

Transitioning from the Transition: Questions Abound Regarding the New Jersey Successor Solar Program

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On April 7, 2021, the [New Jersey Board of Public Utilities \(BPU\)](#) published the *New Jersey Solar Successor Program Straw Proposal*, which outlined recommendations for a long-term replacement for the 2019 Transition Incentive Program. The Straw Proposal launched a stakeholder process for a permanent solar energy project for the state, the duration of which was scheduled to last little more than a month. After the stakeholder process, the BPU Staff is proposing that the BPU issue an Order directing Staff to close the Transition Incentive Program after 30 days' notice, apparently even though the time required for formal notice-and-comment rulemaking would take several months.

[As we wrote about in more detail shortly after its release](#), the Straw Proposal contained numerous recommendations that would reduce the incentives for all solar projects, most notably two-megawatt or fewer projects mounted on non-residential rooftops and on canopies (the incentives for which were proposed to be cut from \$152.00 per megawatt-hour to \$85.00) and the subjecting of projects above two megawatts, including those designed to supply power to the grid as opposed to on-site "behind the meter" hosts, to an annual administratively-determined incentive model.

The New Jersey Successor Solar Program

Four stakeholder workshops have been held since April 21, 2021, along with informal meetings between Staff and industry stakeholders. During this time, several concerns have been raised by solar industry leaders about both the substantial risk of numerous Staff proposals to the growth of the solar industry, as well as the hurried timeline for the BPU to finalize Staff recommendations and close the Transition Incentive Program within 30 days. While only 30 days' notice was required for the closure of the New Jersey solar project incentive program in place prior to the "bridge" Transition Incentive Program (the Solar Renewable Energy Certificates Registration Program), in that instance there was an express provision in the law to end the program when solar energy represented 5.1% of total electricity. There is no comparable deadline with respect to the successor program.

On May 5, 2021, the Straw Proposal timeline was extended by only two weeks. The date of the fifth workshop is now scheduled for May 14, 2021, and the close of the written comment period is now scheduled for May 27, 2021. There remain, however, substantial questions about the BPU's

authority to move to the new program without a full rulemaking proceeding.

Moreover, on May 7, 2021, BPU Staff issued a *Staff Memo* purporting to “provide an update to Staff’s thinking on certain specific items.” The Staff Memo lists six changes to the Straw Proposal recommendations:

1. The implementation of a market “check-up” 12 months after the administratively determined incentive program (“incentive program”) goes into effect
2. An increase in the size of net-metered non-residential projects eligible for the incentive program from two megawatts or less to five megawatts or less
3. Increased differentiation between market segments and the assignment of distinct levels in the incentive program;
4. A clarification that Staff “intends to work with stakeholders in a collaborative process to further develop the competitive solicitation program design”
5. A recommendation for a separate market segment in the competitive solicitation program that would be reserved for contaminated lands projects
6. A proposal to lower project maturity requirements for projects located on contaminated lands so that such projects can lock in an incentive level earlier in the development process

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Evidence of the haste with which this new memo was prepared is that the text suggests two different treatments for projects below and above 2 MW, while a chart in the same proposal uses 1 MW as the dividing line. Presumably, this will get sorted out as the process continues.

Stakeholders may welcome some of these updates, other updates may not be welcome in their current form or may serve only to confuse. In any event, the extremely limited time remaining in which to digest, react, receive answers to outstanding questions from Staff, and finally, to prepare final written comments, highlights the weaknesses of truncating the rulemaking process.

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