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NEW JERSEY BOARD OF PUBLIC UTILITIES

Adopted Amendments to the Renewable Portfolio Standards

N.J.A.C. 14:8-2

Docket No. EX08040255

PUBLIC UTILITIES	1
General	2
Purpose and Scope	3
Definitions	4
Wider Eligibility for Solar RECs	4
Solar REC Trading Life	6
Solar Alternative Compliance Payments (SACP)	6
Solar Electric Facility Qualification Life	6
Limiting Ratepayer Impacts	6
Demonstrating Compliance, Reporting and Record Keeping	10
Federal Standards Statement	10
CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY	10
SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS	10
14:8-2.2 Definitions	10
14:8-2.3 Minimum percentage of renewable energy required	11

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Renewable Energy And Energy Efficiency

Adopted Amendments: N.J.A.C. 14:4-1.2, 14:8-2.1, 2.2, 2.3, 2.8, 2.9, 2.10, 2.11

Proposed: June 16, 2008 at 40 N.J.R. 3586(a).

Adopted: February 11, 2009, by the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Joseph L. Fiordaliso, Nicholas V. Asselta, and Elizabeth Randall, Commissioners.

Filed: February 17, 2009, as R. 2009 d. , with substantive and technical changes not requiring additional public notice and comment under N.J.A.C. 1:30-6.3.

Authority: N.J.S.A. 48:2-13 and N.J.S.A. 48:3-49 et seq.

BPU Docket Number: EX08040255

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Effective date: March 16, 2009

Expiration date: April 18, 2011

The New Jersey Board of Public Utilities (BPU or Board) is herein adopting amendments to its Renewable Portfolio Standards rules at N.J.A.C. 14:4-1.2, 14:8-2.1, 2.2, 2.3, 2.8, 2.9, 2.10, and 2.11. The proposed amendments were published in the New Jersey Register on June 16, 2008 at 40 N.J.R. 3586(a). The 60-day comment period closed on August 15, 2008.

Summary of Public Comments and Agency Responses:

The following persons timely submitted comments on the proposal:

1. Stefanie A. Brand, New Jersey Department of the Public Advocate, Division of Rate Counsel (Rate Counsel)
2. Alexander C. Stern, Public Service Electric and Gas Company (PSE&G)
3. Stephen R. Knowlton
4. Howard O. Thompson, PPL Corporation; PPL Renewable Energy; and PPL EnergyPlus, LLC (PPL)
5. Fred Zalzman, Sun Edison LLC (Sun Edison)
6. Cindy Zipf, Jennifer Samson and David Byer; Clean Ocean Action (COA)

General

1. COMMENT: PSE&G fully supports the approach embodied in the Board's rule proposal.

RESPONSE: The Board appreciates this comment in support of the rules.

2. COMMENT: PPL suggests that N.J.A.C. 14:8-2.9(a) specify that PJM-EIS GATS has been designated by the Board to handle issuance of Solar Renewable Energy Certificates (SRECs).

RESPONSE: The Board believes that an order, rather than a rulemaking, is the appropriate means to make this designation, to preserve flexibility in the designation process. The Board designated PJM-EIS GATS by Order *In the Matter of the Use of PJM-EIS GATS for the Issuance, Tracking and Trading of SRECs for Use in the Board's Renewable Portfolio Standards Docket No. EO08060385* (September 24, 2008).

3. COMMENT: Mr. Knowlton comments that, because the rules as proposed will significantly increase the value of SRECs, it is especially important to have a verifiable, accurate method for determining the amount of electricity generated by all solar generation facilities. He suggests changing N.J.A.C. 14:8-2.9(b)2 to remove "engineering estimates" for systems under 10kW. Engineering estimates, according to Mr. Knowlton, are inaccurate because they do not fully consider conditions at the site such as shading, grid failures, system failures and repairs.

RESPONSE: The suggested change cannot be addressed in this rulemaking because no changes to N.J.A.C. 14:8-2.9(b) were proposed or discussed in the proposal of amendments. However, the Board is currently studying the issue as part

of an ongoing stakeholder process and has received feedback from stakeholders both in favor of and against removing engineering estimates from the rules. Stakeholders willing to participate in this consultation process are encouraged to send an email to: OCE@bpu.state.nj.us stating as subject "Removal of Engineering Estimates". Upon conclusion of the stakeholder process, the Board may decide to undertake another rulemaking proposal addressing this issue.

- 4. COMMENT:** Rate Counsel strongly support a market design for solar energy that creates regulatory certainty, but states that it continues to have concerns that the proposed market design for solar energy is not moving far enough in the direction of regulatory certainty to reduce risks and lower overall ratepayer costs. However, Rate Counsel believes that the rule's framework may be useful if coupled with some form of long-term certainty through what is commonly referred to as "securitization."
RESPONSE: The Board takes note of the commenter's concerns. The Board has been and will continue to work diligently on bringing long term certainty to the New Jersey solar market, in accordance with the Board's Order *In the Matter of Renewable Energy Portfolio Standards* Docket No. EO06100744 (August 7, 2008).

- 5. COMMENT:** Although COA continues to have reservations over the loss of a solar rebate program, it supports most of the proposed amendments as a means to convert the solar program into a more market-based incentive program that will be more efficient and sustainable.
RESPONSE: The Board appreciates this comment in support of the rules. The Board will continue the solar rebate program through 2012 for less than 50kW solar projects. For more information in funding levels see Order *In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Program*, Docket No. EO07030203.

- 6. COMMENT:** Overall Sun Edison considers that the amendments represent continued progress toward the Board's objective of meeting New Jersey's solar RPS through the market-based trading of SRECs, and applauds these revisions.
RESPONSE: The Board appreciates this comment in support of the rules.

Purpose and Scope

- 7. COMMENT:** PPL suggests amendments to N.J.A.C. 14:8-2.1 in order to alter the emphasis of the subchapter and identify additional beneficial results of renewable technology, as follows:
"This subchapter is designed to encourage the development of renewable sources of electricity and new, cleaner generation technology. **In doing so, it is anticipated that such technology will help to:** minimize the environmental impact of air pollutant emissions [from electric generation; reduce possible transport of emissions and]; minimize any adverse environmental impact from deregulation of energy generation; **and/or support the reliability of the supply of electricity to and/or in New Jersey.**"

RESPONSE: The Board agrees with the commenter that renewable energy technology has additional benefits not listed under N.J.A.C. 14:8-2.1. The Board specifically agrees with the commenter that renewable sources of electricity in general, and solar electric generation in particular, support the reliability of New Jersey's supply of electricity. However, the Board has not revised N.J.A.C. 14:8-2.1, as requested by the commenter because the purpose of this provision is merely to outline the purpose of the subchapter not to create an exhaustive list of the benefits of renewable sources of electricity and of cleaner generation technology. Those benefits have been set forth in previous orders and other documents issued by the Board.

In this line, the Board further notes that the expansion of solar electric generation in New Jersey, which these rules are intended to expedite and sustain, will help to mitigate leakage, as required under P.L. 2007, c.340. This law requires the Board to adopt, by July 1, 2009, rules establishing a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage applicable to all electric power suppliers and basic generation service providers that provide electricity to customers within the State. The law defines leakage to mean "an increase in greenhouse gas emissions related to [electric] generation sources located outside of the State that are not subject to a state, interstate or regional greenhouse gas emissions cap or standard that applies to generation sources located within the State." N.J.S.A. 48:3-87(i). Increasing the amount of electric generation capacity based on low-cost or free sources of fuel, such as solar, will increase the amount of electricity generated in New Jersey and in that way will help to mitigate leakage.

Definitions

8. COMMENT: PPL supports the proposed removal of the voltage reference from the proposed definition of "Electric distribution system" N.J.A.C. 14:4-1.2.

RESPONSE: The Board appreciates this comment in support of the rules.

Wider Eligibility for Solar RECs

9. COMMENT: PSE&G supports the proposed amendments to N.J.A.C. 14:8-2.8 and N.J.A.C. 14:8-2.9 to permit a wider eligibility for Solar Renewable Energy Certificates (SREC). PSE&G believes that these amendments will:

- i. allow the development of large-scale solar generation facilities;
- ii. encourage the deployment of solar technology in New Jersey; and
- iii. assist the efforts associated with meeting New Jersey renewable energy commitments.

RESPONSE: The Board appreciates this comment in support of the rules.

10. COMMENT: PPL suggests amendments to N.J.A.C. 14:8-2.8 and N.J.A.C. 14:8-2.9, which would allow electricity from solar generation tying into transmission lines physically located in New Jersey to qualify for SRECs.

PPL comments that the restriction of SRECs to electricity generated solely by New Jersey solar generation installations is problematic from a regulatory standpoint. Furthermore, the proposed limitation of SRECs to solar generation installations tied to distribution lines physically located in New Jersey is a limitation without reasonable regulatory foundation.

PPL comments that interconnecting larger solar facilities with transmission lines physically located in New Jersey provides the same benefit in terms of reactive power as smaller solar facilities connected to distribution systems in New Jersey. Small and large solar projects help to maintain the reliability of local electricity supplies in New Jersey.

PPL further notes that the legislation does not impose a size limitation on solar generators nor restrict eligibility to tie-ins to distribution lines. Beyond a certain voltage level, generators are going to tie-in to the transmission lines rather than distribution lines. PPL states that the size and tie-in restrictions in the proposal are inappropriate when juxtaposed with New Jersey's solar needs.

PPL believes that in a competitive market, suppliers and providers must be free to identify, build and/or buy solar energy and other renewable energy as they choose, and to meet portfolio obligations in as cost-effective manner as possible in order to remain competitive. Larger solar facilities provide greater market opportunity and economic benefit for capital invested in New Jersey. The proposed RPS regulation would deter or thwart suppliers/providers from delivering large-scale, more efficient, and cheaper solar power to New Jersey.

RESPONSE: The Board will consider the commenter's suggestion to issue SRECs based on electricity from solar generators connected to the transmission system located in New Jersey. However, this is a very complex issue, involving not only potential impacts on the safety and reliability of the electricity grid, but also the interaction of many entities of various sizes and roles, including the regional transmission organization, PJM Interconnection, L.L.C. Therefore, the Board will not make such a change without first providing the public with notice that such a change is being considered and an opportunity to comment specifically on the particular change suggested, or without undertaking a further rulemaking if necessary. In adopting these rules, the Board also approved a separate notice soliciting comments on this issue, which has been posted at www.njcleanenergy.com.

11. COMMENT: Rate Counsel supports the proposal to expand SREC eligibility to larger, non-net-metered solar energy installations since these larger units have an important role to play in achieving the Board's clean energy and renewable energy goals and have lower unit costs, thereby creating potential financial benefits for ratepayers relative to smaller systems.

RESPONSE: The Board appreciates this comment in support of the rules.

12. COMMENT: Sun Edison supports the amendments enabling the creation of SRECs by non-net-metered facilities. The amendment is faithful to the intent of the recent legislative enactment, P.L. 2007, c.300, and consistent with solar industry trends towards development of systems of greater scale.

RESPONSE: The Board appreciates this comment in support of the rules.

Solar REC Trading Life

13. COMMENT: PSE&G comments that the amendments to N.J.A.C. 14:8-2.8(b)1, which establish a longer SREC trading life, should reduce volatility and uncertainty in the SREC market.

RESPONSE: The Board appreciates this comment in support of the rules.

Solar Alternative Compliance Payments (SACP)

14. COMMENT: PSE&G supports the amendments proposed to N.J.A.C. 14:8-2.10, to increase the price of SACPs and to establish an eight year fixed dollar value for SACPs. PSE&G believes this will provide greater regulatory certainty and, by extension, market-based solar initiatives will be encouraged.

RESPONSE: The Board appreciates this comment in support of the rules.

Solar Electric Facility Qualification Life

15. COMMENT: PPL recommends clarifying that after the 15-year qualification life, electricity from solar generation, while not qualifying for SRECs, will qualify for Class I RECs.

RESPONSE: N.J.A.C. 14:8-2.9(l), as proposed and adopted, already incorporates a clarification addressing the Commenter's concerns. That provision states that electricity from solar generation may be used as a basis for SRECs only until the end of its qualification life, and that after the end of the qualification life, the electricity may be used as a basis for class I RECs.

Limiting Ratepayer Impacts

16. COMMENT: Rate Counsel strongly supports the Board's proposal for developing both rate and capacity caps for the solar portion of the RPS. Rate Counsel believes that such mechanisms provide ratepayer protection without jeopardizing the development of solar energy because "freezing" capacity development levels is not the same as eliminating (or even reducing) overall solar energy goals.

RESPONSE: The Board appreciates this comment in support of the rules.

17. COMMENT: Rate Counsel suggests a change to the proposed definition of "Total Costs of Solar Incentives" under N.J.A.C. 14:8-2.2, in order to cover the costs of programs not present today, but approved by the Board in the future. The suggested change is as follows:

"Cost recovery for renewable energy programs approved by the Board under N.J.S.A. 48:3-98.1, **or approved by any other Board Order**, and [which] is paid from any source other than i, ii or iii above."

RESPONSE: The Board intended to be fully inclusive of all Board-approved solar incentives, as evidenced by “catch-all” language in this provision for “other monies appropriated for such purposes” and “paid from any source other than i, ii or iii above.” In addition, the Board interprets the provision as proposed to cover all programs approved by the Board under N.J.S.A. 48:3-98.1, regardless of whether they were approved prior to or after the adoption of this rule. However, to ensure that there is no confusion on this point, the Board has clarified the rule upon adoption to address the commenter’s concern, so that it specifically covers all programs approved after the effective date of the statutory provision.

18. COMMENT: Rate Counsel argues that the rate impacts of developing solar energy are already considerable and does not support increasing development levels beyond current targets. Rate Counsel believes that such an increase would burden ratepayers with a higher level of costs than is necessary.

RESPONSE: The Board understands that ratepayers fund most of the incentives available to support solar energy and is committed to limiting that burden while at the same time allowing a more efficient and prudent use of ratepayers’ money. Accordingly, the Board has put measures in place to control the cost of solar incentives. Those measures include the transition to a more market-based approach to incentives through the eight-year SACP schedule and related measures in the proposal; other measures contemplated in the Board’s solar transition Order, such as facilitating the financing of solar electric generation installations based on long-term contracts for the sale of SRECs; and the freeze of the solar RPS triggered if the total cost of solar incentives exceeds a threshold in the rules.

19. COMMENT: COA comments that the cap system proposed under amendments to N.J.A.C. 14:8-2.3(j) will:

- i. undermine the State’s ability to develop in-state renewable energy resources by limiting the amount of solar generation needed to meet the RPS to 1,700 MW;
- ii. place contingencies on achieving the solar RPS that could reduce the required percentage to below 2.12 percent of 2020 total electric demand; and
- iii. compromise the State’s ability to obtain 20% of our electricity demand through Class I renewable energy sources by 2020.

COA urges the Board to eliminate the MW cap proposed under N.J.A.C. 14:8-2.3(j). The solar RPS establishes a feasible base rate of growth, and that rate should be the floor for progress, not the ceiling. Furthermore, COA argues that setting a MW cap opens the following issues:

- i. if the State fails to achieve its reduction goals in electricity demand, the contribution of solar electricity generation used to meet the RPS will be limited to only 1,700 MW, regardless of the actual total electricity demand of the State;
- ii. if other renewable energy technologies fail to produce the amount of electricity generation necessary to achieve the RPS, the proposed solar MW cap will effectively limit the contribution of New Jersey’s most developed

renewable resource and jeopardize the State's ability to achieve the RPS;
and

- iii. The MW cap will freeze growth in the burgeoning solar market, quelling much needed momentum and destabilizing the market.

RESPONSE: Please see the response to comment 20 below.

20. COMMENT: Sun Edison opposes the 1,700 MW cap established in the rules because it will introduce regulatory uncertainty and compromise the effectiveness of New Jersey's SREC market. The 1,700 MW cap is based on the expectation of 20% reductions of energy consumption by 2020 and it is triggered regardless of whether New Jersey actually achieves this 20% reduction. The rules should provide for assessment of actual energy usage at the time the 1,700 MW cap is met. Sun Edison comments that if New Jersey falls short of its energy efficiency targets, it is precisely in that situation where the State is most likely to need additional clean energy resources to meet economic and environmental objectives.

RESPONSE to comments 19 and 20: The Board agrees with the commenters and has not adopted the automatic freeze of the solar RPS triggered by surpassing a MW/MWh threshold. In the proposal at 40 N.J.R. 3586(a), the Board acknowledged that the freeze based on installed capacity and solar REC usage differed significantly from what was discussed in the stakeholder process, and that the stakeholder process revealed some strong disagreement of opinion over the entire concept of freezing the solar RPS. The Board had therefore requested substantive comments regarding whether the trigger, or the freeze mechanism itself, should or should not be adopted.

The Board has carefully considered the comments received on these matters, and agrees with the commenters that the prospect of a freeze of solar RPS, based on the amount of installed solar capacity and/or the amount of solar electric generation, would increase regulatory uncertainty in the very same rulemaking that the Board proposed in an effort to reduce such uncertainty. The possibility of such a freeze, and the related possibility of reduced demand for SRECs, adds uncertainty about the market value of SRECs and when or whether that market value may change. Such uncertainty is not justified by an offsetting benefit such as control of the overall costs of solar incentives, especially since the Board is providing that benefit by other means – specifically, adopting the cost trigger for a freeze.

Regulatory uncertainty lowers investors' confidence regarding the ability to recover investment costs and to obtain appropriate returns. Low confidence in the investment sector in turn leads to higher financing costs, which are ultimately borne by ratepayers. The Board aims to establish a regulatory framework that stimulates growth in the solar sector at the lowest possible cost to ratepayers. Reducing uncertainty is, therefore, a top priority for the Board in its work towards sustained, orderly market development in the solar sector. Based upon the input and information received in response to the Board's invitation in the proposal to comment on the limits at N.J.A.C. 14:8-2.3(j), the Board has determined that adopting the MW/MWh trigger would cause uncertainty, which could in turn increase the cost of financing solar electric generation systems, adding burdens on ratepayers and

jeopardizing achievement of New Jersey's environmental and energy goals through the solar RPS.

In addition, the Board notes that the Energy Master Plan released by the Governor in October 2008 includes an Action Item to change the solar energy goals from a percentage in the RPS to a goal of 2,120 GWh by 2020. The corresponding implementation strategy for this action item calls for the adoption of this ruling without the megawatt trigger. Therefore, the Board has not adopted the megawatt trigger that was proposed at N.J.A.C. 14:8-2.3(j).

21. COMMENT: COA urges the Board to continue discussions with the solar industry and renewable energy advocates on the cost cap issue to ensure any such policy does not freeze the solar RPS, or otherwise impede growth and development of solar electricity generation in New Jersey.

RESPONSE: The cost trigger established in the rules reflects the Board's effort to establish a sustainable energy policy where environmental, social, and economic interests are protected in a balanced manner. The Board Staff conducted extensive consultation with stakeholders on this point and concluded that the ability to limit the ratepayers' exposure to unacceptably large costs of solar incentives would promote the sustainability of solar incentives and the predictability that those incentives would remain in place. The cost trigger will allow New Jersey solar incentives to better adjust to market circumstances, promoting efficient use of economic sources and investment stability in diverse energy sources. Therefore, the will keep the cost trigger.

22. COMMENT: Sun Edison suggests that the current 2 MW entity cap on the SREC-Only Pilot Program constrains achievement of the Board's solar generation goals, and results in higher cost of compliance, and hinders the creation of permanent, sustainable "green-collar" jobs in New Jersey by forcing solar developers into a stop-start pattern of hiring. Sun Edison strongly supports the prompt removal of the "entity cap".

RESPONSE: As the commenter notes, the "entity cap" was a feature of a pilot program that was not contained in the Board's rules. A notice has been posted at www.njcleanenergy.com advising that, at the same time as it is adopting these solar transition rules, the Board has also eliminated the 2 MW entity cap on the Board's SREC-Only Pilot Program as established by orders *In the Matter of Renewable Portfolio Standards: Recommendations for Alternative Compliance Payments and Alternative Solar Compliance Payments for Energy Year 2008*, Docket No. EO06100744 (January 19, 2007), and *In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resources Analysis for 2005-2008* Docket No. EXO4040276 (August 1, 2007). The elimination of the cap is intended to support the overall purpose of this rulemaking, that is, to harness market forces to promote cost-effective development of solar electric generation facilities. Furthermore, the rules as proposed and adopted have eliminated two specific limitations that affected the SREC-Only Pilot program but will not affect the SRECs market under the regulatory framework in place as of the adoption of these amendments. The first limitation allowed issuance of SRECs based only on electricity generated on

customer-generator's premises; amendments to N.J.A.C. 14:8-2.8(c)1, as proposed and adopted herein, eliminate this restriction. The second limitation restricted ownership of the renewable attributes of solar generation only to customer-generators eligible for net metering (unless otherwise agreed by contract). Amendments to N.J.A.C. 14:8-2.9(m), as proposed and adopted herein, have eliminated this requirement also.

Demonstrating Compliance, Reporting and Record Keeping

23. COMMENT: PSE&G appreciates the change at N.J.A.C. 14:8-2.11(a) to extend the deadline for Electric Distribution Companies (EDCs) to submit their RPS annual report demonstrating suppliers/providers compliance with RPS requirements. The previous reporting deadline was very short. PSE&G believes the change to N.J.A.C. 14:8-2.11(a) assists the EDCs in complying with their reporting requirements while providing positive additional support to the SREC marketplace.

RESPONSE: The Board appreciates this comment in support of the rules.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The RPS has no Federal analogue, and is 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 incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. does not require a Federal Standards Analysis for the proposed amendments.

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

CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.2 Definitions

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

...

"Total cost of solar incentives" means the sum of the following for a reporting year, provided that any particular cost that is within more than one of the categories listed below shall not be counted twice:

1. The total amount of financial assistance for solar electric generation paid from:

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- i. - iii. (No change from proposal.)
 - iv. Cost recovery for renewable energy programs approved by the Board under N.J.S.A. 48:3-98.1 **after January 13, 2008,** which is paid from any source other than i, ii or iii above;
2. - 3. (No change from proposal.)

...

14:8-2.3 Minimum percentage of renewable energy required

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

(j) If the Board determines ***[either of the following:]* that the total cost of solar incentives for a reporting year exceeds two percent of the total retail cost of electricity for that reporting year***, then the percentage of solar electric generation required under Table A for the reporting year in which the Board makes its determination ***[under (j)1 or 2 below]*** shall continue to be the percentage required in each subsequent reporting year, until the limitation ends under (k) below. For example, if the Board determines on December 1, 2018 that the ***cost*** limitation ***[in (j)1 or 2 below]*** was triggered, the percentage of solar electric generation required shall remain at 1.572 percent until the limitation ends under (k) below. The Board may revise Table A accordingly by administrative correction pursuant to N.J.A.C. 1:30-2.7***[:**

- 1. The total cost of solar incentives for a reporting year exceeds two percent of the total retail cost of electricity for that reporting year; or
- 2. The amount of solar electric generation capacity operating in the State exceeds 1,700 megawatts, and that solar RECs representing at least 1.7 million megawatt-hours have been used for compliance with the solar RPS***].**

(k) If the limitation in (j) above was triggered ***[under (j)1 above]***, the limitation shall end after the Board determines that the total cost of solar incentives for a reporting year did not exceed two percent of the total retail cost of electricity for that reporting year. ***[If the limitation in (j) above was triggered under (j) 2 above, the limitation shall end after the Board determines either that the amount of solar electric generation capacity operating in the State does not exceed 1,700 megawatts, or that solar RECs representing less than 1.7 million megawatt-hours have been used for compliance with the solar RPS for a reporting year.]***

- 1. - 3. (No change from proposal.)