

New Jersey BPU's New Solar Program Maintains a Robust Incentive for Residential Solar Installations

By: Barbara J. Koonz

On July 28, 2021, the New Jersey Board of Public Utilities (BPU) established a new economic incentive program for solar energy projects to be constructed in New Jersey. The program, which is referred to as the Successor Solar Incentive (SuSI) Program, has been under development for over two years and replaces New Jersey's successful Solar Renewable Energy Certificate (SREC) and Transition Incentive Renewable Energy Certificate (TI or TREC) Programs.

SuSI Program Overview

While the SuSI Program reduces incentives for commercial solar installations, it establishes a residential project incentive comparable to that available under the current TREC Program, wherein a solar generator is awarded a renewable energy certificate (REC) for each megawatt-hour (MWh) of solar electricity generated. The value of a certificate depends upon the type of solar installation (e.g., residential, non-residential, ground-mount, roof-top, etc.). Under the TREC Program, a residential solar project earns \$91.20 per MWh. Under the new SuSI Program, a residential project will earn \$90.00 per MWh.

Through the SuSI Program, the BPU seeks to strike a balance between incentivizing continued investment in solar projects without imposing an unreasonable economic burden on New Jersey electricity customers responsible for funding the incentive programs. Solar industry representatives have expressed concern that the SuSI incentives are insufficient to sustain robust solar development. In contrast, consumer advocates and customer groups have

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asserted that the proposed SuSI incentives are unnecessarily generous.

The BPU, however, is confident that the new incentives are sufficient to sustain the continued construction of solar energy systems in New Jersey. A strong solar incentive program will be necessary if New Jersey is to achieve its ambitious Energy Master Plan goal of generating 34% of the State's required energy from solar electricity by 2050.

For non-residential projects, the SuSI incentives are generally less favorable than the TREC incentives. As a result, commercial property owners intending to install solar generation systems should consider registering their projects with the BPU prior to the August 27, 2021 closure of the TREC Program.

The new solar incentive program is required by both the New Jersey Clean Energy Act of 2018 (CEA) and the recently adopted Solar Act of 2021 (S2605). The CEA required the BPU to

replace its SREC Program when 5.1% of the total energy sold in New Jersey was produced by solar generation systems. This 5.1% solar production threshold was achieved on April 30, 2020, at which time the BPU closed the SREC Program to new entrants. The BPU then established a Transition Incentive (TI) Program to maintain incentives (TREC) until the BPU developed the SuSI Program.

The SuSI Program consists of two components: (1) an Administratively Determined Incentive (ADI), and (2) a Competitive Solar Incentive (CSI). The ADI is a fixed incentive payment applicable to net-metered (e.g., residential) projects of 5 MWs or less. The SuSI Program provides one Solar Renewable Energy Certificate II (SREC-II) for every MWh of solar electricity produced by a qualifying facility, with an additional \$20/MWh added for public entities, such as school districts and municipalities.

ADI Component

The ADI is available for residential, community solar, public projects, and most commercial and industrial solar projects. The value of each SREC-II will vary based upon the solar project installation type (e.g., rooftop, canopy, ground mount), customer classification (e.g., residential, community solar, public) and project size. Incentive amounts under the SuSI Program will be reviewed and reset every three years for new program entrants, if appropriate, based upon market circumstances.

The SREC-II values for the ACI incentives are shown below:

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Market Segment	System Size (MWdc)	Incentive Value (\$/SREC-II)	Incentive Value for Public Entities (\$/SREC-II)	Current TREC Incentive Value (\$/TREC) (\$152 as factored)
Residential	All types and sizes	\$90	N/A	\$91.20 (0.6 factor)
Small Net Metered Non-Residential on Rooftop, Carport, Canopy and Floating Solar	Projects smaller than 1 MW	\$100	\$120	\$152 (1.0 factor).
Large Net Metered Non-Residential on Rooftop, Carport, Canopy and Floating Solar	Projects 1 MW to 5 MW	\$90	\$110	\$152 (1.0 factor)
Small Ground Mount Net Metered Non-Residential	Projects smaller than 1 MW	\$85	\$105	\$91.20 (0.6 factor)
Large Ground Mount Net Metered Non-Residential	Projects 1 MW to 5 MW	\$80	\$100	\$91.20 (0.6 factor)
Community Solar Non-LMI	Up to 5 MW	\$70	N/A	\$129.20(0.85 factor)
Community Solar LMI	Up to 5 MW	\$90	N/A	\$129.20(0.85 factor)
Interim Subsection (t)	All types and sizes	\$100	(1.0)N/A	Rooftop \$152 Ground mount \$91.20

CSI Component

The CSI is applicable to grid-supply projects and net-metered commercial and industrial projects in excess of 5 MWs. CSIs will be awarded based upon a competitive solicitation process intended to establish the lowest financial contribution possible from ratepayers. The competitive solicitation process will be conducted annually, with the first competitive solicitation expected to occur in early to mid-2022. Under the competitive solicitation process, a fixed incentive payment will be paid to successful bidders for each MWh of solar electricity generated over a fifteen-year qualification life

The BPU’s solar incentive programs have established New Jersey as a national leader in solar energy production. The SuSI Program should enable New Jersey to continue its solar development success.

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will need to agree as to how they will be shared and allocated between them.

The parties should likewise consider whether they will each bear their own risk of contracting COVID-19 by including pandemic-specific indemnification provisions. The parties may wish to add reciprocal provisions cross-indemnifying one another for COVID-related illnesses that may look something like: Absent gross negligence or reckless conduct, Subcontractor/Contractor/Owner shall indemnify and hold harmless one another, their respective agents, subcontractors and employees, from and against any and all claims, damages, losses and expenses, arising out of or resulting from exposure to COVID-19 or any other communicable illness.

The COVID-19 global pandemic has created and continues to create unprecedented challenges for all. The construction industry is no different. While this article is not intended to identify every possible pandemic-related issue that might be addressed by pointed contract language, it is our hope that contracting parties will caucus with their in-house or outside legal teams to consider the unique new challenges each project presents and negotiate upfront who will bear responsibility for each. It will be time, energy and resources well spent.