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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

COMPETITIVE SOLAR INCENTIVE PROGRAM

Proposed Amendments: N.J.A.C. 14:8-1.2, 11.1, 11.2, 11.4, 11.5, 11.6 and 11.7

Proposed New Rule: N.J.A.C. 14:8-11.10

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Dr. Zenon Christodoulou, and Robert M. Gordon, Commissioners.

Authority: N.J.S.A. 48:3-115(c), N.J.S.A. 48:3-49 et seq., 48:3-87, 48:3-116 through -118

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

BPU Docket Number: QX22100653

Proposal Number:

The deadline for comments on this matter is 5:00 p.m. on _____, 2022. While all comments will be given equal consideration and will be made part of the final record of this proceeding, the preferred method of transmittal is via the Board's Public Document Search tool, by searching for the specific docket listed above and using the "Post Comments" button. Written comments may also be submitted. Please include subject matter and docket number and submit to:

Secretary of the Board

New Jersey Board of Public Utilities

44 South Clinton Ave., 1st Floor

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All comments are considered “public documents” for purposes of the State’s Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth in N.J.A.C. 14:1-12.3.

The agency proposal is as follows:

Summary

The Board of Public Utilities (“Board”) is proposing to amend its existing solar energy rules to include the Competitive Solar Incentive Program (“CSI”), as part of the larger Successor Solar Incentive (“SuSI”) Program set forth in N.J.A.C. 14:8-4. The CSI Program is designed to provide incentives to larger solar facilities within the SuSI Program which serves as the permanent program for providing solar incentives to qualified solar electric generation facilities.

The Clean Energy Act of 2018, L. 2018, c. 17 (“Clean Energy Act”), as modified by a series of solar-related amendments passed by the Legislature on June 30, 2021, and signed by Governor Murphy on July 9, 2021 (hereinafter referred to as the “Solar Act of 2021”), directs the Board to

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establish a comprehensive program to provide incentives for the development of at least 3,750 megawatts of new solar power generation by 2026.

Specifically, the Solar Act of 2021 directs the Board to create two solar incentive programs, as part of the SREC-II program, which largely track the solar program designs that the Board has been considering in the stakeholder proceeding conducted under Docket No. QO20020184:

- Section 3 of the Solar Act of 2021 directs the Board to “develop . . . a small solar facilities incentive program to award [New Jersey Solar Renewable Electricity Certificates-IIs (“NJ SREC-IIs” or “SREC-IIs”)] to the owners of community solar facilities and net metered solar facilities” up to 5 megawatts (MWdc) in size.” L. 2021, c. 169, § 3 (codified at N.J.S.A. 48:3-116). Net metered solar generation facilities are generally connected to the distribution system and most of the solar produced is consumed by the customer on site (see N.J.S.A. 48:3-87(e) and N.J.A.C. 14:8-4); and
- Section 4 of the Solar Act of 2021 directs the Board “develop and administer . . . a transparent, fair, and competitive solicitation process . . . to promote the construction of solar electric power generation facilities” for larger “grid supply” solar facilities and net metered solar facilities greater than 5 MWdc in size. L. 2021, c. 169, § 4 (codified at N.J.S.A. 48:3-117). Grid supply facilities are often connected to the high voltage transmission system and sell electricity and capacity at wholesale.

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In compliance with these statutory directives, the Board’s SuSI Program is comprised of two sub-programs: the existing Administratively Determined Incentive (“ADI”) Program, which provides incentives to facilities under Section 3 of the Solar Act of 2021; and the newly-established CSI Program, which serves the larger facilities addressed in Section 4 of the legislation.

Regulations that apply to both the ADI and CSI Programs were adopted through prior Board action. These include such matters as how the solar incentives are created, tracked, and ultimately paid to solar developers, and registration rules. In particular, the Board approved that the incentive in both the ADI and CSI Programs be delivered through NJ SREC-IIs, as required by Section 2(a) of the Solar Act of 2021. See L. 2021, c. 169, § 2(a); see also 54 N.J.R. 368(a) (Feb. 22, 2022).

While the CSI Program proposed herein involves a competitive methodology for determining the value of each NJ-SREC-II, once the value is established, the NJ-SREC-IIs awarded under the CSI Program are assigned a fixed value, in \$/megawatt-hour (\$/MWh) of solar electricity produced from a qualifying facility and paid out for the duration of a project’s eligibility for said incentive (the “Qualification Life”). Using a \$/MWh incentive structure ensures that solar facilities receive financial incentives only when they actually produce clean solar electricity, which appropriately places the risk of equipment failures, poor siting, construction, or other risks on private developers instead of ratepayers. The competitively established incentive value further has the

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benefit of providing the financial certainty required to facility developers participating in the CSI Program, while limiting ratepayer contributions to what is needed to facilitate solar development.

Here, the Board proposes amendments to the SuSI Program rules to establish the specifics of the CSI Program design, which includes implementation of an SREC-II award for grid supply solar facilities (that is, projects connected to the grid in front of the meter that sell electricity into the wholesale markets), net metered non-residential solar facilities over 5 MWdc, and certain electricity storage facilities that are combined with grid supply solar installations. As required by the Solar Act of 2021, the value of the incentives in the CSI Program will be determined by market forces through a competitive process.

The intention of the CSI Program is to promote the development of new solar projects that will create a substantial number of green economy jobs, while allowing the State to progress toward meeting its renewable energy goals by leveraging the maturing solar industry to achieve maximum benefits to ratepayers at the lowest reasonable cost. The targets set and the transparency of the process are intended to support the continued growth of solar deployment throughout the State. Further, the existing rules specify that all projects participating in the SuSI Program of over 1 MW in size are required to meet the Board's prevailing wage requirements.

The proposed rule amendments establish the CSI program structure so that it consists of separate procurement categories, or tranches, to ensure that a range of competitive solar project

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types qualify to receive SREC-IIs, despite, in some cases, potentially different project cost profiles.

The Solar Act of 2021 gives the Board discretion in designing the tranches in the CSI Program, provided the tranche system enhances the diversity of energy resources and results in environmental and public health benefits to New Jersey.

The recommended tranches are designed, in part, to comply with the provisions of the Solar Act of 2021, which direct that “[t]he development of grid supply solar should be directed toward marginal land and the built environment and away from open space, flood zones, and other areas especially vulnerable to climate change” and call for a policy approach that will “affordably expand New Jersey’s commitment to renewable energy while not compromising the State’s commitment to preserving and protecting open space and farmland.” N.J.S.A. 48:3-114(c). While siting rules applicable to CSI-eligible solar facilities participants are being discussed in a companion proceeding, BPU Docket No. QX22100654, these considerations helped to inform the establishment of the proposed tranches as detailed below. The proposed rules establish the following tranches:

- Tranche 1 serves as a basic grid supply category that would include certain grid supply projects that do not qualify for one of the tranches below (e.g., greenfield solar projects).
- Tranche 2 covers grid scale solar projects located on the built environment, including rooftops, raised carports over parking lots or parking decks, or similar installations.

Considering these projects in a separate tranche recognizes that the Board may choose

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to select these projects even if they come at some price premium over greenfield solar development, while establishing a competitive structure to set an appropriate market price for these projects.

- Tranche 3 allows a specific subset of projects on contaminated sites and landfills, recognizing that such projects may need special consideration to be competitive in the CSI Program, due to the additional costs of mitigating the contamination and securing permits, as well as the longer development cycle that these complicated projects often entail. This tranche also follows the direction provided by the Solar Act of 2021, which states that the solar solicitation program must “ensure that the environmental and public health benefits of solar electric power generation facilities on contaminated sites or landfills are recognized, including accommodating the long development timescale for these projects.” N.J.S.A. 48:3-117(c)(8).

New Jersey is a leader in solar development on landfills and brownfields, with approximately 254 MW operational under N.J.S.A. 48:3-87(t) as of October 28, 2022. The Board has long recognized the benefits of solar development on contaminated sites and landfills, not least because such development has enabled clean-up and mitigation activities on such sites, and because, given the limited availability of land in New Jersey, using contaminated sites and landfills for solar development reduces development pressure on open space. A separate tranche for development on contaminated sites and landfills is a prudent step to ensure that New Jersey continues to be a national leader in

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using contaminated sites and landfills to host solar facilities, while reducing pressure to site solar on the State's remaining open space. Creating a tranche exclusively for projects located on contaminated sites and landfills ensures that the CSI Program will procure the targeted number of megawatts of solar on these lands every year. In the near term, these projects may be more expensive than projects not located on contaminated land. However, as solar development continues and potential solar development sites become scarcer, this type of solar development may become more competitive with other solar projects, and savings may result from preserving the knowledge and infrastructure that currently exists in New Jersey to support such development.

- Tranche 4 comprises net metered non-residential projects greater than 5 MW, whereas net metered solar projects in New Jersey of 5 MW or less continue to qualify for inclusion in New Jersey's ADI Program as specified in the Solar Act of 2021. While it is not known how many qualifying large net metered projects are likely to compete in the CSI Program, the previous Transition Incentive or "TI" Program received a robust response from large (> 5 MW) net metered projects, suggesting that there could be significant potential participation by large net metered projects. Net metered projects may have some inherent advantages in a competition against wholesale projects, since they already receive some degree of subsidy, compared to wholesale projects, in the form of net metering credits, which results in sales revenues that are typically higher than the wholesale cost of power. By breaking these projects out into their own tranche, the Board

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will be able to award SREC-IIs to the most competitive net metered projects, while ensuring that there is still room in the program for other types of projects. Within this net metered project tranche, the Board does not propose to differentiate between different types of sites being developed (i.e., no additive preference for contaminated sites or built environment projects), in order to ensure sufficient competition within the tranche.

- Tranche 5 is dedicated to projects that pair grid supply solar generation and energy storage facilities. New Jersey is currently establishing an independent energy storage program in BPU Docket No. QO22080540. Here, the Board proposes support for storage facilities in the context of the CSI Program by offering competitively set incentives for grid supply solar projects that are paired with storage. Adding storage to a solar project carries benefits that can result in increased project revenues over time. Solar projects that include storage can benefit from increased capacity ratings in PJM wholesale markets and from being able to store energy produced when local wholesale prices are low and sell when those prices are higher. Storage facilities paired with net metered solar do not necessarily provide the same benefits to the grid, and the Board does not propose allowing storage facilities paired with a Tranche 4 project to compete in Tranche 5.

In order to compete in Tranche 5, a solar plus storage project will provide a two-part bid: a solar-only SREC-II price and a storage adder price. The project will first be considered as a solar-only project in the appropriate tranche (or tranches). Assuming it receives an

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SREC-II award, its proposed storage adder price will then be considered separately in the storage tranche for award of a storage adder. The intention of this approach is to encourage projects to consider the addition of storage, to ensure that projects that do consider adding storage are not penalized in the selection process by additional costs associated with storage, and to assist in gathering information about the cost to developers of incorporating storage into their solar projects. Because the CSI Program is focused on promoting solar projects, the storage capacity in MWhs eligible for the adder is limited to a maximum of four times the total capacity in MW of the solar project (that is, a solar project may be paired with four hours of eligible storage or less). Storage facility bids will be ranked by “normalized storage bid,” which represents the price in dollars per megawatt-hour of solar production of the associated solar facility that would correspond to a pairing of solar with four hours of storage. Any fraction of four-hours of storage, if selected, will receive a proportional incentive. This approach allows for any size storage facility up to four hours of the nominal solar capacity, while selecting the lowest price storage projects for New Jersey.

Projects may compete in all tranches for which they are eligible; however, each project can be awarded SREC-IIs only once. As a result, the order in which tranches are considered is important. The Board proposes to start by selecting the lowest cost projects to fill Tranche 1: Basic Grid Supply, regardless of whether those projects would qualify for another grid supply tranche. This ensures that the basic grid supply tranche can include projects sited on preferred land uses, if

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they are cost-competitive with greenfield projects. Once the basic grid supply tranche is filled, the Board will next select the lowest-cost qualified remaining projects to fill Tranche 2: Grid Supply on the Built Environment, and then proceed to fill Tranche 3: Grid Supply on Contaminated Sites and Landfills. This approach enables projects on preferred land to make up a larger portion of total grid supply awards than the specific tranches.

Tranche 4 bids will be evaluated separately, since the net metered projects in this tranche are not eligible to compete in any grid supply tranche.

Tranche 5: Grid Supply plus Storage will be evaluated after projects have been selected in Tranche 1, 2, and 3; and storage facilities will be selected based on procurement cost. Storage incentives will be awarded as an adder to the SREC-II of associated solar facilities, and therefore paid on the basis of dollars per megawatt-hour of solar electric generation. Storage facilities paired with net metered projects may not compete in this tranche, as the financial incentives needed for storage plus net metered projects differ too much from those needed for storage plus grid supply projects to enable a valid comparison between the two.

The Board recognizes that between solicitations it may be necessary to adjust tranches or create new tranches to reflect changes in the solar market. The Board also reserves the right to establish confidential, pre-determined price caps for any or all tranches prior to the commencement of a solicitation, in order to protect ratepayers from inflated prices in cases of little competition. See N.J.S.A. 48:3-117(d).

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The proposed rules direct the Board to select bids by ranking the offers in terms of proposed price per SREC-II and selecting the lowest-priced offers. However, the Board recognizes that it is necessary to select the proposed projects with the lowest SREC-II costs that also have a reasonable likelihood of successful and timely completion. Therefore, these proposed rules incorporate project qualification and maturity requirements that aim to strike a balance between awarding sufficiently early in the development process to not create undue development risk or burden on developers, but also to support projects that can be successfully built and produce SREC-IIs within a reasonable timeframe.

In this rule proposal, the Board further proposes several modifications to registration rules for ADI program, including allowing the Board discretion on whether to require a registration fee, and clarifying several registration requirements. Specifically, the Board proposes to allow projects that have previously registered under the TI program, to register for the ADI program, even if they have already begun construction. This change is proposed to allow projects that fail to reach COD or submit the post-construction certification package within the registration expiration timeframe, that otherwise would not be eligible for any incentive, to participate in the ADI program. The Board further proposes to add a requirement for a site plan, largely following the requirements for a site plan under the Municipal Land Use Law, which shall be certified by a licensed professional engineer, for all ADI projects with a capacity larger than 100 kW and for all CSI projects. The need for this requirement has arisen due to often insufficient quality of submissions under the requirement for “site maps” for assessing material details about

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a project's compliance with regulations. For the CSI Program, specific pre-qualification requirements like the site plan follow the intent of the Electric Discount and Energy Competition Act, (EDECA), N.J.S.A. 48:3-49, et seq, which will allow the Board to select projects on price only.

As the Board has provided for a 60-day comment period on this proposed notice of proposal, the proposed notice is excepted from the rulemaking calendar requirement set forth at N.J.A.C.1:30-3.3(a)5.

Following is a section-by-section summary of the proposed amendments and new rule:

At N.J.A.C. 14:8-1.2, the Board proposes new definitions, general to the chapter, for the following terms: "Built Environment", "CSI-Eligible Facility", "land in agricultural use", and "megawatt-hour".

At N.J.A.C. 14:8-11.1, the Board proposes an amendment to the purpose and scope of this subchapter to include the CSI Program.

At N.J.A.C. 14:8-11.2, the Board proposes new definitions, specific to this subchapter, for the following terms: "associated disturbed areas," "associated solar facility," "contaminated site," "landfill," "normalized storage bid," "site plan," and "storage."

At N.J.A.C. 14:8-11.4, the Board proposes an amendment to the section title to encompass eligibility rules for both programs under the Successor Solar Incentive Program, namely the

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Administratively Determined Incentive or ADI Program and the Competitive Solar Incentive or CSI Program.

At N.J.A.C. 14:8-11.4(b), the Board proposes an amendment to clarify the requirements for new ADI Program participants seeking special dispensation for participation in the program.

At new N.J.A.C. 14:8-11.4(g), (h), (i), (j), and (k), the Board proposes new eligibility requirements specifically addressing the CSI Program, including types of projects and registration requirements.

At N.J.A.C. 14:8-11.5, the Board proposes several amendments to the registration process as previously defined for Successor Solar Incentive Programs.

At N.J.A.C. 14:8-11.5(c), the Board proposes that it may, by order, set a registration fee associated with either the ADI or CSI Programs, and would reserve this subsection to address the issue if the need should arise.

At N.J.A.C. 14:8-11.5(d), the Board proposes to expand the descriptions of documentation required to demonstrate that proposed projects within the ADI and CSI Programs meet the minimum facility maturity standards.

At new N.J.A.C. 14:8-11.5(d)1 the Board proposes clarification of documentation requirements for ADI Program registrants.

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At new N.J.A.C. 14:8-11.5(d)2 the Board proposes the documentation required by CSI Program registrants for participation in the program for each of the proposed tranches.

At N.J.A.C. 14:8-11.5(f), the Board proposes classification of minor and major deficiencies in project registration packages that mark the registration as incomplete or ineligible, thus providing a way for registrants to correct deficiencies and proceed with a project registration.

At N.J.A.C. 14:8-11.5(g), the Board proposes clarification to the ADI Program registration process and establishes a CSI Program registration process. The registration processes both provide for registration packages for ADI and CSI Programs, and the provision of an applicable Board Order confirming facility eligibility to the CSI-eligible facility's conditional registration notice, is added.

At N.J.A.C. 14:8-11.5(l), the Board clarifies a reference and specifies that megawatt capacity blocks are applicable to ADI projects only. .

At new N.J.A.C. 14:8-11.6(i), (j) and (k), the Board proposes that the value of incentives offered in the CSI program be set based on the accepted bid into CSI solicitation. The proposed rules also establish an "add-on" incentive to CSI-eligible facilities that are awarded under the grid supply plus storage tranche (tranche 5), which will increase the value of the NJ-SREC-II assigned to that project for the qualified life of the project. The storage add-on will be calculated based on bid price, storage capacity, and associated solar capacity, and bids will be ranked based on the value of the "normalized storage bid" that corresponds to the value of the SREC-II add-on in the case the nameplate storage capacity in MWh would be equal to four times the nameplate solar capacity

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in MW. The storage adder may be revoked if it is determined by the Board that there is a lack of evidence of continued availability and operation of the qualified Storage facility.

At new N.J.A.C. 14:8-11.10, the Board proposes the design of the CSI Program solicitation, detailing the five tranches in which CSI-eligible facilities may compete for allocated megawatt blocks for targeted procurement capacity. The proposed rules establish the Board's ability to adjust megawatt target allocations amongst tranches or create new tranches to respond to the changing solar market. The Board shall issue an annual solicitation for CSI-eligible facilities. The proposed rules specify the criteria projects will have to meet in order to pre-qualify for participation in the solicitation, including maturity requirements and a bid participation fee, and detail the way bids must be submitted. Bids will be ranked and selected on price. If the procurement target cannot be exactly met by the final award, the proposed rules give the Board the ability to exercise discretion in deciding whether to exceed the targets if in the Board's judgment the incremental project or projects will benefit New Jersey consumers. In order to protect ratepayers in cases of insufficient competition in a tranche, the rule proposal includes that the Board may establish by order confidential, pre-determined price caps for any or all tranches that, if breached, will cease procurement in the affected tranche or tranches. In addition, the proposed rules specify that no projects will be awarded that would cause the statutory limit for solar on certain farmlands to be exceeded.

Social Impact

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This rulemaking will have a positive social impact on New Jersey by promoting the twin legislative goals of the Clean Energy Act of 2018: encouraging the continued efficient and orderly development of solar energy generation in the State and reducing the cost of solar incentives to ratepayers. The CSI Program is expected to procure 300 megawatts of new clean solar generation for New Jersey consumers per year at competitive prices. The significant increase in local solar generation is expected to reduce electric generation from fossil fuel, resulting in reduced emission of greenhouse gases, particulate matter, and sulfur and nitrous oxide compounds, all of which have demonstrated negative impacts on human health and biodiversity. These reductions improve health outcomes for New Jersey residents, which in turn, brings real economic benefits to the State. The Board anticipates that the CSI Program proposed in this rulemaking will build on the successes of the underlying Successor Solar Incentive program. The competitive structure of the CSI program is designed to motivate large-scale solar development at the lowest feasible cost, while the size of the projects involved is expected to create economies of scale. The Board anticipates that the CSI Program will cause the production of more clean energy and reduce New Jersey's reliance on fossil fuel resources.

Economic Impact

The proposed CSI Program is expected to have significant positive economic impacts on the State of New Jersey. These benefits accrue to New Jerseyans in several ways. First, the proposed program will result in cleaner air for all citizens of New Jersey, and the reduction in

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the negative human health impacts of pollution from fossil fuel power plants, as well as the reduction in the emission of planet-harming greenhouse gases and the attendant sea level rise. The positive health effects and mitigation of climate change bring substantial benefits to New Jersey's economy. Second, the new CSI Program is expected to be a significant source of new solar-related jobs, while facilitating continued employment of the more than 6,000 New Jerseyans who currently work in solar-related jobs. The program is expected to expand the growth of solar-related employment in the utility scale sector by significantly expanding incentives for these larger projects. Third, the Board anticipates that continued investment in solar electricity generating capacity will leverage private investment and stimulate additional indirect economic benefits through local jobs and services. Fourth, the CSI Program is expected to procure solar power at a significantly lower cost to consumers than other solar incentive programs in New Jersey. This will be the first solar incentive program in New Jersey aimed specifically at large-scale projects, and the competitive nature of the solicitation is designed to produce the lowest incentive levels at which these projects are profitable.

The benefits of increased solar production discussed above are balanced against the fact that the clean energy incentives provided under the CSI Program are collected from New Jersey ratepayers, which, all other things being equal, could result in higher electricity bills. Higher electricity rates can reduce New Jersey's economic competitiveness vis-a-vis states without a comparable commitment to clean energy. The competitive determination of the incentive levels ensures that solar will be procured at minimal cost to New Jersey ratepayers. Although

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specific costs cannot be determined prior to the solicitation, the CSI incentives are expected to be significantly lower than the incentives historically paid out under the SREC and TREC programs. In order to protect ratepayers against elevated prices that would result from low levels of competition, the proposed rules provide the Board with authority to adopt a confidential bid cap, which will stop awards at a certain price level. Finally, since solar is a resource that has zero marginal costs, and therefore typically bids into the energy market at very low prices, increased solar generation is expected to result in lower wholesale prices for electricity.

This rulemaking grants the Board discretion to set the registration fee for projects seeking incentives under the ADI program. Up to now, the Board has not charged a registration fee, and the absence of this fee has not yet created issues with anti-competitive behavior that formed the initial rationale for its inclusion. Anti-competitive behavior could involve developers submitting large numbers of registrations for projects with a low likelihood of completion in a single ADI market segment, thereby causing the capacity block to be filled prematurely and crowding out other solar development. The Board proposes retaining the discretion to set a registration fee to discourage this type of over-registration in the ADI program, should the need arise.

For the CSI program, this rulemaking provides for a non-refundable bid participation fee, the value of which to be determined by the Board. The fee is intended to ensure that only projects

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with a reasonably likelihood of commercial success will participate in the procurement and can “reserve” covered farmland.

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. This rulemaking 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 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 proposed amendments and new rules.

Jobs Impact

This rulemaking is designed to promote the continued vigorous development of the solar market in New Jersey by establishing a program that opens the utility-scale solar market for the first time in New Jersey. The State has had few incentives for large-scale solar facilities up to now; by providing a competitively-determined incentive to grid supply solar projects and net metered projects above five megawatts in size, and promoting the creation of a new storage component, this rulemaking provides growth opportunities to the large-scale solar industry located in New Jersey. As such, this rulemaking tends to promote job creation and

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retention in the State. Moreover, all systems over one MW in size will continue to be subject to New Jersey's prevailing wage statute.

Agriculture Industry Impact

The proposed establishment of the CSI Program has the potential to have significant impacts on the agriculture industry. The Board has therefore built protections into the program intended to reduce the amount of solar development that might otherwise displace agriculture. The CSI Program consists of several different tranches and these recommended tranches are designed, in part, to comply with the provisions of the Solar Act of 2021 that direct development of grid-supply solar toward marginal land and the built environment and away from open space, flood zones, and farmland. N.J.S.A. 48:3-114(c). Siting considerations helped to inform the establishment of the proposed tranches, two of which prioritize the built environment and contaminated lands. In addition, the structure of the solicitation, which provides for selecting the lowest cost projects to fill Tranche 1: Basic Grid Supply, regardless of whether those projects would qualify for another tranche, ensures that the basic grid supply tranche can be filled by projects sited on preferred land uses if they are cost-competitive with greenfield projects. Any projects awarded SREC-IIs in the first round under the basic grid supply tranche will then be removed from consideration in Tranche 2: Grid Supply on the Built Environment. As a result, other built environment projects will be able to qualify for SREC-IIs in the solicitation run specifically for Tranche 2: Grid Supply on the Built Environment. The result might be that more

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projects in preferred categories will be awarded. By clearing resources in this manner, the Board prioritizes solar on the built environment, contaminated sites, and landfills.

Finally, siting considerations which expressly include the impact of CSI-eligible solar on farmland are being codified into rules in a companion rulemaking proceeding pending before the Board under BPU Docket No. QX22100654.

Regulatory Flexibility Statement

This rulemaking will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. 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. Regarding businesses that qualify as small businesses under the Act, the SuSI Program is a voluntary program and, as such, will not impose any requirements on any small business that chooses not to voluntarily participate in the program.

Housing Affordability Impact Analysis

This rulemaking will not impact the affordability of housing in New Jersey, nor will it have an impact on the average cost of housing. This rulemaking only addresses a solar energy program and will not directly affect housing prices or the housing market.

Smart Growth Development Impact Analysis

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This rulemaking will not impact smart growth development in New Jersey. This rulemaking will not 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. The scope of the rulemaking is limited to establishing a new competitive procurement program for solar in New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board evaluated this rulemaking and determined that it 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 1: RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

14:8-1.2 Definitions

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

...

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“Built environment” means the surface of one or more existing, serviceable structures or serviceable, improved and impervious roadways built for a purpose other than solely to facilitate solar development.

...

“Competitive Solar Incentive-Eligible Facilities” or “CSI-Eligible Facilities” means all grid supply solar facilities and net metered solar facilities over 5 MW, as measured in direct current (“MWdc”), connected to the distribution or transmission system operated by a New Jersey electric distribution company.

...

“Land in agricultural use” means the land used for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. The built environment is specifically excluded from land in agricultural use.

...

“Megawatt-hour” or “MWh” means 1,000 kilowatt-hours.

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...

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 sub-programs: 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. **The CSI Program is designed to provide an incentive for qualifying grid supply facilities, net metered non-residential facilities greater than five megawatts, and certain electricity storage facilities that are combined with grid supply solar installations.**

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:

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“Associated disturbed areas” means areas, which may themselves not have been contaminated, but after considering tax and property records as well as historical land use, are or were the site of an accessory use to contaminated areas or landfills. Examples include access roads, lay-down areas and former building sites that were previously part of an industrial or landfill complex.

“Associated solar facility” means the solar facility linked to a Storage facility by the bid into the CSI Program.

...

“Contaminated site or landfill” means the same as that term is defined pursuant to the “Electric Discount and Energy Competition Act”, N.J.S.A. 48:3-51.

...

“Normalized storage bid” means the bid into the CSI program, calculated in dollars per megawatt hour, that corresponds to an incentive for a storage facility capable of discharging the equivalent of four hours of the nominal electricity generation capacity of the associated solar facility, where both the solar generation capacity and the Storage discharge capacity are measured in direct current (dc).

...

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"Site plan" means a development plan of one or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not limited to topography, vegetation, drainage, flood plains, marshes and waterways, any contaminated sites or landfills, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and (3) any other information that may be reasonably required in order to make an informed determination on the requirements in these rules.

"Storage facility" means a device that is capable of absorbing energy from the grid or from a Distributed Energy Resource, storing it for a period of time using mechanical, chemical, or thermal processes, and thereafter discharging the energy back to the grid or directly to an energy-using system to reduce the use of power from the grid.

...

14:8-11.3 Successor Solar Incentive Program Structure

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

14:8-11.4 [Administratively Determined] **Successor** Solar Incentive Program Eligibility

(a) (No change.)

(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 the Board grants a waiver in response to a petition]. **The ADI Program shall**

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also be open to facilities that were registered in the TI Program but failed to commence commercial operations and/or submit the post-construction certification package by the applicable expiration dates. The Board may waive strict compliance with the requirement of not having commenced commercial operation, in response to a petition. If construction is commenced on a facility prior to receipt of conditional registration, such construction shall be undertaken at the risk of the party(ies) involved. 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) below prior to beginning construction on the facility, unless the Board grants a waiver in response to a petition.

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

(g) The Competitive Solar Incentive Program shall be open to:

- 1. new net metered non-residential solar generation facilities greater than five megawatts (measured as the sum of the nameplate capacity in DC rating of all photovoltaic panels comprising the facility and any co-located facilities);**
- 2. qualifying grid supply solar generation facilities; and**
- 3. grid supply solar generation facilities paired with storage, for which the discharge capacity of the storage facility shall be measured as the nameplate capacity in megawatt-hours, and shall be equal to or less than four times the**

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nameplate capacity, measured in megawatts, DC rating, of the associated solar facility.

- (h) CSI-eligible facilities will only be allowed to register for SREC-IIs upon award of a bid, pursuant to N.J.A.C. 14:8-11.10.**
- (i) The CSI Program shall only be open to new facilities that have not commenced commercial operation, unless the Board grants a waiver in response to a petition, and to facilities that were registered in either the TI or ADI Program but failed to commence commercial operations and/or submit the post-construction certification package by the applicable expiration dates. If construction is commenced on a facility prior to receipt of conditional registration, such construction shall be undertaken at the risk of the party(ies) involved. Additionally, facilities seeking eligibility in the CSI 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.**
- (j) The equipment used in a CSI-eligible facility must be new; that is, none of the equipment may have been used prior to the installation of the CSI-eligible facility.**
- (k) Facilities seeking eligibility to participate in the CSI Program must plan to be interconnected to a distribution or transmission system operated by a New Jersey electric public utility or local government unit.**

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

(c) [Each complete registration package must be accompanied by the payment of a registration fee, the value of which will be determined by the Board via 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.]**The Board may require the registration package to be accompanied by a registration fee, the value of which shall be determined by the Board via order, and available on the Board’s website.**

(d) The registrant shall meet minimum facility maturity standards **according to the ADI or CSI program conditions** and provide all **required** 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;

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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.]
1. **For the ADI program, the registrant shall supply the following and any other information the Board or its designee may deem necessary to confirm eligibility for the program::**
 - i. **A contract between the primary installer or the third-party owner, as applicable, and the customer of record;**
 - ii. **For facilities sized 100 kW or greater, a site plan certified by a licensed professional engineer, or, for smaller facilities, a site map.**

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- iii. 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;**
- iv. For net metered facilities, a utility bill showing the site host's name, address, and electric tariff, if applicable;**
- v. 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;**
- vi. 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;**
- vii. For net metered facilities sized one MW or greater, an executed Part 1 interconnection agreement and a Milestone Reporting Form; and**
- viii. 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.**

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2. For the CSI program, the registrant shall supply the following and any other information the Board or its designee may deem necessary to confirm eligibility for the program::

- i. A contract between the primary installer or the third-party owner, as applicable, and the bidder or customer of record;**
- ii. A site plan certified by a licensed professional engineer;**
- iii. For net metered facilities, a utility bill showing the site host's name, address, and electric tariff;**
- iv. Electrical and building permits or documentation that applications for electrical and building permits have been submitted to the relevant municipality;**
- v. For net metered facilities, an executed Part 1 interconnection agreement;**
- vi. A Milestone Reporting Form; and**
- vii. Evidence of the project's accepted bid into the CSI program; and**
- viii. For projects to be located on contaminated sites or landfills only, conditional certification of Tranche 3 eligibility from the Board, which the developer shall apply for using the form located on the Board's New Jersey Clean Energy Program website at www.njcleanenergy.com.**

(e) (No Change.)

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(f) Board Staff or the SuSI Program registration manager shall notify registrants whether the facility is eligible to participate in the program, and if the initial registration package is complete, incomplete, or deficient. Registrations that are deemed incomplete due to a minor deficiency, as defined [on the New Jersey Clean Energy Program website] **at N.J.A.C. 14:8-11(f)1**, 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 [on the New Jersey Clean Energy Program website] **at N.J.A.C. 14:8-11(f)2**, 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 complete registration to the [SuSI] **ADI Program only** 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.

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2. Major deficiencies include such items as failure to upload the SuSI registration certification form to the SuSI portal or failure to include all signatures on that form; failure to upload **the certified site plan**, site map or utility bill **if relevant** 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; **for CSI projects, failure to provide evidence of an accepted bid**; 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 complete 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 [these rules] **this section**, 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 **program and which** market segment [megawatt block] the facility is eligible;
 2. (No change.)
 3. Include an expiration date occurring on:

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- i. The one-year anniversary of the registrant’s notice of conditional registration for **residential** net metered facilities **and non-residential net metered facilities five megawatt or less that are eligible for receiving incentives under the ADI Program**; [or]
 - ii. (No change.) ; or
 - iii. The [twenty-four] **thirty-six-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)] **CSI Program**; and
4. Include notice that the facility must receive permission to operate from the relevant EDC or regional transmission organization and submit a post-construction certification packet as defined at N.J.A.C. 14:8-11.5(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; **and**
 6. **For CSI-Eligible facilities, include a reference to the applicable Board Order that confirms the facility’s eligibility and the value of the incentive.**

(h)-(i)(No Change.)

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(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.

1. **For ADI-eligible facilities, t**[T]he 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.
2. **For landfills that participating in the CSI Program, if proper closure has been identified as a condition of certification, documentation of proper closure of the sanitary landfill facility issued by DEP shall be included in the post-construction certification package.**

(k) If, after submittal of an initial registration package, an increase of up to [10] **20** 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

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provided on the New Jersey Clean Energy Program website. Facilities shall not be permitted to increase their generating capacity by more than [10] **20** 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 **N.J.A.C. 14:8-11.5(g)** above shall retain eligibility to remain in the SuSI Program until the expiration or cancelation of the facility's SuSI registration. Any facility that does not commence commercial operation within the time provided in its SuSI registration (i.e. 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 (i.e. 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 into the [SuSI] **ADI** 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 re-submittal of an expired registration, registrants will be exempt from the requirement at 14:8-

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11.4(b) above 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)-(h) (No Change.)

(i) The NJ SREC-IIs produced by each solar facility registered in the CSI Program shall be assigned a specific incentive level, which shall be equal to the accepted bid into the CSI solicitation pursuant to solicitation rules, and may be modified as per N.J.A.C. 14:8-11.6(j) below.

(j) Storage facilities accepted into the CSI program shall be eligible for an adder to the NJ SREC-II, to be calculated in \$/MWh and to be applied to the incentive for the associated solar facility. The value of the adder will be determined by taking the value of the installed storage facility discharge capacity, measured in megawatt-hours, dividing this by the value of the installed associated solar facility capacity, measured in megawatts, dividing the resulting number by four, and multiplying this with the normalized storage bid.

(k) The Board or its designee may request evidence of continued availability and operation of storage facilities as a prerequisite for continued qualification for the adder specified under N.J.A.C. 14:8-11.6(j). Staff is authorized to amend the SREC-II value for the

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associated solar facility to compensate for overpayment of any SREC-II adders that were paid while a storage facility was not in operation.

14:8-11.7 Market Segment Megawatt Blocks for ADI Program

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) Based on the annual budget allocation for each market segment established by the Board pursuant to 14:8-11.7(a), divided by a forecast of the estimated cost of NJ SREC-IIs from that market segment, the Board will establish by Order an annual capacity megawatt block or quarterly capacity megawatt blocks for market segments **in the ADI Program**. 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) (No change.)

14:8-11.10 Competitive Solar Incentive Solicitation Design

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(a) The Board shall conduct one CSI solicitation once per year. The timing of the solicitations shall be subject to review and revision at the discretion of the Board.

(b) The Board shall allocate megawatt blocks for targeted procurement capacity to the following market tranches for solar projects in the CSI Program:

1. Tranche 1: Basic Grid Supply – grid supply projects that do not qualify for Tranche 2 or 3 and are connected to the distribution or transmission system owned or operated by a NJ public utility or local government unit.

2. Tranche 2: Grid Supply on the Built Environment – grid supply projects for which all solar panels are installed on rooftops, raised carports over parking lots or decks, or similar installations on the built environment, and are connected to the distribution or transmission system owned or operated by a NJ public utility or local government unit.

3. Tranche 3: Grid Supply on Contaminated Sites and Landfills – grid supply projects for which the solar panels are fully installed on contaminated sites or landfills, where the associated disturbed areas constitute a maximum of ten percent of the total area dedicated to solar development. Projects proposed on land in agricultural use are excluded from participation in tranche 3.

4. Tranche 4: Net Metered Non-residential Projects above 5 Megawatts – these net metered projects must meet the requirements of their New Jersey utility to qualify as net metered projects serving non-residential customers.

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5. Tranche 5: Storage Paired with Grid Supply Solar – a storage facility that is planned to be located contiguous to and to be electrically connected to associated solar facilities: grid supply solar bidding into tranche 1, 2, or 3.

(c) To participate in the solicitation, Projects shall meet the following requirements:

1. If subject to the PJM interconnection process, a published PJM feasibility study, a PJM Phase I study, or such equivalent successor PJM study as the Board shall identify via order, for one or more queue positions that will allow for generation interconnection of the proposed solar and/or storage facility(ies) ;

2. If not subject to the PJM interconnection process, an executed Part 1 interconnection agreement;

3. Payment of a non-refundable bid fee, the value of which shall be established by the Board, for solar projects bidding into tranche 1, 2, 3, or 4. Projects serving public entities shall be exempt from the bid fee.

(d) For pre-qualification to participate in a solicitation, a project shall submit to the Board or its designee the following information:

1. Designation of tranche into which the project intends to bid;

2. Solar project capacity in megawatts or storage facility capacity in megawatt-hours;

3. A site plan certified by a licensed professional engineer;

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- 4. Evidence of qualification for the tranche for which the project is intending to bid, including, but not limited to: GIS coordinates, address, project address, number of acres proposed for development;**
 - 5. Evidence of compliance with relevant Board approved siting criteria;**
 - 6. Link(s) to one or more PJM feasibility studies, PJM Phase I studies, equivalent successor PJM studies, or copy of Part 1 interconnection agreement;**
 - 7. For projects with a proposed installation density greater than 300 kW per acre, a statement from a licensed professional engineer confirming feasibility of the installation density based on proposed design parameters such as module quantity, size and efficiency, tilt, azimuth and interrow spacing;**
 - 8. For projects on contaminated sites and landfills, estimated size of the area designated as “contaminated site” or “properly closed sanitary landfill” and a DEP permit readiness checklist;**
 - 9. For storage paired with grid supply solar, description of the storage facility technology, and reference to the associated solar facility.**
- (e) Projects shall bid a proposed price per SREC-II for evaluation as follows:**
- 1. Solar shall be bid as a price in dollars per megawatt-hour of solar production.**
 - 2. Storage facilities shall be bid as a normalized storage bid, which represents the adder to the SREC-II, expressed in dollars per megawatt-hour of**

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electricity generated by the associated solar facility, for a storage facility with a discharge capacity in megawatt-hours equal to four times the capacity in megawatts of the associated solar facility.

(f) Eligibility to participate in the Tranche 5 solicitation for the storage incentive shall be restricted to storage facilities with associated solar facilities that have received an SREC-II award in Tranche 1, Tranche 2, or Tranche 3 in the same solicitation.

(g) Eligibility for a storage incentive is limited to a storage facility's discharge capacity in megawatt-hours equal to or less than four times the total electricity generation capacity in megawatts of the associated solar facility.

(h) Winning bids will be determined by ranking the offers on proposed price per SREC-II for tranches 1, 2, 3, and 4, and on normalized storage bids for tranche 5, and selecting the lowest-priced offers.

(i) Awards will continue through the last project that does not exceed the procurement target for a given tranche.

1. If the total combined acreage of proposed solar development exceeds any of the limits for solar on certain agricultural land specified under N.J.S.A. 48:3-119(d)(1) and N.J.S.A. 48:3-119(f), awards will continue but no project that would cause a limit to be exceeded will be awarded. Instead, the next lowest priced project that would not cause any limit for solar on agricultural land to be exceeded will be selected.

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2. If two projects are bid with the same price and either can be awarded without exceeding the procurement target but awarding both would exceed the procurement target, the Board shall exercise its discretion in making the award.

3. If a final award cannot be made that will exactly meet a procurement target, the Board shall exercise its discretion in deciding whether to exceed the targets if in the Board's judgment the incremental project or projects will benefit New Jersey.

(j) The Board may establish by order confidential, pre-determined price caps for any or all tranches prior to the solicitation. If the Board determines that a project would breach a price cap, further procurement in the affected tranche or tranches will not be undertaken. Procurement shall cease regardless of whether the targeted number of megawatts in that tranche or tranches has been met.

(k) All projects in Tranches 1, 2, and 3 shall compete against each other initially. Those projects that are eligible for Tranche 2 and Tranche 3 and which are not selected initially shall then compete in Tranches 2 and 3. Tranche 5 shall be evaluated after projects have been selected in Tranche 1, 2, and 3.

(l) The Board may adjust the tranches or create new tranches 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 tranches is necessary in light of the costs and revenues of different project types, administrative complexity, or the emergence of new technologies.

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