

to provide for utility service lines, such as drainage, sewerage, water, electric, telephone, or other such service lines; or to quitclaim possible outstanding interests, shall not be “deeds” for the purposes of N.J.S.A. 56:8-208 and 209 or this chapter.

“Deed procurement service” means the provision by a non-governmental entity of one or more copies of deeds for lands, tenements, or other realty in this State to a property owner, for a fee in excess of the amount authorized pursuant to Title 22A of the New Jersey Statutes that the county clerk’s office assesses for providing copies of deeds, and not in relation to the transfer or sale of, or the mortgage origination, mortgage servicing, mortgage refinancing, property tax servicing, or other action initiated by or on behalf of the owner with respect to, such lands, tenements, or realty.

“Written form of communication” or “communication” means a written or electronic communication used by a deed procurement service in order to solicit business.

13:45A-37.2 Requirements for written forms of communication used to solicit business

(a) Any written form of communication used by a deed procurement service in order to solicit business shall include the following:

1. A statement that the communication is an advertisement;
2. A statement that deeds also may be obtained at the office of the county clerk;
3. The address, website, and phone number for the county clerk of the county in which the consumer receiving the solicitation resides; and
4. The fee that is charged by the county clerk for copies of deeds.

(b) The information required to be included in a written form of communication pursuant to (a) above shall be located at the top of the first page of the written form, or at the top of any electronic solicitation or other form of written communication, and shall be in a boldface type larger than all other text contained in the communication and in a color clearly distinguishable from the surrounding background.

(c) The information required to be included in a written form of communication pursuant to (a) above shall not wrongfully imply association with any department or agency of the Federal government or of this State or any of its political subdivisions, or otherwise violates N.J.S.A. 56:8-2.1.

(d) The written form of communication and any accompanying documentation, including packaging, shall not specify a date or time period when payment to the deed procurement service is due, and shall not include any deceptive or misleading language including, but not limited to, the terms “due date,” “respond by,” “urgent,” or other language that would lead a recipient of the communication to believe action must be taken within a certain period to obtain a service or benefit.

(e) A copy of any written form of communication and all accompanying documentation, including packaging, used by a deed procurement service as a solicitation for business is to be submitted to the relevant county clerk’s office at least 15 days before the procurement service sends the communication to any resident of that county.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Successor Solar Incentive Program

Adopted Amendments: N.J.A.C. 14:8-2.2, 2.3, 2.8, 2.9, and 2.11

Adopted New Rules: N.J.A.C. 14:8-11

Proposed: August 16, 2021, at 53 N.J.R. 1337(a).

Adopted: January 26, 2022, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: January 26, 2022, as R.2022 d.029, **with non-substantial changes** not requiring additional public notice and 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: QX21040728.

Effective Date: February 22, 2022.

Expiration Date: February 27, 2026.

Summary of Public Comments and Agency Responses:

Written comments were submitted by: EDF Renewables Distributed-Scale Power (EDF Renewables), K. Frost (K. Frost), New Jersey American Water Company, Inc. (NJAWC), North Jersey District Water Supply Commission (NJDWSC), New Jersey Division of Rate Counsel (Rate Counsel), PJM Environmental Information Services (PJM-EIS), Rockland Electric Company (RECO), and Sunwealth Power, Inc. (Sunwealth).

The following is a summary of the comments received from members of the public and the Board of Public Utilities’ (“BPU” or “Board”) responses.

General Comments

1. COMMENT: The commenter notes that the basic structure of the Successor Solar Incentive (SuSI) Program is dictated by the Solar Act of 2021, which provides that solar incentives will be established through a competitive process only for larger solar projects and that many of the proposed rules deal with administrative and operational mechanisms rather than, for example, setting incentive levels. The commenter specifies that, as a result, it is not providing comprehensive comments on the new rules, but only on issues that are of particular concern. (Rate Counsel)

RESPONSE: The Board appreciates Rate Counsel’s comments and notes that the design and implementation of the Competitive Solar Incentive (CSI) Program will be part of an upcoming stakeholder proceeding.

2. COMMENT: The commenter highlights the importance of addressing climate change and rapidly helping New Jersey residents access distributed energy resources. The commenter believes that the Board should substantially increase subsidies for solar power and hydrogen storage for households earning less than \$200,000 per year to encourage clean energy investment and reduce air pollution. (K. Frost)

RESPONSE: The Board agrees with the commenter’s sentiment regarding climate change and notes that the community solar program is specifically designed to make solar more accessible for low- and moderate-income households, and that hydrogen storage is beyond the scope of this rulemaking.

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

3. COMMENT: Noting that proposed N.J.A.C. 14:8-2.3(r) and (t) provide for the allocation of a proportionate percentage of the total Solar Renewable Energy Certificates-II (SREC-IIs) procured during the energy year to each third-party supplier/basic generation service (TPS/BGS) provider, the commenter asserts that the rulemaking should clarify that the electric distribution companies (EDCs) are not required to purchase an amount of SREC-IIs that exceeds the Class I renewables requirement in a given energy year. The commenter also states that if the number of SREC-IIs generated in a given year exceeds the projected amounts, the excess SREC-IIs should be carried forward and taken into account as part of the true-up calculation and the establishment of the megawatt blocks for the following energy year. (RECO)

RESPONSE: As stated at N.J.A.C. 14:8-2.3(d), SREC-IIs are a carve-out of the larger renewable portfolio standard (RPS) requirement, which is itself a “minimum amount of qualified renewable energy required for that energy year ...” N.J.A.C. 14:8-2.3(a). SREC-IIs currently account for a small amount of the total RPS requirement, which increases to 50 percent by 2030 and, thus, the commenter’s concerns appear speculative. The Board notes that the RPS itself is a “minimum” clean energy requirement and, while it is highly unlikely that SREC-IIs would ever result in the procurement of Class I Renewable Energy Certificates (RECs) in excess of the minimum required by the RPS, should such an event occur, affected parties should seek guidance from the Board at that

time. Further, the Board has historically required RECs to be retired within a specific energy year in order to ensure that the environmental benefits of the clean energy produced are consumed (that is, the REC is retired) in a time period that is reasonably proximate to the consumption of electricity by consumers. In accordance with this policy preference, proposed N.J.A.C. 14:8-2.8(a) specifically states that an SREC-II may be used to comply with RPS requirements for the energy year in which the underlying energy was generated or the following energy year. The Board sees no reason to deviate from well-established policies, and, therefore, declines to amend the rules as suggested by RECO.

N.J.A.C. 14:8-2.9 Issuance of RECs, SRECs, TRECs, and SREC-IIs

4. COMMENT: Pursuant to proposed N.J.A.C.14:8-2.9(f), a fraction of a megawatt-hour (MWh) can be carried forward at the end of an energy year and combined with energy generated in a subsequent energy year in order to make a full MWh eligible for the creation of an SREC-II. The commenter believes that the cost cap and the megawatt blocks established as part of the SuSI Program produce the need for different treatment of SREC-IIs. Specifically, the commenter recommends that entire SREC-IIs that exceed the amount needed to satisfy the RPS in a given energy year should be allowed to be carried over to the following energy year. (RECO)

RESPONSE: As an initial point, the Board notes that the proposed changes at N.J.A.C. 14:8-2.9(f) are an expansion of existing rules governing the creation and retirement of RECs, to ensure that these same rules also apply to SREC-IIs. The Board disagrees that there is anything new or different about SREC-IIs that warrants changing these well-established rules. The commenter also appears to conflate the assignment of megawatt (MW) blocks, which are a measure of installed capacity, from the creation and retirement of SREC-IIs, which are denominated in MWh. Thus, there is no interplay between proposed N.J.A.C. 14:8-2.9(f), which governs how fractional MWhs of solar production are carried over between years, and the assignment of MW blocks. The Board also disagrees with the commenter that any change is needed with respect to the issue of how fractional MWhs eligible to serve as the basis for the creation of SREC-IIs are carried over into a new year, given that the existing (and proposed) rules clarify that any fractional MWhs carried over into the new year is deemed created in the energy year in which it was aggregated to create one SREC-II. The expected dollar value associated with any fractional MWhs is small when compared to the overall program, likely accounting for approximately two percent of the SREC-IIs created (assuming 1154 MWh of annual production per MW of installed capacity). Thus, the Board disagrees with the commenter that there is any need for treating SREC-IIs differently than other comparable REC products. Finally, the Board notes that, like the Transition Incentive (TI) Program, the SuSI Program is purposefully designed to procure all the environmental attributes of all electricity produced by eligible solar electric generation facilities in a timely manner. This approach provides greater certainty for investors to the value of the electricity produced, thereby reducing the risk to project owners, which creates lower project finance costs and ultimately results in lower incentive requirements needed to reach New Jersey's solar goals.

N.J.A.C. 14:8-11.1 Purpose and Scope

5. COMMENT: The commenter asserts that capping the size of net metered systems that can participate in the Administratively Determined Incentive (ADI) Program at five MW artificially limits the development of solar generation located near load, restricts private-sector investment, and is contrary to the goals of New Jersey's Energy Master Plan. Further, the commenter believes that there is no need for this cap, as projects greater than five MW represent only 0.08 percent of all projects installed in the SREC Registration Program (SRP) and the TI Program and 23 percent of total installed capacity. The commenter states that the CSI Program will not be available for some time, and that the five MW cap on participation of net metered installations in the ADI Program will put larger projects on hold until such time as the CSI Program launches, thereby increasing the risk that the State's energy goals will be delayed or not achieved in a timely manner. As an alternative, the commenter suggests that the five MW cap could be applied per meter, per energy year rather than per project, allowing for greater access by larger customers and helping to alleviate any concerns relating to the cost caps. The

commenter also believes that the five MW cap inhibits remote net metering and asserts that those projects should have a 10 MW cap for participation in the ADI Program, or no cap at all. Finally, the commenter asserts that there should not be any cap on the size of projects attached to critical infrastructure or public entities. (EDF Renewables)

6. COMMENT: The commenter recommends clarifying what constitutes a five MW project, suggesting that the lack of "qualifiers," such as "per meter" or "per account address" or "per energy year" could result in a narrow interpretation that would not align with the State's energy goals. The commenter states that the CSI Program is not a viable solution, as it has yet to be defined, is likely to be delayed, may not work for complex projects, and will likely favor front-of-the-meter solar installations rather than large behind-the-meter installations. The commenter suggests that the five MW limit for participation in the ADI Program be applied per energy year, in order to enable staggered development of multiple net metered installations in consecutive years, while staying within the cost caps imposed by legislation. (NJDWSC)

7. COMMENT: The commenter suggests the ADI Program should cover net metered non-residential solar installations up to 10 MWdc, rather than five MWdc. The commenter states that this change would add more projects to the competitive pool, thereby further incentivizing the advancement of solar. (NJAWC)

RESPONSE TO COMMENTS 5, 6, AND 7: The Board notes that the Solar Act of 2021 requires the Board to develop "a transparent, fair, and competitive solicitation process for awarding SREC-II contracts" for "grid supply solar facilit[ies] or net metered solar facilit[ies] greater than five megawatts in size ..." N.J.S.A. 48:3-117.a. While the act does permit the Board to adjust those size limits, the Board elected to follow the clear guidance from the Legislature in adopting the five MW cutoff for the participation of large net metered facilities in the ADI Program. For additional clarity, the Board notes that the five MW cutoff represents the size limit used to determine eligibility of net metered non-residential systems for the ADI Program; it does not represent an absolute cap on the size of net metered systems, and, therefore, does not in any way prohibit the continued development of larger net metered installations.

New Jersey has a longstanding commitment to fostering the development of different types and sizes of solar facilities, and doing so at a reasonable cost to ratepayers. The five MW cap on net metered non-residential systems in the ADI Program reflects this commitment. As reported by the commenter, projects greater than five MW represent 23 percent of installed capacity in the SRP despite making up less than 0.1 percent of the projects in that program. While these figures indicate the importance of large projects to New Jersey's solar generation goals, it is important to note that large net metered projects enjoy significant economies of scale that allow them to produce solar electricity at a lower cost than comparable projects of smaller size. Large net metered facilities also receive retail value for the electricity produced, which gives them access to significantly higher energy market revenues than a comparable large grid supply project. For these reasons, extending the administratively determined incentive provided in the ADI Program for small projects to larger projects would potentially result in a significant over-payment to the larger projects.

The Board recognizes that the development of the permanent CSI Program necessitates a temporary pause in the development of larger net metered systems. However, the Board anticipates that the program details for the CSI Program will be finalized in early/mid-2022, and that the full program will launch in the third quarter of 2022. This development period, therefore, is not expected to impede or delay New Jersey's long-term solar goals.

N.J.A.C. 14:8-11.2 Definitions

8. COMMENT: The commenter suggests expanding the definition of "public entities" to include investor-owned public utility companies (other than electric distribution companies). The commenter states that this change would enable investor-owned public utilities to take advantage of the "adder" incentive available to ADI-eligible net metered facilities serving public entities. The commenter asserts that the adder and the Federal tax incentives would benefit the public utilities' customers by offsetting operating expenses. Finally, the commenter asserts that this

change in definition would enable these investor-owned public utilities to take advantage of net metering aggregation. (NJAWC)

RESPONSE: Investor-owned utilities are private companies. To include them in the definition of “public entities” would be contrary to the plain meaning of that term, and the Board will not do so. The Board has granted special consideration for public entities, in recognition of both the importance of government leading the way in a clean energy economy, as well as the fact that solar projects for public entities generally tend to be more costly due to the specific nature of the public procurement process, as well as the fact that public actors cannot directly use the Federal tax benefits associated with ownership of a solar system. The Board does not believe that these same policy considerations apply to investor-owned utilities.

N.J.A.C. 14:8-11.4 Administratively Determined Incentive Program Eligibility

9. COMMENT: The commenter generally supports proposed N.J.A.C. 14:8-11.4. However, the commenter objects to certain language included at subsections (b) and (f), both of which would allow the Board to grant “special dispensation” to projects that do not meet the eligibility criteria specified in each subsection. In the commenter’s opinion, subsection (b) provides a safeguard against awarding incentives to projects that were developed and reached commercial operation without the need for subsidies in the form of SREC-IIs, while subsection (f) prevents solar developers from dividing a larger project to capture higher incentives intended for smaller projects. The commenter sees no reason for the Board to grant a dispensation from these protections and opines that the language allowing “special dispensations” should be deleted from the proposed rule. In the alternative, the commenter proposes that if the Board believes there are circumstances that may justify exemptions, it should republish a revised rule that includes specific criteria and standards for the granting of exemptions from the two eligibility requirements referenced above. (Rate Counsel)

RESPONSE: The Board appreciates the commenter’s concern that the above-cited provisions for special dispensation could be exercised in a manner that would provide subsidies to projects that were constructed without expectation of incentives. In general, the Board agrees that a project constructed without expectation of subsidy should not be retroactively granted an incentive. The Board notes that in this context “special dispensation” was intended to be synonymous with the formal Board petition process. However, to avoid possible confusion, the Board has reverted to the more common phrase upon adoption, regarding the Board granting a waiver in response to a petition.

The Board believes that the two subsections cited by the commenter cover very specific aspects of the qualification criteria where, based on the Board’s long experience in administering solar incentive programs, flexibility may be warranted and where a categorical bar could potentially increase the costs of solar in New Jersey. The Board has encountered a number of situations where a project was built with the expectation of receiving an incentive in a specific incentive program, but for some reason, failed to meet all of the requirements of the program. For example, a number of projects, despite pursuing development in good faith through the TI Program and in full expectation of receiving a TI Program incentive, were nonetheless unable to complete all requirements for TI eligibility by their program deadline. Were the Board to do as the commenter suggests and reject, as ineligible, all projects that achieved commercial operation prior to the opening of the ADI Program, these projects would be stranded without any incentive. The Board’s experience is that this type of “incentive cliff” creates significant difficulty in financing renewable energy infrastructure and increases the cost of all solar projects in the State. Such a result would be chilling to the State’s solar industry and would tend to undermine its renewable generation goals.

Finally, the Board notes that any exercise of discretion requires formal Board action, which necessarily includes the ability for public participation. The Board believes that it has the expertise necessary to distinguish between legitimate claims for special consideration based on unique circumstances, on the one hand, and attempts to “game the system” in order to seek special treatment that would be financially advantageous to an interested party, on the other hand.

N.J.A.C. 14:8-11.5 Successor Solar Incentive Program Registration Process

10. COMMENT: The commenter suggests that the Board consider modifying the proposed language at N.J.A.C. 14:8-11.5(c), which states that registration fees “will be determined by the Board through a Board order.” The commenter proposes instead that the Board establish a fee structure within the regulations, in order to provide a consistent standard. (NJAWC)

RESPONSE: The Board supports a consistent fee structure; however, the Board believes that the adoption of any fee schedule should be informed by some experience with the program and the Board does not yet have that experience. Further, the determination of fees by Board order allows for flexibility in increasing or decreasing the fees in response to project participation and completion rates, which will improve administration of the program and allow the Board to more quickly adapt to changes in the solar industry.

11. COMMENT: The commenter states that the requirement for a registration fee included at N.J.A.C. 14:8-11.5(c) is onerous and unnecessary. In the commenter’s opinion, the required evidence for project maturity to participate in the ADI Program itself will require capital deployment and actively discourage frivolous applications. The commenter believes that imposing registration fees will limit market participation and complicate the administration of the program. (EDF Renewables)

RESPONSE: The Board does not believe that a registration fee is either onerous or unnecessary. Fees for program participants are a common feature of many State programs. Moreover, the participants in the SuSI Program will be seeking to benefit from incentives subsidized by New Jersey ratepayers. For those participants to pay a fee that offsets at least a portion of the costs of administering the subsidy program appears eminently reasonable.

12. COMMENT: The commenter suggests clarifying proposed N.J.A.C. 14:8-11.5(d)1 to indicate that a “customer of record” may include third-party SREC-II owners. (Sunwealth)

RESPONSE: The intent of this provision is to ensure that the initial registration package include a copy of the contract signed with the final customer. “Customer of record” is a defined term in the Board’s rules and means the person that 1) applies for utility service; and 2) is identified in the account records of a public utility as the person responsible for payment of the public utility bill. See N.J.A.C. 14:3-1.1. The term “customer of record” is, therefore, tied to utility service and utility accounting records and does not embrace third parties, such as SREC-II owners if they do not already fall within those boundaries. Moreover, a contract between a third-party SREC-II owner and a primary installer, as proposed by the commenter, would not serve the purpose of ensuring that the proposed project is actually associated with a specific customer’s location. However, the commenter is correct to note that the customer of record may sign a contract with a third-party owner, rather than directly with the primary installer. The Board has corrected this inaccuracy in the adopted rule.

13. COMMENT: The commenter recommends removing the requirement for building and electrical permits from proposed N.J.A.C. 14:8-11.5(d). Such removal would, in the commenter’s opinion, streamline processing and recognize the reality that developers prefer to confirm that a project is financially viable before taking on the administrative burden of applying for these permits. The commenter proposes that the Board, instead, require “special permits,” or an affirmation that “special permits” are not needed. (Sunwealth)

RESPONSE: The Board notes that the requirement for building and electrical permits applies only to projects of 25 kW or greater. This requirement is not unduly onerous for projects of this size and contrary to the commenter’s concern, should not delay these projects. Rather, these permits provide additional confirmation that a project is mature enough to merit submitting a registration in the ADI Program or participating in a given solicitation period in the CSI Program, and that the project is likely to be completed within the registration period.

14. COMMENT: With respect to the requirement at proposed N.J.A.C. 14:8-11.5(d)4 that a net metered facility’s initial registration package include a utility bill showing the site host’s name, address, and electric tariff, the commenter states that this documentation should be optional for

certain types of projects, such as solar projects associated with new construction or community solar. The commenter notes that, in these instances, a utility account may not be established at the time the initial registration package is submitted, and suggests that the Board can require this documentation at a later point in the process. (RECO)

RESPONSE: The Board agrees that where a solar facility is proposed for new construction or for a community solar project, there is no utility bill to provide and developers should so indicate. In the past, registrants have simply provided an explanation that the requirement is not applicable. However, to avoid possible confusion, the Board has inserted the language “if applicable” upon adoption.

15. COMMENT: The commenter believes that the interconnection requirements set forth at proposed N.J.A.C. 14:8-11.5(d)6 should conform to the interconnection requirements of the Board’s current interconnection regulations at N.J.A.C. 14:8-5, in order to provide clarity and certainty to developers and the EDCs. (RECO)

RESPONSE: The Board agrees with the commenter that, for a solar electric generation facility to be considered as net metered for purposes of ADI Program eligibility, the facility must satisfy the Board’s rules for interconnection at N.J.A.C. 14:8-5. However, the Board does not believe that it is necessary to specify in the incentive program registration rules that projects less than 25 kW must obtain a fully executed Part 1 interconnection agreement to enable registration submission. The Board anticipates that any registrant that does not conform to the interconnection requirements at N.J.A.C. 14:8-5 will not be approved to construct until it addresses such issues independently.

16. COMMENT: The commenter requests that the extension policy at N.J.A.C. 14:8-11.5(i) be modified to allow developers to receive up to one year of extensions upon providing evidence of active and ongoing work on a project, such as permits and purchase orders. According to the commenter, an incentive cliff, whereby additional extensions are available only through “an expensive, time-consuming, and uncertain BPU petition” process have proven unacceptable to investors and resulted in the loss of high-value public sector projects that are often subject to extensive procurement and permitting requirements. (EDF Renewables)

17. COMMENT: The commenter recommends making up to one year of extensions available for SuSI Program participants due to slow permitting processes and ongoing supply chain issues resulting from the COVID-19 public health emergency. Alternatively, the commenter suggests tolling the registration expiration for projects that are pending a decision on a permit. (NJAWC)

RESPONSE TO COMMENTS 16 AND 17: The Board recognizes that the legislatively mandated closure of the SRP, and establishment of the TI Program, and now the creation of the permanent SuSI Program have created challenges for certain developers. The Board likewise appreciates the potential difficulties of developing projects within a set timeframe, but notes that the timeframes in the proposed rules are the product of both an extensive stakeholder process and 20 years of experience New Jersey has with the solar industry. While the time constraints in the closure of the SRP and the interim nature of the TI Program may have prevented the development of some projects, including some in the public sector, New Jersey’s thriving solar industry and the amount of installed solar in the State demonstrate that they are not unduly exacting. New Jersey continues to see large amounts of capital being deployed by investors, and the Board commits to continuing to monitor the health of the solar industry. However, requiring that projects reach commercial operation within a set timeframe is critical to the integrity of the solar program as is ensuring that ratepayers receive a return on their investment in solar within a reasonable period. This is particularly true given that the cost of solar continues to decrease significantly over time, meaning that developers have a financial interest in “locking in” today’s incentive levels, but delivering solar at some point in the future after costs have declined.

Finally, the Board believes that fact- and developer-specific issues, including those related to supply chain, permitting, or other comparable issues that affect individual developers or projects, can most appropriately be addressed by the Board through fact-specific adjudication. The transparency and public accountability created by the Board’s petition process are critical to public confidence that New Jersey is making wise, cost-effective investments in clean energy. The Board disagrees that its petition process is needlessly “expensive” or “time-consuming,”

particularly given the many millions of dollars in solar incentives that entities are often seeking.

18. COMMENT: The commenter opposes proposed N.J.A.C. 14:8-11.5(k), which would allow registrants to increase the capacity of their projects up to 10 percent or 25 kWdc, whichever is smaller, subject to the five MWdc program maximum for projects in the ADI Program, by filing a notice with the Board’s staff. The commenter asserts that this provision is not consistent with any prior Board-approved solar energy programs and is arbitrary in nature. Allowing such capacity changes, in the commenter’s opinion, could lead to additional uncertainty and volatility in the planning and budgeting process contemplated elsewhere in the proposed rules. (Rate Counsel)

19. COMMENT: With respect to proposed N.J.A.C. 14:8-11.5(k), the commenter states that the allowed increase in capacity for individual projects may not have a significant impact on an individual facility basis, but that, if each facility increases its size by the allowable amount, a change in the megawatt blocks may be warranted. Thus, the commenter recommends that the Board include an analysis of these allowable system size increases as part of the establishment of the megawatt blocks applicable to the upcoming energy year, in order to prevent exceedances of the cost caps and the RPS. (RECO)

RESPONSE TO COMMENTS 18 AND 19: The Board’s experience in administering the solar programs shows that solar projects are often constructed at sizes that are slightly different than indicated in the project’s initial application. Often, these small changes are made to reduce the cost or difficulty in constructing the project, adjust for changes in equipment based on availability, or reduce the impact of the project on the electrical grid, and, therefore, should be encouraged. The Board does not anticipate that many projects will make use of the flexibility provided at N.J.A.C. 14:8-11.5(k) and, thus, does not believe that it will lead to the uncertainty feared by the commenters. The Board also notes that an increase of capacity capped at 25 kWdc is relatively modest in the context of projects that may be as large as five MW. Such minor capacity adjustments have historically been permitted in the SRP and TI Program, in recognition that the final installed solar system may not be exactly identical to the plans presented in the initial registration. Additionally, the Board will close the registration window for a market segment when registrations to that market segment reach the annual capacity allocation. The Board notes that, historically, a certain percentage of registered projects fail to reach commercial operation. The Board expects that the amount of capacity decrease resulting from projects that have registered, but fail to reach commercial operation, will likely be significantly larger than the capacity increase resulting from projects that exercise the option to increase by the maximum allowable 25 kW. In the event that increases in size become common enough to risk increased uncertainty, the Board may revisit this provision and/or the megawatt blocks.

N.J.A.C. 14:8-11.6 New Jersey SREC-II Value

20. COMMENT: The commenter supports the qualification life of 15 years at proposed N.J.A.C. 14:8-11.6(a), stating that it reflects a reasonable balance between the need for stability to keep the cost of providing incentives down and the need to limit the length of time for which ratepayers subsidize solar installations. The commenter also notes that this proposed qualification life is consistent with past Board policies. (Rate Counsel)

RESPONSE: The Board notes the commenter’s support for the rule, which is anticipated to encourage investment while limiting overall program costs.

21. COMMENT: The commenter supports proposed N.J.A.C. 14:8-11.6(e), which provides that incentive values for the ADI program would be reset through a Board Order no less frequently than every three years and that, in the absence of such an order, incentives would automatically decrease by 10 percent at the end of three years. The commenter believes that this provision is consistent with the general trend towards decreasing solar installation costs and the Clean Energy Act’s mandate to continually reduce the costs of achieving the State’s solar energy goals. In addition, the commenter states that the requirement to actively review incentive values every three years, subject to automatic decrease if the Board does not act, will help to provide financial discipline to the ADI program and, over the long run, reduce New Jersey ratepayer costs. (Rate Counsel)

RESPONSE: The Board notes the commenter's support for the rule, which it anticipates will ensure close attention is paid to the costs of ADI Program.

22. COMMENT: The commenter does not support proposed N.J.A.C. 14:8-11.6(g), which would allow the Board to create an "adder" to increase the value of the incentives provided under the ADI program to net-metered facilities serving public entities. In the commenter's opinion, adders only intensify the challenges the commenter believes are inherent in establishing administratively determined incentives. Specifically, the commenter believes that the use of adders will lead to administrative inefficiencies by adding an additional cost while not simulating additional MWs of solar capacity at the margin; will lead to additional levels of gamesmanship by solar energy developers; and will further complicate what the commenter characterizes as an already complicated program. (Rate Counsel)

RESPONSE: The Board shares the commenter's belief that an excessive use of adders tends to produce administrative inefficiencies and to increase program costs. For that reason, the Board has allowed only the single adder for public entities. The Board believes that there is a public policy benefit to supporting public entities' access to the benefits of distributed solar power. Public entity projects result in savings to local communities, give New Jersey consumers confidence in the solar market, and serve as an example to communities. Additionally, public entities are typically unable to receive the Federal tax incentives available to private entities, and therefore, frequently use a more expensive third-party project ownership model. For all of these reasons, the Board believes that public entities merit a dedicated incentive adder.

23. COMMENT: The commenter states that the adder for net-metered projects serving public entities contemplated at N.J.A.C. 14:8-11.6(g) will serve to increase the total amount paid under the cost cap. The commenter recommends that the value for the public entity adder should be projected each year as part of the process to establish incentive values, so that the all-in cost of a fully subscribed megawatt block does not exceed the cost cap in that particular year. The commenter suggests that the projection for public entity adders could include a cap on the total amount available to new projects each year. (RECO)

RESPONSE: The statutory cost cap applies regardless of project owners and the Board intends for all relevant incentives, including any public entity adders made available under the ADI Program, to remain below the cost cap. The Board agrees that it has the flexibility to modify the size of the adder at a future point in time through an appropriate proceeding.

N.J.A.C. 14:8-11.7 Market Segment Megawatt Blocks

24. COMMENT: The commenter supports the requirement that the Board set annual budget allocations and megawatt-hour blocks for the SuSI Program. However, the commenter does not believe that the eight specific initial market segments identified at proposed N.J.A.C. 14:8-11.7(b) should be codified in the Board's rules. In the commenter's opinion, the division of the solar market into numerous segments represents an attempt to micromanage solar market outcomes, rather than letting those outcomes reveal themselves through actual program participation. In addition, the commenter believes that the rulemaking provides little research to support the proposed market segments and asserts that most of the proposed segmentation focuses on setting aside incentives to fund what the commenter says are more expensive solar market sectors. The commenter notes that proposed N.J.A.C. 14:8-11.7(c) allows the Board to adjust the market segments or create new ones in future Board Orders, but places little faith in this provision, since there is no mechanism requiring the Board to reevaluate the initial segments at any particular time. Thus, the commenter fears that the proposed rule creates a presumptive list of market segments that could continue indefinitely. The commenter proposes that, instead, the rule should provide for a periodic review similar to that provided for incentive levels at proposed N.J.A.C. 14:8-11.6(e), and modify N.J.A.C. 14:8-11.7(b) to state that "[t]he Board shall allocate megawatt blocks to the market segments established by Board Order for the ADI program[.]" The commenter further recommends modifying proposed N.J.A.C. 14:8-11.7(c) to require a review of market segments at least triennially. (Rate Counsel)

RESPONSE: The Board shares many of commenter's concerns about how excessive differentiation of market segments can cause loss of competition and potentially trigger a corresponding increase in incentive values. However, these concerns must be balanced against the fact that market segments have differing cost and revenue streams tied to project type (for example, net metered versus grid supply), size, or location (for example, ground mount, contaminated sites, rooftops). Some differentiation in incentives is, therefore, appropriate and desirable to ensure that ratepayers are providing a sufficient, but not excessive, incentive that is tailored to the needs of different project types. In addition, the Board notes that its market segmentation were derived after extensive modeling, using both actual project costs and theoretical solar cost models, as detailed in the Board's order adopting the SuSI Program. (See, for example, In the Matter of a Solar Successor Incentive Program Pursuant to P.L. 2018, C.17, BPU Docket No. QO20020184, Order dated July 28, 2021, pages 15-20.) Further, the Board notes that the "spread" in incentive levels between various market segments is relatively tight, with the base incentive for the majority of projects varying between \$80.00 per MWh to \$100.00 per MWh. The Board further notes that while incentives vary by market segment, competition between projects in the ADI Program happens between large groups of projects comprising the three megawatt block segments (net metered residential, net metered non-residential, and community solar), which helps address the commenter's concerns.

Additionally, while some flexibility is advisable to allow the Board to respond to unanticipated changes in the solar marketplace, the Board sees value in keeping adjustments to market segments as voluntary, rather than mandatory. The Board views a consistent set of market segment definitions as increasing market certainty and competition, while also allowing for transparent comparison of incentive levels over time. To the contrary, requiring adjustment to market segments on a triennial basis would potentially invite the exactly the type of "micromanag[ing] of solar market outcomes" by specific solar advocacy groups that the commenter rightly warns against.

25. COMMENT: The commenter suggests modifying N.J.A.C. 14:8-11.7(b) to split the market segment for net metered non-residential projects under one MW into two blocks: one for net metered non-residential projects under 500 kW, and one for net metered non-residential projects between 500 kW to one MW. (Sunwealth)

RESPONSE: The Board established the segment blocks, and associated incentive levels, based on extensive modeling and stakeholder engagement. In determining how many market segments to set, the Board sought to balance two imperatives: on the one hand, the Board recognizes that different project sizes and types have different financial profiles and policy outcomes, and, thus, merit different incentive levels; on the other hand, excessive differentiation between incentive levels risks increasing "gaming" by industry participants (designing projects to maximize their incentive rather than selecting the most efficient system design). Additionally, hyper-specific administratively determined incentive values are more likely to be misidentified, and, thus, either over- or under-incentivize the associated market segment. The Board, therefore, does not believe it necessary or prudent to further subdivide the market segment for net metered non-residential projects under one MW.

26. COMMENT: The commenter recommends that the Board modify the language at N.J.A.C. 14:8-11.7(e) by establishing a limit on the amount that a registration can exceed the capacity allocation for a given capacity block. Proposed N.J.A.C. 14:8-11.7(e) currently states that a "capacity block will be defined as being fully subscribed when the last registration received in the registration portal causes the total capacity of all registrations in that block to exceed the capacity allocation for said block." Without the addition of a limit on the extent to which a registration may cause a capacity block to exceed the capacity allocation, the commenter believes that a capacity block with available capacity of 0.01 MW could accept a five MW project, potentially exceeding both the cost cap and the RPS for that energy year. (RECO)

RESPONSE: The Board has taken into account the fact that capacity blocks may slightly exceed their allocations with the final registrant, as many capacity blocks may remain under the annual cap. The Board does not anticipate that any such overage will exceed the maximum five MW in each block. Further, as the Board explained in the cost cap rulemaking,

block sizes may be adjusted in the future if the cost cap is approached (see 53 N.J.R. 1476(a)). Additionally, the pipeline of projects registered for both the SRP and the TI Program has routinely experienced project expirations and cancellations. As a result, should a market segment reach the point that registered capacity equals the full amount allocated for a year, the Board expects that subsequent cancelled or expired capacity will far exceed the capacity of the last registered project.

N.J.A.C. 14:8-11.7(b) and 11.8

27. COMMENT: The commenters suggest modifying proposed N.J.A.C. 14:8-11.7(b) and 11.8 to allow reallocation of unused megawatt blocks as part of the order that establishes the annual budget allocation referenced at N.J.A.C. 14:8-11.7(a). (EDF Renewables and NJAWC)

RESPONSE: The Board does not anticipate the need to reallocate “unused” capacity, noting that it does not necessarily aim to achieve full subscription in all segments. Given that capacity targets will be set on an annual basis, by the time it becomes apparent that there is available capacity in a given market segment, the Board will likely be setting new targets for all market segments. The Board anticipates that the process for setting new capacity targets will most likely include consideration of the prior year’s performance. Moreover, the Board believes that such a reallocation process would reduce certainty and unnecessarily complicate the administrative process.

N.J.A.C. 14:8-11.8 Mechanism for Creation of NJ SREC-IIs

28. COMMENT: Proposed N.J.A.C. 14:8-11.8(f) provides that “[e]lectricity generated by a SuSI-eligible facility that is not redeemed in GATS in the energy year in which the electricity was produced, or in the following year, shall not be eligible for a NJ SREC-II, but shall be eligible to create a New Jersey Class I REC.” Noting that the Board’s July 28, 2021 Order in Docket No. QO200201841 does not require that EDCs purchase Class I RECs, the commenter states that the proposed rule should clarify that EDCs have no obligation to purchase the Class I RECs that were formerly SREC-IIs. (RECO)

RESPONSE: The Board agrees with this statement, but believes that a clarification is not necessary, as this is already clear from the existing rules. See N.J.A.C. 14:8-2.3, which sets the annual RPS requirement for New Jersey supplier/providers and states how the different types of RPS requirements may be satisfied.

N.J.A.C. 14:8-11.8(e)

29. COMMENT: The commenter believes that the rule unduly limits the eligible life of an SREC-II by requiring that it be redeemed in GATS in either the year that the energy was generated or in the following year. In the commenter’s opinion, the process for creating, procuring, and retiring SREC-IIs can be overwhelming, especially for residential homeowners. Moreover, the commenter believes that the mechanism for creating a Class I REC from an SREC-II based on when, and by whom, the REC is retired would require a manual process that would add complexity for the system owner, the SREC-II Administrator, and the GATS Administrator.

The commenter notes that, while its remarks make specific reference to TRECs, they are also applicable to SREC-IIs. The commenter proposes modifying the proposed rule to add another year for SREC-IIs to be retired for RPS compliance, making the rule for an SREC-II the same as for a Class I REC. In addition, the commenter believes that the Board should delete the provision that allows for the creation of a New Jersey Class I REC after the generation is no longer eligible for an SREC-II. In support of its position, the commenter states that project owners are already incentivized to create and deliver SREC-IIs as soon as possible and that there is no need to penalize owners, especially residential homeowners, for delays outside of their control or beyond their expertise. With an additional year to complete the steps needed to create and deliver SREC-IIs to the SREC-II Administrator, the commenter believes that there would be no need for a provision allowing for the creation of Class I RECs from SREC-IIs.

In the alternative, the commenter suggests modifying N.J.A.C. 14:8-11.8(f) to state that electricity generated by an SREC-II-eligible facility that is not redeemed in GATS in either the energy year in which it was produced or in the following year shall not be accepted by the SREC-II Administrator. Rather than creating a New Jersey Class I REC in place of

the SREC-II once that time has expired, the commenter proposes that SREC-IIs could be redeemed as-is to satisfy the Class I requirement, similar to how Class I RECs were able to be used to satisfy the Class II requirement in past years. (PJM-EIS)

RESPONSE: The Board does not support the commenter’s suggested changes. The benefits to ratepayers from aligning program benefits and costs by requiring the timely submission of meter readings to create SREC-IIs outweigh the potential costs to individual project owners and PJM-EIS. The requirement for reasonably proximate electricity production with SREC-II procurement and retirement is to ensure consistent levels of cost recovery and compliance with the statutory cost caps on solar incentives, so that accumulated SREC-IIs do not unbalance anticipated retirements and costs. In addition, the Board notes there is no experience with this process in the ADI Program yet. Given the lack of a record, the Board is not persuaded that the issue identified by the commenter is significant enough or sufficiently likely as to require a rule amendment. If any initial delays in registration and redemption are experienced, these should not recur in future energy years. As to the delays outside of an electricity producer’s control referenced by the commenter, these may be addressed with a petition to the Board. In addition, while the commenter alleges that converting SREC-IIs to Class I RECs will unduly complicate the process, the Board believes that the SREC-II Administrator should not have issues facilitating the reclassification. The solution proposed by PJM-EIS of allowing unredeemed SREC-IIs to accrue to the EDCs is unworkable as the EDCs do not represent all regulated entities with an obligation to comply with the Board’s Renewable Portfolio Standard rules.

N.J.A.C. 14:8-11.9 Prevailing Wage Requirement

30. COMMENT: The commenter seeks clarification on how the prevailing wage requirement will be verified. (Sunwealth)

RESPONSE: Prevailing wage requirements are an important part of the Board’s commitment to fair labor practices. Project developers are expected to abide by the prevailing wage requirements at all times and to self-certify compliance. Violations of prevailing wage requirements will be addressed on a case-by-case basis and enforced in coordination with the New Jersey Department of Labor and Workforce Development, the New Jersey Attorney General’s Office, and other responsible entities.

Competitive Solar Incentive (CSI) Program

31. COMMENT: While acknowledging that the CSI Program is not included in the rulemaking, the commenter states that it has significant concerns regarding the status of that program. Noting that it has consistently stressed the importance of competition to bring downward pressure on the high costs of solar development in New Jersey, the commenter recommends that the Board move expeditiously to implement this program. (Rate Counsel)

RESPONSE: The Board agrees with the commenter that establishing the CSI Program on an expeditious timeframe is a top priority and agrees that the CSI Program should attract lower cost solar generation to New Jersey. The Board currently anticipates completing design work on the CSI Program by mid-2022, with the first solicitation held and bids due in the third quarter of 2022.

Federal Standards Statement

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 Successor Solar Incentive Program 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, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the adopted amendments and new rules.

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

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

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:

“Administratively Determined Incentive Program” or “ADI Program” means the administratively determined incentive program established pursuant to N.J.A.C. 14:8-11.4.

“Administratively determined incentive-eligible facility” or “ADI-eligible facility” means a solar generating facility eligible to participate in the Administratively Determined Incentive Program pursuant to N.J.A.C. 14:8-11.4.

“Competitive Solar Incentive Program” or “CSI Program” means the competitively determined incentive program established pursuant to N.J.A.C. 14:8-11.

“Competitive solar incentive-eligible facility” or “CSI-eligible facility” means a solar generating facility eligible to participate in the Competitive Solar Incentive Program pursuant to N.J.A.C. 14:8-11.

“New Jersey SREC-II” or “SREC-II” means a certificate issued by the Board or its designee, representing the environmental attributes of one megawatt-hour of electric generation from a SuSI-eligible facility having received a New Jersey State Certification Number pursuant to N.J.A.C. 14:8-11.5 or other facility, as may be designated by the Board.

“New Jersey SREC-II Administrator” means the entity jointly contracted by the EDCs, in coordination with Board staff, responsible for administering the procurement and allocation, and coordinating the retirement, of NJ SREC IIs.

“Successor solar incentive-eligible facility” or “SuSI-eligible facility” means a solar generating facility eligible to participate in the Successor Solar Incentive Program, and eligible to participate in either the Administratively Determined Incentive Program pursuant to N.J.A.C. 14:8-11.4 or the Competitive Solar Incentive Program.

“Successor Solar Incentive Program” or “SuSI Program” means the solar incentive program established by the Board to replace the SREC and TI Programs, and implemented through two subprograms: the Administratively Determined Incentive Program pursuant to N.J.A.C. 14:8-11.4 and the Competitive Solar Incentive Program.

“Transition Incentive Program” or “TI Program” means the transitional solar incentive program established at N.J.A.C. 14:8-10.

14:8-2.3 Amount of renewable energy required

(a) Each supplier/provider, as defined at N.J.A.C. 14:8-1.2, that sells electricity to retail customers in New Jersey, shall ensure that the electricity it sells each energy year in New Jersey includes at least the minimum amount of qualified renewable energy required for that energy year, as specified in this section. Requirements for class I, class II, SRECs, TRECs, and SREC-IIs are set forth at Table A below:

Table A
What Percentage of Energy Supplied Must Be SREC-IIs, TRECs, SRECs, Class I, or Class II Renewable Energy

<u>Energy Year</u>	<u>SREC-IIs</u>	<u>TRECs</u>	<u>SRECs</u>	<u>Class I</u>	<u>Class II</u>	<u>Total</u>
June 1, 2018 - May 31, 2019	0%	0%	4.30%	14.175%	2.50%	20.975%
June 1, 2018 - May 31, 2019*	0%	0%	3.29%*	14.175%*	2.50%*	19.965%*
June 1, 2019 - Dec. 31, 2019	0%	0%	4.90%	16.029%	2.50%	18.529%
June 1, 2019 - Dec. 31, 2019*	0%	0%	3.38%*	16.029%*	2.50%*	21.909%*
January 1, 2020 - May 31, 2020	0%	0%	4.90%	21.0%	2.50%	23.50%
January 1, 2020 - May 31, 2020*	0%	0%	3.38%*	21.0%*	2.50%*	26.88%*
June 1, 2020 - May 31, 2021	0%	based on retail sales	5.10%	21.0%	2.50%	23.50%
June 1, 2020 - May 31, 2021*	0%	based on retail sales	3.47%*	21.0%	2.50%	26.97%
June 1, 2021 - May 31, 2022	based on retail sales	based on retail sales	5.10%	21.0%	2.50%	23.50%
June 1, 2022 - May 31, 2023	based on retail sales	based on retail sales	5.10%	22.0%	2.50%	24.50%
June 1, 2023 - May 31, 2024	based on retail sales	based on retail sales	4.90%	27.0%	2.50%	29.50%
June 1, 2024 - May 31, 2025	based on retail sales	based on retail sales	4.80%	35.0%	2.50%	37.50%
June 1, 2025 - May 31, 2026	based on retail sales	based on retail sales	4.50%	38.0%	2.50%	40.50%
June 1, 2026 - May 31, 2027	based on retail sales	based on retail sales	4.35%	41.0%	2.50%	43.50%
June 1, 2027 - May 31, 2028	based on retail sales	based on retail sales	3.74%	44.0%	2.50%	46.50%
June 1, 2028 - May 31, 2029	based on retail sales	based on retail sales	3.07%	47.0%	2.50%	49.50%
June 1, 2029 - May 31, 2030	based on retail sales	based on retail sales	2.21%	50.0%	2.50%	52.50%
June 1, 2030 - May 31, 2031	based on retail sales	based on retail sales	1.58%	50.0%	2.50%	52.50%
June 1, 2031 - May 31, 2032	based on retail sales	based on retail sales	1.40%	50.0%	2.50%	52.50%
June 1, 2032 - May 31, 2033	based on retail sales ***	based on retail sales **	1.10%	50.0%	2.50%	52.50%

(*BGS Providers with existing contracts)

**The TREC Obligation expressed as a percentage of retail sales in a given energy year will not be known until each energy year when the volume of retail sales subject to the RPS has been determined. Allocation of the Statewide obligation to individual TPS/BGS providers will follow the method set forth at (r) and (t) below.

***The SREC-II Obligation expressed as a percentage of retail sales in a given energy year will not be known until each energy year has concluded and the volume of retail sales subject to the RPS has been determined. Allocation of the Statewide obligation to the individual TPS/BGS providers will follow the method set forth at (r) and (t) below.

(b) Each supplier/provider that sells electricity to retail customers in New Jersey shall ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of SRECs, TRECs, and SREC-IIs required for that energy year as set by the Board. The Board, in consultation with the NJDEP, EDCs, Rate Counsel, the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in this chapter, taking into account the cost impacts and public benefits of such increases including, but not limited to:

1.-4. (No change.)

(c) (No change.)

(d) Beginning in EY20, SREC obligations and TREC obligations are a component of class I renewable energy requirements, and satisfaction of SREC and TREC obligations shall be counted toward class I renewable energy requirements. Beginning in EY22, NJ SREC-II obligations are a component of class I renewable energy requirements, and satisfaction of NJ SREC-II obligations shall be counted toward class I renewable energy requirements.

(e)-(i) (No change.)

(j) The same renewable energy shall not be used for more than one of the following:

1.-2. (No change.)

3. Creation of a REC, or of any other type of attribute or credit, under authority other than N.J.A.C. 14:8-2.9, such as another state's renewable energy standards or any voluntary clean electricity market or voluntary clean electricity program;

4. Creation of a TREC pursuant to N.J.A.C. 14:8-10; or

5. Creation of an SREC-II pursuant to N.J.A.C. 14:8-11.

(k)-(q) (No change.)

(r) 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 TREC and SREC-II obligation. For any electricity supplied by a TPS/BGS provider, such supplier/provider shall calculate its TREC and SREC-II obligation based upon the total number of TRECs and SREC-IIs procured by the TREC Administrator and SREC-II Administrator within the applicable energy year and the market share of retail electricity sold by the supplier/provider within the energy year.

(s) All TRECs shall be created by GATS and procured by a TREC Administrator under contract with the State's electric distribution companies. All SREC-IIs shall be created by GATS and procured by an SREC-II Administrator under contract with the State's electric distribution companies.

(t) During the true-up period following each energy year, Board staff shall calculate the market share of total Statewide retail electricity sold by each TPS/BGS provider. The TREC Administrator will allocate a proportionate percentage of the total TRECs procured during the energy year to each TPS/BGS provider. Each TREC allocated by the TREC Administrator shall be retired by, or on behalf of, the TPS/BGS provider. The SREC-II Administrator will allocate a proportionate percentage of the total SREC-IIs procured during the energy year to each TPS/BGS provider. Each SREC-II allocated by the SREC-II Administrator shall be retired by, or on behalf of, the TPS/BGS provider.

14:8-2.8 Using RECs, SRECs, TRECs, SREC-IIs, and ORECs for RPS compliance

(a) An REC, SREC, TREC, SREC-II, or OREC shall be used to meet New Jersey RPS requirements for specific energy years, based on the type of renewable energy upon which the REC, SREC, TREC, SREC-II, or OREC is based, and the energy year during which the renewable energy was generated, as follows:

1.-4. (No change.)

5. A SREC-II shall be used to comply with RPS requirements for one of two energy year periods:

- i. The energy year in which the underlying energy was generated; or
- ii. The energy year following the energy year in which the underlying energy was generated.

(b) Once a REC, SREC, TREC, or SREC-II has been used for compliance with this subchapter, the REC, SREC, TREC, or SREC-II shall be permanently retired and shall not be used again.

14:8-2.9 Issuance of RECs, SRECs, TRECs, and SREC-IIs

(a) The Board has designated PJM-EIS GATS as the entity that issues class I RECs, class II RECs, TRECs, SRECs, and SREC-IIs for use in complying with this subchapter.

(b) The Board may issue an order discontinuing the designation of PJM-EIS GATS pursuant to (a) above, and/or approving use of RECs, TRECs, SRECs, or SREC-IIs issued by another entity for compliance with this subchapter. The Board shall post a notice of its intent to issue such an order at least 30 days prior to issuing the order, and may, in its discretion, choose to accept public comment on the notice.

(c) Beginning December 4, 2012, in measuring generation to determine the number of RECs, TRECs, SRECs, or SREC-IIs to issue, the Board or its designee shall accept only readings of a meter that records kilowatt-hour production of electrical energy, and which meets all applicable requirements at (c)1 and 2 below. The readings may be taken or submitted by any person, but shall be verified by the Board or its designee:

1.-2. (No change.)

(d) The Board or its designee shall issue RECs, TRECs, SRECs, and SREC-IIs in whole units, each representing the environmental attributes of one megawatt-hour of electric generation.

(e) Electric generation qualifies for issuance of RECs, TRECs, SRECs, or SREC-IIs only if:

1.-2. (No change)

(f) If a generator has accumulated a fraction of a megawatt hour by the end of an energy year, the fraction may be carried over and combined with energy generated in a subsequent energy year in order to make a full megawatt hour that is eligible for a REC, TREC, SREC, or SREC-II. In such a case, the combined energy shall be eligible for issuance of a REC, TREC, SREC, or SREC-II only during the energy year in which accumulated generation reaches one full megawatt hour. Only a fraction of a megawatt hour shall be carried over.

(g) The Board shall require submittal of information and certifications needed to enable the Board, or its designee, to verify the generation that forms the basis of the requested RECs. The Board shall require inspections, as appropriate, of generation equipment, monitoring and metering equipment, and other facilities relevant to verifying electric generation. The Board shall impose application fees, inspection fees, and/or other charges for any work required to verify electric generation and issue RECs, TRECs, SRECs, or SREC-IIs.

(h) The Board, or its designee, shall not issue a REC, TREC, SREC, or SREC-II based on electric generation that has previously been used for compliance with this subchapter, or that has been used to satisfy another state's renewable energy requirements or any voluntary clean electricity market or program.

(i) (No change.)

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

(a) (No change.)

(b) If the annual report required pursuant to (a) above does not demonstrate that the TPS/BGS provider has supplied the RECs, SRECs, TRECs, or SREC-IIs required pursuant to N.J.A.C. 14:8-2.3 Table A 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.-5. (No change.)

6. The total number of SRECs, TRECs, and SREC-IIs retired for the purpose of compliance with this chapter;

7. (No change.)

8. The total amount of solar electric generation, class I renewable energy, and class II renewable energy represented by RECs, SRECs, TRECs, and SREC-IIs submitted with the annual report;

9.-11. (No change.)

12. The price of each REC, SREC, TREC, and/or SREC-II that was retired during the energy year.

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

1.-3. (No change.)

4. For each SREC, TREC, and SREC-II submitted, certification of compliance with the requirement at N.J.A.C. 14:8-2.4(b) or 10.6(b) that the REC has not been used to satisfy another state's renewable energy requirements. The certification shall be in a form required by the Board, and available on the BPU website at www.njcleanenergy.com.

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

SUBCHAPTER 11. SUCCESSOR SOLAR INCENTIVE PROGRAM

14:8-11.1 Purpose and scope

This subchapter sets forth the rules for the establishment of a new solar incentive program, the Successor Solar Incentive Program (SuSI Program). The SuSI Program is comprised of two subprograms: the Administratively Determined Incentive Program (ADI Program) and the Competitive Solar Incentive Program (CSI Program). The ADI Program is designed to provide an incentive for net metered residential facilities, net metered non-residential facilities five megawatts or less (measured as the sum of the nameplate capacity in DC rating of all photovoltaic panels comprising the facility), and community solar facilities.

14:8-11.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Co-location” means siting two or more SuSI-eligible solar facilities on the same property or on contiguous properties, such that the individual facilities are eligible for a higher incentive value than they would be if they were combined into one single facility. In the case of net metered projects, SuSI-eligible solar facilities shall be not be deemed co-located if they serve separate net metering customers as defined at N.J.A.C. 14:8-4.

“Commencing commercial operation” means having obtained permission to operate (PTO) from the relevant electric distribution company.

“Municipal electric utility” means a municipal, county, or other governmental entity, or a regional cooperative, which owns and/or operates an electric distribution system in New Jersey.

“New Jersey SREC-II Qualification Life” means the period of time during which a SuSI-eligible facility may create NJ SREC-IIs.

“PJM Environmental Information Services” or “PJM-EIS” means the unregulated affiliate of PJM Interconnection LLC that operates the Generation Attribute Tracking System (GATS).

“Public entity” means a customer that is a State entity, school district, county, county agency, county authority, municipality, municipal agency, municipal authority, New Jersey public college, or New Jersey public university.

“SuSI Program registration manager” means the agent of the Board contracted to administer the registration process for SuSI-eligible facilities.

14:8-11.3 Successor Solar Incentive Program structure

(a) The Successor Solar Incentive Program shall provide an incentive to solar generation facilities deemed eligible pursuant to this subchapter. The SuSI Program incentive shall be paid to SuSI-eligible solar facilities having received a New Jersey State Certification Number pursuant to N.J.A.C. 14:8-11.5 in the form of NJ SREC-IIs that are created by PJM-EIS GATS for each megawatt-hour generated, metered, and reported to PJM-EIS GATS.

(b) All NJ SREC-IIs shall be jointly procured by the EDCs to satisfy compliance obligations pursuant to the Renewable Portfolio Standards at

(c) below. The EDCs shall jointly procure an NJ SREC-II Administrator, in consultation with Board staff. The NJ SREC-II Administrator will be responsible for administering the procurement, allocation, and retirement of SREC-IIs.

(c) The SuSI requirement is a carve-out of the Class I RPS requirement. Each NJ SREC-II shall be allocated to, and retired on behalf of, New Jersey's TPS/BGS providers based on their respective market shares of retail sales. Each NJ SREC-II retired shall reduce the Class I requirement by one REC as set forth at N.J.A.C. 14:8-2.3(d), (r), and (s).

(d) The owner of a SuSI-eligible facility may assign ownership of a facility's NJ SREC-IIs to a third party if, and when, one of the following occurs:

1. Sale of the facility;

2. Bankruptcy of the owner of the SuSI-eligible facility; or

3. The owner of the SuSI-eligible facility enters into a contract assigning ownership to a third party.

14:8-11.4 Administratively Determined Incentive Program eligibility

(a) The Administratively Determined Incentive Program shall be open to new net metered residential solar generation facilities, net metered non-residential solar generation facilities five megawatts and less (measured as the sum of the nameplate capacity in DC rating of all photovoltaic panels comprising the facility), and community solar facilities that submit a complete ADI Program registration pursuant to N.J.A.C. 14:8-11.5. Community solar facilities must also be qualified pursuant to the rules and regulations of the Community Solar Energy Pilot Program or Community Solar Energy Program, as relevant, prior to registering in the ADI Program.

(b) The ADI Program shall only be open to new facilities that have not commenced commercial operation prior to the opening of the ADI Program registration portal by the Board, unless *[otherwise granted special dispensation by]* the Board ***grants a waiver in response to a petition***. Additionally, facilities seeking eligibility in the ADI Program must submit a registration and receive a notice of conditional registration pursuant to N.J.A.C. 14:8-11.5(g) prior to beginning construction on the facility, unless *[otherwise granted special dispensation by]* the Board ***grants a waiver in response to a petition***.

(c) The equipment used in an ADI-eligible facility must be new; that is, none of the equipment may have been used prior to the installation of the ADI-eligible facility.

(d) The ADI Program shall remain open to new registrations, so long as there is sufficient capacity available in a given market segment, as described at N.J.A.C. 14:8-11.7, Market segment megawatt blocks.

(e) Facilities seeking eligibility to participate in the ADI Program must be connected to the distribution or transmission system owned or operated by a New Jersey electric distribution company. Solar facilities connected to the grid owned or operated by a New Jersey municipal electric utility are also eligible to participate in the ADI Program.

(f) Co-location is not permitted in the ADI Program, unless *[granted special dispensation by]* the Board ***grants a waiver in response to a petition***.

14:8-11.5 Successor Solar Incentive Program registration process

(a) The SuSI Program registration process shall be developed by Board staff and the SuSI Program registration manager in compliance with Board rules and orders. All forms and instructions regarding the SuSI Program registration process shall be found on the Board's New Jersey Clean Energy Program website at www.njcleanenergy.com.

(b) For any facility seeking eligibility for the SuSI Program, the registrant shall submit a complete registration package to the Board, or its designee, in accordance with Board rules and orders and the instructions posted on the NJ Clean Energy Program website.

(c) Each completed registration package must be accompanied by the payment of a registration fee, the value of which will be determined by the Board through a Board order. The registration fee shall take effect one year from the opening of the SuSI Program; projects registering during the first year of the SuSI Program will be exempted from the registration fee.

(d) The registrant shall meet minimum facility maturity standards and provide all documentation required by Board rule or order as part of its initial registration package, including, but not limited to:

1. A contract between the primary installer *or the third-party owner, as applicable,* and the customer of record;

2. A site map;

3. A disclosure statement signed by the customer, the installer, and the third-party SREC-II owner, if applicable, available on the New Jersey Clean Energy Program website;

4. For net metered facilities, a utility bill showing the site host's name, address, and electric tariff*, if applicable*;

5. For facilities sized 25 kW or greater, electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality;

6. For net metered facilities sized 25 kW or greater, up to one MW, evidence of having submitted to the relevant EDC a Part 1 interconnection agreement signed by the customer-generator and the installer;

7. For net metered facilities sized one MW or greater, an executed Part 1 interconnection agreement and a Milestone Reporting Form; and

8. For public entities seeking eligibility for the ADI public entity adder, if such an adder is established by the Board pursuant to N.J.A.C. 14:8-11.6(g), a letter on official stationery of the public agency under signature of a bona fide officer, elected official, or employee of the public entity attesting to the status of the public entity.

(e) Registration packages submitted to the ADI Program shall be reviewed by the SuSI Program registration manager on a first-come, first-served basis.

(f) Board staff or the SuSI Program registration manager shall notify registrants whether the facility is eligible to participate in the program, and whether the initial registration package is complete, incomplete, or deficient. Registrations that are deemed incomplete due to a minor deficiency, as defined below, will be notified of the deficiency by the SuSI Program registration manager and granted seven business days to cure the deficiency. Registrations that are deemed ineligible, incomplete, have a major deficiency, as defined below, or fail to correct minor deficiencies within the time allowed, will be rejected, and the registration will be cancelled. If the registration is cancelled, the registrant may submit a new completed registration to the SuSI Program if the relevant capacity block established pursuant to N.J.A.C. 14:8-11.7 remains open, or in a future capacity block.

1. Minor deficiencies include such items as an inconsistency between the signatures on different sections of the SuSI certification form; failure to complete one or more sections on the SuSI certification form; failure to label technologies or to indicate panels on the site map; a missing or incorrect premise address or missing installer information on the site map; submittal of an incorrect page of the utility bill; failure to enter complete equipment information in the online portal; an incomplete section or sections on the Milestone Reporting Form or disclosure form; or other similar clerical error.

2. Major deficiencies include such items as failure to upload the SuSI certification form to the SuSI portal or failure to include all signatures on that form; failure to upload the site map or utility bill to the SuSI portal; failure to upload the Milestone Reporting Form to the SuSI portal or to include all signatures; failure to upload the disclosure form to the SuSI portal or to include all signatures; and for net metered projects one megawatts or larger, failure to upload a fully executed Part I of the Interconnection Approval from the relevant EDC with the application.

(g) Registrants that submit a completed registration package or that cured all minor deficiencies in the time allowed, and that meet the eligibility and qualification requirements for a SuSI market segment pursuant to this subchapter, will be issued a notice of conditional registration by Board staff or the SuSI Program registration manager. The notice of the conditional registration shall:

1. Indicate for which market segment megawatt block the facility is eligible;

2. State that, if the solar facility is constructed as described in the initial registration package, Board staff or the SuSI Program registration manager will issue a New Jersey State Certification Number for the facility upon receiving a complete post-construction certification package, and if no waiver is granted, an inspection will be required necessary in accordance with the provisions at (j) below;

3. Include an expiration date occurring on:

i. The one-year anniversary of the registrant's notice of conditional registration for net metered facilities;

ii. The 18-month anniversary of a registrant's notice of conditional registration for community solar facilities; or

iii. The 24-month anniversary of a registrant's notice of conditional registration for projects granted conditional certification by the Board as part of the Contaminated Sites interim market segment established pursuant to N.J.A.C. 14:8-11.7(b)8; and

4. Include notice that the facility must receive permission to operate from the relevant EDC and submit a post-construction certification packet as set forth at (j) below prior to the expiration date indicated in the notice of the conditional registration; and

5. After issuance of the notice of conditional certification by the Board, construction of the solar facility as described in the initial registration package may begin.

(h) All registered facilities one MW or greater will be required to submit quarterly milestone reporting forms, on a standard form to be developed by the SuSI Program registration manager in coordination with Board staff. Timely submission of milestone reporting forms will be considered in cases of extension requests pursuant to (i) below.

(i) SuSI-eligible facilities that received a SuSI Program notice of conditional registration may request one six-month extension to their registration expiration date. Extension requests must be submitted to the SuSI Program registration manager on or before the expiration date noted in the notice of conditional registration. Any extension request shall be reviewed by the SuSI Program registration manager, in consultation with Board staff, on a case-by-case basis, based on consideration of extenuating circumstances for the delay in completing the facility, evidence that the facility has made progress towards completion, and the likelihood of timely and successful completion of the solar facility. For facilities one MW or greater, the SuSI Program registration manager shall also consider whether the registrant has submitted timely quarterly milestone reporting forms. If the extension is granted, the SuSI Program registration manager shall provide a new conditional registration expiration date, six months from the expiration of the original conditional registration.

(j) Following commencement of commercial operations, and prior to the expiration date provided in the notice of conditional registration, the registrant shall submit a post-construction certification package, through the Board's New Jersey Clean Energy Program website at www.njcleanenergy.com. The post-construction certification form and instructions will be found on the New Jersey Clean Energy Program website at www.njcleanenergy.com. If the post-construction certification package demonstrates that all program requirements have been met, and the facility either passes an inspection or receives an inspection waiver, Board staff shall assign a New Jersey State Certification Number to the solar facility for use in obtaining SREC-IIs from PJM-EIS GATS. The Certification Number will identify the facility's market segment, and associated incentive level, based on the completed facility size information certified in the post-construction certification package.

(k) If, after submittal of an initial registration package, an increase of up to 10 percent or 25 kWdc, whichever is smaller, in the solar electric generating facility's generating capacity is planned, the registrant shall notify Board staff following the instructions provided on the New Jersey Clean Energy Program website. Facilities shall not be permitted to increase their generating capacity by more than 10 percent or 25 kWdc, whichever is smaller. Notwithstanding a permissible increase pursuant to this subsection, no ADI-eligible facility will be permitted an increase in generating capacity that would expand the project beyond five MWdc.

(l) Solar electric generation facilities that have received a notice of conditional registration for SREC-IIs pursuant to (g) above shall retain eligibility to remain in the SuSI Program until the expiration or cancellation of the facility's SuSI registration. Any facility that does not commence commercial operation, within the time provided in its SuSI registration (that is, by the registration expiration date), or that commences commercial operation, but does not submit a post-construction certification package within the time provided in its SuSI registration (that is, by the registration expiration date), will no longer be eligible for the SuSI Program and its registration shall be canceled. A registrant may submit a new registration to the SuSI Program if capacity

remains in the relevant megawatt capacity block as established at N.J.A.C. 14:8-11.7. Board staff and the SuSI Program registration manager shall treat the new registration package as if it were a first-time submittal, with no reference to the previous registration process. In the case of resubmittal of an expired registration, registrants will be exempt from the requirement at N.J.A.C. 14:8-11.4(b) prohibiting construction on the facility prior to submission of the registration and receipt of a notice of conditional registration.

14:8-11.6 New Jersey SREC-II value

(a) A SuSI-eligible facility shall be eligible to generate NJ SREC-IIs for 15 years following the date of commencement of commercial operation. This 15-year period is defined as the New Jersey SREC-II qualification life at N.J.A.C. 14:8-11.2.

(b) SuSI-eligible facilities shall be eligible to create New Jersey Class I RECs at the conclusion of the 15-year NJ SREC-II qualification life.

(c) NJ SREC-IIs shall be valued on a dollar per megawatt hour (\$/MWh) basis for solar electricity generated by a SuSI-eligible facility during each year of the facility's 15-year NJ SREC-II qualification life.

(d) The NJ SREC-IIs produced by each facility registered in the ADI Program shall be assigned a specific incentive level, which shall vary based on which market segment the project is eligible to participate in, as identified at N.J.A.C. 14:8-11.7(b), or as defined through a Board order.

(e) The ADI Program incentive values shall be reset through a Board order no less than once every three years, at least six months prior to the end of the third year, after public notice and comment. Factors considered in this proceeding will include, but not be limited to, existing modeling, major policy changes, market performance, and stakeholder input. The incentive values may be reset prior to the end of a three-year period if deemed necessary by the Board. If the Board does not initiate a triennial review and proceeding to affirmatively maintain or reset the incentives, incentives will automatically decrease by 10 percent for the following three-year period, and every subsequent three-year period, until such time as the Board takes action.

(f) An incentive reset in the ADI Program will not affect facilities with an existing ADI Program conditional registration or facilities already receiving NJ SREC-IIs at the time that the Board enacts the incentive value reset. Reset incentives will apply prospectively to pending applications that have not received conditional registration, as well as new applications to the ADI Program, until the next incentive value reset.

(g) The Board may, in its discretion, create an adder for ADI-eligible net metered facilities serving public entities. Factors considered in this decision will include, but not be limited to, costs specific to these types of facilities, the ability of public entities to benefit from Federal tax incentives, and the societal benefits of solar on public buildings. If applied, the value of this adder shall be determined by order and shall increase the value of each SREC-II produced by the facility by the amount of the adder for the qualified life of the facility. Projects seeking eligibility for the public entity adder may be required to provide supporting documentation in their SuSI Program registration pursuant to N.J.A.C. 14:8-11.5.

(h) An ADI-eligible facility that, in its entirety, could be eligible for two or more market segments shall be assigned to the market segment with the lower incentive value.

14:8-11.7 Market segment megawatt blocks

(a) The Board shall set, through a Board order, an annual budget allocation for each of the market segments described at (b) below. The annual budget allocations shall ensure that total program spending remains in accordance with the cost cap established pursuant to P.L. 2018, c. 17, codified at N.J.S.A. 48:3-87(d)(2), and promote project diversity after considering the historic market share of each market segment. The Board may set annual budget allocations that are aggregated for multiple market segments.

(b) The Board shall allocate megawatt blocks to the following initial market segments in the ADI Program:

1. Net Metered Residential (all sizes);
2. Net Metered Non-Residential smaller than one MW, located on a rooftop, carport, canopy, or floating solar;
3. Net Metered Non-Residential one MW to five MW, located on a rooftop, carport, canopy, or floating solar;

4. Net Metered Non-Residential smaller than one MW, all ground mounted facilities;

5. Net Metered Non-Residential one MW to five MW, all ground mounted facilities;

6. LMI Community Solar, as defined in the Community Solar Energy Pilot Program or Community Solar Energy Program, as relevant;

7. Non-LMI Community Solar, as defined in the Community Solar Energy Pilot Program or Community Solar Energy Program, as relevant; and

8. On an interim basis, contaminated sites, which is a market segment open only to facilities previously eligible for conditional certification pursuant to N.J.S.A. 48:3-87(t).

(c) The Board may adjust the market segments or create new market segments through a Board order to reflect changes in the solar market. In considering an adjustment, the Board shall include consideration of whether increased or decreased differentiation between market segments is necessary in light of the costs and revenues of different project types, administrative complexity, or the emergence of new technologies.

(d) Based on the annual budget allocation for each market segment established by the Board pursuant to (a) above, divided by a forecast of the estimated cost of NJ SREC-IIs from that market segment, the Board will establish, by Board order, an annual capacity megawatt block or quarterly capacity megawatt blocks for market segments. If the Board establishes quarterly megawatt blocks, unused capacity within a block will roll over from quarter to quarter within each given energy year. The Board may set capacity targets that are aggregated for multiple market segments.

(e) The SuSI Program registration manager shall accept new registration packages for a given market segment until the capacity block for that market segment is fully subscribed. When the capacity block for a given market segment is reached, the SuSI Program registration manager shall close the registration portal and stop accepting new registrations until the next capacity block is opened. A capacity block will be defined as being fully subscribed when the last registration received in the registration portal causes the total capacity of all registrations in that block to exceed the capacity allocation for said block.

14:8-11.8 Mechanism for creation of NJ SREC-IIs

(a) NJ SREC-IIs shall be created based upon metered generation supplied to GATS by the owners of eligible facilities or their agents. Each SuSI-eligible facility must have been issued a New Jersey State Certification Number pursuant to N.J.A.C. 14:8-11.5(g), be registered in GATS, and all SuSI-eligible generation must be transferred to the NJ SREC-II Administrator through an irrevocable standing order, pursuant to (b) below.

(b) Irrevocable standing orders shall be treated as follows:

1. An irrevocable standing order, defined in the GATS Operating Rule as "A reoccurring automatic transfer of certificates for a given generating unit from the account holder's active subaccount to the active subaccount held by different account holders," shall be created in GATS for each SuSI-eligible facility. The irrevocable standing order will cause the automatic transfer of NJ SREC-IIs created by an eligible solar facility to a GATS account jointly held by the four EDCs (the EDC Joint GATS Account).

i. The irrevocable standing order, upon execution, shall require for that generator that, following the creation of the irrevocable standing order, 100 percent of the certificates created from each meter reading be automatically transferred to the EDC Joint GATS Account.

ii. An irrevocable standing order is not activated until the transferor confirms, and the NJ SREC-II Administrator accepts, the irrevocable standing order transfer.

iii. Prior to the execution of the irrevocable standing order, NJ SREC-IIs may be transferred manually from the account of a SuSI-eligible facility to the EDC Joint GATS Account. Following a grace period of one month subsequent to the establishment of a GATS Account for a SuSI-eligible facility, the NJ SREC-II Administrator may cease accepting manual NJ SREC-II transfers from a SuSI-eligible facility pending the execution of an irrevocable standing order.

2. Solar aggregators, brokers, and installers acting on behalf of solar facility owners may perform the role of transferor, register on behalf of

the facility owner, and create an irrevocable standing order for each eligible facility for which it is reporting generation into GATS.

3. The NJ SREC-II Administrator will confirm that:

- i. Each account holder created an irrevocable standing order;
- ii. Each irrevocable standing order is complete, identifies the transferor, and represents 100 percent of all NJ SREC-IIs for that generator;
- iii. The solar aggregator, broker, installer, or other account holder has the authority to create the irrevocable standing order; and
- iv. The automatic transfer of NJ SREC-IIs has occurred.

4. Irrevocable standing orders authorizing transfers can only be terminated with the written consent of both parties.

(c) One NJ SREC-II shall be created for each megawatt-hour (MWh) of eligible electricity produced from a SuSI-eligible facility. A NJ SREC-II created for eligible electricity shall not be used for a purpose other than satisfying the SuSI Program carve-out to the NJ Class I requirements of the RPS.

(d) All solar electricity must be metered using an ANSI c-12 certified meter in conformance with N.J.A.C. 14:8-2.9(c).

(e) A NJ SREC-II may be redeemed in GATS in the energy year in which the electricity was produced or in the following energy year.

(f) Electricity generated by a SuSI-eligible facility that is not redeemed in GATS in the energy year in which the electricity was produced, or in the following year, shall not be eligible for a NJ SREC-II, but shall be eligible to create a New Jersey Class I REC.

14:8-11.9 Prevailing wage requirement

NJ SREC-IIs are deemed Board of Public Utilities financial assistance subject to prevailing wage rates pursuant to section 1 of P.L. 2009, c. 89 (N.J.S.A. 48:2-29.47) for all SuSI-eligible facilities sized one MWdc or greater.

(a)

BOARD OF PUBLIC UTILITIES

Transition Incentive Program Rules

Adopted Amendments: N.J.A.C. 14:8-2.2, 10.1, 10.3, 10.4, 10.5, and 10.6

Adopted New Rule: N.J.A.C. 14:8-10.7

Proposed: August 2, 2021, at 53 N.J.R. 1243(a).

Adopted: January 26, 2022, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: January 26, 2022, as R.2022 d.030, **without change**.

Authority: N.J.S.A. 48:3-87, 48:3-87.11, and 48:2-13.

BPU Docket Number: QX21040725.

Effective Date: February 22, 2022.

Expiration Date: February 27, 2026.

Summary of Public Comments and Agency Responses:

Written comments were submitted by: Brian O. Lipman and Sarah H. Steindel, New Jersey Division of Rate Counsel (RC); two comments by Jean Public (referred to herein as “Jean Public 1” and “Jean Public 2,” respectively); Tim Eustace on behalf of North Jersey District Water Supply Commission (NJWSC); and PJM Environmental Information Services (PJM-EIS).

The following is a summary of the comments received from members of the public and the Board of Public Utilities’ (“BPU” or “Board”) response.

General Comments

1. COMMENT: The commenter supports the rule proposal, stating that it includes clarifications and improvements to the implementation of the Transition Incentive (TI) Program based on lessons learned since the program was implemented on May 1, 2020. The commenter notes that the TI Program was closed to new applicants as of 11:59 P.M. Eastern

Standard Time on August 27, 2021, but states that the proposed amendments should facilitate the process of closing out the program for applications that were complete by this deadline. (RC)

RESPONSE: The Board notes the commenter’s support for the rulemaking.

2. COMMENT: The commenter disapproves of the proposed amendments, asking that the Board review how prior ratepayer funding is working out and improving life in New Jersey before establishing new programs. (Jean Public 1)

RESPONSE: The rule amendments, made to the existing TI Program, were proposed based on the experience gained in the implementation of the TI Program since inception in May 2020. They are designed to facilitate administration by the Board and participation by the solar industry in an existing program, not to create a new expenditure of ratepayer funding. Generally, the Board believes that supporting the development of solar resources through programs, such as the TI Program is important to meeting the State’s clean energy goals.

N.J.A.C. 14:8-10.5

3. COMMENT: The commenter supports the proposed amendment to create a new Transition Renewable Energy Certificates (TREC) factor for floating solar projects, stating that it would codify the Board’s existing policy regarding the value of the TREC incentive for these projects. (RC)

RESPONSE: The Board notes the commenter’s support for the rulemaking.

4. COMMENT: The commenter does not support floating solar projects, and does not believe that they will withstand severe weather events. (Jean Public 1)

RESPONSE: The TI Program provides eligible solar electric generation facilities a per megawatt-hour (MWh) production-based incentive, meaning that solar projects only receive an incentive for electricity produced during their 15-year qualification life. A system that breaks down or otherwise does not produce electricity will, therefore, not receive State incentives through the TI Program.

5. COMMENT: The commenter is concerned about floating solar as a possible source of pollution and believes that more research is needed. (Jean Public 2)

RESPONSE: Floating solar is an emerging type of solar deployment, and more information is becoming available as new projects are installed. These amendments impact only the incentive eligibility, not the standards or conditions for construction or operation of the systems. All floating solar projects participating in the TI Program will remain subject to all applicable laws, rules, and regulations, and will be required to receive all necessary permits from local, State, and Federal entities.

N.J.A.C. 14:8-10.6(d)

6. COMMENT: The commenter believes that the rule unduly limits the eligible life of a TREC by requiring that it be redeemed in the Generation Attribute Tracking System (GATS) in either the year that the energy was generated or the following year. The commenter notes that only 15 months elapse between June 1, 2020-the earliest date that generation for May 2020 can be reported in GATS-and September 1, 2021, the deadline by which the TREC Administrator must procure TRECs for energy year (EY) 2020, if they are to be used for EY 2021 Renewable Portfolio Standard (RPS) Compliance. For EY 2020, the commenter notes that there are currently 534 TRECs available that presumably can no longer be accepted by the TREC Administrator. In the commenter’s opinion, the process for TRECs to be procured and retired by the TREC Administrator may be overwhelming, especially for residential homeowners. Moreover, the commenter believes that the mechanism for creating a Class I REC from a TREC based on when and by whom the REC is retired would add complexity for the TREC Administrator and the GATS Administrator, as well as the system owner.

The commenter proposes modifying N.J.A.C. 14:8-10.6(d) and 2.8 to add another year for TRECs to be retired for RPS compliance, making the rule for a TREC the same as for a Class I REC. In addition, the commenter believes that the Board should delete N.J.A.C. 14:8-10.6(e) that allows for the creation of a New Jersey Class I REC after it is no longer eligible as a TREC. In support of its position, the commenter states that TREC project owners are already incentivized to create and deliver TRECs as soon as