



Agenda Date: 11/17/23
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE COMPETITIVE SOLAR)	ORDER ADDRESSING
INCENTIVE (“CSI”) PROGRAM PURSUANT TO P.L.)	PRICE CAP
2021, C. 169)	DETERMINATION
)	
)	DOCKET NO. QO21101186

Party of Record:

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

BY THE BOARD:

By Order dated December 7, 2022, the New Jersey Board of Public Utilities (“Board” or “BPU”) established the Competitive Solar Incentive (“CSI”) Program.¹ The CSI Program is open to qualifying grid supply solar installations and non-residential net metered solar installations with a capacity greater than five (5) megawatts (“MW”), as well as to eligible grid supply solar installations in combination with energy storage. The second solicitation of the CSI Program opens for prequalification on November 27, 2023, and closes to bids on February 29, 2024 at 11:59:59 pm EST. Through this Order, the Board establishes confidential price caps for all tranches in which projects will compete during the second CSI Program solicitation and details mechanisms to promote State fiscal responsibility around the price caps. Through this Order, the Board also waives the solicitation bid fee for developers who submit to the second solicitation a substantially similar project with an overlapping footprint to the project they submitted in the first solicitation. The bid fee amount eligible for waiver will be capped at the amount paid for the project in the first solicitation. Pending rulemaking, the Board further waives, for participants that receive an award in the second CSI Program solicitation, the registration requirement for electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality.

BACKGROUND

On June 9, 2021, Governor Murphy signed into law the Solar Act of 2021 (hereafter “Solar Act”

¹ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, 2022 N.J. PUC LEXIS 367, BPU No. [QO21101186](http://www.nj.gov/bpu/), (Dec. 7, 2022).

or “Act”).² The Act directed the Board to establish a program to incent the development of 3,750 MW of solar by 2026 through the mechanism of Solar Renewable Energy Certificates (“SREC-IIs”). SREC-IIs represent the value of the environmental attributes of electricity produced by the solar electric power generation facility. The Act directs the Board to create both a solar facilities program for smaller projects, with administratively set incentive values, and a solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW.

The Board took a major step forward to implementing the Solar Act on July 28, 2021, voting unanimously to create the Successor Solar Incentive (“SuSI”) Program.³ The SuSI Program sets the State on a path to double its solar capacity by 2026. This target reflects both New Jersey’s 2019 Energy Master Plan and Governor Murphy’s goal of achieving 100% clean energy by 2050.⁴

The SuSI Program is divided into the Administratively Determined Incentive (“ADI”) and CSI Programs. The ADI Program, opened to new registrants on August 28, 2021, offers a fixed incentive in the form of New Jersey SREC-IIs for net metered residential projects, net metered non-residential solar projects of five (5) MW or less, and community solar programs. Incentive values are set administratively, following comprehensive modeling of costs and multiple rounds of stakeholder involvement. Incentive values vary by market segment, and in some cases, according to project size and siting.

On December 7, 2022, the Board approved the establishment of the CSI Program.⁵ The CSI Program covers qualifying grid supply solar projects (i.e., those selling into the wholesale markets) and net metered non-residential projects above five (5) MW in size. The Order also laid out stringent siting criteria for CSI-eligible facilities and closed the interim Subsection (t) segment of the ADI Program. Rules establishing the CSI Program and addressing accompanying siting criteria were approved by the Board on December 7, 2022 for publication in the New Jersey Register at 55 N.J.R. 127(a) for a 60-day comment period on February 6, 2023, and a notice of correction was issued on March 20, 2023 at 55 N.J.R. 523(a). The public comment period closed for the notice of proposal on April 7, 2023 and for the notice of correction on May 19, 2023. Siting rules for grid supply and large net metering solar facilities were adopted on September 18, 2023.⁶

The CSI Program awards SREC-IIs through a competitive solicitation, with separate solicitations for four market tranches: basic grid supply projects, grid supply projects sited on the built environment; grid supply projects sited on contaminated sites and landfills; and net metered non-residential projects greater than five (5) MW. The prequalification window of the first solicitation of the CSI Program opened on February 1, 2023 and bid submission closed on March 31, 2023. During the pre-qualification period, projects provided evidence that they met maturity requirements and specific tranche eligibility criteria; applications were administratively reviewed by the solicitation manager. Eligible CSI projects then submitted a bid for an SREC-II award in

² L. 2021, c. 169.

³ In re A Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, 2021 N.J. PUC LEXIS 300, BPU no. [QO20020184](#) (July 28, 2021).

⁴ 2019 New Jersey Energy Master Plan: Pathway to 2050, nj.gov, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf

⁵ In re Competitive Solar Incentive (“CSI”) Program Pursuant to L. 2021, c. 169, 2022 N.J. PUC LEXIS 367, BPU No. [QO21101186](#) (Dec. 7, 2022).

⁶ 55 N.J.R. 2015(a)

their tranche, specified in dollars per MWh of solar electricity production; pre-qualified projects competed on bid price only.

In the December 7, 2022 Order, the Board reserved the right to establish confidential, pre-determined price caps for any or all tranches prior to the solicitation. By Board Order on March 6, 2023,⁷ the Board established confidential price caps for all tranches in which projects would compete during the first CSI Program solicitation. Staff and consultant Daymark Energy Advisors (“Daymark”) conducted incentive modeling to determine appropriate price caps, utilizing the modeling software System Advisor Model (“SAM”), an industry-recognized and publicly accessible performance and financial model developed by the National Renewable Energy Laboratory (“NREL”).

On March 7, 2023, Staff issued a Request for Information (“RFI”) regarding the requirement in the CSI Order that a registration package shall include electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality. Staff invited interested parties to submit comments on the timeframe of this requirement and barriers that it might impose on parties bidding into the first CSI Program solicitation. Comments were received by 5:00 p.m. on March 15, 2023. The Board received nine (9) comments in response to the RFI. Some commenters cited issues with the timing and level of project design required in the electrical and building permitting process that would place untenable risk and cost on developers. Other commenters highlighted an issue with the requirement for a contract to be in place between the primary installer or third-party owner and the bidder or customer of record. The Board addressed the concerns by Secretary Letter issued March 22, 2023, and by Board Order on April 12, 2023, waiving the requirement for the electrical and building permits for those participants in the first solicitation, and extending the time within which contracts would be put in place to one year from registration.⁸

By Board Order on July 12, 2023, the Board announced the results of the CSI Program first solicitation, declining to make any awards as all bids were higher than the price caps.⁹ The Board directed Staff to perform an in-depth analysis of the specific financial assumptions and external factors that were used to determine the price caps, which would inform the setting of any confidential price caps for the next solicitation. The Board directed the next solicitation in the CSI Program to open on an expedited timeline, opening to prequalification on October 1, 2023, and closing to bids on December 31, 2023 at 11:59:59 PM. By Order on September 27, 2023, the Board delayed the opening of second solicitation of the CSI Program until November 27, 2023; with the solicitation window to be closed February 29, 2024.

The total procurement for the second solicitation remains 300 MW; the megawatt procurement targets per tranches are listed below and are unchanged from the first solicitation. A fifth tranche allows for storage in combination with a grid supply solar award from tranche 1, 2 or 3. To compete in Tranche 5, a solar plus storage project provides a two-part bid: a solar-only SREC-II price (eligible to compete in tranches 1, 2 or 3) and a storage adder price that is considered separately in the storage tranche for award.

⁷ In re Competitive Solar Incentive (“CSI”) Program Pursuant to L. 2021, c. 169, 2023 N.M. PUC LEXIS 37, BPU No. QO21101186 (Mar. 6, 2023).

⁸ In re Competitive Solar Incentive (“CSI”) Program Pursuant to L. 2021, c. 169, 2023 N.J. PUC LEXIS 54, BPU No. QO21101186 (Apr. 12, 2023).

⁹ In re Competitive Solar Incentive (“CSI”) Program Pursuant to L. 2021, c. 169, 2023 N.J. PUC LEXIS 173, BPU No. QO21101186 (July 12, 2023).

Tranche	Target (MW)
1. Basic Grid Supply	140
2. Grid Supply on the Built Environment	80
3. Grid Supply on Contaminated Sites & Landfills	40
4. Net Metered Non-residential above 5 MW	40
TOTAL	300
5. Storage Paired with Grid Supply Solar	160 MWh

STAFF RECOMMENDATION

The Board’s long-standing commitment to the dual goals of promoting a thriving solar industry in the State and keeping ratepayer costs as low as possible has informed the design of the CSI Program. In the first solicitation of the CSI Program, there was considerable uncertainty regarding how many qualified projects would elect to participate. However, the Board received a vigorous response from the industry, with submissions totaling over 300 MW of solar generation – proving sufficient market potential to fulfill the goals of the program through numerous projects with sufficient maturity in development. The Board made no awards in the first solicitation because all bids received were above the price caps determined for the first solicitation. Following this result, the Board directed Staff and Daymark to perform a comprehensive post-award analysis utilizing recent market-based data and issue a report. The report, which included updated incentive modeling would be used to determine new appropriate price caps for the second solicitation.

Daymark reported the following principal findings from their post-award analysis:

- The cost data used to develop first solicitation price caps was sufficiently high to reflect increasing solar system costs through the spring of 2023.
- A spike in energy prices in the fall of 2022 resulted in an estimate of energy revenues for solar projects used for modeling that was likely higher than the estimates used by developers in the spring of 2023.
- Interest rate spikes beginning in 2022 and carrying on into 2023 likely drove developer cost projections higher than those reflected in the initial solar price cap analysis.
- Feedback from developers through surveys and interviews supports findings on uncertainties in the energy and capacity markets.

To perform the incentive modeling, Daymark again utilized the SAM modeling software developed by NREL, with updated market values for capacity and energy revenue expectations, interest rates and installation cost data. The analysis further showed that the need for incentives is particularly sensitive to changes in expected energy prices and interest rates.

In a competitive solicitation, incentive values should reflect current market conditions and provide a long-term, guaranteed incentive structure for developer investment. Per statute the competitive solicitation process aims to ensure that New Jersey ratepayers are incentivizing the projects that seek the lowest incentive contribution from the ratepayers. Price caps serve as a protective mechanism against non-competitive bids and would generally be set at a level that exceeds expected competitive bids.

Staff recommends that for the second solicitation of the CSI Program, the Board again use its authority pursuant to N.J.S.A. 48: 3-117(d) to establish confidential, pre-determined price caps for all tranches, based on an assessment of market conditions including interest rates and rates of return, forecasted energy and capacity market prices, and installation and operational costs. In line with the statutory mandate to develop a transparent, fair, and competitive solicitation process, N.J.S.A. 48: 3-117(a), Staff continues to recommend that the price caps set be confidential in order to prevent gaming. To be effective, price caps must be confidential. A key legislative goal underlying the Solar Act of 2021 is minimizing the burden on ratepayers, and the tool chosen to effectuate that intent is a competitive solicitation. Disclosure of the caps would thwart that intent by undermining the integrity of the solicitation, reducing the likelihood of competitive pricing, and threatening the State's interest in keeping the cost of solar as low as possible.

Staff further recommends that the price caps differentiate among and be specific to the five (5) tranches in the CSI Program. Staff recognizes that the different project types per tranche carry different costs and revenues and seeks to balance these with ratepayer protections. Staff recommends that the price caps for tranches 2 and 3 are set 15% and 32% higher, respectively, than the tranche 1 cap for the second solicitation.

Staff recommends that the price cap for net metered, non-residential public entity projects participating in Tranche 4 be set \$20 higher than the price cap for other projects in this tranche, in line with the Public Entity adder offered to participants in the ADI Program. Consistent with the ADI Program, Public Entity is defined as a customer that is a State entity, school district, county, county agency, county authority, municipality, municipal agency, municipal authority, New Jersey public college, or New Jersey public university.¹⁰

Staff recognizes the Board's responsibility to maintain sensitivity to market conditions throughout the solicitation, and thus recommends additional mechanisms for the Board to use in considering successful bids. First, Staff recommends that the Board may revise the confidential price caps by Board Order, based on an updated assessment of the parameters discussed herein: interest rates and rates of return, energy and capacity price expectations, and installation and operational costs. Second, Staff recommends that the Board may elect to award bids that do not exceed the price caps by more than 10%. Staff also recommends that the Board use its authority pursuant to N.J.S.A. 48: 3-117(f)(3) to adjust the number of megawatts awarded in a tranche in response to bid prices above or below any predetermined price caps, such that if a tranche has insufficient competitive bids to reach the number of megawatts allocated to that tranche and another tranche has competitive bids totaling to an amount above its megawatt allocation, the Board may adjust the number of megawatts awarded in a tranche to ensure a successful solicitation. Finally, Staff recommends that the Board may reject any bids above the confidential price cap where the Board determines that the bid prices are not competitive and/or are not fiscally responsible, regardless of whether the targeted megawatt allocation in that tranche or tranches has been met.

Participants in the CSI Program are required to demonstrate project eligibility and maturity during the prequalification period and must pay a \$1,000/MW bid participation fee designed to protect against speculative projects. Staff recognizes that while no awards were made in the first CSI Program solicitation, participants demonstrated commitment such that Staff considers that these bidders are not speculative. Staff recommends that the Board waive the bid fee for developers who submit to the second solicitation a substantially similar project to a project they submitted in the first solicitation. A project will be considered substantially similar if its footprint overlaps the

¹⁰ See In re Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, 2021 N.J. PUC LEXIS 300, BPU No. QO20020184 (July 28, 2021).

first project's footprint. The amount of the bid fee waived will be capped at the amount of the bid fee paid for said project's participation in the first solicitation. Staff does not recommend refunding any portion of the bid fee if the project is smaller than initially submitted.

By Board Order on April 12, 2023, the Board waived for participants in the first solicitation the registration requirement of electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality. As the CSI Program rules modifying registration requirements have not been published in the New Jersey Register, the Board remains sensitive to stakeholder feedback on the program registration requirements received during the first solicitation that this requirement stands as an obstacle to participation. Staff recommends that the Board waive this same registration requirement for participants that receive an award in the second CSI Program solicitation opening November 27, 2023.

FINDINGS AND CONCLUSIONS

After making no awards in the first solicitation of the CSI Program, the Board directed Staff to account for the specific financial assumptions and external factors that were used to determine the first solicitation price caps. Staff and Daymark analyzed reasonable and sufficient incentive level price caps for the second solicitation that would facilitate development of large-scale solar in New Jersey at the lowest viable cost to New Jersey ratepayers.

The Board anticipates that competition amongst solar development projects will arise organically and that SREC-II prices will provide the amount needed to enable development, without over-incentivization. Moreover, the Board anticipates that certain factors that may have pushed bid prices to a high level, including expectations around component costs and inflation, as well as regulatory uncertainty at the federal level, have abated, creating a more favorable competitive environment.

In instances of low competition, a price cap remains an important level of protection to ratepayers against excessive bid prices. The Board **FINDS** that a lack of competition in one (1) or more tranches may produce excessively high bids. Therefore, the Board **FINDS** that the establishment of tranche-specific price caps in the second CSI Program solicitation remains necessary to protect ratepayers against excessive bid prices.

In accordance with the Solar Act of 2021, the Board seeks to "promote fiscal responsibility for the State and the likelihood of successful bids." N.J.S.A. 48:3-117(d). The Board **FINDS** that the conclusions in the report prepared by Daymark are reasonable and demonstrate consideration of market forces impacting solar project planning and potential bids. The Board **HEREBY APPROVES** the confidential price caps recommended by Staff and **ORDERS** these confidential price caps to be applied in the second CSI Solicitation. The Board **FINDS** that the caps must be confidential in order to fulfill their function of keeping the cost of the solicitation as low as practical. The Board **FINDS** that mechanisms providing for additional Board discretion in the selection of competitive bids promotes fiscal responsibility for the State and the likelihood of successful bids and **HEREBY APPROVES** granting the Board the ability to revise price caps by Board Order based upon an updated assessment of market factors used to determine the price caps before awards are made. If the Board determines that a bid or bids in one or more tranches are above the confidential price cap in a given tranche but are competitive, the Board reserves the right to make awards to such bids that do not exceed price caps by more than 10%. The Board also reserves the right to adjust the number of megawatts allocated to a tranche or tranches if bid

prices are above or below the established confidential price caps. Finally, the Board reserves the right to reject any bids above the confidential price cap where the Board determines that the bid prices are not competitive and/or are not fiscally responsible, regardless of whether the targeted megawatt allocation in that tranche or tranches has been met.

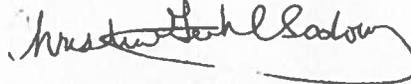
The Board also seeks to avoid jeopardizing the success of this program by ignoring the existence of unintended barriers to participation. While the Board intends to address such barriers through the rule adoption process, immediate relief may be granted through Board action. Therefore, the Board **FINDS** that requiring CSI registrants to provide electrical and building permits, or documentation that applications for electrical and building permits have been submitted to the relevant municipality, forces the registrants to make design and procurement decisions at too early a point in the development process. The Board **HEREBY WAIVES** that requirement for participants in the second solicitation.

The Board concurs with Staff that participants in the first CSI Program solicitation demonstrated sufficient commitment that the Board **FINDS** that their bids are not speculative. The Board **WAIVES** the bid fee for those developers who submitted a bid in the first solicitation and who submit in the second solicitation a project substantially similar project to a project they submitted in the first solicitation. To be considered substantially similar, the footprint of the second project must overlap the footprint of the first. The amount of the bid fee waived will be capped at the amount of the bid fee paid for said project's participation in the first solicitation. The Board does not approve refunding any portion of the bid fee if the project is smaller than initially submitted.

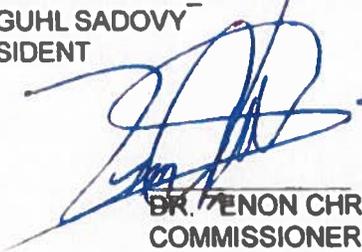
The effective date of this Order is November 24, 2023.

DATED: November 17, 2023

BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL SADOVY
PRESIDENT



BR. FENON CHRISTODOULOU
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER
MARIAN ABDOU
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ATTEST:


SHERRIL L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE COMPETITIVE SOLAR INCENTIVE ("CSI") PROGRAM PURSUANT TO P.L. 2021, C.
169 – PRICE CAP DETERMINATION

DOCKET NO. QO21101186

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