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### DON'T LET THE MEDIA COVERAGE FOOL YOU — SOLAR ENERGY IS STILL VIABLE IN NEW JERSEY

By James Stewart, Esq.

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**Solar energy has developed rapidly in New Jersey. New Jersey is second only to California in the number of solar energy projects. The state has developed a system of financial incentives to support solar energy development. Those incentives include a Renewable Portfolio Standard (RPS) that requires energy utilities to produce an increasing percentage of their power from renewable sources or through the purchase of Solar Renewable Energy Certificates (SRECs), which are created when solar energy projects create 1,000 kWh of energy and which can then be sold on the SREC market.**

In June, when the Christie administration issued for comment a draft 2011 New Jersey Energy Master Plan, it triggered strong reactions. One guest editorial titled "NJ Draft Energy Master Plan Saps Drive for Clean Power," published in the July 29, 2011, issue of *The Times of Trenton*, characterized the plan as valuing "polluting fossil fuels above clean energy." In a June 8, 2011, *NJ Spotlight* article titled "Revamped Energy Master Plan Casts Shadow on Solar," an environmental advocate was quoted as saying, "What this governor has done is taken one of the

most advanced clean energy programs in the country and gutted it."

Based on these reactions, one might think that solar energy projects are no longer viable in New Jersey. But nothing could be further from the truth. In the final Energy Master Plan, issued December 6, 2011, the Administration included a number of new recommendations to support commercial and industrial solar energy projects. In the right circumstances, these solar energy projects continue to make economic sense, especially for consumers of large amounts of electricity, such as participants in the food industry.

Many commercial and industrial entities are interested in solar power but do not have the cash flow to build their own system, the tax situation to benefit fully from the federal incentives, or an interest in being in the electricity-producing business. But they are interested in reducing energy costs. They can benefit from entering into a solar Power Purchase Agreement (PPA).

Through a PPA, a solar energy developer agrees to construct, install and operate a solar energy system on the customer's property, usually a roof, but the project can also be car ports in a parking lot or

solar panels on a field. The customer agrees to purchase all the electricity generated by the system for its useful life – anywhere between 15 and 25 years. The price of the electricity is usually fixed in the PPA, starting at a determined price with an annual escalator of a defined percentage. The initial price of the electricity is below the current market price. The developer retains all the SRECs and tax incentives. The customer gets reduced electricity costs and long-term price certainty. Frequently, they agree that both can publicize the project and benefit from supporting clean energy.

The other option is for entities to develop their own solar energy system to provide for some of their own electric power needs. Under this option the entity would secure the funds to construct, install and operate the solar energy system and use the power itself or sell it to a related entity. As the developer, the entity would be able to take advantage of the federal grant, credit or depreciation incentives, some of which are changing or expiring, sell

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the SRECs, which are fluctuating and for which the final Energy Master Plan has included several recommendations to restore their value, and avoid the costs of purchasing electricity for the amount of energy generated by the solar energy system. Depending on the entity's cash flow and tax situation, this option may be even more beneficial financially.

Of course, there are many specific factors to be evaluated to determine whether a solar energy project makes sense for a specific entity. For commercial or industrial operations that are energy consumers, especially those that consume significant amounts of electricity, that evaluation is worthwhile, because those customers have the potential to use solar energy in New Jersey to reduce electricity costs significantly. While the final Energy Master Plan does make some adjustment to renewable energy goals and discount the value of certain

solar energy projects, it also includes recommendations to maintain the value of SRECs and assure that solar energy projects remain advantageous to many commercial and industrial users.

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