ALERT
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Energy, Environmental and Utilities Group
News Concerning
Recent Developments in Energy and Environmental Law

COZEN O'CONNOR

New Jersey Struggles with Implementation of Solar Law

New Jersey is struggling to fix its solar market following a sustained and precipitous drop in prices for Solar Renewable Energy Credits (SRECs). A new solar energy bill (the Solar Law) designed to stabilize the market was signed into law on July 23, 2012 by Governor Chris Christie but questions surrounding its implementation by the New Jersey Board of Public Utilities (BPU or the Board) have led many stakeholders to question the sustainability of New Jersey's solar market under its current design.

The New Jersey Renewable Portfolio Standard (RPS) requires New Jersey electricity suppliers to secure a portion of their electricity from solar generators. Electricity suppliers fulfill this obligation by purchasing SRECs from solar generators. If electricity suppliers fail to meet their RPS obligations, they must pay a fine, known as the Solar Alternative Compliance Payment (SACP).

The current problems of New Jersey's solar market are a symptom of its own success. New Jersey's solar market has expanded rapidly over the past decade. There are currently more than 17,000 solar generation installations in the state with capacity close to 900 megawatts – second in the United States only to California.

SREC prices are largely a function of the supply of solar energy in New Jersey. Demand for SRECs is driven by the RPS. New Jersey's solar capacity grew so fast that the supply of SRECs began to exceed the demand for them. SREC prices dropped from the mid-$600 range to under $100 in recent months. A sustained drop in SREC prices threatens the economic viability of some operating solar projects and is likely to deter investments in future solar projects.

In an effort to stabilize SREC prices, the Solar Law does the following:

1. Ramps up the RPS requirement by accelerating the percentage of solar energy that must be secured by electricity generators from 2014 to 2020;
2. Reduces SACP prices so that energy suppliers will not be penalized if there is not enough solar capacity to meet the new RPS requirements;
3. Allows net metering aggregation for certain government facilities;
4. Relieves owners and operators of solar projects from liability under the New Jersey Spill Act;
5. Directs the BPU to establish financial incentives to cover the additional costs of developing solar facilities on brownfields, areas of historic fill and on sanitary landfill facilities; and
6. Outlines new eligibility requirements to receive the "connected to the distribution system" or "grid-supply designation" that is necessary to sell SRECs to electricity suppliers.

During a recent stakeholder meeting hosted by the BPU, concerns were raised over the last two components of the law, listed above. Solar developers have also expressed dissatisfaction with the law's attempt to keep large solar projects off of farmland.

The Board has not stated what incentives it intends to provide for the development of solar facilities on brownfields, areas of historic fill, and on sanitary landfill facilities. The solar law specifies that the BPU must design incentives that will cover the additional costs related to developing solar facilities on such lands. A proposal to allow these facilities to receive bonus SRECs was widely criticized since there is already an oversupply of SRECs in the market, coupled with a growing concern that SREC prices will remain depressed.

However, the greatest element of uncertainty lies in how the BPU will handle applications seeking the grid-supply designation necessary to sell SRECs. These projects represent between 500 and 700 megawatts of solar capacity. The added aggregate capacity of these projects, if approved, would likely cause SREC prices to drop even further.

On the other hand, many of these projects are far along in the planning process. Developers have threatened that if there is a wholesale rejection of these projects by the BPU, they will initiate legal proceedings against the state. The developers view the Solar Law as a reversal of the Board's previous encouragement of large-scale grid-supply solar projects and are worried about the stranded investment costs that will result if these projects are denied.

The BPU will be accepting comments on these issues until November 23, 2012. Any business engaged in solar energy development in New Jersey should pay close attention to these proceedings.

To discuss any questions you may have regarding this Alert, or how it may apply to your particular circumstances, please contact a member of Cozen O'Connor's Energy, Environmental & Public Utilities Practice.