Agenda Date: 10/28/26
Agenda Item: 8A

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE DUAL-USE SOLAR ENERGY PILOT PROGRAM	)	ORDER ON PRE-CONSTRUCTION SOIL SAMPLING FOR PROGRAM YEAR 1
	)	DOCKET NO. QO23090679

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Decision and Order, the New Jersey Board of Public Utilities ("Board" or "BPU") will consider Board Staff's ("Staff") recommendation for a waiver of the Board's rules pursuant to N.J.A.C. 14:8-13.8(f) to perform pre-construction soil sampling within ninety (90) days of the effective date of the Board's order dated August 12, 2026,[1] for good cause shown. The waiver of these rules is only applicable to the projects selected for awards in the first solicitation of the Pilot Program.

BACKGROUND

Development of Dual-Use Pilot Program

The Solar Act of 2021[2] directed the Board to establish a program to incentivize the development of 3,750 megawatts ("MW") of solar in New Jersey by 2026 through the mechanism of Solar Renewable Energy Certificates IIs ("SREC-IIs"), representing the value of the environmental attributes produced by the solar electric power generation facility. By Order dated July 28, 2021,

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[1] In re Dual-Use Solar Energy Pilot Program - Order on the Outcome of the First Solicitation in the Dual-use Pilot Program, BPU Docket Nos. QO23090679 et al., Order dated August 12, 2026 ("August 2026 Order").

[2] P.L. 2021, c. 169.

the Board opened the Successor Solar Incentive ("SuSI") Program on August 28, 2021.[3] The SuSI Program serves as the Board's permanent program for providing solar incentives to qualified solar electric generation facilities; it is divided into the Administratively Determined Incentive ("ADI") and the Competitive Solar Incentive ("CSI") Programs.

On July 9, 2021, the Dual-Use Solar Energy Act of 2021[4] ("Dual-Use Act" or "Act") was signed into law. The Act directed the Board, in consultation with the New Jersey Secretary of Agriculture, to adopt rules establishing a Dual-Use Pilot Program ("Pilot Program") within 180 days following the enactment of the Dual-Use Act.[5] The Pilot Program is open to qualifying Dual-Use Solar Energy Projects with a capacity no greater than ten (10) MW and hosted on unpreserved farmland in active agricultural or horticultural use ("Pilot Program projects").

On May 1, 2023, the Board approved and executed a three-year grant agreement with the Rutgers Agrivoltaics Program ("RAP") at Rutgers University ("RU") to facilitate the development and implementation of the Pilot Program.[6] As well as working with RAP, Staff consulted with the New Jersey Department of Agriculture ("NJDA"), the State Agriculture Development Committee ("SADC"), and the New Jersey Department of Environmental Protection ("NJDEP,") (collectively, the "State Agencies") and obtained the input of public Stakeholders in designing the Pilot Program.

By Order dated October 23, 2024,[7] the Board launched the Dual-Use Pilot Program. The Board ordered that the Pilot Program be open to qualifying grid supply projects; qualifying grid supply projects paired with storage; net metered non-residential projects greater than five (5) MW; and net metered non-residential solar projects less than five (5) MW. The Board approved a capacity target of up to 200 MW total for the thirty-six (36) month duration of the Pilot Program – the Pilot Program capacity is additional to the capacity otherwise awarded under the SuSI programs.

A rule proposal to codify the Pilot Program and integrate it with the larger SuSI Program set forth at N.J.A.C. 14:8-11 was published in the New Jersey Register on December 2, 2024 ("Dual-Use Rule Proposal").[8] The rules were adopted with proposed substantial changes upon adoption on January 5, 2026.[9] The proposed amendments were also adopted on June 15, 2026.[10]

Program Year 1 ("PY1") – Solicitation Round 1

Pursuant to the October 2024 Order, on January 6, 2025, Staff issued a Notice of Incentive

[3] In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO20020184, Order dated July 28, 2021.

[4] P.L. 2021, c. 170.

[5] N.J.S.A. 48:3-87.13(a).

[6] In re a Dual-Use Solar Energy Pilot Program Grant Agreement between the New Jersey Board of Public Utilities and Rutgers, the State University on behalf of its RU Agrivoltaics Program, BPU Docket No. QO23010008.

[7] In re Dual-Use Solar Energy Pilot Program, BPU Docket No. QO23090679, Order dated October 23, 2024, corrected on January 2, 2025 ("October 2024 Order").

[8] 56 N.J.R. 2271(a).

[9] 58 N.J.R. 60(a) and 58 N.J.R. 14(1).

[10] 58 N.J.R. 1681(a).

Availability ("NOIA") with a capacity target up to fifty (50) MW.[11] The NOIA opened the pre-qualification period to Expression of Interest ("EOI") submissions on January 6, 2025 and closed it on February 14, 2025 at 11:59:59 PM. In response to the NOIA, the Pilot Program received EOIs from thirty-three (33) prospective projects totaling around 140 MW. These projects were proposed in eleven (11) counties across New Jersey and represented a wide variety of production systems on unpreserved farmland. Five (5) EOIs were not approved to submit applications due to noncompliance with program requirements and unresolved administrative deficiencies. The remaining twenty-eight (28) projects received prequalification application approval letters from Staff.

By Order dated November 21, 2025,[12] the Board increased the capacity target to sixty-five (65) MW for the first application period and opened to applications on January 14, 2026 and closed on February 25, 2026. The Board received seventeen (17) prequalified applications totaling 57.05 MW of solar generation capacity. By the August 2026 Order, the Board approved with conditions sixteen (16) projects to receive SREC-II awards ("PY1 awarded projects"), totaling about fifty-two (52) MW of capacity.

Pre-Construction Soil Monitoring Requirements

In the October 2024 Order, the Board ordered Pilot Program projects to monitor and conduct research for the duration of the Pilot Program pursuant to the requirements contained within Appendix B.[13] In addition, the Board ordered that each awarded applicant develop a Construction, Operations, Monitoring, and Project Research Plan ("COMPR") establishing the terms and conditions for maintaining eligibility for the SREC-II incentive. A COMPR is defined as the document or set of documents filed with the Board Secretary's Office describing key elements of a selected project.[14]

Appendix B outlined that within ninety (90) days of receipt of notice of selection for a Dual-Use Solar Energy Pilot Program award, a report prepared by a qualified soil scientist or geotechnical engineer is required to be added to the COMPR on the pre-construction soil quality characteristics across the project site, solar array, and research control area ("Pre-Construction Soil Report" or "Report"). Appendix B, Section A, further outlined that the Report must include the following parameters: 1) soil map unit; 2) soil textural classification; 3) hydrologic soil group; 4) organic matter content; 5) salinity; 6) macro- and micronutrient content; 7) bulk density; 8) overall slope; and 9) topography of the project site.

In the November 2025 Order, the Board approved updated monitoring and research requirements contained within Appendix A.[15] Included in these updates were clarification of monitoring of the pre-construction soil quality characteristics "before site preparation begins". Appendix A also

[11] Board of Public Utilities, Notice: In the Matter of the Dual-Use Solar Energy Pilot Program, Dual-Use Solar Energy Pilot Program – Notice of Solar Incentive Availability, BPU Docket No. QO23090679 (January 6, 2025).

[12] In re Dual-Use Solar Energy Pilot Program - Order for the First Application Period of the Dual-Use Pilot, Program Year 1, BPU Docket No. QO23090679, Order dated November 21, 2025 ("November 2025 Order").

[13] Appendix B of October 2024 Order.

[14] October 2024 Order at page 8.

[15] Appendix A of November 2025 Order.

updated that the Pre-Construction Soil Report must contain: 1) Soil map unit(s), soil type(s), textural classification, hydrologic soil group, salinity, and overall slope, as provided by a soil map; 2) Bulk density and soil volumetric water content covering the depth range of zero to at least fifteen (15) inches below the surface, or zero inches below the surface to the depth of a restrictive layer; 3) Penetration resistance covering the depth of zero to at least fifteen (15) inches below the surface, or zero inches below the surface to the depth of a restrictive layer; 4) Nutrients, pH, total soil carbon, soil respiration, particle-size (texture), cation exchange capacity ("CEC"), and exchangeable cations, as provided by a laboratory analysis; and 5) Infiltration rate.

The requirement to submit the Pre-Construction Soil Report within ninety (90) days of notice of selection for a Pilot Program award was adopted at N.J.A.C. 14:8-13.8(f) on January 5, 2026.[16] The updated requirements of the parameters to be included in the Report were proposed as substantial changes upon adoption at N.J.A.C. 14:8-13.10(b) on January 5, 2026,[17] and fully adopted on June 15, 2026.[18]

By the August 2026 Order, the Board directed all awarded projects to submit a Pre-Construction Soil Report prepared by a qualified soil scientist or geotechnical engineer on the pre-construction soil quality characteristics across the project site, solar array, and research control area within ninety (90) days of the effective date of the Board Order (i.e., by November 17, 2026), pursuant to N.J.A.C. 14:8-13.8(f) and N.J.A.C. 14:8-13.10(b). The Board also directed awarded projects to submit an initial COMPR within ninety (90) days of the effective date of the Board Order.

Coordination with Research Partners

On April 22, 2026, the Board approved and executed a three (3)-year memorandum of understanding ("MOU") between the Board and RAP for continued support in the implementation of the Pilot Program.[19] Among other terms and conditions of the MOU, the scope of work defined that RAP shall "work with provisionally approved applicants in each application period to perform site visits and consultations, develop the project-specific COMPR, assist with the COMPR approval process, and create and maintain a filing system for approved project data". RAP shall also "work with fully approved applicants from each application period on the research and production component of their projects, including research data collection as needed, verification of agricultural or horticultural production, data processing, annual survey, and visualization."

In the August 2026 Order, consistent with the purpose of the Pilot Program and with the research, monitoring, and reporting requirements established in the Pilot Program rules, the Board directed Staff to issue project award letters that required selected projects to further coordinate with their research partners, including RAP, BPU, and NJDA, on how to collect project data to ensure meaningful analysis and evaluation. During the course of early coordination efforts, the RAP soil team identified a concern about completing all the pre-construction soil sampling within the ninety (90)-day period described in the August 2026 Order.

[16] 58 N.J.R. 60(a)

[17] 58 N.J.R. 14(1).

[18] 58 N.J.R. 1681(a).

[19] In re a Dual-Use Solar Energy Pilot Program Memorandum of Understanding between the New Jersey Board of Public Utilities and Rutgers, the State University, on behalf of its RU Agrivoltaics Program, BPU Docket No. QO2601006.

Based on a letter provided by RAP to Staff dated September 21, 2026,[20] the reasons for extending the pre-construction soil sampling timeline are: 1) RAP has been tasked to sample sixteen (16) awarded projects instead of the originally anticipated ten (10); 2) RAP anticipates potential delays in accessing the farms due to the time needed for landowner/farmer approvals and ongoing agricultural uses (e.g., crop has not yet been harvested); and 3) RAP may encounter poor soil conditions (too dry/wet) that could delay certain measurements such as penetration resistance and infiltration rate. Therefore, RAP has proposed a two-tier approach. First, RAP plans to complete soil sampling for nutrient analysis and carbon content within the ninety (90)-day period and submit a report to the BPU that summarizes the measured data ("Tier 1"). Second, RAP will conduct the remaining tests (penetration resistance, infiltration rate, water content, and bulk density) as soon as possible ("Tier 2"). However, completion of these tests at all sites may be as late as April 2027 because winter weather often leads to frozen/saturated soil conditions.

In order to understand if this approach would delay project construction timelines, Staff requested updated timelines from PY1 awarded projects. RAP anticipates that the proposed soil sampling schedule will not negatively impact construction schedules due to the updated anticipated dates provided by PY1 awarded projects.

Staff Recommendations

The Board originally developed these monitoring requirements to ensure that soil data collection for the Pre-Construction Soil Report occurred prior to any site preparation21 and that sampling would characterize pre-construction soil quality conditions without any delay of project development. However, Staff recognizes the complexity of collecting soil samples within this original timeframe. Staff also recognizes that when the requirements were developed, it was impossible to know when projects would be awarded, and thus when the Pre-Construction Soil Report would be due. Moreover, upon coordination with PY1 awarded projects, Staff believes that most projects will only begin site preparation as early as the fall of 2027 and, therefore, completing soil sampling in the spring of 2027 should not impact project timelines.

In consultation with NJDA, Staff therefore recommends the Board waive its rules at N.J.A.C. 14:8-13.8(f). Staff recommends requiring the Pre-Construction Soil Report to be submitted by a revised deadline of June 1st, 2027.

Staff recommends allowing the deadline to be administratively extended beyond June 1, 2027, on a project-by-project basis based on sufficient evidence of extenuating circumstances. Extensions would be requested by email to the Dual-Use Program Administrator (njreinfo@njcleanenergy.com) with adequate justification and evidence of extenuating circumstances, at least thirty (30) calendar days before the effective deadline. The request should

[20] Appendix A.

[21] For the purposes of the Pre-Construction Soil Report, site preparation should include any activity related to solar development that could meaningfully impact physical properties of soil. Site preparation would include any field activities that involves heavy equipment, clearing of hedgerows, or earth movement. The installation of silt fencing or other precautionary soil erosion and stormwater controls would constitute site preparation. Site preparation should exclude cover cropping for one season in preparation for construction.

include a proposed new deadline for consideration, ranging from ten (10) to one hundred and eighty (180) calendar days. Staff will use the following criteria to assess the necessity of granting an extension: (1) the project has faced significant setbacks in development timeline, as reflected by updated Milestone Reporting Forms; (2) a soil scientist or geotechnical engineer assessed that soil conditions (e.g. too dry/wet) were not adequate for testing and that the requested extension would improve data quality; and (3) the extension will not cause any delay of site preparation. Staff also recommends the "Pre-Construction Soil Report" form from the COMPR must be updated at the time of the request, pursuant to N.J.A.C. 14:8-13.13, Reporting and recordkeeping, and submitted to reflect the current status of pre-construction soil testing and the justification within the email. Within fifteen (15) calendar days upon receiving the letter, Staff will issue a written decision on letterhead delivered via email granting or denying the extension; if granting the extension, Staff will state the new deadline in the letter, and the awarded project would need to add the letter to the COMPR Plan.

This recommendation refers only to the submission of the Pre-Construction Soil Report and does not apply to any other requirements of the Pilot Program, including other requirements required within ninety (90) days of the effective date of the August 2026 Board Order, such as the submission of the COMPR.

DISCUSSION AND FINDINGS

New Jersey's solar programs have created a thriving industry, and the Board has strongly supported the development of innovative technical advances for clean energy and renewable energy projects throughout the State. Through the Pilot Program, the Board is committed to establishing New Jersey as a marketplace leader in agrivoltaics in accordance with the requirements of the Dual-Use Act, while at the same time controlling ratepayer costs and working with State Agencies to protect the state's farmland and natural resources.

The Pilot Program seeks to demonstrate and provide information on the compatibility of agricultural or horticultural production and solar photovoltaic infrastructure on the same land. With the COMPR, the Board has taken a methodological approach in supporting Dual-Use Solar Energy Projects by developing the Pilot Program with the extensive and continual involvement of RAP and State Agencies. The Pilot Program requires each project to collect data for the purposes of monitoring and evaluation in order to establish standards for agrivoltaics projects for a permanent program. N.J.A.C. 14:8-13.8(f) captures the ninety (90)-day pre-construction soil sampling COMPR requirement in question. The goal of N.J.A.C. 14:8-13.8(f) is to capture soil and site conditions prior to influence of solar energy development, as it was intended to be compared with soil and site conditions post-construction and in future years of the Pilot Program. Because of the need of advanced coordination between parties and detailed data collection required by the Board, there are situations that arise that need to be addressed for the success of the Pilot Program.

Pursuant to N.J.A.C. 14:1-1.2(b), the Board shall, in accordance with the general purposes and intent of its rules, waive a specific provision where full compliance would adversely affect ratepayers, the ability of a utility to provide safe, adequate, and proper service, or the interests of the general public.

First, acknowledging the experimental nature of a Pilot Program, and the understanding that initial goals and designs, while well researched, still leave room for adjustment to achieve programmatic

success and optimal benefit to New Jersey ratepayers, here, based on the information shared by RAP in a letter dated September 21, 2026, and the recommendations of Staff, a waiver of N.J.A.C. 14:8-13.8(f) is in the public interest. A waiver would afford RAP the best opportunity to complete the soil sampling requirements with the most accurate data, while also having no negative impact on the awarded Pilot Program projects. Further, based on the reasonable anticipations of RAP and the current information available regarding anticipated project completion timelines provided by developers, there is no suggestion that a waiver of the ninety (90)-day soil sampling COMPR requirement would negatively impact project construction schedules, avoiding any adverse impacts to program participants. Additionally, as the purpose and intentions behind the ninety (90)-day soil sampling requirement will likely not be affected or discarded by granting Staff's requested relief as supported by RAP, it affirms the belief that neither program participants nor New Jersey rate payers would be adversely affected or disadvantaged by the waiver of the rule. Moreover, strict adherence to the rules would adversely affect all Pilot Program projects, resulting in loss of PY1, thereby resulting in a negative impact to ratepayers due to loss of solar benefits derived from the program.

After a review of the record and Staff's recommendations, the Board **FINDS** that the revised deadline for the Pre-Construction Soil Report is justified because of the complexity of collecting soil samples within the original timeframe. The Board **FINDS** that modifying this timeline for PY1 awarded projects will not significantly impact development timeframes for the projects. The Board **FURTHER FINDS** modifying this timeline for PY1 awarded projects will not likely impact the monitoring and research requirements for the Pilot Program.

Accordingly, the Board, having reviewed Staff's request and the information provided herein, **HERBY FINDS** that good cause exists pursuant to N.J.A.C. 14:1-1.2(b) for the Board to relax its soil sampling rules outlined in N.J.A.C. 14:8-13.8(f) for PY1 awarded projects and **GRANTS** Staff's waiver request.

The Board **DIRECTS** all PY1 awarded projects to submit the Pre-Construction Soil Report by June 1st, 2027 prepared by a qualified soil scientist or geotechnical engineer on the pre-construction soil quality characteristics across the project site, solar array, and research control area pursuant to N.J.A.C. 14:8-13.10(b). The Board **DIRECTS** Staff to be able to grant additional extensions to this deadline on a project-by-project basis, based on the criteria listed in Staff's recommendations to assess the necessity of granting extensions.

Finally, unless expressly stated otherwise, the Board **HEREBY APPROVES** all Staff recommendations set forth within the body of this Order.

This Order shall be effective on October 28, 2026.

DATED: October 28, 2026

BOARD OF PUBLIC UTILITIES
BY:

BEN HERTZ-SHARGEL
PRESIDENT

CHRISTINE GUHL-SADOVY
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

EMMA REBHORN
COMMISSIONER

JOSEPH COVIELLO
COMMISSIONER

ATTEST:

SHERRI L. LEWIS
BOARD SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE DUAL-USE SOLAR ENERGY PILOT PROGRAM
DOCKET NO. QO23090679

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September 21, 2026

NJ Board of Public Utilities
Laura Scatena
Dual-Use Solar Energy Pilot Program

Re: Pre-Construction Soil Sampling

Dear Laura,

The RAP soil team is concerned about completing all the pre-construction soil sampling within the 90-day period described in the Board Order. The reasons are:

- We collectively decided to sample 16 projects instead of the original 10,
- We anticipate potential delays in accessing the farms due to the time needed for landowner/farmer approvals and ongoing agricultural uses (e.g., crop has not yet been harvested),
- We may encounter poor soil conditions (e.g., too dry/wet, frozen) that could delay certain measurements such as penetration resistance and infiltration rate.

Therefore, we propose a two-tier approach:

1. We will complete soil sampling for nutrient analysis and carbon content within the 90-day period. RAP will submit a report to the BPU that summarizes the measured data.
2. We will conduct the remaining tests (penetration resistance, infiltration rate, water content, and bulk density) as soon as possible after the first round of sampling. However, completion of these tests at all sites can be as late as April 2027 because winter weather often leads to frozen/saturated soil conditions.

We anticipate that our proposed soil sampling schedule will not negatively impact construction schedules because we were informed that there is only one project that could potentially start construction this winter or early next spring. For that project, and any other potential project with a similar construction schedule, we propose completing all the pre-construction soil measurements prior to construction.

In any case, our overall goal is to schedule our soil sampling campaign strategically so that we can complete data collection at each site as quickly as possible. Please let us know if this approach is acceptable.

Sincerely,

A.J. Both and Dave Specca
Rutgers Agrivoltaics Program