

New Jersey's Solar Market Is Ripe for Investment

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New Jersey's solar market has seen tremendous growth over recent years. So much so that New Jersey is second in the nation next to California for installed solar capacity. Much of this success can be attributed to New Jersey incentives aimed at stimulating the solar industry. Programs in New Jersey, including solar loan programs, property tax exemptions, sales tax exemptions, favorable local permitting laws, and a strong Renewable Portfolio Standard (RPS), including marketable Renewable Energy Credits (REC's), will ensure that the solar industry will continue to thrive in New Jersey for years to come. Federal incentives which can be used in conjunction with State incentives make New Jersey an even more attractive market for solar investment. Due to the expiration of a generous Federal grant at the end of 2011, interested parties looking to invest in solar resources in New Jersey must act quickly in order to take full advantage of these incentives.

New Jersey's RPS

Much of the success of New Jersey's solar market can be attributed to the State's aggressive RPS.¹ Under the RPS, 22.5 percent of New Jersey's power mix must be produced by renewable energy by the year 2021.² In addition to the 22.5 percent requirement, solar energy has a specific requirement of 5316 Gigawatt hours (GWh) of solar energy by the year 2026. Accordingly, the New Jersey RPS creates demand in the market for renewable energy and particularly for solar.

Helping to fund the renewable energy projects necessary to meet the RPS requirements is the Renewable Energy Credit (REC) financing model. For every Megawatt (MW) of power generated by a qualified renewable energy project one REC is generated. The same is true for solar which generates one Solar Renewable Energy Credit (SREC) for every MW generated.³ The SREC's and REC's can be traded and sold independent of the power. The percentage requirements of the suppliers can be met either from generating the power themselves or by purchasing the REC's/SREC's on the open market. If a supplier or provider fails to meet their RPS requirement, they are required to make an alternative compliance payment and/or a solar alternative compliance payment for the amount of RECs and SRECs that were required.⁴ As a stand-alone incentive, the trading of SRECs at levels of up to \$700/SREC provide an attractive incentive for recovering project costs.

Solar Financing

As attractive as \$700 SREC's may appear there is concern in the market that as the RPS percentage requirements are met the SREC's will decline in value, making investment a far riskier proposition. Two financing models offered by New Jersey's Electric Distribution Companies (EDC) have provided certainty for long term investment in solar. In a BPU order issued in August of 2008, the four New Jersey EDCs were required to develop long term contract-

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ing or financing programs.⁵ The first model comes from a pair of programs: the Utility Solar Financing Program⁶ and the Utility Solar Financing Incentive.⁷ The second model is the Public Service Electric and Gas (PSEG) Solar Financing Program.

The Utility Solar Financing Program is a mechanism permitting the EDC's, Atlantic City Electric, Jersey Central Power and Light and Rockland Electric Company, to offer long term SREC purchase contracts to solar system owners looking to recover costs through the sale of SREC's generated from a project. This incentive is available to both residential and non-residential customers with projects that are 2 MW's or smaller and within the service territories of the aforementioned EDC's. The generation projects must also be installed on the customer side of the meter and the customer must enter into a net metering arrangement with the utility. Systems qualifying for this program can participate by submitting Requests for Proposals (RFP) to the EDC's.⁸

An additional incentive for facilities enrolled in the SREC program that are not within the PSEG territory is the EDC solar financing incentive (ESFI). The ESFI provides a \$.50/Watt incentive for residential systems up to 10 kilowatts (kw). Publicly owned and non-profit systems are eligible for a \$.50/Watt rate for up to 50kw systems. This incentive is capped at \$3,750 for residential systems and \$15,000 for non-profits and public entities. The long term SREC purchase contract and the ESFI are mandatory for the three EDC's listed above and are meant to supplement New Jersey's RPS. New Jersey's fourth EDC, PSEG, was permitted to develop a financing model which allows PSEG to finance a portion of the project. Approval of this program was granted because their Solar Loan program meets the requirements of the August 2008 BPU Order, providing similar benefits to the programs offered by the other New Jersey EDC's.⁹

PSEG's solar loan program, launched in 2008, is seeking to install 30MW of customer-sited solar

projects financed by loans totaling \$105 million. Currently PSEG's program is offering additional loans totaling \$247 million. The program provides loans for 40-60 percent of the cost of the system with the balance of the system cost financed by the customer. The loan rates are 11.3092 percent over 15 years for non-residential and 6.5 percent over 10 years for residential customers. Repayment of the loans can be done either with cash or by assigning SREC's to PSEG, however, the customer will own the SREC's generated at the end of the loan term. These loans are available for projects that generate 2MW's or less and must generate SRECs and be eligible for net metering.¹⁰

The New Jersey Net Metering Rules¹¹ were promulgated to facilitate renewable energy investments used together with existing incentives. Essentially the rules allow for customers to recover the full retail rate of electricity that they generate in excess of their consumption. Under the Net Metering Rules the system size cannot exceed 2MW's or the annual on site electric demand.¹² By way of example, on a day when electricity production exceeds consumption the utility meter will actually spin backwards providing the customer with credits, which are stored and paid back annually. This incentive not only promotes energy generation but also promotes energy efficiency, as any reduction in consumption will increase the next generation of the customer.

Siting Solar

The siting of any development, even one with obvious environmental and social benefits, can be complicated with objectors who simply do not want to see the project in their backyard. The uncertainty with obtaining necessary approvals on the local level can be a deterrent for developers looking to invest in alternative energy. Fortunately, New Jersey has recognized the importance of fostering alternative energy as an industry and has enacted several key laws in an attempt to make the siting process less onerous. Several laws were enacted between 2009 and 2011 finding certain alternative energy

uses as “permitted uses” in specific zones. In 2009, N.J.S.A. § 40:55D-66.11 - 40:55D-66.12 established solar and wind technologies in all state municipalities as permitted uses in industrial zones of 20 contiguous acres or more. The only qualification for this benefit is that the parcel or parcels must be owned by the same person or entity.

Developers seeking a variance from permitted uses will also have an easier time in New Jersey than many other uses would. New Jersey’s Municipal Land Use Law N.J.S.A. 40:55D-4 defines wind and solar facilities as “inherently beneficial uses”. Inherently beneficial uses are projects which promote the general welfare and public good and they presumptively satisfy the positive criteria for grant of a use variance. Although applicants for this variance must still show that the proposed project will not create a substantial detriment to the public good or substantially impair the purpose and intent of the zone plan and zoning ordinance, it makes the process of seeking a variance far more palatable for solar developers.

Among New Jersey’s other incentives are Farmland Assessment Benefits for qualifying farming operations,¹³ 100 percent property tax exemption of the renewable asset,¹⁴ clean energy manufacturing grants¹⁵ and solar energy sales tax exemption.¹⁶ All of these incentives have contributed to making New Jersey one of the strongest solar markets in the country for both manufacturing and development.

Federal Incentives

Making solar investment an even more attractive option are the Federal incentives available for renewable energy that can be used in conjunction New Jersey incentives. Currently, Federal incentives allow eligible taxpayers a choice of a tax credit or a grant for 30 percent of the property that is part of a qualified facility.

The Investment Tax Credit¹⁷ provides up to 30 percent of expenditures for a qualified renewable

energy project, including solar. Eligible solar projects include electric generating facilities, solar water heating and cooling, solar process heat and certain types of solar lighting systems. These systems must be in place prior to December 31, 2016 in order to qualify for this incentive.

Developers interested in the upfront Renewable Energy Grant¹⁸ may choose this option in lieu of the tax credit, however, in order to qualify projects must begin construction prior to December 31, 2011. The guidelines of this program do provide for a 5 percent safe harbor provision that sets the commencement of the construction at the point where the applicant has incurred or paid at least 5 percent of the total cost of property. However, even with the safe harbor provision time is of the essence to take advantage of this program.

Due to the mechanics of site selection, project design and negotiating lease structures, parties looking to take advantage of either of these programs should make every effort to contract with their solar developer and provider by June of this year. The time to complete the lease and incur the 5 percent cost will of course vary depending on the complexity of the project and the parties involved. Existing debt covenants, restrictions and security structure on facilities where renewable energy projects will be installed may impose challenging impediments to financing renewable energy projects. Furthermore, whether the parties are public entities, private or non-profit, will greatly impact the options and time needed to complete the lease and ensure eligibility for these two incentives prior to expiration.

Conclusion

When taken together with New Jersey incentives, the existing Federal incentives, particularly the Renewable Energy Grant, make solar development in New Jersey an extremely attractive investment. Although the solar industry hopes for an extension of the Federal grant program, as was the case in 2010,

the existing Federal and New Jersey incentives will provide the necessary drivers to ensure growth in this industry well into the foreseeable future.

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¹ N.J.S.A. § 48:3-49; N.J.A.C. 14:8-2.1 - 2.12.

² N.J.A.C. § 14:8-2.3.

³ N.J.A.C. § 14:8-2.2.

⁴ N.J.A.C. §14:8-2.10.

⁵ IMO The Renewable Portfolio Standard – Amendments to the minimum Requirements for Energy Efficiency, Renewable Energy and Conservation Programs, and for Electric Distribution Company Submittals of Filings in Connection with Solar Financing, Docket No.: EO06100744, August 7, 2008.

⁶ IMO The Renewable Portfolio Standard – Amendments to the minimum Requirements for Energy Efficiency, Renewable Energy and Conservation Programs, and for Electric Distribution Company Submittals of Filings in Connection with Solar Financing, Docket No.: EO06100744, August 7, 2008.

⁷ 7 N.J.S.A. § 48:3-60

⁸ 8 SREC-Based Financing Program, http://www.njedcsolar.com/assets/files/NJEDCSolar_Program_Guide_1-6-2011.pdf.

⁹ IMO of Petition of Public Service Electric and Gas Company for Approval of a Solar Energy Program and an Associated Cost Recovery Mechanism – Decision and Order approving Settlement, Docket No.: EO07040278. April 16, 2008.; IMO Petition of Public Service Electric and Gas Company for Approval of a Solar Loan II Program and an Associated Cost Recovery Mechanism, Docket No.: EO09030249, June 22, 2010.

¹⁰ PSE& G Solar Loan II Program Rules, http://www.pseg.com/home/save/solar/pdf/program_rules.pdf.

¹¹ N.J.S.A. § 48:3-87; N.J.A.C. § 14:8-4.1 - 14:8-4.11.

¹² N.J.A.C. § 14:8-4.3.

¹³ N.J.S.A. § 54:4-23.3(c).

¹⁴ N.J.S.A. § 54:4-3.113(a) et seq.

¹⁵ <http://www.njeda.com>.

¹⁶ N.J.S.A. § 54:32B-8.33; N.J.A.C. § 18:24-26.1 et seq.

¹⁷ 28 U.S.C. § 48.

¹⁸ Pub. L. 111-5 (2009) §§ 1104, 1603.