

# RULE ADOPTION

## PUBLIC UTILITIES

(a)

### BOARD OF PUBLIC UTILITIES

#### Renewable Energy and Energy Efficiency

#### Adopted Amendments: N.J.A.C. 14:8-1.2, 2.1 through 2.6, 2.9, 2.10, and 2.11

Proposed: March 7, 2016, at 48 N.J.R. 383(a).

Adopted: February 22, 2017, by the New Jersey Board of Public Utilities, Richard S. Mroz, President; Dianne Solomon, Joseph L. Fiordaliso, Mary-Anna Holden, and Upendra Chivukula, Commissioners.

Filed: February 23, 2017, as R.2017 d.049, with non-substantial changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13, 48:3-51, and 48:3-87.

BPU Docket Number: QO16020130.

Effective Date: April 17, 2017.

Expiration Date: May 1, 2019.

#### Summary of Public Comments and Agency Responses:

Timely comments were submitted by:

New Jersey State Agricultural Development Committee (SADC); New Jersey Solar Energy Coalition (NJSEC); New Jersey Solar Grid Supply Association (NJSOSA); Robert W. Simkins Associates (Mr. Simkins); PVNavigator, LLC (PVNavigator); Alethea Cleantech (Alethea); Division of Rate Counsel (Rate Counsel); Retail Energy Supply Association (RESA); New Jersey Conservation Foundation (NJCF); NJR Clean Energy Ventures (CEV); New Jersey State League of Municipalities (NJSLOM); Mid-Atlantic Solar Energy Industries Association (MSEIA); and SJI Energy, South Jersey Industries, LLC (SJI).

#### General Comments

1. COMMENT: Rate Counsel generally supports the rule proposal, but urges the Board of Public Utilities (Board) to install a market monitor or to establish a monitoring mechanism in order to ensure fair and competitive market functioning. Rate Counsel points to the increase in solar renewable energy certificate (SREC) prices from a low of \$142.00 in March 2013, to \$256.00 in March 2016, noting that the five-month period of price increases from October 2015 through March 2016, is the longest stretch of repeated SREC price increases in the last three years. The commenter expresses concern that this price increase is occurring despite a 67 percent increase in New Jersey's solar capacity since 2012, and the continuing drop in installation prices nationwide. In that context, these "substantial and persistent" increases, in Rate Counsel's opinion, are perplexing at best and at worst suggest that SRECs are not being offered into the New Jersey market. Stating that the Board has the statutory authority and obligation to promote competition, market diversity, and the achievement of the State's renewable energy goals, Rate Counsel proposes that the Board use the opportunity offered by the rulemaking to initiate specific market monitoring.

RESPONSE: The Board thanks the commenter for its support. With respect to the proposal to add a market monitor or monitoring mechanism to the Renewable Portfolio Standard (RPS) rules, should the Board find merit in the proposal, the Board would take action independent of this rulemaking proceeding. The Board has seen no evidence to support the commenter's belief that market manipulation is occurring. Retaining SRECs rather than selling them into an oversupplied market is an option provided by law to all market participants and, while it may increase prices, does not indicate market manipulation. As Rate Counsel is aware, Board staff routinely provides New Jersey solar market data from the SREC registration program and

from the PJM-EIS Generation Attribute Tracking System (GATS). Board staff, together with the New Jersey Clean Energy Program Administrator team, hold regular, open, public Renewable Energy stakeholder meetings to discuss the available data. No party to these discussions has attributed the relatively high SREC price to market manipulation. It should be noted that even New Jersey SREC market prices, which are among the most voluminous and liquid renewable energy certificate (REC) markets in the nation, are difficult to track and validate given the variety of transaction types and the lack of visibility to both spot and contracted prices. In part, SREC prices are a function of the demand expressed by the compliance obligation and the supply of eligible SRECs available and forecast to be available, since New Jersey SRECs may be banked for five years. N.J.S.A. 48:3-8.p sets a five-year period during which SRECs may be used to satisfy the solar portion of the RPS, a fact that makes forecasts of SREC supply over five years relevant in any review of price or market behavior.

#### N.J.A.C. 14:8-1.2 Definitions

##### Definition of Farmland

2. COMMENT: SADC, NJSLOM, and NJCF request that the Board clarify the proposed definition of "farmland" to make clear that farmland means any land that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964 "at any time within the 10-year period prior to the effective date of P.L. 2012, c. 24." The commenters note that this is the definition of "farmland" given at N.J.S.A. 48:3-87.s (Subsection s) and assert that this definition is consistent with the New Jersey Energy Master Plan and what they characterize as the statutory intent to prohibit grid supply solar development on farmland.

RESPONSE: The Board agrees that the rulemaking did not correctly attribute the definition from the relevant portion of the statute and has modified the rule accordingly upon adoption. The Board does not view this clarification as a substantive change since the only use of the term "farmland" in the RPS definitions addresses SREC eligibility. The commenters correctly point out that the Solar Act of 2012 is widely interpreted as implementing the provisions of the Energy Master Plan that recommend SRECs not be used to motivate solar development on farmland or open space. The Solar Act, in Subsections s and N.J.S.A. 48:3-87.q (Subsection q), provides two time-limited opportunities for proposed solar projects on farmland to seek approval for SREC eligibility. The Board does not seek to implement N.J.S.A. 48:3-87.r (Subsection r) in such a way as to reopen that opportunity after the Legislature has closed it.

3. COMMENT: Alethea asks the Board to consider revising the definition of farmland such that only "true" farmland is excluded from solar development. In the commenters' opinion, the Farmland Assessment Act has "relatively simple" qualification requirements and as a result, a large number of properties that are zoned for residential, commercial, or industrial development have been classified as "farmland" for tax purposes. Thus, asserts the commenter, the proposed rule's "blanket disqualifications of all properties that happen to be under Farmland Assessment will likely result in few (if any) qualified Subsection R submissions."

Even limiting the proscribed properties to those targeted for preservation by municipal or State government would be over-broad, argues Alethea, because there is only enough funding for preserving one or two farms per county, per year. The commenter contends that to place all farms targeted for preservation off-limits for solar development under these conditions may amount to inverse condemnation. In addition, Alethea states that if other agencies are to rely upon the process of targeting farmland for preservation, especially if this reliance may have significant financial consequences, the targeting process does not provide the landowners due process.

RESPONSE: The Board notes the commenter's concerns, but is bound by the statute as written. The Legislature chose to address solar development on farmland in Subsection s of the Solar Act, which by its terms applies to all land that has been actively devoted to agricultural or

horticultural use “that is valued, assessed, and taxed pursuant to the ‘Farmland Assessment Act of 1964,’ . . . at any time within the 10 year period prior to the effective date of [the Solar Act].” (Emphasis added). The Legislature did not choose to make Subsection s applicable only to land that constitutes “true” farmland, as the commenter proposes; to the contrary, the language quoted above was drafted to cover properties that had been eligible for assessment as agricultural for a number of years prior to 2012. Moreover, Subsection s was drafted to provide only two classes of projects the opportunity to be found eligible for SRECs: those approved under Subsection q, which is not at issue here, and facilities for which “(a) PJM issued a System Impact Study . . . prior to June 30, 2011, (b) the facility files a notice with the board within 60 days of the effective date of [the Solar Act] . . . and (c) the facility has been approved as ‘connected to the distribution system’ by the board.” As the Board has noted elsewhere, these limits indicate a clear legislative intent to allow only a subset of facilities, already pursuing their regulatory approvals, to be eligible for ratepayer-derived incentives for the electricity produced by merchant, wholesale solar generation facilities. Given this analysis, the Board need not reach the commenter’s constitutional concerns.

4. COMMENT: MSEIA states that the rule proposal should discourage solar development only on properties that are actively farmed for food crops; have ever applied for farmland preservation, even if not approved; or are adjacent to an operating farm. If a property has been farmed in the “recent” past, the commenter supports requiring written expressions of support from the town and from its farm bureau. In MSEIA’s opinion, property that is zoned for commercial, industrial, or residential development should not be excluded from approval for solar development if that property also has current or pending developmental approvals which, with the consent of the municipality, are terminated in favor of approvals for solar development.

RESPONSE: As noted in the Response to Comment 3, the Board is bound by the language of the statute, which does not limit the application of Subsection s to the types of properties enumerated by the commenter or provide for an exception for properties with current or pending developmental approvals, regardless of the attitude of the municipality.

#### Definition of On-Site Generation Facility

5. COMMENT: NJSEC proposes that the Board modify the definition of “on-site generation facility” to include “other adjacent properties that share a common property boundary and are owned by the same entity[.]” The commenter reasons that multiple properties that share a common geographic boundary and a common owner would represent the same end use customer and should be considered contiguous under the rule. NJSEC adds that the properties would no longer be considered contiguous if a subsequent change in the ownership of the properties sharing a common geographic boundary occurred.

6. COMMENT: NJSGSA concurs with the comment of NJSEC (Comment 5).

7. COMMENT: SJI asks the Board to clarify whether the term “property” as used in the definition of an on-site generation facility may include more than one tax parcel, if owned by the same party and/or may be separated by a municipal boundary line.

8. COMMENT: SJI notes that the Board’s existing rules state that generation may be deemed to occur behind a customer’s meter if the generation is located on a property that is “contiguous to the property on which the energy is consumed,” while the definition of “on-site generation facility” in the rule proposal speaks of generation located contiguous to “the property of the end user.” The commenter asks whether the “property of the end use customer” must be the property “on which the energy is consumed,” and, if that is the case, “whether energy consumption is measured by the location of the physical connection between the renewable energy facility and the meter measuring the energy that is delivered to the customer.”

RESPONSE TO COMMENTS 5, 6, 7, AND 8: The Board has proposed language in the definition section of the RPS rules for “on-site generation facility” that tracks the statutory definition listed at N.J.S.A. 48:3-51. The inclusion of this definition in this subchapter is intended to address SREC eligibility generally and not to override existing

provisions in other subchapters, including the net metering rules at N.J.A.C. 14:8-4.1(b)iii that address on-site generation. With respect to the location of the consumption of energy, this query involves issues of net metering rather than of the Renewable Portfolio Standard, and is, therefore, beyond the scope of this rulemaking.

9. COMMENT: PVNavigator asks the Board to consider amending the definition of “on-site generation facility” to include facilities within a certain specified distance or which are dedicated to generating power for the end user. The commenter asserts that the property available for solar generation is often not located contiguous to the property where the end user of generation is located and that such an amendment would be consistent with the intent of the Solar Act because it would result in more viable solar projects.

10. COMMENT: SJI asks the Board to clarify whether two properties may be separated by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way and still be considered contiguous.

RESPONSE TO COMMENTS 9 AND 10: The Board refers the commenters to the definition of “on-site generation facility” found at N.J.S.A. 48:3-51. The statutory definition provides that an on-site generation facility may be located “on property contiguous to the property on which the end user is located.” The definition goes on to state that the two properties “shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility right-of-way, or if the end use customer is purchasing thermal energy services produced by the on-site generation facility . . . regardless of whether the customer is located on property” that is separated from the facility by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way.” (emphasis added). The plain language of the statute, thus, limits the expansion of the definition of “contiguous” to those facilities from which the customer is purchasing thermal energy services. All other types of generation facilities are, by implication, excluded.

11. COMMENT: SJI asks the Board to confirm that a facility that is not a net-metered facility, but which qualifies as an on-site generation facility may qualify to produce SRECs.

RESPONSE: N.J.S.A. 48:3-51 defines “connected to the distribution system” to include six specific categories of solar generation facilities. More specifically, the definition reads: “Connected to the distribution system” means . . . (2) an on-site generation facility[.]” As in the definition of “on-site generation facility,” the plain language of the statute controls and that language states that an on-site generation facility is, by definition, connected to the distribution system.

#### Definition of Properly Closed Sanitary Landfill Facility

12. COMMENT: Mr. Simkins, a former Burlington County District Solid Waste Coordinator, argues that the definition in the rule proposal is too narrow. Mr. Simkins states that the Board and/or the New Jersey Department of Environmental Protection (NJDEP) appear to be intentionally limiting the location of solar panels to the waste fill area, rather than allowing them anywhere on the blocks and lots that have been registered with the State or county. Mr. Simkins says that there are hundreds of “potential” closed landfill sites on the DEP’s Landfill Location/Status List and that these should have been properly closed years ago. Prior to 1970 and the creation of the NJDEP, Mr. Simkins notes sanitary landfills were regulated by municipalities. Mr. Simkins states that many landfills closed rather than register with the DEP, while others that did register closed later because they could not afford the costs associated with bringing their facilities up to the newer standards. Asserting that one goal of the Solar Act was to incentivize proper closure of these sites, Mr. Simkins alleges that unless solar development is permitted on the entire registered property it will be impossible to close most of them. Mr. Simkins itemizes eight ancillary facilities that may be found outside of the waste fill area of a landfill, stating that these facilities form a necessary part of a sanitary landfill and should be considered as such. He adds that while older facilities may lack these additional facilities, the registered land outside the actual waste fill area should nonetheless be eligible for the location of solar generation.

In support of his argument, Mr. Simkins points to the Solar Act's definition of "sanitary landfill facility," which references the definition found in the New Jersey Solid Waste Management Act at N.J.S.A. 13:1E-3, "a solid waste facility at which solid waste is deposited on or in the land as fill for the purpose of permanent disposal or storage for a period exceeding six months[.]" He also relies upon the Solid Waste Management Act's definition of "solid waste facility," which includes "transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities . . . and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner[ ]" (emphasis added by commenter). Mr. Simkins also points to the DEP's regulations, asserting that these regulations support his expansive view of what constitutes a sanitary landfill, and to the NJDEP's "Guidance for Installation of Solar Renewable Energy Systems on Landfills in New Jersey." He attributes the stricter interpretation of the Solar Act by Board and DEP staff to either lack of understanding of the Solid Waste Management Act or fear that some of the older landfills have "massive" amounts of land registered and would support extremely large solar facilities. The latter fear, says the commenter, is not based on fact.

Finally, Mr. Simkins asserts that in contrast to closed landfills, which he characterizes as the most complicated, challenging, and costly type of solar to develop, brownfields "have enjoyed a particularly permissive authorization for the placement of solar panels." In the commenter's opinion, there is not an "even playing field" for solar development on landfills, which he finds particularly unfair because he has observed that brownfields often obtain DEP permission to continue accepting contaminated waste and receive the associated payments to fund their proper closure.

13. COMMENT: NJSEC also argues that the definition in the rule proposal is too narrow and also advocates a more expansive definition, proposing that the Board add the phrase "or other unused lands on the same parcel of property."

14. COMMENT: PVNavigator supports the comments submitted by Mr. Simkins (Comment 12), mentioning specifically its desire for an "even playing field."

15. COMMENT: NJGSGA concurs with NJSEC's comments on the definition of "properly closed sanitary landfill."

RESPONSE TO COMMENTS 12, 13, 14, AND 15: Mr. Simkins hypothesizes that Board and DEP staff either lack understanding of the Solid Waste Management Act or have unfounded fears that some of the older landfills have "massive" amounts of land registered. The Board, as discussed above, believes that the Board and DEP staff are implementing the express direction of the statute. With regards to the commenter's belief regarding the Legislature's intent to incentivizing solar on landfills, the Board has the statutory duty to ensure "safe, adequate, and proper service" at "just and reasonable" rates. The incentives that the solar industries receive are funded by ratepayers and as such, the Board must balance the benefits of solar energy with the cost to utility customers. While Mr. Simkins advocates for a more liberal construction of the term sanitary landfill, he acknowledges that solar projects on landfills are "the most costly type of solar to develop." Indeed, while the commenter asserts that there is no reason to fear large older landfills supporting large numbers of solar facilities, he also states that there are hundreds of landfills that might support solar.

In addition, the Board addresses Mr. Simkins' and PV Navigator's argument that there is no "even playing field" for solar development on landfills by comparison with solar development on brownfields. Mr. Simkins asserts that the Board has, in effect, favored solar development on brownfields over solar development on landfills. The Board implements the statute as it is written. The Board has not and will not afford preferential treatment to one category of petitions over another.

As to Mr. Simkins' statement that brownfields have an alternative source of revenue, the alleged income is irrelevant to the Board's own determinations. The Board has no jurisdiction over and no involvement in either the regulation of brownfields or the decisions taken by a sister agency with respect to the operations of these properties.

Lastly, the Board notes the commenters' concerns, but the language of the Solar Act does not support the contention that the Legislature intended to incentivize the proper closure of every former landfill in the

State through SREC eligibility. The commenters assert a policy position that is not supported by the express statutory language. Mr. Simkins points to the Solar Act's statement that "'sanitary landfill facility' shall have the same meaning as provided in the [Solid Waste Management Act]." He cites the NJDEP rules and its guide for the installation of solar on landfills for the same proposition. However, in the Solar Act, the Legislature provided a separate and much more limited definition of a "properly closed sanitary landfill facility," which means "a sanitary landfill, or a portion of a sanitary landfill, for which performance is complete with respect to all activities [involved in closing the landfill to the satisfaction of the NJDEP]." N.J.S.A. 48:3-51. This language not only sets a much higher standard for the property in question but also recognizes that "proper closure" may be achieved for one portion of a sanitary landfill while others parts of the same landfill do not meet that standard.

16. COMMENT: RESA supports the proposed change of the term "supplier/provider" to "TPS/BGS provider," saying that the former term is confusing and inconsistent with general usage. However, RESA notes that the term "supplier/provider" still appears at N.J.A.C. 14:8-2.11.

RESPONSE: The Board thanks the commenter for the observation and will make the additional change upon adoption.

#### N.J.A.C. 14:8-2.2 Definitions

17. COMMENT: RESA supports a modification of the definition of "true-up period," but believes that the proposed definition, "a period . . . of no less than 120 days following the end of the energy year," is too uncertain. RESA requests that the Board define "true-up period" to extend through November 15 of the year in which the energy year ends.

RESPONSE: Furthermore, the definition of "true-up period" proposed for inclusion in the RPS rules is identical to those contained in the statute. The requested change also conflicts with the existing rule provisions at N.J.A.C. 14:8-2.11, which attempt to implement a true-up period that balances the interests of all market participants. The effectiveness of the RPS and the value of RECs are diminished by increasing the time period between when a compliance obligation is incurred and when that obligation is fulfilled. The RPS exists to motivate investments in renewable electricity generation capacity by providing value through RECs for eligible electricity production. Generally speaking, the value of the REC is a function of: (1) the amount of retail electricity sold; (2) the compliance requirement; and (3) the supply of available RECs. However, within a given year, REC prices are observed to increase when demand becomes apparent to market participants. This occurs twice annually every year, immediately before and after the BGS auction and at the end of the true-up period. The longer the delay from the end of the compliance period, May 31 of each year, to the date upon which compliance must be achieved, the more opaque and uncertain the aggregate and individual compliance obligations become. Thus, the true-up period must balance providing sufficient time for regulated entities to calculate and satisfy their compliance obligation, on the one hand, and providing other market participants a firm, timely, and certain deadline for REC transactions to be consummated, on the other.

#### N.J.A.C. 14:8-2.3 Amount of renewable energy required

##### N.J.A.C. 14:8-2.3(k)2iv

18. COMMENT: As a threshold matter, the Board notes that RESA's comments reference "N.J.A.C. 14:2-3(k)(iv)," but from the context it appears that RESA intended to reference the fuller citation provided above. RESA believes that the Board should define the term "total retail sales" as it is used in this rule. While stating its belief that any concrete definition would be preferable to the status quo, RESA advocates defining "total retail sales" as "metered load." According to the commenter, the use of settled load as a proxy could result in customer overpayments presumably due to supplier over-compliance. As evidence of this assertion, RESA cites a PSE&G website showing line losses among all rate classes of over seven percent. In further support of its argument, RESA identifies instances in proposed revisions at revised N.J.A.C. 14:8-2.3(k) wherein, according to RESA, the terms "supply" and "sale" are used interchangeably. RESA reiterates its position that "sales" are a more accurate measure than "supply."



RESPONSE: The RPS rules in this section have not been proposed for change; they are designed to implement the statutory language addressing this area. The PJM-EIS GATS was subsequently authorized, via these rules, to facilitate RPS compliance by third-party suppliers and BGS providers (TPS/BGS Providers). The commenter does not appear to realize that the use of settled load as a proxy for retail sales is a choice made by TPS/BGS Providers who are unable or unwilling to provide a measure of metered load sold as retail electricity. The number for settled load is calculated as follows. During the annual true-up period, PJM-EIS supplies the GATS account of each TPS/BGS Provider with the corresponding energy year load data from the PJM settlement market. Shortly thereafter, PJM-EIS supplies Board staff with reconciled load data for each TPS/BGS Provider that approximates their retail sales to enable Board staff to validate compliance. Board staff then provides notice to TPS/BGS Providers of the opportunity to reconcile their load data to account for any deviation between retail electricity sales and PJM load data. Many TPS/BGS Providers accept the PJM-EIS supplied load data as their retail sales for the compliance period. Other TPS/BGS Providers provide reconciled data. Since the deviation between PJM load settlement data and actual retail sales is not consistent for each TPS/BGS Provider, some are likely to have more than the illustrative seven percent losses cited by the commenter and some are likely to have less than seven percent losses. GATS has advised that other states rely upon their electric distribution companies to perform this reconciliation process for their regulated entities in the more condensed time period of 30 days rather than the 120 days provided for in New Jersey's RPS rules. However, New Jersey electric distribution companies (EDCs) have indicated that they cannot provide this service in such a compressed time frame. The Board believes that the time period provided in its rules balances the diverse interests of the market participants identified in the response to their earlier comment; in that comment, the Board notes, the commenter requested a true-up period longer than 120 days.

**N.J.A.C. 14:8-2.4 Energy that qualifies for an SREC; registration requirement; additional approval, designation, and certification processes for grid supply projects**

N.J.A.C. 14:8-2.4(c)1i

19. COMMENT: NJSEC suggests that the Board exempt all projects less than 25 kW from the 14-day registration requirement and allow these projects to register any time before they receive their permission to operate. The commenter asserts that the impact of small-scale registrations is of little or no value to market participants and analysts and that the administrative burden of filing separate registrations for each small project far outweighs any "dubious transparency value." Moreover, NJSEC believes that removing this requirement would encourage the market participation of entities such as aggregators from other SREC markets, which in NJSEC's opinion would greatly improve the market's efficiency. The commenter also asks the Board to consider registration protocols used by neighboring states. Specifically, it points to Maryland's protocol of dating SREC eligibility from either the interconnection date or the beginning of the calendar year in which the application was submitted, whichever comes later. As another alternative, NJSEC suggests the Massachusetts methodology under which a project receives credit back to the first day of the quarter during which the project application meets a set deadline.

20. COMMENT: The NJSGSA concurs with the comments of NJSEC.

RESPONSE TO COMMENTS 19 AND 20: While a single system of less than 25 kW may seem insignificant in terms of contributing new SREC capacity data or "pipeline information" to market participants, in aggregate the capacity of these systems, which totaled more than 10,845 systems for over 86 MW in calendar year 2015, has the potential to move the market. Furthermore, the additional data points provided by the registration of these systems, such as the owner, the ownership model utilized, and the location are of significant interest to market participants. The SREC Registration Program (SRP) registration records are vital in ensuring that the SREC costs borne by ratepayers are the result of verified electricity produced by eligible generation facilities. Moreover, approximately 90 percent of these smaller systems are owned by large, corporate, third-party owners with sufficient staff to manage

the registration process as part of their sales, permitting, and installation practices.

The commenter does not provide a compelling rationale for recommendations to alter the date for the commencement of SREC creation. The Board recommends that these organizations participate in the open, public, Renewable Energy stakeholder meetings that are held on a regular basis by members of Staff and the SRP processing team.

N.J.A.C. 14:8-2.4(c)1ii

21. COMMENT: SJI notes that the rule proposal has amended the language of this subsection, such that the requirement of SRP registration within 14 days of contract execution does not apply to grid supply projects unless they have been conditionally certified as being located on a brownfield, properly closed sanitary landfill, or area of historic fill. However, the commenter points out, the rule proposal does not alter the existing N.J.A.C. 14:8-2.4(f)5, which has been proposed for recodification as N.J.A.C. 14:8-2.4(h)5 and states that construction may begin once a conditional SRP registration has been received. SJI asks the Board to clarify whether it is acceptable to begin construction on Subsection q and/or Subsection r facilities before being issued a conditional registration.

RESPONSE: It is not acceptable to begin construction for any facility prior to issuance of a conditional registration. It is true that the Solar Act has provided approval and certification requirements for certain grid supply facilities that are additional to the SRP requirements in the RPS rules at N.J.A.C. 14:8-2. However, it remains the Board's intent that the SRP process provide some degree of transparency to the solar market by signaling that a proposed solar generation facility has moved far enough forward in the development process that other market participants should be aware that it may impact the market. Therefore, the requirement of SRP registration is tied to the event that marks that point in a project's development. Prior to the Solar Act, the "execution of the contract for purchase or installation of the photovoltaic panels to be used in the solar facility" or the submission of a legally binding letter of intent functioned as that milestone for all solar projects, so signing that contract or submitting that letter triggered the registration requirement. (See N.J.A.C. 14:8-2.4(c)1i) Certain grid supply projects, pursuant to the Solar Act, now also require Board approval or certification to proceed; for those projects, Board approval is now a more appropriate trigger for SRP registration. For that reason, recodified N.J.A.C. 14:8-2.4(h)5, has not been amended, grid supply developers are directed to register as a condition of approval or certification using a contract or letter of intent, and proposed solar facilities granted conditional approval or certification may not begin construction prior to receipt of SRP acceptance.

22. COMMENT: SJI asks the Board to clarify what penalties would attach, if construction commences in violation of recodified N.J.A.C. 14:8-2.4(h)5.

RESPONSE: N.J.A.C. 14:8-2.4(c)2 states that construction of a solar facility shall not begin until Board staff has issued a conditional registration. This provision has not been proposed for change. For administrative purposes, the citation for the conditional registration process has changed from N.J.A.C. 14:8-2.4(f)5 to recodified N.J.A.C. 14:8-2.4(h)5. The developer in this hypothetical case risks construction of a facility that may be found to be ineligible for SRECs. The commenter is reminded that satisfactory participation in the SRP process is a condition required to be met in the conditional approvals and certifications granted by the Board.

N.J.A.C. 14:8-2.4(g)

23. COMMENT: CEV requests that the Board reiterate both the Solar Act policy objective of maintaining stability and reducing volatility in the SREC market and the four specific criteria under which the Solar Act requires the Board to review grid supply projects. Pointing to the Solar Market Volatility Report's statement that the small incremental increases in demand set by the Solar Act between 2012 and 2023, create the potential for significant market volatility, CEV recommends that the Board explicitly incorporate market data tests into its annual determination of how many additional megawatts the market can support. The commenter calculates that New Jersey's solar market will be able to absorb less than 60 MW annually from 2019 to 2024, and

notes that the current annualized net metered installation rate is more than double that amount. As a result, CEV proposes that when making its annual determinations, the Board use formulas that evaluate both historic and projected rates of net metered project activity. In addition, the commenter recommends that in energy years 2017 and 2018, the Board limit its approval of new grid supply projects to capacity that becomes available as a result of cancellations of projects previously approved under Subsections q or s.

RESPONSE: The rulemaking includes a stakeholder process for recommending the appropriate maximum number of MW to be approved in each energy year and the Board will await the results of that process prior to making that determination. Board staff anticipates using the publicly available data from the SREC Registration Program including installed and registered capacity along with the results of the Expression of Interest (EOI) process and estimates of SREC demand based on the established percentage requirements and forecasts of retail electricity sales to form a straw proposal for public comment. Market participants are expected to freely offer their insights including results of any “market data tests” believed relevant in responding to staff’s straw proposal. The results of the stakeholder process will be presented by Board staff to the Board for its consideration in determining the parameters of the Subsection r application process for the energy year.

24. COMMENT: MSEIA states that the criteria for approval should include a project’s effects on the interests of the SREC market, the solar industry, New Jersey ratepayers, and RPS compliance.

RESPONSE: The Board’s rules are intended to implement the statute as written. The application process at proposed N.J.A.C. 14:8-2.4(g)2, which includes an EOI and stakeholder process, together with the documentation requirements at new N.J.A.C. 14:8-2.4(g)1 are intended to furnish the Board with information to enable it to make the determinations required by the statute. Should the gathered information be found insufficient, the rulemaking also allows the Board to gather additional information.

25. COMMENT: SJI asks the Board to confirm that the processes set out in the rule proposal at new N.J.A.C. 14:8-2.4(g) apply “only to grid supply facilities under Subsection (r) of the Solar Act[.]” SJI then asks the Board to confirm that a grid supply facility that was previously qualified by the Board under Subsection q of the Solar Act and which has failed to timely complete construction does not need to go through the new process set out in new N.J.A.C. 14:8-2.4(g), but may follow the former process as outlined in new N.J.A.C. 14:8-2.4(h).

RESPONSE: Any applicant may apply under the provisions of the adopted amendments or current rules, so long as the applicant meets the requirements of the rules.

N.J.A.C. 14:8-2.4(g)1ix

26. COMMENT: PVNavigator asks that rather than asking for all required State permits or approvals, the Board add “already received or anticipated to be required,” as the commenter states that not all permits may have been issued at the time of application.

RESPONSE: The Board notes the commenter’s concern and refers the commenter to the statutory requirement in Subsection r that a grid supply solar generation facility must commence commercial operations within two years of the Board’s designation of approval or forfeit its eligibility for SRECs. The application requirement to supply all required State permits or approvals, as well as all required municipal permits, approvals, or waivers already received or anticipated to be required, will increase the likelihood that speculative applications or applications unable to be completed within the required two-year period will not be submitted.

N.J.A.C. 14:8-2.4(g)1xv

27. COMMENT: PV Navigator states that proposed new N.J.A.C. 14:8-2.4(g)1xv instructs an applicant to submit maps and other documents showing the location of all other grid supply projects proposed, existing, or under construction within the nearest Agricultural Development Area (ADA). PV Navigator asks that the Board limit this requirement to those projects known to the applicant at that time, asserting that an applicant may not be able to learn of all projects.

RESPONSE: By statute, the Board must determine whether a proposed facility will impact the preservation of open space. It is the responsibility of the prospective applicants to provide the Board with the information necessary to make this determination. ADA information is public and anyone can request location information from the appropriate County Agriculture Development Board. One of the State’s tools for preserving open space is the Farmland Preservation Program, pursuant to which ADAs are delineated. The SREC Registration Program maintains a comprehensive list of all installed and registered grid supply projects, which includes locational information. The Board expects an applicant to apply itself diligently to meet this requirement.

N.J.A.C. 14:8-2.4(g)1xvi

28. COMMENT: PV Navigator asks that the requirement of a decommissioning plan be deferred until the time final approval is being sought because such a plan is not needed at the time conditional approval is sought. The commenter further submits that an applicant may have the resources to prepare a decommissioning plan in-house, avoiding additional expense, and requests that the Board delete the phrase “by an independent entity.”

RESPONSE: The Board requires a decommissioning plan to be submitted with the application so that design and construction of a solar generation facility will be informed by the knowledge of both the facility’s impacts and the steps that will be necessary to remediate them at the end of the facility’s useful life. As to the requirement that the plan be prepared by an independent entity, the Board believes that the requirement is straightforward, inexpensive, and should become commonplace for grid supply projects.

N.J.A.C. 14:8-2.4(g)2 and 3

29. COMMENT: NJSEC states that a plain language reading of Subsection r shows that the Board is required to consider only the project whose application is before it for purposes of making the four necessary determinations. In particular, the commenter quotes the statutory language and points to specific phrases which it claims bolster this interpretation:

(2) The board shall approve the designation of the proposed solar power electric generation facility as “connected to the distribution system” if the board determines that:

(a) the SRECs forecasted to be produced by the facility do not have a detrimental impact ...

(b) the approval of the designation of the proposed facility would not significantly impact ...

(c) the impact of the designation on electric rates and economic development ...

[N.J.S.A. 48:3-87r (emphasis added by commenter)]

In the commenter’s opinion, the emphasized phrases signify that the Board should consider only the single project before it in a given application. NJSEC avers that this scheme would allow the Board to “more fairly evaluate” the individual projects and better serve the public interest.

RESPONSE: The commenter appears to believe that the statutory references to “the facility,” “the designation,” and so forth indicate a legislative intent that the Board should evaluate each application in a vacuum. On the contrary, this strained extrapolation from the Legislature’s use of the definite article within the four criteria is inconsistent with the plain meaning of the criteria themselves. The statute directs the Board to determine that there is no “detrimental impact on the SREC market” and no “impact [on] the preservation of open space.” N.J.S.A. 48:3-87.r. The Board cannot make a meaningful determination on these matters if it looks only at an individual application and its theoretical impact in isolation while ignoring the dozens of other applications that may come before the Board in any given year. One 10 MW project may not have an adverse impact on the SREC market and/or the preservation of open space; however, in the four years since passage of the Solar Act, an average of 125 MW of grid supply solar capacity was approved each year. In aggregate, a large volume of installations has the potential to have an impact on the SREC market, the appropriate development of solar in the State, and the preservation of open space. Thus, the Board must consider each

application in the context of all activity in the grid supply sector to adequately fulfill the statutory charge.

30. COMMENT: NJSEC criticizes the proposed rule's creation of an annual stakeholder process to determine the maximum number of MW that the Board may approve in the next energy year. In place of the process set out in the rule proposal, NJSEC points to the authority provided to the Board by N.J.S.A. 48:3-87.i (identified by the commenter as "N.J.S.A. 48:3-87(e.) (4)(i.)") to "initiate subsequent proceedings and adopt, after appropriate notice and opportunity for public comment and public hearing, increased minimum solar kilowatt-hour sale or purchase requirements[.]" The commenter argues that the Board should use that authority as needed to increase New Jersey's RPS in order to absorb the number of SRECs produced by its approval of all grid supply projects which, looked at individually, cause the Board to make the four determinations required by the statute.

31. COMMENT: NJSGSA and MSEIA concur with the comment of NJSEC.

RESPONSE TO COMMENTS 30 AND 31: The Board does not agree that a regulatory process that affords all interested parties a chance to provide their views on how best to implement Subsection (r) to avoid adverse impacts from approval of grid supply solar generation facilities to earn SRECs would amount to "meaningless metrics." There are a number of valid perspectives on how best to manage this critical variable, and the Board considers it appropriate, as well as equitable, to afford an opportunity to be heard to all comers. The commenter states that an annual process could produce the very volatility the Board seeks to avoid, but the Board disagrees. On the contrary, the knowledge that an annual cap will be imposed on this ratepayer-subsidized market sends a clear and continuous signal to market participants that there is a limit to the amount of capacity that will be subsidized and they must plan accordingly. The commenter may not like the signal being sent, but that does not mean that the signal will produce volatility. Volatility should not be confused with oversupply. Indeed, the commenter acknowledges as much with its final statement that when the rate of increase of the RPS falls sharply in EY2019, "an annual megawatt cap aimed at reducing volatility would likely mean few or no approvals of grid supply projects[.]" And this is reflected in the structure of the Solar Act, which increased demand by moving RPS requirements forward (at the expense of the ratepayers) and placed new eligibility requirements on grid supply solar projects. The Energy Master Plan, by stating a preference for "dual-purpose" solar installations, either net metered located near electricity loads or located on marginal land, over large greenfield projects, and the Solar Act, by requiring Board approval for grid supply solar but not for net metered projects, are consistent in establishing a policy that grid supply projects not be developed to the detriment of other market segments.

The commenters' proposal, on the other hand, amounts to asking the Board to make market demand a function of supply. While it has the potential to avoid volatility, as the RPS would be set to equal the number of MW installed, such an approach would move the solar market in New Jersey away from the goal of a disciplined market in which the SREC price serves as a signal for developers to speed or slow development and toward a wholly artificial framework where the solar industry is fully insulated from market pressures. Moreover, as the cost of the RPS is borne by ratepayers, there would be no check upon the extent to which costs would rise. The Board will neither abandon its market-based approach nor its mandate to balance the benefits of clean energy with the burden borne by ratepayers.

32. COMMENT: MSEIA objects to the requirement that applications be submitted no earlier than the start of the energy year in which designation is sought. Noting that grid supply projects generally have both a long development and a long construction cycle, MSEIA expresses concern that the proposed time line makes it likely that some of the most cost effective solar projects will be prohibited because of an application date too late in the development cycle. Instead, the commenter proposes that the date of application be set three to six months prior to the beginning of the energy year.

RESPONSE: At the present time, the Board believes that linking the approval process closely to the energy year provides the greatest degree of transparency and makes sense from the perspective of regulatory

simplicity. As proposed, each energy year will be preceded by an opportunity for developers to express interest to seek designation in the coming year and a subsequent opportunity for stakeholders to comment on the amount of capacity that could be approved for designation in the coming year without causing an adverse impact on the SREC market. Following these two milestones, which are designed to precede an energy year, four application windows are proposed to provide flexibility to developers and administrative efficiency for the Board.

33. COMMENT: Rate Counsel states that establishing an upper limit on the amount of capacity that can be approved each year under Subsection r appears reasonable, but does not believe that the proposed rule provides enough detail. First, Rate Counsel asserts that the rule should specify the information to be included in the EOI, specifying that project size and location should be required at a minimum. The commenter also proposes several modifications it believes necessary to ensure that stakeholders are afforded due process and that the Board's determinations are based on an adequate record. Rate Counsel proposes that the public comment process be initiated by a notice including Board staff's proposal for a maximum capacity level, with a detailed explanation of how the proposed capacity level was determined. This explanation, according to the commenter, should include the effect of the EOIs received and "an evaluation of whether there is sufficient competition in the SREC market to assure that ratepayers are not paying excessive prices for SRECs." In addition, Rate Counsel recommends that the rule include a comment period no shorter than 45 days and also require the issuance of a Board Order that fully explains the factual basis and rationale for the maximum capacity level determined.

RESPONSE: The Board thanks the commenter for its support of the rule. The Board has approved, via the Board Order dated May 25, 2016, Docket Numbers E012090832V, E012090880V, and Q016020130 (Order), an interim process intended to facilitate the implementation of Subsection r following finalization of this rulemaking. The EOI approved by the Board does require project size and location, as logically anticipated by the commenter. The Board also approved, as part of the interim process, a stakeholder process to gather input on aspects of Subsection r implementation. The rulemaking does not rule out a Board staff straw proposal for public comment with the level of detail requested by the commenter, but the rules are designed to allow Board staff some flexibility as to what level of detail will be included in the initiation of the stakeholder process. With respect to the inclusion of an evaluation for adequate competition in the SREC market, there are over 50,000 eligible solar generation facilities under a wide diversity of ownership arrangements creating SRECs from metered data that are eligible for use by over 80 unique TPS/BGS Providers through transactions facilitated by perhaps more brokers and aggregators involving higher SREC volumes and liquidity than any REC market in the nation. As noted in the response to prior comments, every owner of SRECs has the ability to wait five years before selling those SRECs and the condition of the market may well prompt such a choice. The Board believes that the public stakeholder process provided by the rulemaking is adequate to allow for a sufficiently long comment period and, lastly, that the Order issued will provide a factual basis and a rationale for its decisions in implementation of the statute.

34. COMMENT: Noting that the rule proposal contains several dates that have already passed or were due to pass shortly after the time the comment was submitted, MSEIA recommends the adoption of specific dates for Energy Year 2017.

RESPONSE: The Board is aware that the dates set out in the rulemaking are no longer relevant to the current energy year. The rulemaking includes set application periods, which are the same for each energy year. The commenter is advised to participate in the Renewable Energy stakeholder meetings facilitated by Board staff and to apply in the first available application period.

N.J.A.C. 14:8-2.4(g)2i

35. COMMENT: PV Navigator urges the Board to allow the submittal of EOIs for an energy year at any time during the preceding energy year, arguing that such a process would prevent an influx of applications at one time and allow other solar developers to see where applicants were considering building. The commenter also states that it



sees no basis for limiting the submittal period to 30 days prior to the start of the energy year.

RESPONSE: The Board believes that permitting the submittal of EOIs at any time during the preceding energy year would not contribute to market transparency. As an EOI must be submitted for any project the applicant is interested in developing in the next year, permitting the EOI submission at any point during the prior energy year has the potential to “muddy the waters” by placing the market on notice at uncertain intervals of many projects that will not be pursued. Limiting the EOI submittal period to 120 days beginning five full months before the next energy year will tend to reduce the number of projects that are purely speculative. The purpose behind establishing four potential application windows per year is to ensure against an unplanned influx of applications, to provide applicants flexibility in responding, and to allow for an efficient review process by the Board.

N.J.A.C. 14:8-2.4(g)5iv

36. COMMENT: Detailing the sometimes protracted State and local approval processes and the factors outside of the applicant’s control that are inherent in development of a grid supply solar project, Alethea states that the process of development can easily last for 36 months. Alethea asks the Board to consider exercising its discretion and consider eliminating the 24-month timeline in the proposed rule and instead require that all applicants provide a timeline for Board review.

RESPONSE: The Board refers the commenter to N.J.S.A. 48:3-87.r(3). The rulemaking was designed to implement the law as written. Based upon experience with Subsection q, the Board believes the two-year timeline provided for a designated application to complete construction and commence commercial operations strikes a necessary balance between the interests of an individual developer and other market participants.

N.J.A.C. 14:8-2.4(i)

37. COMMENT: SJI states its understanding that extensions under the rule proposal will be handled as follows:

1) Facilities that are net-metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering may request one extension before the expiration of the conditional registration;

2) The Board may authorize one six-month extension of a registration on a case-by-case basis for projects conditionally certified for designation, other than those applying under new N.J.A.C. 14:8-2.4(g);

3) Facilities conditionally certified by the Board, other than those applying under new N.J.A.C. 14:8-2.4(g), must apply directly to the Board for an extension; and

4) Registrants who file after failure to complete during the initial 18- or 24-month registration period shall not be subject to the one-year delay in eligibility to create SRECs if the Board finds that the failure to complete within time was reasonable.

RESPONSE: First, the Board reminds the commenter that the requirements for Board approval or certification of certain grid supply solar generation facilities are additive to the requirement of the Board’s rules that the facilities be accepted into the SRP. The Board will now attempt to clarify the commenter’s understanding of the extension processes and timeline(s).

1) Facilities that are net-metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering may request one extension of a conditional registration before the expiration of the conditional registration and Board staff may authorize that extension on a case-by-case basis if it deems the project likely to successfully complete within that time.

2) The Board may authorize an extension for projects conditionally certified by the Board, other than those applying pursuant to N.J.S.A. 48:3-87.q or under new N.J.A.C. 14:8-2.4(g). The length of the extension is not specified in the rules.

3) Facilities conditionally certified or approved by the Board, other than those applying under new N.J.A.C. 14:8-2.4(g), must apply directly to the Board for an extension.

4) The commenter is correct that no penalty will result if the Board judges that the failure to file prior to the end of the original time period was reasonable.

38. COMMENT: Based on its understanding of the SREC Registration extension process, SJI asks the Board whether projects approved pursuant to Subsections q and t will “still have the ability to obtain the 1 time 6 month extension on a case-by-case basis[?].” If not, the commenter asks the Board to clarify how the registrants for such projects can apply for extensions.

RESPONSE: Subsection q projects were provided “approvals” or “conditional approvals” by the Board, consistent with the statutory language. Subsection t projects are provided “conditional certifications” by the Board with Board staff given the authority to provide “certification” when project-specific development conditions are met. Further pursuant to statute, neither the Board nor Board staff may grant an SRP extension to projects that applied pursuant to Subsection q, if the project’s two-year designation period has expired. In light of the Subsection q requirement that projects commence commercial operations within two years of designation, the Board has attempted to modify the SREC registration length for these projects via Board orders approving or conditionally approving certain projects to provide each project an SRP registration expiration date consistent with the expiration of designation period. As indicated above, projects conditionally certified pursuant to Subsection t are not subject to a two-year construction completion requirement and registrants may petition the Board for a registration extension.

39. COMMENT: SJI also asks the Board to clarify the difference in process between how a registrant applies for the one-time extension that is granted on the “case-by-case basis” as opposed to applying directly by application to the Board. Specifically, the commenter asks whether “case-by-case” requests are to go through the Office of Clean Energy while direct applications to the Board are to be made via formal petition or some other process.

RESPONSE: Board staff may grant a single six-month extension of a registration, on a case-by-case basis, to projects that are net-metered, or provide power for a qualified customer engaged in aggregated net metering. Projects that have been conditionally certified by the Board, although they do not have a statutory requirement to complete within two years, must still petition the Board for a registration extension.

40. COMMENT: SJI asserts that even when a solar facility’s construction is substantially complete, the EDC has often not completed its upgrade work and/or is otherwise not ready to complete the interconnection process. SJI requests that the Board consider further revising its regulations to provide automatic extensions for conditional registrations when an application is accompanied by a showing that only interconnection delays prevent construction completion. At a minimum, SJI asks for a specific statement that failure to complete construction before a conditional registration expires will not result in penalties if such failure is due to delays related to interconnection of the facility by the local distribution company.

RESPONSE: The Board does not grant any extension “automatically.” The Board will consider petitions for extensions based on their merits, any statutory limitations, and any accompanying documentation.

N.J.A.C. 14:8-2.5(h) and 2.6(g)2iii

41. COMMENT: RESA proposes that the Board amend the rule to remove the requirement that either the TPS/BGS Provider submit an affidavit of environmental compliance as part of its annual report or the biomass facility operator submit such a determination by October 1 of each year. Under the current rule, failing to submit the determination or submitting it late renders the RECs produced by that facility during the preceding energy year ineligible for use in compliance with the New Jersey RPS. If a TPS/BGS Provider has purchased such RECs, it must quickly purchase additional RECs to make up the shortfall or pay the Alternate Compliance Payment. RESA opines that because the rule requires that the determination be submitted after the close of the relevant energy year, it creates confusion and regulatory risk. TPS/BGS Providers who purchase Class I RECs from biomass facilities cannot know until almost the end of the reporting period, argues RESA, whether those RECs are useable for the New Jersey RPS. The commenter proposes that the Board modify its rules to require a determination of sustainability at the beginning of the energy year by

making the preceding calendar year a “Test Year.” Under the proposed scheme, if the facility was deemed to have been compliant during the Test Year all RECs it produced during the following energy year would be eligible as Class I RECs.

42. COMMENT: RESA proposes that the Board amend the rule to remove the requirement that either the TPS/BGS provider submit an affidavit of environmental compliance as part of its annual report or the resource recovery facility operator submit such a determination by October 1 of each year. RESA opines that because the rule requires that the determination be submitted after the close of the relevant energy year, it creates confusion and regulatory risk. RESA argues that TPS/BGS Providers who purchase Class II RECs from resource recovery facilities cannot know whether those RECs are useable for the New Jersey RPS until the reporting period for a given energy year is almost over. To rectify this perceived problem, the commenter proposes that the Board modify its rules to require a determination of sustainability at the beginning of the energy year by making the preceding calendar year a “Test Year.” Under the proposed scheme, if the facility was deemed to have been compliant during the Test Year all RECs it produced during the following energy year would be eligible as Class II RECs; if non-compliant, none of those RECs would be eligible.

RESPONSE TO COMMENTS 41 AND 42: The Board has created a regulatory system that provides for very careful monitoring of the energy on which RECs and SRECs may be based. For example, all RECs must be based on energy that has been measured by a revenue-grade meter. The Board also notes that RECs and SRECs were designed to support the development of clean energy, not the other way around. To allow the creation of Class I RECs on the basis of energy that has not been attested to by an affidavit would be contrary to the environmental and energy policies that form the foundation of the New Jersey Clean Energy Program.

#### **N.J.A.C. 14:8-2.11 Demonstrating Compliance, Reporting, and Recordkeeping**

43. Comment: RESA notes that N.J.A.C. 14:8-2.11, which is not part of the rulemaking, continues to require submittal of the annual report documenting RPS compliance “[b]y [the] Oct 1 date” and proposes that this date also be changed to Nov 15.

RESPONSE: The end of the true-up period and the last date for demonstrating compliance with the rule have always been intentionally coterminous. If there was an inconsistency between these two dates, during an era between rule changes, it was an unintentional oversight that has since been corrected. There is currently no inconsistency between the dates.

44. COMMENT: RESA notes that the Board should change the term “supplier/provider” to “TPS/BGS Provider” to be consistent with the changes made elsewhere in the rulemaking. In addition, RESA notes its belief that N.J.S.A. 14:8-2.11(d)3, as it currently exists, requires TPSs to attest to facts outside its knowledge, namely that the megawatt hours of electricity sold to retail customers were delivered into the PJM region and complied with PJM Interconnection rules. RESA proposes that this requirement be omitted or imposed upon the operator of the units that generated the electricity. The commenter also reiterates its contention that instead of requiring that annual reports be submitted by October 1, the Board should provide for flexibility in the face of any extenuating circumstances that may exist. RESA states that such flexibility would preclude the necessity for TPS/BGS Providers to file petitions for extensions each year.

RESPONSE: The Board has granted extension requests in the past, demonstrating an ability to be flexible in certain circumstances, demonstrating an ability to provide flexibility in light of extenuating circumstances. For example, extenuating circumstances were demonstrated when the solar RPS obligations were expressed as a gigawatt hour requirement to be spread among TPS/BGS Providers according to market share. Extenuating circumstances were also demonstrated when certain BGS providers were granted an exemption from compliance with obligations that changed subsequent to a BGS auction. Extensions should be limited in frequency and duration because the Board has an obligation to balance a variety of the needs, one of

which is the ability to determine compliance achievement within a reasonable amount of time after an obligation to comply is incurred.

#### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The RPS rules have no Federal analogue and are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., do not require a Federal standards analysis for the adopted amendments.

**Full text** of the adopted amendments follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### **SUBCHAPTER 1. RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS**

##### **14:8-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1, 14:4-1.2, and 14:8-2.2.

“Brownfield” means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

“Class I renewable energy” means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells powered by renewable fuels, geothermal technologies, wave or tidal action, small scale hydropower facilities with a capacity of three megawatts or less and put into service after July 23, 2012, and/or methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner. Types of Class I renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:8-2.5.

“Class II renewable energy” means electric energy produced by a hydro power facility that has a maximum design capacity of greater than 3 megawatts but less than 30 megawatts from all generating units combined or by a resource recovery facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. Types of Class II renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:8-2.6.

“Connected to the distribution system” means, for a solar electric power generation facility, that the facility is:

1. Connected to a net metering customer’s side of a meter, regardless of the voltage at which that customer connects to the electric grid;
2. An on-site generation facility;
3. Qualified for net metering aggregation;
4. Owned or operated by an electric public utility and approved by the Board;
5. Directly connected to the electric grid at 69 kilovolts or less, regardless of how an electric public utility classifies that portion of its electric grid, and is designated as “connected to the distribution system” by the Board pursuant to N.J.S.A. 48:3-87.g, r, or s; or
6. Certified by the Board, in consultation with the Department of Environmental Protection, as being located on a brownfield, an area of historic fill, or on a properly closed sanitary landfill facility.

Any solar electric power generation facility, other than that of a net metering customer on the customer’s side of the meter, connected above 69 kilovolts shall not be considered connected to the distribution system.

...

“Farmland” means land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the



“Farmland Assessment Act of 1964,” N.J.S.A. 54:4-23.1\*[\* \* at any time within the 10-year period prior to the effective date of the Solar Act.\*

“Final remediation document” shall have the same meaning as provided in N.J.S.A. 58:10-23.11b.

...

“Grid supply facility” means a solar electric power generating facility that is directly connected to the distribution system in the state that sells the electricity it generates at wholesale rates through PJM Interconnection or under wholesale bilateral contracts, but is not owned or operated by an electric utility and approved by the Board pursuant to N.J.S.A. 48:3-98.1.

“Historic fill” means non-indigenous material, no matter what date this material was emplaced on the site, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but are not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non-hazardous solid waste. “Historic fill” shall not include any material which is substantially chromate chemical waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slags, or tailings.

“Megawatt” means 1,000 kilowatts, measured in direct current (dc).

...

“Net metering aggregation” means a procedure for calculating the combination of the annual energy usage for all facilities owned by a single customer where each customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority, and which are served by a solar electric power generating facility in accordance with N.J.S.A. 48:3-87.e(4).

...

“On-site generation facility” means a Class I or Class II renewable generation facility and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other but may be otherwise separated by an easement, public thoroughfare, or transportation or utility-owned right-of-way.

“Properly closed sanitary landfill facility” means a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.

...

“School district” means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, or a district under full State intervention pursuant to N.J.S.A. 18A:7A-34 et seq.

“Site investigation” shall have the same meaning as provided in N.J.S.A. 54:10-23.11.b.

“Small scale hydropower facility” means a facility located within this State that is connected to the distribution system, and that meets the requirements of, and has been certified by, a nationally recognized low-impact hydropower organization that has established low-impact hydropower certification criteria applicable to:

1. River flows;
2. Water quality;

3. Fish passage and protection;
4. Watershed protection;
5. Threatened and endangered species protection;
6. Cultural resource protection;
7. Recreation; and
8. Facilities recommended for removal.

...

“SREC Registration program” or “SRP” means an administrative process developed by the Board that requires filing with the Board documents detailing the size, location, interconnection plan, land use, and other project information as required by the Board for all proposed solar electric generation facilities seeking to create SRECs, including grid supply facilities seeking approval, designation, or certification as “connected to the distribution system.”

“State entity” means a department, agency, or office of State government, a State university or college, or an authority created by the State.

“TPS/BGS provider” means an electric power supplier or a basic generation service provider, as these terms are defined at N.J.A.C. 14:4-1.2.

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.1 Purpose and scope

(a) Each TPS/BGS provider, as defined at N.J.A.C. 14:8-1.2, that sells electricity to retail customers in New Jersey, shall include in its electric energy portfolio electricity generated from renewable energy sources. This subchapter is designed to encourage the development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation; and support the reliability of the supply of electricity in New Jersey.

(b) This subchapter governs the retail electricity sales of each TPS/BGS provider, as defined in N.J.A.C. 14:8-1.2. This subchapter does not govern installed capacity obligations, as defined at N.J.A.C. 14:8-2.2.

(c) This subchapter does not apply to a private or government aggregator that contracts for electric generation service or electric related services, either separately or bundled, for its own facilities or on behalf of other business and residential customers in this State. This subchapter does not apply to an energy agent, as defined at N.J.A.C. 14:8-1.2. A TPS/BGS provider that is contractually obligated to sell electricity to an aggregator shall comply with this subchapter by including the amount sold to the aggregator as part of its energy portfolio.

14:8-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Resource recovery facility” means a solid waste facility that incinerates solid waste for the purposes of producing energy and recovering metals and other materials for reuse, which the Department of Environmental Protection has determined to be in compliance with current environmental standards, including, but not limited to, all applicable requirements of the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq.

...

“True-up period” means a period, as determined by the Board, of no less than 120 days following the end of the energy year by which a BGS provider or TPS must demonstrate compliance with the RPS for that energy year.

...

14:8-2.3 Amount of renewable energy required

(a)-(i) (No change.)

(j) Each megawatt-hour (MWh) of retail electricity supplied in New Jersey by a TPS/BGS provider subject to this subchapter carries with it an accompanying solar obligation. For Energy Year 2015, each

TPS/BGS provider shall calculate its solar obligation as set forth in (k) below. Subsection (k) below allocates the Table B Statewide solar obligation among all TPS/BGS providers that are subject to this subchapter. All TPS/BGS provider solar obligations, taken together, must equal the Statewide solar obligation set forth in Table B below for Energy Year 2015.

(k) For electricity supplied during EY 2015, a BGS provider shall calculate its solar obligation by following one of the two calculations set forth in this subsection:

1. Those BGS providers having supply contracts that were effective prior to July 23, 2012, have a solar obligation equal to the number of SRECs mandated by the solar renewable portfolio standards requirements that were in effect on the date that these BGS providers executed their existing supply contracts. These BGS providers shall calculate their solar obligation as follows:

i. Determine the solar electric generation requirement, converted from GWhs to MWhs, in effect when the BGS contract subject to this subsection was executed (see Table B below);

ii. Determine market share of all electricity supplied Statewide during Energy Year 2015, as follows:

(1) Consult the Board’s NJCEP website to determine the total number of MWhs of electricity supplied Statewide during the energy year by all TPS/BGS providers subject to this subchapter;

(2) Determine the MWhs of exempt electricity supplied during the energy year from supply contracts which were in effect prior to the date of enactment of P.L. 2012, c. 24; and

(3) Divide (k)1ii(2) above by (k)1ii(1) above to calculate market share;

iii. Multiply result from (k)1ii(3) above by (k)1i above to arrive at the solar obligation for an individual exempt electricity BGS provider.

2. Those BGS providers that do not have supply contracts which were effective prior to July 23, 2012, shall calculate their solar obligations as follows:

i. Multiply the individual BGS provider’s total non-exempt retail electricity sales during the Energy Year in MWh by the applicable percentage requirement in N.J.S.A. 48:3-87.d(3).

ii. Determine the market share-based allocation of the increased obligation avoided by exempted electricity by consulting the Board’s New Jersey Clean Energy Program (NJCEP) website to determine the additional obligation amount which must be distributed from the exempted BGS providers to the non-exempt BGS providers, calculated by Board staff as follows:

(1) Determine the total retail electricity sales of exempt BGS providers Statewide;

(2) Determine the total retail electricity sales of non-exempt BGS providers Statewide;

(3) Determine the total retail electricity sales of all BGS providers and TPS Statewide;

(4) Divide (k)2ii(1) above by (k)2ii(3) above to calculate market share of exempt BGS providers Statewide;

(5) Determine the total solar obligation of exempt BGS providers Statewide during the Energy Year by multiplying (k)2ii(4) above by (k)1i above;

(6) Multiply the applicable percentage requirement in N.J.S.A. 48:3-87.d(3) by (k)2ii(1) above and subtract (k)2ii(5) above;

(7) Calculate the percentage share of total non-exempt electricity sold by dividing non-exempt electricity sold by the individual BGS provider by (k)2ii(2) above; and

(8) Multiply (k)2ii(6) above by (k)2ii(7) above.

iii. Add (k)2i above to (k)2ii(8) above to arrive at an individual non-exempt BGS provider’s obligation in MWh; and

iv. For any electricity supplied by a TPS, such TPS shall calculate its solar obligation by multiplying its total retail sales by the applicable percentage requirement in N.J.S.A. 48:3-87.d(3).

Table B

Total Statewide Solar Obligation Starting June 1, 2010

<u>Energy Year</u>	<u>Statewide Solar Obligation in GWhs or Percentage of Retail Sales</u>
EY 2011: June 1, 2010 - May 31, 2011	306 GWhs
EY 2012: June 1, 2011 - May 31, 2012	442 GWhs
EY 2013: June 1, 2012 - May 31, 2013	596 GWhs
EY 2014: June 1, 2013-May 31, 2014	2.050%
For BGS providers with existing supply contracts:	772 GWhs
EY 2015: June 1, 2014-May 31, 2015	2.450%
For BGS providers with existing supply contracts:	965 GWhs
EY 2016: June 1, 2015-May 31, 2016	2.750%
EY 2017: June 1, 2016-May 31, 2017	3.000%
EY 2018: June 1, 2017 – May 31, 2018	3.200%
EY 2019: June 1, 2018 – May 31, 2019	3.290%
EY 2020: June 1, 2019 – May 31, 2020	3.380%
EY 2021: June 1, 2020 – May 31, 2021	3.470%
EY 2022: June 1, 2021 – May 31, 2022	3.560%
EY 2023: June 1, 2022 – May 31, 2023	3.650%
EY 2024: June 1, 2023 – May 31, 2024	3.740%
EY 2025: June 1, 2024 – May 31, 2025	3.830%
EY 2026: June 1, 2025 – May 31, 2026	3.920%
EY 2027: June 1, 2026 – May 31, 2027	4.010%
EY 2028: June 1, 2027 – May 31, 2028	4.100%

14:8-2.4 Energy that qualifies for an SREC; registration requirement; additional approval, designation, and certification processes for grid supply projects

(a) (No change.)

(b) To be eligible for issuance of an SREC usable for compliance with this subchapter, electricity shall:

1.-2. (No change.)

3. Be generated at a facility which, if the facility’s construction commenced after July 23, 2012, and the facility has a capacity of one megawatt dc or greater, paid the workers on its construction in accordance with N.J.S.A. 48:2-29.47.

Recodify existing 3. and 4. as 4. and 5. (No change in text.)

(c) To comply with (b)2 above, a solar electric generating facility that was not issued a New Jersey State Certification Number prior to June 4, 2012, shall obtain a New Jersey State Certification Number through the registration process set forth in this section. The registration process includes three important deadlines:

1. The submittal of an initial registration package under (j)1 below shall occur:

i. No later than 14 business days after execution of the contract for purchase or installation of the photovoltaic panels to be used in the solar facility if the facility is net metered, provides on-site generation, or provides power for a qualified customer engaged in aggregated net metering or within 14 business days from the effective date of an order granting approval, conditional certification or designation for projects requiring Board approval, designation or certification;

ii.-iii. (No change.)

2. Construction of the solar facility, if the facility is net metered, provides on-site generation, provides power for a qualified customer engaged in aggregated net metering, or has been conditionally certified by the Board as being located on a properly closed sanitary landfill facility, brownfield, or area of historic fill shall not begin until Board

staff has issued a conditional registration for the facility under (h)5 below; and

3. (No change.)

(d) (No change)

(e) If the applicable submittal deadline in (c)1 above is met, SRECs, based on electricity generated by the solar facility, shall be usable for compliance with this chapter immediately upon the issuance of a New Jersey State Certification Number for the facility, subject to any other applicable limits on use of SRECs. If the applicable deadline is not met, any SRECs based on electricity generated by the solar facility shall not be usable for compliance with this chapter until 12 months after the solar facility has received authorization to energize either in accordance with the Board's interconnection rules at N.J.A.C. 14:8-5 or in accordance with the process required by PJM or the EDC for projects not interconnected under the rules at N.J.A.C. 14:8-5.

(f) (Reserved)

(g) A proposed grid supply facility that is not located on a brownfield, properly closed sanitary landfill facility, or area of historic fill must satisfy the requirements of this subsection for the energy it generates to serve as the basis for creation of an SREC. Applications for grid supply facilities on farmland shall be rejected.

1. A person seeking designation as connected to the distribution system in the State, so that electricity generated by the facility may serve as the basis for an SREC must file an application with the Board during the periods specified in (g)5 below. The application shall include, at a minimum, the following information and documentation:

- i. The nameplate capacity of the facility;
- ii. Estimated energy to be produced annually;
- iii. Estimated number of SRECs to be produced and sold annually;
- iv. Expected commissioning date and decommissioning date;
- v. Total project acreage and location;
- vi. Estimated annual rate impact on ratepayers;
- vii. Point of interconnection;
- viii. Type of solar technology to be used;
- ix. Required State permits or approvals;
- x. Required municipal permits, approvals, or waivers already received or anticipated to be required;
- xi. Current zoning designation(s) for the proposed host site;
- xii. Date of most recent change in zoning designation;
- xiii. Zoning ordinance;
- xiv. Maps and other documents showing the location and associated impacts, including identification of any farm parcels or lands preserved for agricultural, conservation, or recreational purposes, including, but not limited to, lands preserved pursuant to New Jersey's Green Acres Program, located within 0.5 miles of the host site. Maps and other documents submitted must also show the host site's location in proximity to an Agricultural Development Area or Farmland Preservation Program project area.
- xv. Maps and other documents showing the location of other grid supply projects proposed, under construction, or existing within the nearest Agricultural Development Area, land preserved under the Green Acres Program, and land preserved under the Farmland Preservation Program. Maps and other documents must also show the location of all solar grid supply projects proposed, under construction, or existing within five miles of the host site;
- xvi. Project decommissioning plans, prepared by an independent entity, for the end of the useful life of the facility. A decommissioning plan shall set out the process through which any lands disturbed by the construction and/or operation of the solar facility shall be restored to pre-existing condition and shall include, at a minimum:
  - (1) A plan for removal of all solar energy generation facilities and all electrical appurtenances;
  - (2) A plan for removal of foundations and any access roads not needed for future purposes by the owner of the site; and
  - (3) A plan to ensure that environmental impacts are minimized and mitigated during decommissioning activities, including a plan for replacement of surface materials; and
- xvii. Any other information that the Board staff deems necessary to review an application filed under this subsection.

2. The application process shall proceed under the following timelines:

i. Between January 1 and April 1, expressions of interests must be filed by entities seeking designation in the coming energy year pursuant to this subsection. An expression of interest shall be submitted using the form posted on the New Jersey Clean Energy Program (NJCEP) webpage. Only applications for grid supply projects for which an expression of interest was timely submitted shall be considered by the Board for designation as "connected to the distribution system" in the next energy year.

ii. On an annual basis prior to the beginning of an energy year, Board staff will issue a request for public comment on the capacity that the Board makes available for designation as "connected to the distribution system" under this subsection in the upcoming energy year.

3. Following the close of the submittal period, but no later than 30 days prior to the start of the energy year, the Board will conditionally approve a specific number of megawatts dc as the upper limit for which designation as "connected to the distribution system" may be approved in the energy year. During the energy year, the Board may approve projects, so that the sum of all approved projects does not exceed the announced megawatt dc limit.

4. Applications to be designated as "connected to the distribution system" shall not be filed prior to the start of the energy year for which an expression of interest was filed. Applications may be filed beginning on and for 14 calendar days after the following dates: June 1, September 1, December 1, and March 1.

5. Upon filing of an application, Board staff will review the application for administrative completeness within 30 days.

i. If Board staff deems the application complete, Board staff will notify the applicant, and will provide an opportunity for public comment on the application by posting the application to the Board's website. The public comment period shall be no less than seven days.

ii. If Board staff deems the application incomplete, the application will not be deemed complete until Board staff has received information necessary to complete the application. Board staff will notify the applicant that with the additional information the application is now complete, and will follow the process described in (g)5i above.

iii. The Board will rule upon the application as follows:

(1) If Board staff has deemed the application complete, the Board will approve, conditionally approve, or disapprove designation of the grid supply facility as "connected to the distribution system" within 90 days of receipt of a completed application.

(2) If Board staff has deemed the application incomplete, the Board will approve, conditionally approve, or disapprove the grid supply facility as "connected to the distribution system" within 90 days of the date of the last filing that completes the application.

iv. Projects approved or conditionally approved for designation as "connected to the distribution system" under this subsection must commence commercial operations within two years of the effective date of the Order granting that approval.

(h) Registration of a solar electric generating facility requires completion of the following process:

1.-3. (No change.)

4. If the solar facility as described in the initial registration package meets SREC eligibility requirements, Board staff shall issue notice to the registrant of a conditional registration for the facility. The notice of the conditional registration shall:

i. (No change.)

ii. Include an expiration date 12 months after the date of the notice for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering or an expiration date 24 months after the effective date of Board approval, designation, or conditional Board certification where Board approval, designation, or conditional certification is required; and

5. (No change.)

(i) Construction of the solar electric generating facility shall be completed prior to expiration of the conditional registration. The registrant for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering, may request one extension prior to the expiration of the



conditional registration, and shall include an updated schedule for completion. Except for registrations submitted for projects approved or conditionally approved for designation as “connected to the distribution system” under (g) above, Board staff may authorize one extension of the project’s registration on a case-by-case basis, based on the likelihood of timely and successful completion of the solar facility. An extension shall provide a new expiration date, six months from the expiration of the original conditional registration. If the conditional registration, or extension, expires before construction is complete, the registrant shall begin the entire registration process again by submitting an initial registration package. Board staff shall treat the new registration package as if it were a first-time submittal, with no reference to the previous registration process. Facilities that require approval or certification by the Board, other than those requiring approval of designation under (g) above, must seek extensions of the conditional registration expiration date directly by application to the Board, unless otherwise directed by the Board. Registrants who file after failure to complete during the initial 18 or 24 month registration period shall not be subject to the penalty set out at (e) above if the Board finds that the failure to complete within time was reasonable.

(j) (No change in text.)

(k) When construction of the solar electric generating facility is complete, the facility owner shall submit a post-construction certification package that meets the requirements of (l) below, and shall request an inspection of the facility by Board staff, or an inspection waiver, through the Board’s NJDEP website at [www.njcleanenergy.com](http://www.njcleanenergy.com).

(l) (No change in text.)

(m) After receiving the inspection request and complete final documentation required after (l) above, Board staff shall conduct an inspection or shall notify the registrant that no inspection is required.

(n) If no inspection is required, or if the inspection indicates that the solar electric generating facility has been constructed in accordance with the conditional registration, and/or any Board-authorized changes made under (o) below, Board staff shall assign a New Jersey State Certification Number to the solar facility for use in obtaining SRECs from PJM-EIS GATS.

Recodify existing (m) through (o) as (o) through (q) (No change in text.)

#### 14:8-2.5 Energy that qualifies for a class I REC

(a) (No change.)

(b) The following qualify as Class I renewable energy for the purposes of this subchapter, with no prior approval required:

1. (No change.)

2. Solar electric generation from a certified facility after the facility’s qualification life has ended;

Recodify existing 2.-5. as 3.-6. (No change in text.)

7. Electricity generated by a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel. Electricity generated by a fuel cell powered by a fossil fuel shall not qualify as Class I renewable energy for the purposes of this subchapter; and

8. (No change in text.)

(c)-(f) (No change.)

(g) To obtain a biomass sustainability determination, a TPS/BGS provider or biomass facility operator shall submit a request for the determination, including any documentation required by NJDEP. The request shall be submitted to the NJBPU Office of Clean Energy, PO Box 350, Trenton, New Jersey 08625. The TPS/BGS provider or biomass facility operator shall simultaneously provide a copy of the request to the NJDEP’s Office of the Commissioner, PO Box 409, Trenton, New Jersey 08625.

(h) If a biomass sustainability determination is required for Class I renewable energy used to comply with this subchapter, the TPS/BGS provider shall submit the determination as part of the annual report required under N.J.A.C. 14:8-2.11, or the biomass facility operator shall submit the determination by October 1 of each year. If the determination is not submitted annually, the energy shall not qualify for use to comply with this subchapter, and the TPS/BGS provider shall submit RECs or ACPs to make up the shortfall. A determination

submitted to Board staff after the due date of the annual report shall not be accepted, and the electricity shall not be counted towards the TPS/BGS provider’s compliance with this subchapter.

(i)-(l) (No change.)

#### 14:8-2.6 Energy that qualifies for a Class II REC

(a)-(c) (No change.)

(d) To obtain an NJDEP environmental compliance determination for a resource recovery facility, a TPS/BGS provider or facility operator shall submit a request for the determination, including the documentation listed at (e) below, to the NJBPU Office of Clean Energy, PO Box 350, Trenton, New Jersey 08625. The TPS/BGS provider or facility operator shall simultaneously provide a copy of the request to the NJDEP’s Office of the Commissioner, PO Box 409, Trenton, New Jersey 08625.

(e)-(f) (No change.)

(g) A TPS/BGS provider that uses electricity generated from a resource recovery facility to comply with this subchapter shall:

1. (No change.)

2. If the TPS/BGS provider or facility operator obtained an NJDEP environmental compliance determination, the TPS/BGS provider or facility operator shall:

i.-ii. (No change.)

iii. Annually provide to the Board an affidavit from the operator of the resource recovery facility, certifying that the facility has not violated its Federal or State environmental permits in the previous year, and continues to operate in conformity with the request and documentation originally provided to NJDEP. The TPS/BGS provider shall submit the affidavit as part of the annual report required under N.J.A.C. 14:8-2.11 or the resource recovery facility operator may submit the affidavit by October 1 of each year.

(h)-(i) (No change.)

#### 14:8-2.9 Issuance of RECs and SRECs

(a)-(d) (No change.)

(e) Electric generation qualifies for issuance of RECs or SRECs only if:

1. (No change.)

2. It is Class I renewable energy, including solar electric generation after the end of the solar electric generation facility’s qualification life, and one or more of the following requirements is met:

i.-iii. (No change.)

(f)-(i) (No change.)

#### 14:8-2.10 Alternative compliance payments (ACPs and SACPs)

(a)-(b) (No change.)

(c) The Board shall establish and maintain an SACP schedule as set forth at N.J.S.A. 48:3-87.d(3). The Board may increase the SACP amount for one or more energy years, after appropriate notice and opportunity for public comment and public hearing. However, in accordance with N.J.S.A. 48:3-87(j), the Board shall neither reduce the previously established SACP amounts, nor provide any type of relief from the obligation to pay an SACP.

(d)-(h) (No change.)

#### 14:8-2.11 Demonstrating compliance, reporting and recordkeeping

(a) By October 1st of each year, each \*[supplier/provider]\* **\*TPS/BGS provider\*** shall file an annual report with the Board, demonstrating that the \*[supplier/provider]\* **\*TPS/BGS provider\*** has met the requirements of this subchapter for the preceding reporting year (that is, for the reporting year ending May 31st of the same calendar year).

(b) If the annual report required under (a) above does not demonstrate that the \*[supplier/provider]\* **\*TPS/BGS provider\*** has supplied the RECs or solar RECs required under Table A of N.J.A.C. 14:8-2.3 for the previous reporting year, the annual report shall be accompanied by ACPs and/or SACPs in sufficient quantities to make up the shortfall.

(c) The annual report shall contain the following basic information for the preceding reporting year:

1.-2. (No change.)

ADOPTION

PUBLIC UTILITIES

3. The percentage of the \*[supplier/provider's]\* **\*TPS/BGS providers\*** total New Jersey retail sales that the amount set forth under (c)2 above represents;

4. (No change.)

5. The percentage of the \*[supplier/provider's]\* **\*TPS/BGS providers\*** total retail sales that the amount set forth under (c)4 above represents;

6. (No change.)

7. The percentage of the \*[supplier/provider's]\* **\*TPS/BGS providers\*** total retail sales that the amount in (b)6 above represents;

8.-10. (No change.)

11. An accounting issued by PJM-EIS that shows the number of RECs purchased and/or held by the \*[supplier/provider]\* **\*TPS/BGS provider\***; and

12. (No change.)

(d) The documentation required under (c) above shall include the following:

1. (No change.)

2. An affidavit from the operator of each generating unit that the specified amount of megawatt-hours from each renewable energy source was generated by and/or sold to the \*[supplier/provider]\* **\*TPS/BGS**

**provider\*** and that the \*[supplier/provider]\* **\*TPS/BGS provider\*** has sole and exclusive title to the renewable energy and has not been used to meet the RPS energy requirements in any other state or jurisdiction;

3. An affidavit from the \*[supplier/provider]\* **\*TPS/BGS provider\*** that the specified megawatt-hours were delivered into the PJM region and complied with PJM Interconnection energy delivery rules; and

4. (No change.)

(e) Failure of a \*[supplier/provider]\* **\*TPS/BGS provider\*** to demonstrate compliance with this subchapter in accordance with this section, within the deadlines set forth in this section, shall subject the \*[supplier/provider]\* **\*TPS/BGS provider\*** to penalties under N.J.A.C. 14:8-1.3.

(f) Each \*[supplier/provider]\* **\*TPS/BGS provider\*** shall keep all records pertaining to the requirements in this subchapter for a period of five years, including data on megawatt-hours resulting from owned generation, contracts, purchases from the wholesale market, and purchases of RECs. Each \*[supplier/provider]\* **\*TPS/BGS provider\*** shall make all pertinent records available for review upon request by the Board or its designee.

\_\_\_\_\_