



Agenda Date: 9/10/25

Agenda Item: 8F

**STATE OF NEW JERSEY**  
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**CLEAN ENERGY**

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

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ORDER ADDRESSING THE  
PARTICIPATION OF  
WITHDRAWN CSI  
PROJECTS

DOCKET NO. QO21101186

**Party of Record:**

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

**BY THE BOARD:**

By Order dated April 23, 2025, the New Jersey Board of Public Utilities ("Board") set the opening of the third solicitation of the Competitive Solar Incentive ("CSI") Program for May 14, 2025.<sup>1</sup> The CSI Program is open to qualifying grid supply solar facilities, eligible grid supply solar installations in combination with energy storage, and non-residential net metered solar facilities with a capacity greater than five (5) megawatts ("MW"). By Order on July 16, 2025, the Board extended the prequalification window for the third solicitation to close to bids on September 30, 2025, at 11:59:59 PM EST to provide potential CSI Program applicants with the opportunity to access complete information on changes to the investment tax credit ("ITC") qualification that may impact their bid.<sup>2</sup> Through this Order, the Board clarifies the treatment of projects from the current solicitation that are likely to be impacted by the aforementioned changes to federal taxation policies and that withdraw their registration from the current solicitation.

**BACKGROUND**

On June 9, 2021, Governor Murphy signed into law the Solar Act of 2021 ("Solar Act" or "Act").<sup>3</sup> The Act directed the Board to establish a program to incent the development of 3,750 MW of new solar power generation by 2026, through the mechanism of Solar Renewable Energy Certificates

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<sup>1</sup> In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169 - Order on Price Cap Determination for the Third Solicitation of the CSI Program, BPU Docket No. QO21101186, Order dated April 23, 2025 ("April 23 Order").

<sup>2</sup> In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169 –Extension of the Third Solicitation of the CSI Program, BPU Docket No. QO21101186, Order dated July 16, 2025 ("July 16 Order").

<sup>3</sup> L. 2021, c. 169.

("SREC-IIs").<sup>4</sup> SREC-IIs represent the value of the environmental attributes of electricity produced by the solar electric power generation facility. The Act directed the Board to create both a solar facilities program for smaller projects with administratively set incentive values, and a competitive solicitation process for awarding contracts to grid supply solar facilities and net metered solar facilities greater than five (5) MW.

By Order dated July 28, 2021, the Board launched the Successor Solar Incentive ("SuSI") Program.<sup>5</sup> The SuSI Program is divided into two (2) components: the Administratively Determined Incentive ("ADI") Program and the CSI Program.<sup>6</sup> The ADI Program opened to new registrants on August 28, 2021, and the Board established the CSI Program by Order dated December 7, 2022. The CSI Program fulfills the statutory requirement for a competitive procurement program for grid supply and larger net metered solar facilities.<sup>7</sup> Rules establishing the CSI Program and codifying the accompanying siting criteria were published in the New Jersey Register on December 18, 2023.<sup>8</sup> The Board adopted amendments to these rules on January 21, 2025.<sup>9</sup>

The CSI Program awards SREC-IIs through a competitive solicitation with five (5) separate market categories, or tranches:

- Tranche 1: Basic Grid Supply
- Tranche 2: Grid Supply on the Built Environment
- Tranche 3: Grid Supply on Contaminated Sites and Landfills<sup>10</sup>
- Tranche 4: Net Metered Non-residential Projects above five (5) MW
- Tranche 5: Energy Storage Paired with Grid Supply Solar

For each solicitation, the Board sets the solicitation window during which projects must prequalify by providing evidence that they meet maturity requirements and specific tranche eligibility criteria; applications are administratively reviewed by the solicitation manager. Prequalified CSI projects submit a bid for an SREC-II award in their tranche, specified in dollars per MWh ("\$/MWh") of solar electricity production; the solicitation manager subsequently evaluates projects exclusively on bid price. Following the Board announcement of an award, projects have thirty (30) days to register with the program administrator, at which point projects receive a notice of conditional registration in the Program that also sets the project commercial operation deadline ("COD") thirty-

<sup>4</sup> This target reflects both New Jersey's 2019 Energy Master Plan and Governor Murphy's goal of achieving 100% clean energy by 2035. See 2019 New Jersey Energy Master Plan: Pathway to 2050, nj.gov, [https://nj.gov/emp/docs/pdf/2020\\_NJBPU\\_EMP.pdf](https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf) and Executive Order 315, dated February 15, 2023, nj.gov, <https://nj.gov/infobank/eo/056murphy/pdf/EO-315.pdf>.

<sup>5</sup> In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO20020184, Order dated July 28, 2021.

<sup>6</sup> Ibid.

<sup>7</sup> In re Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c.169 - Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022 ("CSI Order").

<sup>8</sup> 55 N.J.R. 2555(a).

<sup>9</sup> 57 N.J.R. 200(b).

<sup>10</sup> A "contaminated site and landfill" means (1) any currently contaminated portion of a property on which industrial or commercial operations were conducted and a discharge occurred, and its associated disturbed areas, where "discharge" means the same as the term is defined in section 23 of P.L. 1993, c. 139 (C.58:10B-1); or (2) a properly closed sanitary landfill facility and its associated disturbed areas. N.J.S.A. 48:3-51.

six (36) months from the date of conditional registration.<sup>11</sup> The CSI Order provides that projects that miss their COD deadline without receiving an extension, or that receive an extension and miss their extended COD deadline, lose their SREC-II qualification. Expired projects are eligible to compete in subsequent procurement rounds but must wait at least one (1) CSI cycle after the expiration of their conditional registration before submitting a substantially similar project.<sup>12</sup> This restriction serves to prevent speculative project participation and limits the risk of projects gaming the solicitation process by submitting a "placeholder" bid and then withdrawing and re-bidding to obtain a higher incentive.

On August 16, 2022, the Inflation Reduction Act ("IRA") was signed into law.<sup>13</sup> The IRA expanded the ITC for clean energy projects to a thirty percent (30%) credit for qualified expenditures for the period from 2022 through 2032. The IRA also transitioned the ITC and associated Production Tax Credit ("PTC") to a technology-neutral credit for facilities placed in service after December 31, 2024; energy storage projects were also eligible for the ITC under this transition. These tax credits were codified at Sections 45Y and 48E of the United States tax code.<sup>14</sup>

On July 4, 2025, the Act to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14 ("H.R.1") was signed into law.<sup>15</sup> H.R.1 directs the phase out of Sections 45Y and 48E on an accelerated timeline, such that wind and solar projects that begin construction within twelve (12) months of the enactment of H.R.1 are eligible for the tax credit without a "placed in service" deadline while projects that begin construction after twelve (12) months must be placed in service by December 31, 2027 to be eligible.

On July 7, 2025, Executive Order ("EO") 14315 was issued.<sup>16</sup> EO 14315 directs the Secretary of the Treasury of the United States to issue guidance within forty-five (45) days on the termination of tax credits for wind and solar renewable energy generation facilities, including clarification of safe harbor and "beginning of construction" guidance, as well as guidance on the implementation of H.R.1 Foreign Entity of Concern ("FEOC") restrictions for renewable energy projects.

In the April 23 Order, the Board set the prequalification window for the third solicitation to open on May 14, 2025; in the July 16 Order, the Board extended the solicitation window until September 30, 2025, at 11:59:59 PM EST to allow potential CSI Program applicants with the opportunity to access complete information on the above-described changes to federal taxation policies, as those changes may impact their bid.

On August 15, 2025, the Internal Revenue Service issued Notice 2025-42 to provide updated guidance on the beginning of construction, for purposes of determining whether a facility is eligible for the ITC.<sup>17</sup> Notice 2025-42 eliminates the Five Percent Safe Harbor cost threshold practice previously established in IRS guidance for "determining whether an applicable wind or solar facility has met the beginning of construction deadline, and, thus, is not subject to the credit

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<sup>11</sup> CSI Order, page 24.

<sup>12</sup> CSI Order at 25.

<sup>13</sup> Pub. L. No. 117-169, H.R. 5376, 117th Cong. (2021-2022)

<sup>14</sup> 26 U.S. Code § 45Y; 26 U.S. Code § 48E

<sup>15</sup> Pub. L. No. 119-21, H.R. 1, 119th Cong. (2025)

<sup>16</sup> Exec. Order No. 14315, 90 FR 30821 (2025).

<sup>17</sup> <https://www.irs.gov/pub/irs-drop/n-25-42.pdf> ("Notice 2025-42").

termination date.”<sup>18</sup> Notice 2025-42 further states that construction begins when “physical work of a significant nature” starts, either on-site or off-site, with no fixed minimum cost threshold; the notice provides guidance on what significant work may include, both on- and off-site. Eligible facilities must satisfy the Physical Work Test for on- or off-site work as described in the notice and maintain a continuous program of construction (the Continuity Requirement).

### **Staff Recommendations**

In the April 23 Order setting the solicitation window for the third CSI Program solicitation, the Board recognized that high market volatility and uncertainty, including the reduction or loss of the ITC, could significantly impact financial considerations for large-scale solar facilities. Due to timing, projects participating in this third CSI solicitation are particularly vulnerable to the impacts of policy modifications, including beginning of construction and continuity requirements and a projects’ resulting ability to retain eligibility for the ITC, and to FEOC restrictions. The Board’s extension of the solicitation window to September 30, 2025, aimed to provide applicants with additional time to consider Federal guidance as it is issued and to submit bids informed by policies impacting solar and energy storage project planning.

Staff considers that bidders in the third CSI Program solicitation may reasonably assume eligibility and consider ITC revenue in their project bid, accounting for changes reflected in construction guidance issued in Notice 2025-42. However, in recognition of potential future changes that may eliminate the ITC for projects, Staff recommends that the Board provide flexibility to allow bidders to submit reasonable bids, in a manner consistent with the CSI Program design. Specifically, Staff recommends that the Board allow such a project awarded in the third solicitation to terminate the award after receiving notice of conditional registration and remain eligible to participate in a subsequent solicitation with the same or substantially similar project. To effectuate this relief, Staff recommends that the Board relax the required waiting period of at least one (1) CSI cycle after their COD deadline expires. Staff suggests that the relaxation of the rebid timing should only apply to projects awarded in this solicitation, for which ITC eligibility is still a possibility, and be conditioned upon demonstrating certain facts.

If a project receives an award in the third CSI Program solicitation assuming ITC qualification, and then finds that due to changes in government policy they may no longer be eligible for tax credits, Staff recommends that projects may submit a written request for termination to the CSI Program manager for administrative review and approval. Such a request would be required to include specific documentation demonstrating that:

1. The awarded bid reflected ITC revenues and the bidder’s reasonable expectation of ITC qualification, based on information available at the time of the award; and
2. At the time of bid submission, the project had a reasonable expectation that it would have achieved and maintained ITC eligibility by the project COD at the time of submitting its bid.

The specific federal policy changes discussed above represent developments completely outside of the registrant’s and indeed the Board’s control. As such, Staff recommends that the Board

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<sup>18</sup> See Notice 2013-29, 2013-20 I.R.B. 1085; clarified by Notice 2013-60, 2013-44 I.R.B. 431; clarified and modified by Notice 2014-46, 2014-36 I.R.B. 520; updated by Notice 2015-25, 2015-13 I.R.B. 814; clarified and modified by Notice 2016-31, 2016-23 I.R.B. 1025; updated, clarified, and modified by Notice 2017-04, 2017-4 I.R.B. 541; Notice 2018-59, 2018-28 I.R.B. 196; modified by Notice 2019-43, 2019-31 I.R.B. 487; modified by Notice 2020-41, 2020-25 I.R.B. 954; clarified and modified by Notice 2021-5, 2021-3 I.R.B. 479; clarified and modified by Notice 2021-41, 2021-29 I.R.B. 17; Notice 2020-12, 2020-11 I.R.B. 495.

provide additional flexibility on withdrawing and re-registering for those projects that can demonstrate that they had a reasonable chance to fulfill the requirements to obtain ITC, but were eventually unable to get it.

Staff also notes that common project delays, such as interconnection issues, component procurement timelines, or delays resulting from EDC action, may lead to the loss of ITC eligibility and thus serve as a reasonable cause for a registrant to withdraw its registration before reaching the COD. Under normal conditions, delays for such reasons would not constitute grounds for relaxing the Board's restrictions on withdrawing and re-bidding. Under the present circumstances, however, regardless of the reason a project awarded in the third solicitation must withdraw its registration, doing so may forfeit its chance at qualifying for the ITC. Therefore, Staff recommends that a solicitation three project which must be withdrawn after receiving its notice of conditional registration be given the opportunity to demonstrate that:

1. The awarded bid reflected ITC revenues and the bidder's reasonable expectation of ITC qualification, based on information available at the time of the award; and
2. At the time of bid submission, the project had a reasonable expectation that it would have achieved and maintained ITC eligibility by the project COD at the time of submitting its bid.

## **DISCUSSION AND FINDINGS**

The Board recognizes that uncertainty in federal policy stemming from H.R.1, enacted July 4, 2025, the subsequent EO 14315, and IRS Notice 2025-42 has proved disruptive to the effective execution of State solar incentive programs and to the solar industry in the State. The Board has previously responded to this uncertainty by providing applicants with additional time to consider updated ITC eligibility criteria, including the new safe harbor deadlines requiring projects to begin construction by July 4, 2026 or alternatively be placed in service by December 31, 2027 to qualify for the full tax credit. The Board must balance the rising energy needs of the State, and the demand for energy resources built at the least cost to New Jersey ratepayers, with the need for a stable program through which to support the development of least-cost solar projects. Bound by the mandate in the Solar Act of 2021 to incent the development of 3,750 MW of new solar power generation by 2026, the Board cannot indefinitely delay the competitive solicitation currently underway. The Board can, however, provide certain reasonable accommodations to protect CSI-eligible projects from potential future changes to the availability of investment tax credits.

The Board **FINDS** that many CSI Program applicants in the third solicitation may reasonably consider that their project will qualify for the ITC given the current available information, and encourages participants to submit competitive bids reflecting this consideration. However, the Board also **FINDS** that projects submitting bids in the third CSI Program solicitation remain vulnerable to unforeseen delays, including changes in federal policy impacting solar facilities. Thus, the Board **FURTHER FINDS** that there exists a need for the relaxation of restrictions placed on the withdrawal and rebidding of CSI-eligible facilities for projects that lose eligibility for the ITC. The Board **APPROVES** Staff's recommendations to relax the required waiting period of at least one (1) CSI cycle after the expiration of the project's COD deadline for projects awarded in the third solicitation that lose ITC eligibility after the project receives notice of conditional registration. If material changes that impact ITC eligibility arise after a project awarded in the third solicitation receives a notice of conditional registration, the Board **ORDERS** that the registrant for a project awarded in the third solicitation seeking withdrawal, provide documentation demonstrating that



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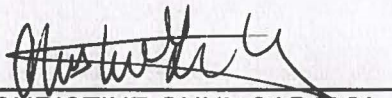
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changes in federal policy caused the loss of the ITC and upon approval Staff approval may participate in a subsequent solicitation with the same or substantially similar project without waiting at least one (1) CSI cycle after the COD expiration. The Board **HEREBY GRANTS** Staff the authority to administratively approve requests for the termination of an award in the CSI Program for such projects if the project provides sufficient documentation.

The effective date of this Order is September 17, 2025.

DATED: September 10, 2025

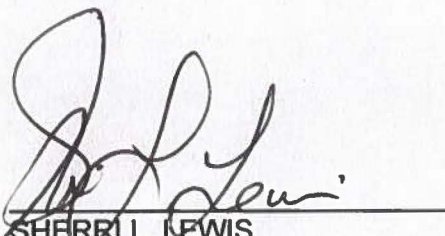
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BOARD SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
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IN THE MATTER OF THE COMPETITIVE SOLAR INCENTIVE ("CSI") PROGRAM PURSUANT TO P.L. 2021, C.  
169 – ORDER ADDRESSING THE PARTICIPATION OF WITHDRAWN CSI PROJECTS

DOCKET NO. QO21101186

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