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The NJ Solar Energy Industry: Boom, Correction And The Future – Part II

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Introduction

Part I of this article described the current federal tax-based and New Jersey state incentive programs available to the owners of photovoltaic (PV) systems. These programs have made New Jersey's solar energy industry a world leader. Part II of this article describes the two major threats to the New Jersey solar energy industry and offers suggestions to ameliorate these threats. These two threats are the substantial reduction in the generosity of the federal tax-based incentives available for PV systems and the current weakness in the New Jersey Solar Renewable Energy Certificate or "SREC" market.

Threats: Changes To The Federal Programs

Loss of the Section 1603 Grant. Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, as extended by Section 707 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, permits a PV system owner who starts the construction of its PV system prior to December 31, 2011 to take the 30

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percent tax credit of 26 U.S.C. § 48 of the Internal Revenue Code as a grant, known as the 1603 Grant. Unless Congress enacts legislation to further extend the availability of the 1603 Grant, the grant will no longer be available to PV system owners who start construction on their systems in 2012 and thereafter. Given the ideological bent of the current House of Representatives, the large and politicized federal deficit and the political fracas over extending the national debt ceiling, it seems highly unlikely that Congress will further extend the availability of the 1603 Grant.

Loss of Bonus Depreciation. In addition to the sunset of the 1603 Grant, the ability to depreciate 100 percent of the cost of a PV system in one year will not be available for PV systems placed in service after December 31, 2011.¹ A PV system owner will be able to depreciate 50 percent of the cost of a PV System for a PV System placed in service between January 1, 2012 and December 31, 2012.² For a PV system placed in service after December 31, 2012, the PV system owner will be able to depreciate 100 percent of the cost of the PV system over five years.³

Weakness In The New Jersey SREC Market

The Market. Until this spring, SRECs always traded at short- and long-term prices that were very close to the solar alternative compliance payment or "SACP." However, this year, there were projections made that indicated that in



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Energy Year June 1, 2012 to May 31, 2013, New Jersey would meet its solar renewable portfolio standard or "RPS" because of the number of PV systems projected to come into service in that year. This possibility caused long-term SREC contract prices to plummet. Since the generation and sale of SRECs is what makes solar energy economically attractive in New Jersey, a prolonged low SREC price will have a very negative effect on the solar energy industry.

However, it is the author's opinion that the SREC market will rebound because many of the PV systems that are projected to be placed in service in Energy Year June 1, 2012 to May 31, 2013 are large solar farms that are thus projected to generate huge numbers of SRECs. However, the financing of these solar farms as well as many overly aggressive behind-the-meter deals are based on extremely aggressive projections of long-term SREC revenues. Therefore, with the fall in SREC prices, these PV systems will likely not be placed in service, the state will not meet its solar RPS in Energy Year June 1, 2012 to May 31, 2013, and the SREC market will rebound. Notwithstanding this theory, an oversupply of SRECs and, if it occurs, a material reduction in the SACP for Energy Years June 1, 2016 – May 31, 2017 through June 1, 2025 – May 31, 2026 represent the two primary threats to the SREC program and hence, New Jersey's solar energy industry.

SACP. The SACP is the per megawatt hour ("MWh") penalty that a public utility must pay for each MWh by which it fails to meet its solar RPS requirement.⁴ In lieu of paying the SACP, a public utility can meet its RPS requirement by purchasing SRECs.⁵ Therefore, the SACP

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sets the ceiling price for SRECs in the market. The New Jersey Board of Public Utilities (“BPU”) is required to set the SACP through Energy Year June 1, 2025 – May 31, 2026.⁶ As of the writing of this article, the BPU has set the SACP for each Energy Year through Energy Year June 1, 2015 – May 31, 2016 but has not set it for Energy Years June 1, 2016 – May 31, 2017 through June 1, 2025 – May 31, 2026.⁷ Once the BPU has set the SACP for a particular Energy Year, it can, through the administrative rule-making process, increase the SACP, but it cannot reduce it.⁸ The SACP is \$658 for Energy Year June 1, 2011 to May 31, 2012 and decreases each year through Energy Year June 1, 2015 – May 31, 2016, at which time it will be \$594.⁹

The recently proposed draft June 2, 2011 Energy Master Plan (“EMP”) of the administration of New Jersey Governor Chris Christie recommends that the BPU “reduce materially the SACP as soon as possible.”¹⁰ The EMP does not have any legal effect in and of itself.¹¹ However, in its final version it is adopted by the BPU.¹² Therefore, if the BPU adopts the EMP with this SACP recommendation, it seems likely that the BPU will then materially reduce the SACP for Energy Years June 1, 2016 – May 31, 2017 through June 1, 2025 – May 31, 2026. This action would have a disastrous effect on the SREC market and the solar energy industry in New Jersey, because it would remove the upside potential from the market, and the private capital that fuels the market would move into other investments.

Federal Policy Suggestions

As set forth above, it is unlikely that Congress will extend either the 1603 Grant or federal bonus depreciation. Accordingly, while it is not likely but perhaps more palatable to the Congress, it would be very helpful if Congress made the 30 percent tax credit transferable, allowing its continued monetization, but at a discounted level. Similarly, making the five-year accelerated depreciation transferable would also be extremely beneficial to the solar industry.

State Policy Suggestions

New Jersey’s solar incentive program is its SREC program. Utilizing incentives to bolster solar energy, a green renewable technology that creates and also maintains high-paying white- and blue-collar

jobs, is sound policy. Moreover, a solar incentive program that relies on renewable energy credit (“REC”) trading (as New Jersey’s SREC program does) has sustainability in an economic and policy sense. This is because a REC program is self-sustaining and does not drain the public treasury, giving it an advantage over programs that rely on outright grants, high tariff payments or large tax incentives. However, in order to keep the New Jersey SREC program self-sustaining and viable in the long term, it should be recognized that the program is indirectly subsidized by state utility rate payers through the public utilities’ purchase of SRECs. Finally, New Jersey’s SREC program is superior to the renewable energy credit trading programs of other states because it has a high SACP that cannot be easily or annually adjusted downward, it has a high solar RPS that is not voluntary and likewise cannot be easily or annually adjusted downward, and it is essentially limited to SRECs generated in New Jersey.

Accordingly, these features of the program should not be changed, and the biggest threat to the SREC program – overly low long-term SREC prices – should be ameliorated. SREC prices will remain low if the BPU materially lowers the SACP and/or if there is an oversupply of SRECs. In order to avoid either of these eventualities, the author suggests the following legislative and administrative policy actions:

The EMP as finally adopted should provide that the SACP for the Energy Years June 1, 2016 – May 31, 2017 through June 1, 2025 – May 31, 2026 be fixed at the Energy Year June 1, 2015 – May 31, 2016 SACP of \$594, keeping New Jersey’s SACP above the Solar Carve-Out Renewable Generation Attribute Alternative Compliance Payment of Massachusetts,¹³ New Jersey’s primary competitor in the solar industry. The BPU should then adopt this \$594 SACP for the Energy Years June 1, 2016 – May 31, 2017 through June 1, 2025 – May 31, 2026.

Additionally, solar farms do not benefit any electricity consumers or businesses, they generate large numbers of SRECs and they use up vacant land. However, solar farms are useful to aid public utilities in meeting their solar RPS requirements. Accordingly, *N.J.S.A.* 48:3-87 should be amended to provide

that solar farms not generate SRECs, with the exceptions of solar farms used by public utilities to meet their solar RPS, solar farms developed on landfills and solar farms developed on brown-fields.

Similarly, individual residential PV systems do not provide a particularly great benefit to their owners, but cumulatively they create an oversupply in the SREC market. Accordingly, *N.J.S.A.* 48:3-87 should also be amended to provide that individual residential PV systems do not generate SRECs.

Finally, behind-the-meter PV systems serving office, industrial, retail and acute healthcare properties generate the broadest economic benefits. Accordingly, this type of solar development should be encouraged the most. However, office, healthcare and retail uses tend to have limited space for PV systems because of mechanical equipment, parking and/or urban locations. Conversely, industrial uses have sufficient room for PV systems, but they lack the required electricity usage. Accordingly, the author’s final suggestion is that *N.J.S.A.* 48:3-87 also be amended to allow limited non-residential community solar projects where a single, large PV system could serve all or a portion of an industrial or office park, several retail centers or be located on a different lot or lots than an acute healthcare facility.

While these suggestions do provide for some significant changes in New Jersey policy, they would greatly help New Jersey’s solar industry overcome the challenges facing it and allow it to remain a world leader in solar energy.

¹ See Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

² See *id.*

³ See 26 U.S.C. § 168 of the Internal Revenue Code.

⁴ See *N.J.S.A.* 48:3-87.j.

⁵ See *N.J.S.A.* 48:3-87.d.(3); *N.J.S.A.* 48:3-87.j.

⁶ See *N.J.S.A.* 48:3-87.j.

⁷ See *N.J.A.C.* 14:8-2.10, Table C.

⁸ See *N.J.S.A.* 48:3-87.j.

⁹ See *N.J.A.C.* 14:8-2.10, Table C.

¹⁰ Draft June 2, 2011 Energy Master Plan, Section 7.2.6, p. 103.

¹¹ See *N.J.S.A.* 52:27F-14.

¹² See *id.*

¹³ See *M.G.L.* ch. 25A, § 11F and 225 *CMR* 14.01 *et seq.*