of the best farmland in the state from the siting restrictions and the waiver process. Prime Agricultural Soils and Soils of Statewide Importance are rapidly disappearing in New Jersey due to development pressures, including significant warehouse development that has intensified during the recent global pandemic.

We support the recommendation that the 5% development limit in each county be calculated by excluding all preserved lands as well as Highlands and Pinelands designated lands. It is important to bear in mind that the ADAs were established to maintain large, contiguous areas of farmland needed to sustain a viable agriculture industry in the state. Allowing solar development on significant amounts of undeveloped farmland within certain county ADAs could jeopardize the future viability of agriculture in those counties. We would also note that the 5% development limit in each county was included in early versions of the statute, while the

legislation was amended to include the 2.5% statewide threshold very late in the legislative process, signaling clear legislative intent and commitment to the 5% limit.

In closing, we support the staff recommendations outlined above, but urge the Board to significantly tighten up the waiver provisions to ensure that the important goals of the legislation to foster development of clean, solar energy are met while protecting the state's forests and critical agricultural soils.

Thank you for considering our views on this important matter.

Sincerely,

Thomas A Gilbert  
Co-Executive Director  
NJ Conservation Foundation

Ed Potosnak  
Executive Director  
NJ League of Conservation Voters



May 31, 2022

Aida Camacho-Welch  
Secretary of the Board  
44 South Clinton Avenue 1<sup>st</sup> floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

Re: Comments on Docket No. QO21101186  
In the Matter of Competitive Solar Incentive Program  
Pursuant to P.L. 2021, C169  
Due May 31, 2022

Dear Ms. Camacho- Welch

Please accept these comments on behalf of CEP Renewables LLC. ("CEP"). CEP endorses, supports and welcomes the concept of providing criteria by which CEP, as a renewable energy solar developer, can identify and develop opportunities for grid supply solar. CEP is a long standing supporter and developer of grid supply solar in New Jersey. Over the past several years, CEP has developed grid supply solar farms on all types of sites and terrain, including super fund landfill sites such as the 28 MW solar farm on the North Combs superfund landfill site in Mount Olive, New Jersey, the 17 MW solar farm on the old clay mines, a historic fill site known as the Clay Pits in Old Bridge, New Jersey and the 18 MW solar farm site on the former Fibermark Paper company property in Holland, New Jersey to name just a few.

In reviewing the staff proposal under the above referenced docket number, we note several issues that must be addressed.

1. Section III 5 Siting of Solar Projects on Farmland

A. The STATEWIDE CAP

We believe that Section III 5 of the Straw Proposal misinterprets the statutory language and legislative intent of P.L. 2021, c. 169. The Straw Proposal attempts to treat the 2.5% Statewide cap on the use of ADA Prime and Statewide Importance Farmland for solar development and the

county wide 5% cap as individual caps whereas the statute clearly only allows the 5% County Development limit to be applied after the 2.5% Statewide Threshold has been met.

Section 6(d) of the Act does not require a solar facility to seek a waiver pursuant to section 6(f) until the Board has determined that 2.5% of prime agricultural soils or soils of statewide importance have been utilized. Only upon a determination that the 2.5% Statewide limitation has been exhausted does a solar facility need to seek a waiver from the Board pursuant to 6(f).

Only facilities seeking waivers in 6 (f) are limited to not occupy more than five percent (5%) of the unpreserved land containing prime agricultural soils and soils of Statewide importance.

The legislature clearly made a policy determination that 2.5% (or 8,493 acres as calculated by the BPU) of ADA Prime and Statewide Important Farmland may be used for larger solar facilities without seeking waivers. Once that limit is reached and Developers start requesting waivers, the BPU may consider the individual Counties 5% limit.

We do not find staffs argument that the caps are to be levied simultaneously are persuasive. We believe that the staffs argument misapplies Section 6(b)'s language. 6(b) states that "In addition to implementing the provision of 6 c. through f of this section, the siting criteria shall...." The Agency must first implement section c and f, setting a Statewide cap before addressing a County's individual cap. The straw proposal attempts to justify the position taken by using language in 6 b. (2) which states the Board is to "minimize, as much as is practicable, potential adverse environmental impacts;" The BPU is making a policy determination that solar facilities present a more adverse environmental impact than farming. There is no justification for that policy decision and in fact just the opposite is true. Various management practices on agricultural soil can result in emissions of nitrous oxide due to the application of fertilizers and adverse irrigation practices. Solar facilities, planted with Rutgers mixes of field grass etc., demonstrably improve soils conditions, preserves moisture in the soils, does not generate greenhouse gases, and reduces reliance on electricity generated from fossil fuels which do generate greenhouse gases. Once the solar facility is decommissioned the soil is returned to farmland. These are policies the legislature was aware of when passing P.L. 2021, c. 169.

The result of the foregoing misinterpretation is to substantially and unnecessarily reduce the amount of acreage intended to be available without a waiver and is inapposite to the stated policy goals of the Grid Bill legislation and the Legislature.

## B. COUNTY WIDE CAP

### County by County 5% Development limits.

Appendix A of the Straw proposal sets forth County by County 5% Development limits. We must point out those limits assign usable acres to Counties where it is well known there is little to no opportunity to develop grid supply solar because there is no infrastructure. For example, of the 8,493 acres available for development without seeking waivers, Salem, and Cumberland County each have greater than 1,000 acres assigned for grid supply solar facilities, Atlantic County close



to 500 acres, but none of these Counties have the infrastructure to support grid supply solar farms. Accordingly, development of grid supply solar facilities in those Counties is unlikely and will not occur. Juxtaposing the lack of infrastructure with the current PJM moratorium makes grid supply solar farm development in these Counties a nonevent. This is a well-known fact and raises questions as to the objectivity of those drafting these straw rules. Allocating so much acreage to areas that will not be developed substantially reduces the land available for solar where it can be produced. This outcome is contrary to the spirit of the Grid Supply Act sponsored by Senator Smith and adopted by the Legislature. We suggest a mechanism or adjustment be available in the waiver process that would allow the acreage to be permissibly redistributed to Counties where interconnection is feasible due to adequate interconnectable infrastructure such as Gloucester, Warren, Sussex and Hunterdon Counties.

## 2. The Waiver Process

### A. Prohibited Areas and Section III C Waiver Process & Limits on Waiver

The Straw Proposal understands that some proposed solar facility projects will be located on preferred siting areas, like landfills, brownfields areas of historic fill and contaminated sites which may have a simultaneously prohibited designation because it is located in a prohibited area, for example Pinelands Preservation Area or the Highlands Preservation Area. While it is incontrovertible that the sites would otherwise be eligible for subsidy because of the existence of the impaired and regulated ground, the Straw proposal provides that these sites must petition the Board for a waiver setting forth the character of the specific parcel and seeking approval notwithstanding the existing condition. Then the Board will consult with the DEP or Secretary of Agriculture to consider such a waiver.

We argue that when the subject property is a landfill, brownfield, area of historic fill or contaminated parcel that is located in a prohibited area, there be a process akin to a "Waiver By Rule" that automatically exempts the Property from the Waiver process provided the developer establishes the fact that the property is in fact a landfill, brownfield, area of historic fill or contaminated site. The reason for this request is that the developer of these types of lands must know up front if the property is eligible for subsidy. The amount of investment required to control, test, and evaluate these types of impaired sites will deter any developer from undertaking same without knowing with certainty that there is a path to subsidy at the outset.

Staff suggests that there be developed an expedited process involving a Memorandum of Understanding. For those of us who have undertaken Memorandums of Understanding, we know that a Memorandum of Understanding is time consuming to negotiate, is subject to change and is not a public process, therefore not predictable. All the foregoing will subject the developer to unnecessary development risks and uncertainty.



All these sites would require detailed applications to the Department of Environmental Protection for solid waste approvals or soils remedial action work plans. Located in the Pinelands or the Highlands means the properties will undergo detailed applications to the Pinelands Commission and or the Highlands commission. If the developer is able to obtain approval from the foregoing agencies, there should be no reason for a second round of approval, the Waiver, by the BPU, which has literally no agency expertise in reviewing the applications. In our opinion, it should be highly unlikely that the BPU Board will overrule an approval by a sister agency. Therefore, to provide a level of certainty to the developer, we argue that the BPU should develop a standard approval process, a waiver by rule, that relies on their sister agency's approval. The DEP has this type of process called "permit by rule." If a certain set of factors exist as set forth in an APA compliant rule, then the waiver is approved.

A waiver approval embodied in regulations substantially reduces the uncertainty and risk of the waiver process and will allow for expedited waivers given the statutory policy preference for such projects. If such a process is not developed, that is tantamount to a decision by the BPU that there are to be no grid supply solar farms in these areas as no developer will undertake the uncertainty created by the process. Once again, we are diluting the areas available for solar development when the purpose of the Grid Supply bill was to create more opportunities.

### 3. Forested Lands

#### Section III B 3 Siting of Solar Projects on Forested Lands.

##### A. Use the Correct Level in the Definition of Forest

The Straw Proposal proposes to use a GIS data layer developed by DEP namely the modified Anderson Code Classification of Forested Lands (4000 series) Level 1 data, as the tool to determine whether a potential solar site is on forested lands. Using the level 1 data, the straw proposal would define a forest as a parcel with a 10% crown closure.

For the purpose at hand, Level 1 is grossly overbroad, and will include lands that do not truly represent a forest. An example of non-forested lands which would be captured using the proposed methodology include phragmites covered fields. Phragmites is a non-woody invasive species, which would not fulfill the 10% crown cover requirement and certainly does not constitute a forest. Another example of this methodology mischaracterizing "forest" is the inclusion of old fields with less than 25% brush in the 4000 series. Again, this habitat is clearly not a forest, but in both examples the mapped habitat does not have any other appropriate series within the Anderson Code Classification and is, therefore, included in the 4000 series of Forested Land.

If the Anderson code Classification system is to be used, we argue that the sublevels to be applied in this exercise should be limited to 4120 (deciduous forest), 4220 (coniferous forest), and 4322 (mixed forest). These designations are most consistent with other definitions of forested land seen throughout NJDEP Regulations. More significantly, the definition of forest for these designations carries a closure of 50% as opposed to 10% and better reflect what is traditionally consider a forest. Additionally, due to the crude nature of land use aerial interpretation, specifically for the



classification of forested land, we propose that a survey methodology may also be utilized to ground truth the mapping. Neither the Coastal Zone Management Rules (N.J.A.C 7:7-13.5), nor the Highlands Rules (N.J.A.C. 7:38-3.9) define forested land based on the Anderson Code Classification, but instead rely on a more quantitative evaluation.

Additionally, the proposed methodology, overlooks any consideration of habitat quality. This is particularly significant due to the prevalence of dead or dying ash trees throughout New Jersey because of the Emerald Ash Borer infestation. This infestation has led to drastically altered condition of previously forest areas. Similarly, the recent infestation of spotted lantern flies has negatively impacted Ailanthus and other host trees in the region. We feel additional consideration should be taken for forested areas that are dominated by invasive species or impacted by these infestations, as they do not provide the same ecological value as native and unimpacted forests.

By taking these factors into account, you will allow for solar development on the widest possible area, while more appropriately protecting the natural forested areas throughout New Jersey. Once again, we find in the straw proposal, provisions that use definitions that unnecessarily restrict solar development as opposed to encouraging same.

#### B. Why Exclude Commercially Harvested Lands from Solar

The definition of forested land in the Straw proposal includes land that has or has had within the past ten years been forested as per the definition. The prohibition of siting of solar projects on forested lands should include an exception for those lands that have been harvested for commercial purpose unrelated to the purpose of installing solar projects. Harvesting woodlands for profit is a common farming activity permitted by law in all jurisdictions. There is literally no justification to say to a landowner that if he or she has engaged in commercial harvesting over the past ten years that they are now precluded from selling or leasing to a solar developer. An exception to this provision must be included in the rules.

#### 4. Section III B. 5. d. Construction Requirements Applicable to Certain Farmlands.

As with other sections on siting on Prime Agricultural Soils/ Soils of Statewide Importance within an ADA, Staff and/or its Sister Agencies have misinterpreted the statute. Nowhere in the statute has the Legislature requested, directed, or authorized BPU or its sister Agencies to develop regulations for the construction of Solar facilities on Prime Agricultural Soils/ Soils of Statewide Importance within an ADA.

The Straw Proposal cites Subsection 6.b.(2) as the basis for developing these *construction* requirements as part of the *siting* regulations for solar facilities. Subsection 6.b.(2) states the BPU, in addition to implementing subsections c. through f., “the siting criteria”, shall, in (2), “*minimize, as much as is practicable, potential adverse environmental impacts;*”. As was previously discussed, a solar facility is better for the environment than farming the land. Additionally, nowhere in that subsection, or the entire Act, does it state that construction requirements are to be promulgated as regulation



The Straw proposal states that a reason for these requirements, is to allow the property to be restored to farming at the conclusion of the useful life of the solar facility because they view the solar facility as: potentially temporary; and seeks to ensure the opportunity for the farmland hosting the solar project to be restored to its pre-project state. This reasoning is speculative, as indicted by Staff's use of "potentially" and "opportunity" qualifiers in the statement. Staff is attempting to regulate the fate of the land 25 years into the future on the "potential" for it to be farmed, and to provide the opportunity for it to be farmed. Both goals are speculation on staff's part and infringe on a property owner rights.

In the Act, the Legislature recognized that to reach the State's goal for Sustainable Energy, that certain land uses would have to be made available for siting solar facilities. The legislature also recognized that certain land uses would not be made available for solar facilities. For Prime Agricultural Soils/ Soils of Statewide Importance within an ADA, the Bill Statement for the Act clearly stated the limits the Legislature was placing on those lands. The bill statement states:

*The bill would provide that grid supply solar facilities or net metered solar facilities greater than five megawatts in size may be sited on certain prime agricultural soils or soils of Statewide importance without the necessity for a special authorization from the BPU, for the first 2.5 percent of such lands in the State. After the 2.5 percent threshold is reached, a waiver would be a required for the remaining 2.5 percent of the lands with agricultural soils until the five percent cap on the use of lands with those soils for solar facilities is reached. (Emphasis added)*

Simply put, BPU lacks the statutory authority to regulated construction requirements, and the reason given to provide that authority is unsupportable and speculative. There is no legislative intent to direct BPU to establish construction requirements. The Legislature specifically stated that for Prime Agricultural Soils/ Soils of Statewide Importance within an ADA, solar projects on the first 2.5%, should be "without the necessity for a special authorization". Staff should delete this entire section from any further proposals.

Notwithstanding the lack of authority, we offer the following comments to BPU and its sister agencies to assuage their concerns regarding soil compaction, preservation of topsoil, and preventing erosion.

The Agencies should consider establishing guidance for landowners, and best Management Practices (BMPs) that provide landowners, developers, and EDCs the tools to be good stewards of the land. The potential for the land to be returned to farming is the choice of the landowner and should not be infringed. If a Farmer owns the land, chooses to lease the property for use as a solar facility, and chooses to farm the land after the solar facility is no longer viable, than any special requirements to fulfill that chosen use should be a contractual matter between the landowner and the developer. BPU and its sister agencies should not infringe on that private contractual matter. Providing that Farmer/Owner with guidance that would assist them in negotiating those contractual matters, would be a fair position to take by the Agencies. That would ensure that any construction related matters would be "practical and economically feasible" as was stated in the Straw proposal. Individual negotiations will address the Straw Proposal's issue related to "potential "future faming. If the landowner wants to farm the land in the future, they can ensure that through the negotiation

of the lease and the Agencies should only assist the Farmer/Owner with guidance, and not try and require it for all projects based on speculation of future land use.

Specific to preventing Soil Erosion, there are already rigorous regulations for Soil Erosion and Sediment Control (SESC) that do not require any special amendments for constructing a solar facility, since they adequately apply to all construction. Also, unlike many developments, Solar panels are considered permeable, and therefore, solar facilities don't significantly add to stormwater runoff which causes soil erosion.

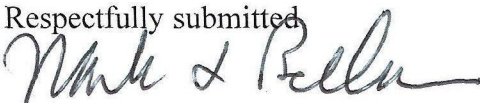
Specific to soil compaction, BPU and its Sister Agencies appear to be presuming that the construction and operation of a solar facility will compact the soil to a point that would render it useless for future farming or cause excess runoff and soil erosion. However, they do not provide any research for this claim. The workshop presented a few photos of solar facilities with erosion problems, but they also showed a few photos presented as successful installations without erosion problems. So, it's not a problem that is systemic to the industry, it's simply an isolated site-specific problem. Again, this would only need to involve issuing guidance or BMPs to contractors and owners that would provide the proper tools. Enforcement is still available under the existing SESC regulations should runoff and erosion problems arise on a specific project.

Specific to the preservation of topsoil, any removal of topsoil again is a landowner's prerogative within existing laws and regulations. Erosion and topsoil removal is addressed within existing SESC regulations and local ordinances.

Appendix B of the straw proposal identifies specific practices for "regulating" the construction and decommissioning of solar facilities but presents them as "Mitigation Guidelines". Again, the proposal fails to show, with research, that there is an adverse effect that requires mitigation. Many of these practices are already addressed in existing regulation, as presented are overkill, and based on the speculation that the land is going to be returned to the same agricultural use that currently exists.

As in the preamble to our comments, we fully support the BPU in its implementation of the Grid Bill. We urge the BPU to take another look at the rules discussed in this letter using the lens of encouraging grid supply solar as was intended by the Legislature as opposed to unduly restricting and limiting the lands available for grid supply solar, a policy that is not supported by the Legislature or the Governor's Office. stated

Respectfully submitted

A handwritten signature in black ink, appearing to read "Mark S. Bellin", written in a cursive style.

Mark S Bellin Esq  
For CEP Renewables LLC.





**May 31, 2022**

**Via Board's External Access Portal only**

New Jersey Board of Public Utilities

c/o Board Secretary Aida Camacho

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PO 350

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[Board.secretary@bpu.nj.gov](mailto:Board.secretary@bpu.nj.gov)

**Re: Comments Regarding Docket No Q021101186 - Competitive Solar Incentive ("CSI") Program**

Dear Secretary Aida Camacho and Commissioners,

CS Energy is pleased to submit the following comments on the CSI Solar Siting Staff Straw Proposal (Straw Proposal). We appreciate the hard work and leadership from BPU, NJDA and SADC staff in developing the Straw Proposal and appreciate having the opportunity to provide comment. We look forward to working with the BPU to ensure that a successful CSI program is developed that brings investment and clean energy efficiently to New Jersey.

Headquartered in Edison, NJ, CS Energy is the industry-leading engineering, procurement and construction (EPC) energy firm that designs and builds optimized projects in solar, energy storage, and emerging energy industries. We have been a long-standing participant in the NJ markets since 2007 and have installed many flagship projects in the State including the largest single interconnection project under Subsection (r), multiple subsection (t) projects, along with the operational Linden Hawk Community Solar Project. CS Energy has successfully designed and installed over 1.35 GW of solar projects across the United States, including nearly 300 MW's in NJ. We are proud to be a part of the fight against climate change and of NJ's transition to a cleaner future.

CS Energy is a participating member of the New Jersey Solar Energy Coalition ("NJSEC"), SEIA, and the Mid-Atlantic Renewable Energy Coalition ("MAREC") and has collaborated with these organizations in development of their comments. Given the importance of creating a successful CSI program and our specific experience in solar project design and construction in the state we are compelled to submit the enclosed comments to provide additional specific suggestions.

Building a Cleaner Future



The siting criteria, GIS procedures, and Agricultural Mitigation Guidelines are extremely important aspects of the CSI program. We are pleased that Staff extended the deadline for comments on this Docket to allow for review of the Siting Criteria in conjunction with the Straw Proposal from Daymark/Staff on the CSI Program's structure ("Structure Straw Proposal").

## 1 COMMENTS ON SOLAR SITING CRITERIA

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### 1.1 SITING OF MAIN PROJECT EQUIPMENT VS. SUPPORTING INFRASTRUCTURE AND EASEMENTS

Well sited solar projects balance many different competing interests including impacts to agricultural resources, visual and viewshed impacts, species and habitat impacts, and many other factors. We believe the intent of the legislation was to prohibit development whereby the main project areas associated with solar panels, inverter and equipment pads and solar collection substations are prohibited from occupying restricted categories of land, such as Pinelands or Highlands preservation areas, forested lands, wetlands or preserved farmlands. We support this restriction generally, but we urge BPU staff to defer to local review and approval and other state and federal permitting processes and procedures for ancillary project infrastructure, such as access roads and utility easements. A well-sited solar facility may require construction of supporting infrastructure involving stream crossings, or limited clearing of wooded areas. State and local permitting processes already require prudence and sound engineering practices to limit impacts to these resources. A prohibition on impacting any restricted categories of land, even if it is only for supporting infrastructure, will result in unwarranted constraints to solar project siting and at a minimum excessive applications for waivers for minor impacts clearly not intended by the Act. We would note that in the proposed definition for Tranche 3 projects, the Structure Straw Proposal includes a concept for allowing up to 10% of the total land area targeted for solar development to be utilized for "associated disturbed areas." This position by Staff seems to recognize a similar concern, and provides clarity for developers.

*Therefore, we strongly recommend that ancillary impacts including easements and supporting project infrastructure, or "associated disturbed areas" that are managed under other discretionary permitting authorities should be affirmatively allowed without requiring waivers.*

### 1.2 CLARIFICATION ON PROGRAM APPLICATION TO PROJECTS OUTSIDE SUSI

We do not concur with Staff's interpretation in Section III.A of the Straw Proposal that all grid supply and net metered solar projects over 5 MW's in size should be considered under the siting rules, regardless of SuSI Program participation. The purpose of the Act is very clearly outlined in Section 1 where it is established that the SREC-II program is a way to incentivize investment into renewable energy at the lowest cost to the consumers to meet the renewable energy goals. It is obvious that the act is considering to set out rules governing the *SREC-II program* and projects that seek such incentives, not the entire solar industry. Staff's interpretation that projects that do not seek to participate in the SREC-II incentive but are nonetheless solar projects that exist within the State's borders must follow the siting rules and count

towards 2.5% development thresholds is not represented in the Act. By comparison, any other generation facility that does not participate in State incentives and receives all revenue from commodity markets need only acquire the necessary Federal, State, and Local approvals to build such a facility on the land proposed for the facility.

This is best illustrated by providing an extreme example of how Staff's interpretation could increase program costs. Hypothetically, if a project does not wish to participate in the SREC-II Program, and has acquired all required permits to become a generating facility within New Jersey state lines, Staff's interpretation is that this project, which again has acquired all permits to be placed on the land and generate clean energy that could count to RPS goals, would not be authorized by the BPU to be built if it did not meet the siting criteria of a State incentive that it is not seeking. This would compel the developer to seek the SREC-II incentive, which would then make it eligible for compensation by a rate payer funded incentive.

Additionally, the Act very clearly adopts the siting rules as a compromise and mitigation in response to concerns from various stakeholders about how the SREC-II programs incentives development that adversely impacts other resources. If the legislature was concerned about other market forces or developments spurring development that is outside the SREC-II market they would have moved to address that issue.

*Therefore, we strongly urge the Solar Siting Criteria should be limited to the intent of the legislation, as a mitigating response to developments spurred by SREC-II incentives and that projects that do not participate in the SREC-II incentive are not counted toward 2.5% development thresholds.*

### 1.3 LEGACY PROJECTS AND THE STATEWIDE THRESHOLD OR COUNTY DEVELOPMENT LIMITS

Additionally, we believe that the intent of the legislature was to limit impacts moving forward for new solar project investments, and not to address legacy projects that moved forward under the various programs NJ has put forward to incentivize solar development in the past.

*Staff should clarify that solar projects that moved forward prior to the SuSI program are not included in calculations related to the Statewide Threshold or County Development Limits described in Section III.B.5.a of the Straw Proposal. This comment can also be applied to Section III.B.5.c of the Straw Proposal.*

### 1.4 CLARIFICATION ON SITING CRITERIA FOR FORESTED LAND

Section III.B.3 of the Straw Proposal addresses siting of solar facilities on forested lands. We would encourage staff to make the following clarifications. Abandoned or underutilized agricultural areas and other desirable siting locations may contain recent tree growth that could approach or exceed the 10 percent canopy cover defined in this section. While NJDEP has considered all trees for forested land surveys and programs in the past, we would encourage staff to include a tree maturity threshold in the definition, such as a 5-inch diameter at breast height to provide clarity and further align the intent of this section with the interest of abating and sequestering CO<sub>2</sub> emissions.

*NJBPU should work in consultation with the NJDEP, as allowed under the Act, to include a tree maturity threshold in addition to the canopy cover constraint.*

## 1.5 CLARIFICATION ON APPLICATION OF THE 5% COUNTY DEVELOPMENT LIMIT

We would note that the clear intent of the Solar Act of 2021 is limiting impacts to NJ's agricultural resources. We disagree with Staff's interpretation excluding Highlands, Pinelands, Green Acres, and State, Local, and Nonprofit Open Space in arriving at its 5% County Development Limit. The Act very explicitly identifies Preserved Farmland in its list of exclusions and very clearly is intended to address lands in ADA's. These other land uses are in fact preserved by many different NJ statutes and programs, but the use of preserved and unpreserved as adjectives in the Act is clearly tied to farmland. In the instances where an ADA overlaps with other restricted land uses, there is likely some overlapping agricultural use and the 5% threshold should include these lands if the intent is to assess agricultural viability impacts in a specific County ADA. We believe Staff should revise Section III.B.5.a as follows to be consistent with the Act:

*"For determining the county-by-county 5% County Development Limit, the Board will determine the Prime Soils and Soils of Statewide Importance within each ADA that are assigned an agricultural designation in the most recent land use/land cover maps, and then exclude areas designated as Preserved Farmland, ~~Highlands, Pinelands, Green Acres, and State, Local, and Nonprofit Open Space~~. Staff will then aggregate these designated land areas by county and multiply each county value by 0.05."*

We concur with SEIA and NJSEC that the Act only applies the County Development Limit for the CSI program in instances where a waiver is being sought after the BPU establishes that the 2.5% Statewide Threshold has been exceeded. The text of the Act clearly intends for the 5% County Development Limit to be a constraint under the waiver process that applies after the 2.5% Statewide Threshold has been reached.

*BPU Staff should revise the Straw Proposal to make the 5% County Development Limit not concurrent with the 2.5% Statewide Limit.*

## 2 COMMENTS ON GIS DATA SOURCES & ANALYSIS PROCEDURE IN APPENDIX A

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We find the procedures to be thorough and understandable.

### 2.1 INCLUSION OF "PRIME SOILS IF DRAINED"

We would encourage Staff to consider inclusion of soils identified as "Prime Soils if Drained" in the dataset. When combined with Staff's inclusion and use of the Land Use / Land Cover data, it would seem that inclusion of these soils would be applicable in an effort to assess impacts to the integrity of individual County ADA's. Additionally, Staff included these soils in its construction mitigation provisions

in Appendix B. It would stand to reason that if efforts are being made to protect these soils under the protection provisions, they should be part of the development limits calculations.

*Staff's intent to identify properties in agricultural production clearly warrants that "Prime Soils if Drained" should be included in the BPU's analysis of the 2.5% Statewide and 5% County thresholds.*

## 2.2 CLARIFICATION ON APPLICATION OF THE 5% COUNTY DEVELOPMENT LIMIT

Additionally, we would apply our comments in 1.5 above regarding the application of the other types of land preservations to the County 5% Development Limits. Again, if there is overlap in agricultural use into another type of preserved land that can be shown in the Land Use / Land Cover dataset, that overlapping land should be considered in an assessment of the integrity of individual County ADA.

*Outside the Preserved Farmland excluded by the text of the Act, Staff should not exclude lands that may overlap as another resource and that are identified for agricultural use.*

# 3 COMMENTS ON AGRICULTURAL MITIGATION GUIDELINES FOR GRID SCALE SOLAR CONSTRUCTION IN APPENDIX B

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We support generally applicable standards that will be equally applied to all projects across the state in an effort to preserve and mitigate potential impacts to NJ's agricultural resources and want to see Staff leverage the experience and knowledge of industry stakeholders to ensure that these guidelines are both feasible and effective. While we appreciate having the opportunity to comment on these guidelines as part of the Straw Proposal process, we think these guidelines need to be thoroughly reviewed section by section in consultation with both solar and agricultural industry representatives.

Well sited solar projects balance many different competing interests including impacts to agricultural resources, visual and viewshed impacts, species and habitat impacts, and many other factors. We are concerned that the mitigation guidelines as proposed value agricultural impacts over and above all others and that this inherent inflexibility will result in poor project designs, a more expensive overall program, and perversely in design and construction decisions that will likely end up impacting a greater quantity of land than is necessary.

## 3.1 CLARIFICATION ON THE PROHIBITION OF CUT AND FILL ACTIVITIES

For example, in Section (f) of Appendix B the proposed guidelines prohibit cut and fill on all prime and statewide importance farmland. We'll note that activities defined as Cut and fill is often required for access roads, pads, stormwater controls and other pieces of infrastructure. We think flexibility on this work needs to be allowed, while suggesting best management practices for minimization of impacts in consultation with the Project Inspector. Additionally, in our experience minor grading can result in more compact and efficient solar projects, particularly with single-axis trackers. We would encourage topsoil segregation with oversight by the project inspector, so that cut and fill can be utilized to keep project

designs efficient and compact. Otherwise we're likely to see gaps and areas that cannot be utilized in the middle of project sites. The siting restrictions already greatly limit impact to prime soils, and we think this additional restriction will end up in more land being impacted than might otherwise be necessary when following best management practices and with careful oversight.

*We would encourage BPU to allow cut and fill in these areas, subject to best management practices and oversight by the Project Inspector.*

### 3.2 CLARIFICATION ON TIMBER MATS AND TOPSOIL STRIPPING

Section (f) also requires timber mats or topsoil stripping across the entire occupied area. This is inconsistent with the prohibitive restriction on cut and fill addressed in 3.1. We would encourage review of the construction standards developed for NY solar projects that allow low-ground pressure vehicles or track vehicles commonly used on solar sites to be allowed without timber mats or topsoil removal in conjunction with post-construction decompaction requirements for temporarily impacted areas and following project decommissioning for NY's equivalent of "occupied areas". Timber mats should be used where heavy vehicles such as cranes and delivery trucks cannot utilize project roads. NY's standards only require topsoil stripping where grading or trenching occurs. Stripping topsoil from the entire solar panel area, or just in the travel lanes between panel rows is not feasible for the size of projects contemplated by this program.

*We strongly encourage that BPU and NJDA staff engage with industry representatives to revise many of the provisions included in this Appendix on the application of timber mats and topsoil stripping.*

### 3.3 PROVISIONS TO ADDRESS RUTTING AND COMPACTION

Section (f) proposes to not allow "work" when soil moisture is excessive. We acknowledge the intent to minimize rutting and compaction. As a leading constructor of ground-mounted solar projects we find this restriction to be infeasible. Large solar project construction involves coordination of contractors from multiple trades and offloading and distributing equipment and materials delivered to the site, in conjunction with weather management. We rely on our staff and subcontracting partners to find ways to work through and around the challenges proposed by mother nature. Prohibiting "work" for potentially lengthy periods of time subject to weather could be incredibly detrimental to projects. We would note that there is extensive effort elsewhere in the Act and in this Appendix to limit impacts to soils, and to address compaction and rutting post-construction.

*We strongly encourage that BPU and NJDA staff engage with industry representatives to place the burden on managing and mitigating rutting and compaction impacts on the project and Project Inspector.*

### 3.4 GENERAL CONCERNS AND INCONSISTENCIES

The guidelines have some areas that are inconsistent or require clarification:

- The “Occupied Area” discussed in several places throughout the document should be defined. We would consider “areas occupied by permanent roads, swales and other stormwater management features, and any areas enclosed by the solar project’s fence and/or involving other features required to support permitting or other design requirements, such as project landscaping features, etc.”
- A “Temporary Impact Area” should be defined and utilized. We would site a definition relating to the following, “any area temporarily impacted by construction activities that is expected to be returned to agricultural operations during the operating life of the solar facility following the completion of construction.
- Commercial arrangements for timber removal and compensation between projects and host landowners are discussed in Section (e) and are an important part of property leasing arrangements. While we encourage the BPU and NJDA to publicize guidance for landowners considering solar leases on this matter, we don’t think it is appropriate for this document to be a mechanism for requiring a certain commercial approach.
- Section (f) discusses gully erosion concerns. While this is important, we have seen many instances where gully features are considered USACE regulated WOTUS, and would discourage strict requirements if/when other permitting authorities may assert jurisdiction over mediation activities.
- The Monitoring and Remediation section is not specifically numbered, but an effort should be made to very clearly identify whether this section applies to areas that were temporarily impacted by construction, Temporary Impact Areas. We would find it problematic to perform some of the suggested activities in the “Occupied Area” and would recommend that this be clarified. The baseline soil compaction data should be maintained so that the Occupied Areas can be returned to their pre-existing use following decommissioning of the solar project.

Again, we would encourage that a significant effort be led by the NJBPU to engage stakeholders on the entirety of Appendix B. We were pleased to be included in the development and review of similar standards for solar projects in New York and would welcome the opportunity to be a part of a similar effort in NJ. A process that takes portions of the comments contributed as part of the Straw Proposal process in isolation is likely to include inconsistencies and challenges that would limit the policy’s feasibility or effectiveness.



## Conclusion

As a leading solar developer and EPC in New Jersey we wish for success of all the SUSI-related programs and initiatives. This Straw Proposal is a strong first step in the stakeholder process that has helped make NJ's solar programs a success in the past. We look forward to the upcoming stakeholder meetings on the Structure Straw Proposal and would welcome the opportunity to engage further on the comments we have brought forward as part of this submission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Tripoli', with a long horizontal stroke extending to the right.

Matt Tripoli

Director, Project Development

CS Energy

[mtripoli@csenergy.com](mailto:mtripoli@csenergy.com)

732-860-4660





**May 31, 2022**

**VIA EMAIL AND E-FILING**

Carmen Diaz  
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**Re: NEW JERSEY SOLAR SITING STRAW PROPOSAL (BPU Docket No. QO21101186)**

Enel North America, Inc. (“Enel”) submits these comments regarding the design of the New Jersey Solar Siting Straw Proposal (“Siting Proposal”) in response to the Board of Public Utilities (“BPU”) Revised Stakeholder Notice dated April 19, 2022 (“Notice”). Enel appreciates the BPU’s continued engagement on these critical questions. More broadly, we are grateful for the BPU’s focus on ensuring that New Jersey can accomplish its clean energy objectives in a reliable, cost-effective manner. As one of the world’s largest utilities and global developer and operator of renewable capacity, we enthusiastically support state policies for rapid decarbonization and clean energy deployment.

**Introduction**

Enel Green Power North America 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. Enel X in North America has around 4,500 business customers, spanning more than 35,000 sites, representing approximately \$10.5B in energy spend under management, approximately 4.7 GW



of demand response capacity and over 70 battery storage projects that are operational and under contract. Enel X Way is revolutionizing the EV charging market with its smart charging solutions deploying over 110,000 charging stations in the US.

Enel has ambitious development plans throughout the PJM region and is eager to expand its clean energy leadership in New Jersey through a robust utility-scale solar and energy storage development pipeline. Throughout New Jersey, Enel has over 400 MW of utility-scale solar plus energy storage projects in advanced stages of development and over 100 MW of utility-scale solar plus energy storage projects in early stages of development. As a leading developer, we appreciate the hard work by BPU Staff, the New Jersey Department of Environmental Protection (DEP), the State Agriculture Development Committee (SADC) and the New Jersey Department of Agriculture (NJDA) for their hard work in putting together preliminary suggestions for the implementation of Section 6 of the Solar Act of 2021. However, we strongly recommend that the BPU make these essential changes to the guidelines to create the conditions necessary to meet New Jersey's laudable goal of incentivizing the construction of at least 1,500 MW of large-scale solar facilities by 2026.

### **General Comments**

The current Straw proposal and draft agricultural mitigation guidelines for grid-scale construction projects on specific farmlands in agricultural development areas contain significant issues and, in some cases, fail to provide the clarity required by project stakeholders to confidently develop and build under the CSI program. For details on these issues and recommended solutions, please refer to the joint comments submitted in response to the BPU's

April 19<sup>th</sup>, 2022, Notice from the “Clean Energy Trade Group”.<sup>1</sup> The BPU should review and strongly consider each section put forth in the joint Clean Energy Trade Group comments.

Additionally, to encourage utility-scale solar that is the ‘least cost and greatest benefit to consumers,’ the BPU should consider separate siting standards for non-participating CSI projects. In adopting Senate Bill 2605, the Legislature found that “in order to achieve the State’s goal of securing 50 percent of its electricity from renewable energy by 2030 with the *least cost and the greatest benefit to consumers*, it is critical to promote investment in new solar. [emphasis added].

Over the last few years, the clean energy industry has seen a dramatic increase in the number of companies adopting Environmental, Social and Governance (ESG) performance goals. Last year, companies bought a record 31 GW of renewable energy via power purchase agreements (PPAs) from private clean energy developers.<sup>2</sup> Enel believes it is in the best interest of New Jersey consumers for the BPU to ensure that complex siting standards do not have the unintended consequence of dissuading solar development whose risk is not borne by the State of New Jersey or its consumers, in particular, projects that do not participate in the CSI program but have PPAs.

While we remained concerned with the statute’s broad application to non-participating CSI projects and the impact this may have on the industry, we believe §48:3-119(6) gives the BPU discretion to adopt separate siting standards for non-participating CSI projects that at the very least meet the minimum requirements of §48:3-119.

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<sup>1</sup> The joint commenters include The Solar Energy Industries Association (SEIA), New Jersey Solar Energy Coalition (NJSEC), Mid-Atlantic Renewable Energy Coalition Action (MAREC Action), and the American Clean Power Association (ACP).

<sup>2</sup> Renewable Energy Buyers Alliance, *Deal Tracker*, 2021

## Conclusion

We appreciate the BPU's careful consideration of the program design and openness to input from industry stakeholders who bring decades of experience developing renewable energy projects across the country. Enel is ready to invest in helping New Jersey meet its clean energy goals and looks forward to collaborating with the BPU to craft a successful program. Collectively, these recommendations will help ensure that New Jersey maintains its place as a national leader in solar and achieves the state's aggressive clean energy goals. Thank you for considering these recommendations.

Respectfully,

*/s/ Adam Stern*

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May 31, 2022

Secretary of the Board

NJ Board of Public Utilities

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Re: Docket No. QO21101186

Dear Secretary of the Board,

I am providing you with my comments and concerns on Competitive Solar Incentive Program and the solar citing being proposed by this docket. I am concerned with the waiver process to reach maximum calculated acreage in the ADA areas. Any waiver should have to go thru the respective county Agriculture Development Board for review and allow for public comments. Also, all solar on farmland should get BPU approval prior to requesting local approvals. There should be standards for distance required away from residences, some towns may have 50 feet and others may have 300 feet. The people that live next to these solar industrial power plants are going to be dealing with a lifetime of negative effects. Furthermore, the calculated area for solar in the County ADA should account for all setbacks not just the area under the solar panels, I'm not sure I read anywhere how this is calculated. Waivers for pinelands and highlands preservation area are not fully defined, and this should have public hearings to allow any waivers in those areas as well. The state should also track farmland for solar panels outside of the ADA on farm assessed land and also track the usage of the non prime and statewide important farmlands for use as solar panels. The acreage chart should also limit the amount of solar allowed in one town or township. For example Harmony Township NJ has 600 acres of approved solar, and several hundred more acres being proposed. There should be a cap of acres per township based on farmland acres and number of townships in each county. Some townships even at this time don't have solar regulations, so there should be a requirement that for using the solar incentive program all towns and townships are required to have local solar regulations. The state should also track farmland and solar that is being proposed as "dual use" where farming and solar continue together. The solar incentive program should do more to promote solar panels on malls, warehouses, and dual use of parking lots rather than the continued destruction of the little remaining agriculture land New Jersey has left. Another unknown is the fact that most of solar is leases and farmland preservation doesn't look at leases for land preservation values. The program should redo the state land preservation appraisals process as part of this incentive and require the lease prices per acre to be made public in order for the state county and towns to be competitive with land preservation offers. The amount of new applications for land preservation is way down probably due to solar and warehouses. If anyone on this board hasn't explored the wide open farmland spaces of Salem and Cumberland County they need to in order to appreciate the working landscape beauty and what's still here before it's all destroyed

Sincerely,

Jason Menegus

Belvidere, NJ

[Jwmenegus@gmail.com](mailto:Jwmenegus@gmail.com)



**Docket No. QO21101186, IN THE MATTER OF COMPETITIVE SOLAR INCENTIVE (“CSI”) PROGRAM  
PURSUANT TO P.L. 2021, C. 169**

**Joint Comments of the Solar Energy Industries Association, New Jersey Solar Energy Coalition, MAREC  
Action, and the American Clean Power Association**

**May 25, 2022**

**I. Executive Summary**

The Solar Energy Industries Association (SEIA), New Jersey Solar Energy Coalition (NJSEC), and Mid-Atlantic Renewable Energy Coalition Action (MAREC Action), and the American Clean Power Association (ACP)<sup>1</sup> appreciate the opportunity to offer input to the New Jersey Board of Public Utilities (BPU or Board) regarding the design and establishment of siting rules applicable to all projects eligible to participate in the Competitive Solar Incentive (CSI) program. We appreciate BPU Staff, the State Agriculture Development Committee (SADC) and the New Jersey Department of Agriculture (NJDA) for their hard work in putting together preliminary suggestions for the implementation of Section 6 of the of the Solar Act of 2021.

In brief, we believe that a workable siting process is imperative for the solar industry to achieve the CSI Program goal of constructing at least 1,500 megawatts of large-scale solar facilities by 2026, as well as Gov Murphy’s broader energy master plan goal of 12.2 GW of solar by 2030, and 17.2 GW by 2035. The solar industry is strongly committed to responsible land use, community partnership, and being good stewards of the sites that host solar facilities. As an industry, we take seriously our ability to support landowners and farmers with additional revenue streams and farmer income and seek to maximize preservation of our natural capital and enhancement of ecosystem services, which includes minimizing permanent negative impacts on land.

While we appreciate the BPU’s stated preference for solar projects that make use of the built environment and that minimize impacts on open space (e.g., rooftops and similar installations on the built environment), we also recognize that a key motivation behind the Solar Act of 2021 was the need to establish an appropriately sized market for large-scale solar projects so that New Jersey can be on track to achieve its laudable solar goals.

However, the current Straw proposal and draft agricultural mitigation guidelines for grid-scale construction projects on specific farmlands in agricultural development areas contain significant issues and, in some cases, fails to provide the clarity required by project stakeholders to confidently develop and build under the CSI program.

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<sup>1</sup> For ease of reference throughout the remainder of this document, we will call the commenting entities herein: “SEIA.”

We look forward to working with the BPU to further refine implementation of Section 6 of the Solar Act of 2021 in a way that balances the need for permitting more solar projects with protecting property rights and sensitive ecosystems and would be pleased to meet with Staff to discuss any of the recommendations contained in these comments.

## **II. Staff's proposal to enforce the 2.5% Statewide Threshold and the 5% County Development Limits Concurrently is Unsupported by Statutory Text and Should Be Modified**

Staff proposes to “allow[] solar development on the first 2.5% of Prime Agricultural Soils/Soils of Statewide Importance that are in ADAs statewide (“2.5% Statewide Threshold”), subject to the limitations found in Section 6(f) that limit total development within a given county.” Straw proposal, at 13. While Section 6(f) does contain a limitation on development that is not found in Section 6(c),<sup>2</sup> the text of Section 6(f) is internally inconsistent, lacks the organization of Section 6(c) on restrictions, and is therefore ambiguous.

Section 6(f) generally addresses waivers to the 2.5% Statewide Threshold. It directs that “in no case shall the projects *approved ... pursuant to this section*” exceed a 5% County Threshold (emphasis added). Yet Section 6 (“this section”) does not govern project approvals; approvals are governed by Section 4, N.J. Stat. 48:3-117. Moreover, if the legislature intended the 5% County Threshold to serve as an additional limitation, it would have placed it in the enumerated list of restrictions in Section 6(c). SEIA believes that the text of Section 6(f) is therefore ambiguous.

Faced with ambiguous statutory text, Staff should instead look to highly probative legislative history which suggests that the 5% County Threshold was not intended to operate concurrent with the 2.5% Statewide Threshold. For example, the Assembly Budget Committee’s Statement of June 22, 2021, notes that “[a]fter the 2.5 percent threshold is reached, a waiver would be a required for the remaining 2.5 percent of the lands with agricultural soils *until* the five percent cap on the use of lands with those soils for solar facilities is reached.” (emphasis added). Here, “those soils” clearly refers to the statewide figure, not to specific counties. Similarly, a Senate statement accompanying the adopted amended language states “[a]fter the 2.5 percent threshold is reached, a waiver would be a required for the remaining 2.5 percent of the lands with prime agricultural soils until the five percent cap on the use of lands with those soils for solar facilities is reached[.]”

A final consideration is that the absence of a bright-line, administrable rule like we propose here will chill developers from investing in the state. This in turn will disincentivize large commercial and industrial users from being able to procure clean energy in New Jersey, and they may seek opportunities elsewhere. These effects were clearly not intended by the legislature in enacting the Solar Act.

In light of the ambiguous text of Section 6(f), its inconsistency with Section 6(c), and the explanatory statements from both houses of the legislature, SEIA believes that the waiver provision in Section 6(f) should apply on a statewide basis beyond 2.5% of restricted state soils, regardless of the 5% County Threshold, in order to give effect to the clear intent of both houses of the legislature.

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<sup>2</sup> “[I]n no case shall the projects approved by the board pursuant to this section occupy more than five percent of the unpreserved land containing prime agricultural soils and soils of Statewide importance ... located within any county's designated Agricultural Development Area[.] N.J. Stat. 48:3-119(f). Section 6(c) is otherwise the exclusive source of siting restrictions within the statute. See N.J. Stat. 48:3-119(c).

### **III. SEIA recommends additional clarity around siting constraints, waivers, and project registrations**

SEIA, NJSEC, MAREC Action, and ACP agree with staff that it is critical to have clear and transparent solar project siting criteria that apply across the State. However, we believe that the Solar Siting Straw proposal would benefit from additional clarity.

We appreciate staff's proposal to create a public "dashboard" that will track the most current calculation of Statewide and County development limits, updated at least quarterly, and recommend that the state also provide GIS data layers that show where prime agricultural soils/soils of statewide importance are located.

However, while the BPU has made it clear that they intend to create a registration system for projects in the CSI program, Staff should clarify what they mean when they suggest that "solar projects selected for participation in the CSI program would submit their intention to construct on Prime Soils or Soils of Statewide Importance within ADAs." Based on the CSI Straw proposal released on April 26<sup>th</sup>, it now appears the Staff is proposing that approximately one month before any solicitation, projects will need to pre-register and indicate an intent to site on land in restricted categories, such as farmland. While the CSI straw proposal clarifies that projects intending to construct on restricted categories will only achieve pre-qualification, and thus be able to bid in a solicitation (if there is room under a given threshold), lack of clarity around how and when a project reserves their spot within the registration system for projects subject to caps is concerning—especially given the BPU's stated intent to enforce the 2.5% statewide threshold and 5% county development limit independently.

Because siting solar on types of agricultural land will be subject to limitations, it is critically important that a workable, transparent, and efficient queuing mechanism be established and enforced. Applicants to the CSI Program must have a clear understanding of the parameters by which their projects will be reviewed, and those standards must be consistently applied. Otherwise, queues could grow unacceptably long, slowing siting and discouraging investment. This could dramatically impair the success of the CSI program before it even gets off the ground.

As a result, we support the suggestion to enforce a "siting constraint" in the CSI program if the amount of percentage thresholds on the statewide or county levels are exceeded in any given solicitation. However, we recommend clearly outlining how or when a project reserves their spot in counting towards the statewide or county development limit for prime agricultural soils/soils of statewide importance within ADAs. We also recommend clarifying what would happen when two projects with exactly the same bid price, taken together, exceed the amount of percentage threshold on the statewide or county level. We recommend that in such a scenario, the winning bidder should be the project with an interconnection agreement; or, if none, the project with the greatest number of other non-ministerial permits.

More generally, the current Straw proposal fails to articulate any intelligible standards governing waiver requests, burdens of proof, adjudication, and appeals. In order to fully determine the extent of the proposal's impact on new solar facilities, industry needs more information to evaluate the burden and feasibility of seeking and obtaining a waiver. A purely discretionary system, as may be contemplated here, is arbitrary, capricious, deprives applicants of due process, and will significantly frustrate the state's renewable energy policy goals.



**IV. SEIA believes Appendix B's construction and restoration requirements are overly broad and proscriptive.**

The solar industry appreciates staff's proposal for agricultural mitigation guidelines for grid-scale construction projects on specific farmlands in agricultural development areas. We share the desire to ensure the integrity of agricultural land impacted by solar development, so that these lands can be returned to agricultural use after the solar system is decommissioned, if so desired. However, we are concerned that the combination of proposed restrictions in Appendix B are overly broad and proscriptive. The Guideline, as currently written, is inflexible and will introduce significant additional costs for solar developers that are not justified.

Specifically, we note the following:

- The Guidelines should clarify that the required "environmental inspector" can be an employee of a developer rather than a third party, and that the requirement to "ensur[e] compliance" does not contemplate additional BPU enforcement authority.
- "Agricultural land" required to be mapped should be more clearly defined to specific land used to grow principal vegetables, fruit, or named specialty crops. It should also exclude inactive cropland.
- Similarly, by restricting development on prime soils in addition to Class II and III soils, the state may prevent larger solar projects from moving forward, which benefit from being less costly due to economies of scale. We encourage staff to examine a soil map of an example county or engage its consultant to use GIS for such an analysis, which would reveal that this broad restriction eliminates many parcels of land that would otherwise be eligible for solar development – as one parcel of land can resemble a marble, containing many different soil classifications.
- Soil compaction testing every 250 feet both pre- and post-construction is unduly burdensome and impractical for larger facilities. Soil compaction may be incidental at solar facilities but is largely only a concern at access roads and laydown areas. Thus, this requirement is excessive and should be removed. At a minimum, we think the BPU, SADC, and NJDA should provide reasoning for these onerous obligations and clarify whether the requirement applies to soils above which no solar equipment is mounted, which can represent 20-50% of the total project area. The same comment applies to topsoil removal provisions, which also will add additional cost to these projects
- The way Appendix B reads the vegetation removal procedures create a de facto landowner veto. It's in the best interests of our members to be working closely with landowners where solar is sited, but BPU should amend this to require landowner consultation only prior to vegetation removal.
- The dispute resolution provisions in subsection H of Appendix B makes mandatory a requirement to get a soil conservation opinion but is silent with respect to who pays for the opinion, whether the opinion is binding, and, if so, whether the opinion can be appealed.
- BPU should further justify the prohibition on concrete or other permanent groundmounting. Such installations can already be constructed in a manner that minimizes soil impacts and can be removed in the process of decommissioning the project
- The topsoil removal and storage requirements are grossly excessive and administratively burdensome and should be removed. BPU, SADC, and NJSAC have not adequately explained why removal should be determined by licensed geologist or soil scientist, and these requirements

could be impractical and unduly burdensome depending on the size of the facility and will add additional cost to these projects

- Seeding and mulching within 7 days of disturbance may be impractical in certain seasons or given other operational requirements. This should be expanded to 90 days or the length of the planting season for the contemplated seed mixture, whichever is longer. By providing greater flexibility on seeding and mulching timing, developers have more opportunities to plant native or pollinator friendly vegetation, as well as deep-rooted vegetation that can optimize facility hydrology.
- The justification for six-year monitoring and remediation is unclear, and appears arbitrary and excessive.

## **V. Additional Considerations**

SEIA, NJSEC, MAREC Action, and ACP appreciate that the Board has a stated preference for solar projects that make use of the built environment and that minimize impacts on open space (e.g. rooftops and similar installations on the built environment). As a result, we support the concept of an expedited siting process for solar projects on the built environment or impervious surfaces.

However, the BPU's proposed definition of "Forested Lands" is unworkable and should be modified. By defining this classification to cover the entire 4000 Series, BPU admits that it would encompass "*any* lands covered by woody vegetation," a facially overbroad and unduly restrictive category. SEIA recommends that "Forested Lands" include only sublevels 4120 (deciduous forest), 4220 (coniferous forest), and 4322 (mixed forest).

Furthermore, we agree with the BPU's assessment that the new definition for the term "contaminated site or landfill" will increase the number of sites eligible for the CSI program. Likewise, we agree with Staff's proposal that gravel, sand, other historic mining sites where a discharge as defined under the Act has occurred, and which currently constitute contaminated sites, will also be covered under the new definition.

In addition, floating solar has not been covered in this straw proposal. There are many industrial applications where floating solar would not interfere with open space and staff should clarify whether floating solar is considered within the built environment and thus subject to the proposed expedited siting process.

We support staff's proposal to develop standardized tools to facilitate the determination as to whether a proposed location for a solar project is suitable, including by making use of GIS software, where useful, to help evaluate compliance with the statutory restrictions. However, although the GIS data is important, GIS data should not be determinative. We don't believe it alone should drive regulatory decisions like whether or not a solar project is permissible in a given area. Despite well-intended best efforts, GIS data is often incomplete or out of date, and therefore must be accompanied by on-the-ground verification of its accuracy to be used in case-by-case siting decisions.

Finally, many of the requirements proposed in Appendix B will add costs to project development, as well as ongoing maintenance and operating expenses. While the details of the CSI Program will be developed in a parallel stakeholder process, if the Board will be setting a cost ceiling above which all bids will be

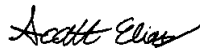
rejected, we suggest that the value of the cost ceiling take into account the cost resulting from the Appendix B in any given solicitation.

## **VI. Conclusion**

We appreciate the hard work by BPU Staff, the State Agriculture Development Committee (SADC) and the New Jersey Department of Agriculture (NJDA) for their hard work in putting together preliminary suggestions for the implementation of Section 6 of the of the Solar Act of 2021. However, we strongly recommend that the BPU make these essential changes to the guidelines to create the conditions necessary to meet BPU's laudable goal of incentivizing the construction of at least 1,500 megawatts of large-scale solar facilities by 2026.

Thank you for considering these recommendations.


Sincerely,



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Director of State Affairs, Mid-Atlantic  
Solar Energy Industries Association  
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Open Space Coordinator



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April 20, 2022

via email: [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Aida Camacho-Welch, Secretary of the Board  
New Jersey Board of Public Utilities  
44 S. Clinton Avenue, 1<sup>st</sup> Floor  
PO Box 350  
Trenton NJ 08625-0350

RE: Docket # QO21101186  
Competitive Solar Incentive ("CSI") Program

Dear Ms. Camacho-Welch,

On behalf of Montgomery Township, thank you for the opportunity to submit comments on the proposed solar siting regulations pursuant to the above-referenced docket number. The Township submits the comments below for your consideration. We support the Board's expressed preference of guiding solar development to existing developed areas as well as to contaminated sites. However, we have concerns regarding the proposed regulations relevant to farmland.

Impervious Surfaces & the Built Environment

The Township fully supports the Board recommendation to direct solar installations to existing impervious surfaces, such as rooftops and parking areas. This will help to reduce heat island effects, which decreases energy use and reduces greenhouse gases. In addition, no new impervious coverage is created, thereby not exacerbating the accompanying issues of stormwater runoff and flooding, which are already intensifying due to development and climate change.

Furthermore, the Township agrees with the Board's preference to direct solar installations to contaminated sites, such as former landfills. This allows these sites which were environmental hazards to provide a positive environmental impact.

Finally, the Township also supports the proposed streamlined BPU approval process for this type of solar development.

Prohibited Sites

The Township fully supports the Board's recommendation to prohibit solar installations on Green Acres-preserved lands, forested lands, and wetlands. These lands serve vital roles in our environment for carbon storage, habitat, conservation and recreation.

Farmland

The proposed regulations would permit solar development on farmland, with a 2.5% limitation imposed on farms with Prime and Statewide Important soils State-wide. The proposal goes on to limit solar development in each County to no more than 5% of the unpreserved lands in each County's designated Agricultural Development Areas (ADAs). As farmland is being lost at a rapid rate across the State, the Township disagrees with this proposal and offers that solar development on farmland should not be an approved location, but rather be a prohibited site where developers may seek approval through a waiver process.

Waiver Process

The waiver process as mentioned in the rules is not clearly defined as to what criteria will be evaluated and by whom. The proposed regulations mention that projects will be evaluated based upon "public interest", however there does not appear to be a process whereby the public is notified of the waiver applications, a means to review them, nor a prescribed process for providing comment. BPU should provide additional details on what the waiver process will entail, and also incorporate language for public notification and comment.

Thank you for the opportunity to provide comments. Please do not hesitate to reach out to me with any questions or concerns at (908) 533-9302 or [LWasilauski@montgomerynj.gov](mailto:LWasilauski@montgomerynj.gov)

Sincerely,



Lauren A. Wasilauski

cc:     Montgomery Township Committee  
          Montgomery Township Environmental Commission  
          Montgomery Township Agricultural Advisory Committee  
          Somerset County Agriculture Development Board  
          Lori Savron, Planning Director



## Berkeley Heights Environmental Commission

29 Park Avenue, Berkeley Heights, NJ 07922  
(908) 464-2700 x2116 • [berkeleyheights.gov/ec](http://berkeleyheights.gov/ec)

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April 18, 2022

Aida Camacho-Welch  
Secretary of the Board  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Re: Docket No. QO21101186 IN THE MATTER OF COMPETITIVE SOLAR INCENTIVE ("CSI")  
PROGRAM PURSUANT TO P.L. 2021, C.169

The Berkeley Heights Environmental Commission supports the siting of solar projects as part of New Jersey's goal to achieve clean energy by 2050. It also agrees with the finding that forested land acts as a carbon dioxide sink that helps to sequester CO<sub>2</sub> emissions and believes that forested lands that are not Green Acres should also not be considered for solar siting. The act should make clear that the rules apply to private property as well.

The Commission also recommends adding to the definition of forested land: "Forests provide essential environmental services for human health and well-being".

In addition the Commission:

- supports the staff recommendation that all projects participating in the CSI Program, as well as any other grid supply and net metered projects over 5 MW in size, located in New Jersey, be required to meet the siting criteria established pursuant to Section 6 of the Act.
- supports the preference of promoting solar on impervious surfaces and the built environment, and staff recommendation to provide an expedited path to demonstrate that such projects meet the solar siting criteria. It should be clear to solar developers that such locations are desirable sites for projects and benefit from expedited review.
- proposes that the Board make public any requested waivers and provide an opportunity for affected and interested parties to comment on waivers requested before the Board acts upon them. The 'public interest' can't be determined without a provision for input from the public. Furthermore, a more detailed definition of 'public interest' should be developed.
- recommends mitigation not be an excuse for granting a waiver to a project that is not in the public interest and would cause unacceptable impacts to critical natural resources. The board should consider mitigation requirements similar to those required under the Green Acres diversion rules.

Sincerely,

Richard Leister, Chair



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL.  
P.O. Box 003  
TRENTON, NEW JERSEY 08625

PHIL MURPHY  
Governor

SHEILA OLIVER  
Lt. Governor

BRIAN O. LIPMAN  
Director

May 31, 2022

**Via Electronic Mail** [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Secretary of the Board  
44 South Clinton Avenue, 1<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: In the Matter of Competitive Solar Incentive ("CSI") Program  
Pursuant to P.L. 2021, c.169  
BPU Docket No. QO21101186**

Dear Secretary:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel in accordance with the Notice issued by the Board of Public Utilities ("Board") in this matter on March 16, 2022 and updated on April 19, 2022. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov).

**Please acknowledge receipt of these comments.**

Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.  
Director, Division of Rate Counsel

By: /s/ Sarah Steindel

Sarah H. Steindel, Esq.  
Assistant Deputy Rate Counsel

Enclosure

cc: Kelly Mooij, BPU  
Ariane Benrey, BPU  
Robert Brabston, BPU  
Stacy Peterson, BPU  
Mike Kammer, BPU  
Abe Silverman, BPU  
Pamela Owen, DAG, ASC

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

<b>In the Matter of Competitive Solar</b>	<b>)</b>	<b>Docket No. QO21101186</b>
<b>Incentive (“CSI”) Program Pursuant to</b>	<b>)</b>	
<b><u>P.L.</u> 2021, c. 169</b>	<b>)</b>	

**COMMENTS OF THE**  
**NEW JERSEY DIVISION OF RATE COUNSEL**  
**CONCERNING SOLAR SITING STRAW PROPOSAL**

**May 31, 2022**



## **INTRODUCTION**

The Division of Rate Counsel (“Rate Counsel”) appreciates the opportunity to provide input to the Board of Public Utilities (“Board”) Staff (“Staff”) concerning the Solar Citing Straw Proposal (“Straw Proposal” that was issued with the Board’s March 16, 2022 Notice in this matter. Rate Counsel participated in March 29, 2022 and April 8, 2022 stakeholder meetings that were held to discuss the Straw Proposal, and is pleased to present additional input in accordance with the Board’s Notice, as updated on April 8, 2022.

### **I. Registration and Coordination With CSI Program**

At page 6 of the Straw Proposal, Staff states its intention that the development of the Board’s solar siting rules will be in a proceeding that is separate from, but conducted in parallel with, the proceeding to develop the market rules for the CSI Program. Rate Counsel agrees with this approach. The siting rules will affect which projects are eligible to participate in the CSI program, and what steps projects must take to qualify. As Staff recognizes, the siting rules will be an integral part of the CSI Program rules. It is important that the siting rules be structured in coordination with the remainder of the CSI Program rules in a way that assures that the CSI Program will harness competitive forces to minimize cost to ratepayers.

Staff has recognized the importance of competition with its proposal to require all grid supply and net metered solar projects over five megawatts to register with the Board whether or not they participate in the CSI Program. As indicated by Staff in the Straw Proposal, this will allow the projects to be monitored and ensure that project developers are not “hoarding” available space or participating in other anti-competitive activity. Straw Proposal at 7-8. Rate Counsel further supports Staff’s proposal to limit registration to projects that meet the maturity requirements to be established for the CSI Program. These measures should help assure a

competitive result by limiting the developers' ability to increase prices by withholding potential projects for the Board's solicitations.

The Board can also help assure a competitive result by coordinating the registration process with the timing of and capacity targets for the CSI Program. In order to harness competitive forces to minimize the cost of solar development for ratepayers, it is important to assure that there is an ample supply of potential project to bid into each solicitation. Therefore, the Board should schedule and set targets for each solicitation based on consideration of the number of projects that are expected to qualify to participate.

At the March 29, 2022 stakeholder meeting, some representatives of the solar industry expressed concerns that a registration requirement would force them to disclose confidential information. These concerns should not deter the Board from implementing a registration requirement. The Board has procedures in place to accommodate the submission of information that is claimed to contain information that should be protected from disclosure. N.J.S.A. 14:1-12.1 et seq. The Board's procedures can be invoked to protect information that is claimed to contain trade secrets, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security ...." N.J.A.C. 14:1-12.1(b). These procedures should be sufficient to protect from any disclosures that would adversely affect solar developers' ability to compete fairly in the Board's solicitation process.

## **II. Protection of Forested Lands**

N.J.S.A. 48:3-119(6)(c)(3) , (c)(5) and (c)(6) define the following three categories of forested land where solar facilities may not be sited unless the Board grants a waiver: (1) land

designated as forest area in the Pinelands Comprehensive Management Plan adopted pursuant to N.J.S.A. 13:18a-11(N.J.S.A. 48:3-119(6)(c)(3)) , (2) lands located within the Highlands Preservation Area as designated in N.J.S.A. 13:20-7 (N.J.S.A. 48:3-119(6)(c)(5) ), and (3) forested lands as defined by the Board in consultation with the New Jersey Department of Environmental Protection (“NJDEP”) (N.J.S.A. 48:3-119(6) (c)(6)). As the Board points out at page 11 of the Notice, the first two of these categories are self-effectuating, as the boundaries of are defined by statute. To define the third category, the Board proposed to use the NJDEP’s modified Anderson Code Classification of Forested Lands. Notice at 12. During the March 29, 2021 stakeholder meeting, a representative of the Highlands Council noted that there are forested areas in the Highlands region outside of the Highlands Preservation Area, and it has developed maps of these which may be more detailed than NJDEP’s mapping. Rate Counsel concurs that the Highlands Council’s maps should be used to identify forested areas in the areas covered by these maps.

### **III. Protection of Farmland**

One of the important objectives of the Solar Act, as stated in the legislative findings, is to encourage solar development while not compromising the State’s commitment “to preserving and protecting open space and farmland; ... .” N.J.S.A. 48:3-114(c). The Straw Proposal includes a number of proposed measures to implement statutory restrictions on the development of solar facilities on farmland, and proposed “Agricultural Mitigation Guidelines” to minimize the impact of solar facilities that are permitted to be located on farmland. While Rate Counsel supports many aspects of the Straw Proposal concerning solar development on farmland, it could be strengthened in some areas.

As explained in the Board's Notice, there are two sources of restrictions on the siting of solar project on farmland. First, N.J.S.A. 4:1C-32.4, governs the siting of solar facilities on preserved farmland. This provision is administered by the State Agriculture Development Committee and the Straw Proposal would not alter the process for siting facilities on preserved farmland. Straw Proposal at 6.

Second, section 6 of the Solar Act of 2021 established limits on the installation of grid-supply projects and net metered projects with capacities over five megawatts on "prime agricultural soils or soils of Statewide importance" that have been identified as such by the United States Department of Agriculture and are located in Agricultural Development Areas certified by New Jersey's State Agricultural Development Committee. N.J.S.A. 48:3-119(c)(7), (d)(1) & (f). Under N.J.S.A. 48:3-119(c)(7) and (d)(1), up to 2.5% of such lands may be utilized for solar projects, after which no further projects are allowed unless the Board grants a waiver. In addition, N.J.S.A. 48:3-119(f) provides, in part, that "in no case shall the projects approved pursuant to this section occupy more than five percent of the unpreserved land containing prime agricultural soils and soils of Statewide importance, as identified by the United States Department of Agriculture's Natural Resources Conservation Service, located within any county's designated Agricultural Development Area, as determined by the State Agriculture Development Committee."

In the Straw Proposal, Staff identified a threshold issue concerning the application of these two restrictions, i.e. whether the five percent limitation on solar development in a single county is an unconditional limitation, or whether it can be enforced only after the 2.5 percent statewide cap is reached. Staff concluded that the five percent limitation within each county was intended be applied independently of the 2.5% statewide cap. Straw Proposal at

13. Rate Counsel agrees with this interpretation. N.J.S.A. 48:3-119(f) clearly provides that projects approved under the Board's siting rules may "in no case" occupy more than five percent of the unpreserved land containing prime or important agricultural soils within a single county. The provisions defining the 2.5 percent statewide cap do not purport to modify this categorical prohibition.

However, Staff should reconsider its methodology for calculating the 2.5 percent of prime and important soils that may be occupied by solar project without a waiver from the Board. Staff's proposal is to calculate the 2.5 percent based on the amount of prime agricultural soils and soils of statewide importance including soils located on preserved farmland. As was suggested in one of the comments during the March 29, 2022 stakeholder meeting, the Board should consider excluding preserved farmland from this calculation. March 29, 2022 meeting replay at 40:23-41:25. As noted above, the siting of solar facilities on preserved farmland is not within the Board's jurisdiction. Thus, while not explicit in the statutory language, is it reasonable to infer that the legislature intended the 2.5 percent to be calculated based the quantity of prime and important soils located on unpreserved farmland.

In addition to defining the farmland that is subject to restrictions on solar development, it is also important to assure that, where development is allowed, it is carried out consistently with the legislative directive to preserve the State's agricultural resources. Rate Counsel supports the Board's inclusion of mitigation guidelines as an integral part of its solar siting proposal, but has a number of suggested improvements.

First, it should be clear that the guidelines apply to all CSI Program projects located on lands containing prime agricultural soils or soils of statewide importance. While the text at pages 15-16 of the Straw Proposal indicates an intention for the guidelines to apply to all

such projects, the draft guidelines are entitled “Agriculture’s Proposal for Agricultural Mitigation Guidelines for Grid Scale Solar Construction Projects on Specific Farmlands in Agricultural Development Areas.” Straw Proposal at 21 (emphasis added). The rules to be adopted by the Board should clarify that the mitigation guidelines apply to both grid supply projects and net metered projects with capacities over five megawatts.

Rate Counsel also has concerns about the stated objective of the guidelines, which is “to ensure the integrity of specific agricultural land impacted by solar development, so that these lands can be returned to agricultural use at the end of life of the solar installation, if so desired.” Straw Proposal at 21. Based on this statement, it appears that the guidelines assume that the land occupied by the solar facilities will be taken out of use as farmland for as long as the solar facility remains in operation. Instead, the continued productive use of farmland should be encouraged. Solar panels can be compatible with continued agricultural production. For example, a farm in Colorado is successfully growing crops including carrots, kale, tomatoes, garlic, beets, radishes and lettuce beneath solar panels.<sup>1</sup>

Rate Counsel notes also section 8 of the Solar Act of 2021 requires the Board and NJDEP, to establish, no later than July 9, 2022, “standards for the use of pollinator-friendly native plant species and seed mixes in grid supply solar facilities, which are designed to reduce storm water runoff and erosion, and provide native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators, and which consider compatibility with the security and reliability of grid supply solar facilities.” N.J.S.A. 13:1B-15.178. This is a clear expression of the Legislature’s intent that, at a minimum, land that is not maintained as farmland should be used to grow native, pollinator-friendly vegetation.

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<sup>1</sup> M. Simon, “Growing Crops Under Solar Panels? Now There’s a Bright Idea,” Wired (Oct. 14, 2021) (available at: <https://www.wired.com/story/growing-crops-under-solar-panels-now-theres-a-bright-idea/>).

On a related issue, Rate Counsel has concerns about the provisions in the proposed mitigation guidelines that permit the removal of topsoil. As was noted during the April 8, 2022 stakeholder meeting, the State's prime agricultural soils and soils of statewide importance are valuable resources that should be preserved. April 8, 2022 meeting replay at 42:03-42:18. Further, any movement of topsoil can compromise its integrity. April 8, 2022 meeting replay at 41:37-42:18 and 51:31-52:07. This appears to be recognized in the guidelines, which would require the movement of topsoil to be minimized "to limit compaction and the destruction of aggregates." Straw Proposal at 24. Further, while based on the discussion at the April 8, 2022 stakeholder meeting it appears that the intent of the guidelines is to require the topsoil to be replaced and planted with vegetation immediately following construction; this is not explicit in the guidelines. Rate Counsel recommends that the guidelines be amended to be more protective of the State's valuable topsoil resources. Solar developers should be required to utilize construction techniques that eliminate or minimize the need to move topsoil. If moving topsoil is unavoidable, it should be subject to strict requirements to replace it and plant appropriate vegetation promptly.

Finally, Staff should be mindful of the need to assure that the mitigation guidelines are not evaded through transfers of ownership of the affected land. In Island Venture Associates v. NJ Department of Environmental Protection, 179 N.J. 485 (2004), the New Jersey Supreme Court held that a restriction on the use of property contained in a coastal permit issued by the NJDEP was not binding on a subsequent owner that had purchased the property without actual notice of the restriction. In order to assure that the mitigation guidelines have their intended effect, it may be necessary to reflect some permit conditions as deed restrictions that are recorded promptly with the clerk of the county where the property is located. See, Id.

#### **IV. Waiver Process**

Under N.J.S.A. 48:3-119 (c) and (f) there are several categories of land where solar facilities are not prohibited but may be sited only if the Board grants a waiver, namely:

- Land preserved under the Green Acres Program
- Land located within the preservation area of the Pinelands
- Land designated as forest area in the Pinelands comprehensive management plan
- Land located within the Highlands preservation area
- Land designated as freshwater wetlands or coastal wetlands
- Forested lands
- Projects that would exceed two and a half percent of NJ land containing prime agricultural soils and soils of Statewide importance located within any Agricultural Development Area

These categories of land include areas that are of considerable importance to the environment and to the quality of life in this State. For this reason, it is important that the waiver process include sufficient safeguards to assure that solar development is consistent with preserving these important resources.

The Straw Proposal includes a provision to establish an expedited process for waivers for projects that are proposed to be sited within the protected areas, but on the built environment or on an impervious surface. Straw Proposal at 17. Rate Counsel supports this proposal to establish an expedited process for projects proposed to be sited on the built environment, as this appears consistent with the legislative objective of directing solar development “toward marginal land and the built environment and away from open space.” N.J.S.A. 48:3-114(c). This process should include a requirement that the applicant provide documentation that the construction was properly permitted as a permanent structure.



However, Rate Counsel has concerns about the proposal to also extend the expedited process to any project proposed to be developed on any “impervious surface.” Impervious surfaces that are not part of the built environment could include open spaces where solar development should not be encouraged.

The Straw Proposal further includes a proposal that, in determining whether a project is in the public interest, the Board and its sister agencies consider mitigation measures and the proposed donation of other land into permanent conservation. Straw Proposal at 17. While such considerations may be valid, the rules regarding obtaining a waiver should make it clear that mitigation may not be used as a substitute for the statutory requirement that the project be “consistent with the character of the specific parcel” where the solar facility is proposed to be located.

Finally, Rate Counsel has concerns about the transparency of the waiver process. First, there is a need to define the criteria the Board will apply in granting waivers, so that waiver requests will be determined based on clear, objective standards. Rate Counsel concurs with the suggestions made during the March 29, 2022 stakeholder meeting that the process include opportunities for public review and input on waiver applications. See March 29, 2022 meeting replay at 42:26-43:16 and 57:02-57:17. Since waiver applications seek authorization to install solar facilities in areas that implicate the public interest, members of the public should have the opportunity to weigh in on these applications. At the March 29, 2022 stakeholder meeting, members of the solar industry also expressed concerns about the potential disclosure of locations before the developers have had the opportunity to conduct public outreach. March 29, 2022 meeting replay at 48:06-49:11. Solar developers can remedy this concern by adjusting the timing of their public outreach efforts.