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## **PUBLIC UTILITIES**

### **BOARD OF PUBLIC UTILITIES**

#### **Renewable Energy and Energy Efficiency**

#### **Proposed Amendments: N.J.A.C. 14:8-2.4**

Authorized 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.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: QX19060720

Proposal Number:

Comments may be submitted through \_\_\_\_\_, by e-mail in **Microsoft Word format**, or in a format that can be easily converted to Word, to: [rule.comments@bpu.nj.gov](mailto:rule.comments@bpu.nj.gov), or on paper to:

Aida Camacho-Welch, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: QX19060720

44 S. Clinton Ave., 3rd Floor, Suite 314

PO Box 350

Trenton, NJ 08625-0350

**Please take notice**, that the Board recognizes that there may be market implications incident to the proposed 5.1% calculation methodology contained herein. The Board is committed to providing an open and transparent public dialogue, prior to the termination of the Solar

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Renewable Energy Certificate (“SREC”) registration program, on whether Board action is necessary to ensure that the solar market in New Jersey continues to remain healthy.

The agency proposal is as follows:

### **Summary**

The Board of Public Utilities (“BPU” or “Board”) is proposing amendments to N.J.A.C. 14:8-2.4 to conform the existing rules to certain provision of P.L. 2018, c. 17 ("Clean Energy Act" or "Act"). The Act made several changes to the Renewable Portfolio Standard (“RPS”) to provide for an orderly and transparent mechanism that will result in the closing of the existing SREC Registration Program (“SRP”) on a date certain but no later than June 1, 2021. Once it has determined that 5.1% of the kilowatt-hours sold in the State by each electric power supplier and each basic generation provider are generated by solar electric generation facilities connected to the distribution system (“5.1% Milestone”), the Board shall close the SREC Program. No later than 24 months after the date of enactment of the Clean Energy Act, the Board must complete a study that evaluates how to modify or replace the SREC Program to encourage the continued efficient and orderly development of solar renewable energy generating sources throughout the State.

On October 29, 2018, the Board addressed the provisions reducing the SREC term or Qualification Life (“QL”) for solar facilities to reduce the QL to ten years for all applications summited after October 29, 2018, the effective date of the Order, and directed staff to initiate a rulemaking on this matter.

On February 27, 2019, the Board issued another Order finding that the Legislature intended to limit access to the SREC market upon the attainment of the 5.1% Milestone. The

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Board also clarified in the February 27, 2019 Order that certain solar projects in the SRP pipeline that have not commenced commercial operations at the time the State reaches this Milestone may not be eligible to participate in the SREC market.

Based on the monthly reports generated by the SRP and on current estimates of installed capacity and consumption over a rolling twelve month period ending in the previous month, on solar facilities that have achieved commercial operation and that are in the pipeline, Staff anticipates that the 5.1% Milestone will be reached on or about June 2020. Staff will provide quarterly forecasts on the status of the 5.1% Milestone until it appears that this milestone will be reached within six months, and will provide monthly forecasts thereafter. The Board will terminate the SREC Program to new registrations immediately following staff's determination that the 5.1% Milestone has been reached. No new projects will be certified after the Board determines that the 5.1% Milestone has been reached. To this end, the Board proposes the following amendments:

At N.J.A.C. 14:8-2.4(b)(6)(i) to (iii), the Board proposes the variables and methodology to be used to calculate the 5.1% attainment milestone.

At N.J.A.C. 14:8-2.4(b)(7)(ii), the Board proposes to clarify that solar facilities that have submitted a complete registration or application for designation or conditional certification on or before October 29, 2018, but have not commenced commercial operations prior to the 5.1% Milestone will be eligible for a 15-year SREC qualification life subject to its maintaining all other eligibility requirements. A solar facility that submitted a complete registration or application for designation or conditional certification after October 29, 2018, shall not be eligible for SRECs.

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At N.J.A.C. 14:8-2.4(b)(7)(iii), the Board proposes to provide that the commencement of commercial operations shall be determined by the date on which the Electric Distribution Company grants the facility permission to operate or the date of the PJM Interconnection LLC interconnection approval process.

At N.J.A.C. 14:8-2.4(b)(7)(iv), the Board proposes to codify the statutory requirement that termination of the SREC registration program shall occur no later than June 1, 2021.

At N.J.A.C. 14:8-2.4(h)(4)(ii), the Board proposes to clarify that projects that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering and that are conditionally registered after August 7, 2019 will be subject to the conditions set out in proposed N.J.A.C. 14:8-2.4(b)(6) and will not be granted a full 12-month SRP and may not be offered an extension.

At N.J.A.C. 14:8-2.4(h)(4)(iii), the Board proposes to state that projects which applied to the Board for approval, conditionally approval or conditional certification after October 29, 2018 may not be granted a full 24 month SRP and may not be offered an extension.

At N.J.A.C. 14:8-2.4(i), the Board proposes to state that projects conditionally registered after December 31, 2018 such that an expiration date falls after December 31, 2019 may not be granted a full six month extension and that the conditional approval may terminate after the attainment of the 5.1% milestone.

At N.J.A.C. 14:8-2.4(r), the Board proposes to clarify that the Clean Energy Act grid supply escrow requirements, ordered by the Board at its October 29, 2018 and February 27, 2019 agenda meetings, apply only to the class of grid supply projects required to file an application for designation.

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At N.J.A.C. 14:8-2.4(s), the Board proposes to clarify the eligibility criteria for a 10-year SREC life after the attainment of the 5.1% milestone, first ordered by the Board during its October 29, 2018 and February 27, 2019 agenda meetings.

The Board has provided a 60-day comment period on this notice of proposal. Accordingly, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)(5).

### **Social Impact**

The proposed amendments to the RPS rules governing the qualification life of solar generation facilities at N.J.A.C. 14:8-2.4 will have a positive social impact on the State's solar industry by enabling continued growth in a sustainable manner. These amendments will also have a positive social impact on New Jersey ratepayers by providing greater clarity and certainty to the solar industry which is necessary to maintain a robust and growing solar energy portfolio in the State while ultimately reducing the overall financial burden on ratepayers.

### **Economic Impact**

In addition, the proposed amendments clarify the implementation of this portion of the Clean Energy Act and therefore assist in providing certainty to New Jersey's solar industry.

### **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 rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The solar, class I, and class II 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

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State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, a Federal standards analysis is not required for the proposed amendments.

### **Jobs Impact**

The proposed amendments are not anticipated to impact jobs in the State’s solar industry. The proposed amendments clarify the Clean Energy Act’s requirement that the qualifying life of solar facilities for SRECs be shortened but do not change that requirement. Similarly, by reducing the availability of extensions to solar development projects, the amendments recognize the impact of the statutorily mandated end of the SRP on projects under development, but the amendments do not create that impact or alter it.

### **Agriculture Industry Impact**

The proposed amendments, which will update the rules to bring them into compliance with P.L. 2018, c. 17, are not anticipated to have a significant impact upon the agricultural industry. The changes to the SREC Registration length and to the availability of extensions will affect the industry’s electricity costs, if at all, only slightly and indirectly; solar energy is not a significant percentage of the energy generation relied upon in the State and energy costs in their entirety are only one of many factors that affect agricultural costs.

### **Regulatory Flexibility Statement**

A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. The proposed amendments do not impose additional reporting, recordkeeping, or other compliance requirements on small businesses operating renewable electric generation facilities in New

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Jersey or in the rest of the PJM region. Accordingly, no regulatory flexibility analysis is required.

### **Housing Affordability Impact Analysis**

The proposed amendments' impact on the affordability of housing in New Jersey will be insignificant, because the proposed amendments address only incentives for renewable energy generation and do not affect housing prices or the housing market.

### **Smart Growth Development Impact Analysis**

Since the scope of the proposed amendments is limited to the SREC market, the proposed amendments will have no impact on smart growth in New Jersey. It is unlikely that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Board has evaluated this rulemaking and determined that changes in solar incentives will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

## **SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS**

14:8-2.4

(a) No Change

(b) 1-5 No Change

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**6. No new SREC registration shall be accepted following a determination by the Board that 5.1 percent of the kilowatt-hours sold in the State by each electric power supplier and each basic generation provider comes from solar electric power generators connected to the State's electric distribution system has been attained. The Board shall announce the State's attainment of the 5.1% milestone when the installed solar capacity reported through New Jersey's Clean Energy Program ("NJCEP") is estimated to have produced 5.1% of the retail electricity sales estimated to have been sold over the previous twelve months. Starting in March 2020, the Board shall report no later than the last business day of each month the estimated solar electricity generated over the previous twelve months. The trailing twelve months of solar electricity generated shall be estimated by multiplying the latest NJCEP-supplied figure on cumulative installed solar capacity for the previous twelve months by a corresponding solar output factor for each month. The solar output factor is an estimate of solar MWh output from one MW dc of capacity. Board Staff shall produce, based upon stakeholder input, an estimate of solar electricity in MWh expected energy output from one MWdc of installed solar capacity representative of the fleet of NJ solar installations. An estimate of retail electricity sold in the previous twelve months shall be calculated from data supplied by PJM-EIS GATS for load served adjusted for distribution line losses via a factor based upon stakeholder input. The Board's monthly report on estimated solar electricity generated as a percent of estimated retail sales shall include the variables and methodology used for calculation which will include:**

**i. An estimate of the trailing twelve months of solar electricity generated; based upon**

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- a. the monthly cumulative installed solar capacity reported to the SREC Registration program;**
- b. the solar output factors for each of the previous twelve months and how they were derived;**
- ii. an estimate of retail electricity sold and how it was calculated from PJM EIS GATS load served including the distribution line loss factor and its derivation; and**
- iii. the resulting equation and the figure it produces.**

**[i. Termination of SREC registration program shall occur no later than June 1, 2021.]**

**7. Following a report that 5.1% of retail sales were attained from solar electric generation or that attainment of 5.1% of retail sales from solar electric generation is imminent within the next month, the Board shall authorize:**

- i. Solar facilities registered in the SRP pipeline described in (p) below to be eligible for SRECs if:**
  - a. a solar facility commenced commercial operations prior to the 5.1 percent milestone attainment and had submitted a complete registration or application for designation or conditional certification on or before October 29, 2018. Such a facility shall be eligible for the 15-year SREC qualification life; or,**
  - b. a solar facility commenced commercial operations prior to the 5.1 percent milestone attainment and had submitted a complete registration or application for designation or conditional certification after October 29, 2018. Such a facility shall be eligible for the 10-year SREC qualification life.**

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- ii. Solar facilities registered in the SRP pipeline described in (p) below that have not commenced commercial operations prior to the 5.1 percent milestone attainment to have their eligibility determined as follows:**
  - a. Such a solar facility, if it submitted a complete registration or application for designation or conditional certification on or before October 29, 2018, may be eligible for a 15 year SREC qualification life subject to its maintaining all other eligibility requirements.**
  - b. Such a solar facility, if it submitted a complete registration or application for designation or conditional certification after October 29, 2018, shall not be eligible for SRECs.**
- iii. The commencement of commercial operations shall be determined by the date on which the Electric Distribution Company grants the facility permission to operate as referenced in N.J.A.C. 14:8-5 or the date the facility is granted permission to operate through PJM Interconnection LLC.**
- iv. Termination of the SREC registration program shall occur no later than June 1, 2021.**

(c) No Change

(d) No Change

(e) No Change

(f) (Reserved)

(g) No Change

(h) 1-3 No Change

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

i. State that, if the solar facility is constructed as described in the initial registration package, Board staff will issue a New Jersey State Certification Number for the solar facility upon construction completion and inspection **subject to conditions referenced in N.J.A.C 14:8-2.4(b)7; and**

ii. Include an expiration date 12 months after the date of the notice for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering [or]. **Subject to the date of the Board’s determination on the State’s attainment of the 5.1% Milestone, facilities that are registered after August 7, 2019 may not be granted a full 12 month registration length and may not be eligible for an extension; and**

[or an expiration date 24 months after the effective date of Board approval, designation, or conditional Board certification where Board approval, designation, or conditional certification is required; and]

iii. **Include an expiration date 24 months after the effective date of Board approval, designation, or conditional certification for solar electric generation facilities where Board approval, designation, or conditional certification is required. Subject to the Board’s determination on the state’s attainment of the 5.1% Milestone, projects which applied to the Board for approval, conditional approval or conditional certification after October 29,**

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**2018 may not be granted a full 24 month registration length and may not be offered an extension.**

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

(i) Construction of the solar electric generating facility shall be **subject to the qualifications at N.J.A.C. 14:8-2.4 (b)7 and shall be** completed prior to expiration of the conditional registration.

The registrant for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering, **and which received conditional registration before December 31, 2018,** may request one extension prior to the expiration of the conditional registration, and shall include an updated schedule for completion. Except for registrations submitted for projects approved or conditionally approved for designation as "connected to the distribution system" under (g) above, Board staff may authorize one extension of the project's registration on a case-by-case basis, based on the likelihood of timely and successful completion of the solar facility. An extension shall provide a new expiration date, six months from the expiration of the original conditional registration. **A project that is provided conditional registration after December 31, 2018, such that it has an expiration date falling after December 31, 2019, may not be granted the full six month extension. The conditional registration of such a project may end when the Board has determined that the 5.1 percent Milestone has been attained.**

If the conditional registration, or extension, expires before construction is complete, the registrant shall begin the entire registration process again by submitting an initial registration package. Board staff shall treat the new registration package as if it were a first-time submittal,

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with no reference to the previous registration process. Facilities that require approval or certification by the Board, other than those requiring approval of designation under (g) above, must seek extensions of the conditional registration expiration date directly by application to the Board, unless otherwise directed by the Board. Registrants who file after failure to complete during the initial 18 or 24 month registration period shall not be subject to the penalty set out at (e) above if the Board finds that the failure to complete within time was reasonable.

**If these projects were provided conditional certification after October 29, 2018, they may not be granted a full 24 month to complete the project and may not be offered an extension.**

(j) No Change

(k) No Change

(l) No Change.

(m) No Change

(n) No Change

(o) No Change.

(p) No Change

(q) No Change

**(r) The Board shall approve, conditionally approve, or disapprove any application for designation as connected to the distribution system of a solar electric power generation facility filed with the Board** no more than 90 days after receipt by the Board of a completed application. For any such application for a project greater than 25 kilowatts, the Board shall require the applicant to post a notice escrow with the Board in an amount of \$40.00 per kilowatt of DC nameplate capacity of the facility, not to exceed \$40,000. The notice escrow amount shall

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be reimbursed to the applicant in full upon either denial of the application by the Board or upon commencement of commercial operation of the solar electric power generation facility. The escrow amount shall be forfeited to the State if the facility is designated as connected to the distribution system pursuant to this subsection but does not commence commercial operation within two years following the date of the designation by the Board. **This escrow requirement only applies to the class of grid supply projects required to file an application for designation.**

(s) [The SREC term shall be 10 years for all applications for designation as connected to the distribution system of a solar electric power generation facility filed with the Board after May 23, 2018, the date of enactment of P.L. 2018, c. 17 (N.J.S.A. 48:3-87.8 et seq.).]

**The qualification life shall be 10 years for all solar generation projects for which the Board receives a complete registration or application for designation as connected to the distribution system or conditional certification after October 29, 2018, which achieves commercial operation prior to attainment of the 5.1 percent Milestone, and which is otherwise eligible for conditional registration.**