

or holiday, notice is timely given if it is mailed or delivered as specified in this notice on the next operating day. Refunds must be made within 30 days of receipt by the health club of the cancellation notice.

“Operating day” means any calendar day on which patrons may inspect and use the health club’s facilities and services during a period of at least eight hours, except holidays and Sundays.

(i) A registered facility shall post the notice required at (h) above on its website if the facility allows consumers to enter into contracts with the facility online.

(a)

**DIVISION OF CONSUMER AFFAIRS
LEGALIZED GAMES OF CHANCE CONTROL
COMMISSION**

**Words and Phrases Defined; Special Door-Prize
Raffle**

Adopted Amendments: N.J.A.C. 13:47-1.1 and 8.15

Proposed: December 6, 2021, at 53 N.J.R. 1985(a).

Adopted: May 11, 2022, by the Legalized Games of Chance Control Commission, Steve P. Layman, Chairperson.

Filed: May 18, 2022, as R.2022 d.068, **without change**.

Authority: N.J.S.A. 5:8-6.

Effective Date: June 20, 2022.

Expiration Date: October 15, 2028.

Summary of Public Comment and Agency Response:

The official comment period ended February 4, 2022. **No comments were received.**

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are governed by N.J.S.A. 5:8-6 and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 1. DEFINITIONS

13:47-1.1 Words and phrases defined

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

...
 “Special door-prize raffle” means a raffle for a door prize(s) of merchandise, the total retail value of which shall not exceed \$200.00, for which no extra charge is made, at an assemblage, and the net proceeds of which are devoted to an authorized purpose.
 ...

SUBCHAPTER 8. CONDUCT OF RAFFLES

13:47-8.15 Special door-prize raffle

(a) A “special door-prize raffle” is one that may be conducted without a license under the following conditions:

- 1.-3. (No change.)
4. The total retail value of all prizes must be less than \$200.00; and
5. (No change in text.)

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES

Cost Cap Calculation

Adopted New Rule: N.J.A.C. 14:8-2.12

Proposed: September 7, 2021, at 53 N.J.R. 1476(a).

Adopted: May 18, 2022, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: May 19, 2022, as R.2022 d.075, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:3-87.d(2).

BPU Docket Number: QX21060944.

Effective Date: June 20, 2022.

Expiration Date: February 27, 2026.

Summary of Public Comments and Agency Responses:

Written comments were submitted by: Gabel Associates (Gabel), New Jersey Division of Rate Counsel (Rate Counsel), Public Service Electric and Gas Company (PSE&G), Rockland Electric Company (RECO), and SRECTrade, Inc. (SRECTrade). The following is a summary of the comments received from members of the public and the Board of Public Utilities’ (“BPU” or “Board”) responses.

General Comments

1. COMMENT: The commenter supports the intent of the proposed rule language. (SRECTrade)

RESPONSE: The Board notes the commenter’s support.

2. COMMENT: The commenter recognizes the critical role that the cost cap will play in the deployment of cost-effective resources necessary to further the State’s clean energy goals. The commenter notes that the cost cap is intended to mitigate customer bill increases and maintain ratepayer costs and is important to determining the capacity allocations for the Administratively Determined Incentive (ADI) Program. The commenter emphasizes that the cost cap calculation should be simple and straightforward while providing transparency and certainty to stakeholders. (RECO)

RESPONSE: The Board notes the commenter’s points and intends to minimize the complexity of the cost cap calculation where possible to ensure stakeholder understanding.

3. COMMENT: The commenter notes that the Successor Solar Incentive (SuSI) Program should not lead to a total incentive spending that is on par with the prior Solar Renewable Energy Certificate (SREC) Program, but rather should recognize the reduced level of incentives needed for a mature solar industry. The commenter emphasizes that the incentives paid must be reasonable and appropriate in light of the impact on customer bills, particularly low- and moderate-income customers. (RECO)

RESPONSE: The Board maintains a specific focus on ratepayer affordability and on ensuring that incentives are appropriate, based on modeling and analysis of typical projects in the SuSI Program market segments. Recognizing the generally declining costs of solar installations, the incentive values provided in the ADI Program are lower than they were under the SREC and Transition Incentive (TI) Programs on a per-megawatt-hour basis. The competitive nature of the Competitive Solar Incentive (CSI) Program is anticipated to further reduce the value of incentives for large net metered and grid supply projects when that portion of the SuSI Program is launched. The Board will continue to monitor total incentive spending and will adjust program capacity and incentive values as needed.

4. COMMENT: As a general statement on customer costs, the commenter recommends that the Board remain mindful of the increasing costs of the various renewable energy programs that do not fall under the cost cap, which the commenter states will increase substantially over time. (PSE&G)

RESPONSE: The Board supports overall ratepayer affordability and will continue to monitor renewable incentive spending, for both the categories covered and those not covered by the cost cap.

Summary

5. COMMENT: The commenter recommends a change to the Summary in the notice of proposal under the heading “Description of the Cost Cap Calculation.” Specifically, the commenter recommends that the statement “In both cases, the end goal of the Cost Cap is to ensure that

New Jersey's Class I programs remain affordable and that the State abides by the spending limits required by statute" be amended to include the phrase "while pursuing New Jersey's renewable energy goals to the fullest extent possible." The commenter believes this addition would broaden the description of the cost cap calculation to remain consistent with the Murphy Administration's renewable energy goals and the mandatory cost cap. (Gabel)

RESPONSE: The Board agrees with the sentiment expressed by the commenter. However, the Board views the suggested language as a non-substantive suggestion and does not believe that such a change is necessary, nor that it would warrant republishing the notice of proposal and delaying the effective date of the Board's clean energy policies. As the current language correctly notes, the cost cap limits the total amount of ratepayer spending devoted to certain clean energy programs and is, therefore, key to the Board's stated intent to meet New Jersey's clean energy goals while ensuring that they remain affordable.

6. COMMENT: The commenter recommends that the Summary of the notice of proposal, under the heading "Energy Savings Attributable to the Class I Program," be amended to include retail energy savings from behind-the-meter solar projects as an offset to the cost of renewable energy incentives. The commenter believes that doing so will recognize that utility bill savings received by on-site customers are directly attributable to, and would not occur without, solar incentives. Therefore, the commenter proposes that the Summary include the following statement: "Board staff will include behind-the-meter customers' retail energy savings based on New Jersey Clean Energy Program's historical Solar Activity Reports, adjusted to included forecast production from installations in the upcoming energy year. The retail energy savings will be calculated using a production factor estimate of 1,154 kWh/kW and a savings of 30 percent of the average retail electric rate. Energy savings values will be calculated on an energy year basis (June-May) and published by Board staff annually." (Gabel)

RESPONSE: The Board does not agree with reducing the costs of the Class I Program by the retail energy savings associated with behind-the-meter solar projects because these savings are largely derived from net metering, not the renewable energy certificates. The costs of net metering are not included in the cost cap numerator and, therefore, neither should the associated bill savings for solar customers. Therefore, the Board declines to make the changes requested by the commenter.

7. COMMENT: The commenter recommends that the Summary of the notice of proposal, under the heading "Energy Savings Attributable to the Class I Program," be amended to provide more flexibility to Board staff to improve its cost cap calculations as additional information becomes available or as the methodology to calculate Demand-Reduction-Induced Price Effect (DRIPE) impacts is refined. The commenter specifically suggests the following amendments (underlined) to the existing summary language.

"Board staff may use New Jersey-specific calculations based on publicly available methodologies to analyze these impacts, data and models from PJM as well as a forecast of new Class I capacity installed throughout the upcoming energy year, to estimate the wholesale energy savings. Energy savings values will be calculated on an energy year basis (June-May) and published by Board staff annually. Board staff may also use an alternative methodology, such as multi-variant regression modeling or a detailed energy market dispatch model, if the alternative methodology is determined to provide improved accuracy in estimating the energy savings." (Gabel)

RESPONSE: Given the complex nature of the cost cap calculation, and the possibility of future changes as the Board explores new information or modeling tools, the Board appreciates the commenter's emphasis on flexibility and agrees that it may be appropriate at some future time to update the methodology. However, the Board believes that the commenter's proposed language is not needed to provide this flexibility, and, in fact, may undermine the Board's ability to update its methodology based on proper analysis and stakeholder engagement, including notice and comments. The Board refers the commenter to the Response to Comment 12 for its assessment of the specific alternative methodology recommended by the commenter. Therefore, the Board declines to make the change requested by the commenter.

8. COMMENT: The commenter recommends that in the Summary of the notice of proposal, under the heading "Environmental Savings to the Class I Program," any references to "average" CO₂ emissions be changed to "marginal" CO₂ emissions. In support of this change, the commenter states that Class I renewable generation does not displace "average" generation, but rather displaces "marginal" generation that tends to be fossil fuel. Citing a U.S. Environmental Protection Agency (USEPA) guideline, the commenter asserts that this recommended change is consistent with standard industry practices. (Gabel)

RESPONSE: The Board refers the commenter to the Responses to Comments 13 and 14 below for a substantive discussion of the commenter's proposed change.

N.J.A.C. 14:8-2.12(a)2

9. COMMENT: The commenter asserts that the Board should clarify that the environmental and energy benefits used to offset the cost of the Class I renewable energy requirement in the numerator of the cost cap equation are only those environmental and energy benefits attributable to the programs subject to the cost cap, defined in the proposed rule as "Cost Cap-Applicable Programs." Specifically, the commenter objects to the reference to "the dollar value of any energy and environmental savings attributable to the Class I program" in this subsection and proposes that the phrase "Class I program" be deleted and replaced with the phrase "Cost Cap-Applicable Programs" in order to more accurately reflect the intent of the Legislature. The commenter states that the existing language referencing the Class I program could be read as allowing the Board to offset the benefits of the entire Class I program, including the offshore wind and CSI programs, which would be inconsistent with the exclusion of those programs from the cost cap calculation. (Rate Counsel)

RESPONSE: The commenter correctly notes that the Class I program is not directly synonymous with the Cost-Cap Applicable Programs. The Clean Energy Act (N.J.S.A. 48:3-87.d) specifically excludes ORECs, and the Solar Act of 2021 (N.J.S.A. 48:3-117.h) specifically excludes SREC-IIs created through the CSI Program from the cost of the Class I renewable energy requirement. As the cost of the ORECs and CSI Program SREC-IIs is excluded from the cost cap calculation, any energy and environmental cost reductions associated with these two programs should also be excluded. To remove possible confusion, the Board adjusted the language at adopted N.J.A.C. 14:8-2.12(a)2 to reference Cost Cap-Applicable Programs instead of the Class I Program.

10. COMMENT: The commenter recommends that Class I resources be neither overvalued nor undervalued, as that would make solar programs more expensive or restrict the capacity of programs available under the cost cap, respectively. Specifically, the commenter recommends that the amount of operating solar capacity used for energy and capacity savings be calculated using the same method as PJM, take into account system degradation and retirements, and be adjusted, rather than using nameplate capacity. The commenter also states that solar capacity will decline over time and recommends that staff use PJM's Effective Load Carrying Capability (ELCC) methodology, adjusted for New Jersey, to ensure that solar capacity is properly accounted for. (PSE&G)

RESPONSE: The Board agrees with the commenter's recommendation that Class I resources be neither overvalued nor undervalued. In implementing the cost cap, the Board will seek to utilize data that is as accurate as possible and account for any declines or adjustments of solar project capacity that becomes known to the Board. With respect to the commenter's specific recommendation that staff use PJM's data and adjustments to capacity, such as Effective Load Carrying Capability methodology, staff is concerned that the commenter's proposed methodology may not be appropriate for behind the meter solar resources, which are modeled as load modifiers and are not affected by ELCC. If these resources were modeled as supply-side resources, then an ELCC adjustment could be appropriate. The Board notes that PJM's treatment of ELCC and behind the meter solar is in flux; should the application of ELCC change, the Board may consider reassessing its inclusion in the cost cap calculation. Further, for behind the meter resources, the Board believes that it is preferable to use capacity data published on a monthly basis in the Solar Activity Reports on the New Jersey Clean Energy Program website, which offers the most accurate representation of all projects currently registered in the Board's solar incentive programs and

their creation of SRECs, TRECs, or SREC-IIs. Therefore, the Board declines to make the change requested by the commenter.

N.J.A.C. 14:8-2.12(a)2ii

11. COMMENT: The commenter requests greater transparency regarding the calculation of the energy savings that are offset against costs. The commenter notes that the Summary of the notice of proposal includes some information about the availability of past studies of energy markets. However, the commenter asserts that it is not clear from that Summary or from the rule text whether the methods used in those studies will be used in the cost cap calculation and how those methods would be employed. The commenter recommends that the proposed rule be amended to more clearly set forth how energy savings will be quantified, so that the methodology is transparent and replicable. (Rate Counsel)

RESPONSE: Pursuant to the Solar Act of 2021, the Board will reduce the total cost of the Cost Cap-Applicable Programs by the dollar value of any energy savings attributable to these Cost Cap-Applicable Programs. This requires the Board to assess what electricity costs would have been without the Class I REC program, compared to the actual costs reported by the regional electricity market operator, PJM Interconnection (PJM). Various academic and industry studies have used different methods for estimating these energy savings and demonstrating that renewable energy programs have a measurable impact on overall energy purchases. It is important that the rules provide sufficient flexibility for the Board to adjust the methodology for estimating the energy savings if new studies and modeling tools prove to be more effective or practical than the statistical analysis used to date. The Board agrees with the commenter that it is important that the cost cap calculation be transparent and replicable. Pursuant to this rulemaking, Board staff will publish its cost cap calculations on an annual basis and will include details regarding data sources and methodology.

12. COMMENT: The commenter states that energy savings, or “DRIPE,” are appropriately included in the cost cap calculation, but that the rulemaking does not specifically identify the methodology to be used in the calculation. The commenter does not support the use of a statistical analysis to estimate DRIPE, and instead recommends changing to an AURORA or similar market simulation model. The commenter asserts that the AURORA model is forward-looking and better able to identify future changes, takes into account PJM market variables, and would best capture the net impact of New Jersey-driven renewable capacity additions both in-State and out-of-State. Pointing to the Board’s use of AURORA in other proceedings, the commenter states that it is a widely accepted, industry standard model. In the alternative, should Board staff use a statistical analysis, the commenter recommends that it be done with a multi-variant regression model and use historical New Jersey and PJM data that includes multiple variables like load, energy prices, natural gas prices, and emissions prices. (Gabel)

RESPONSE: As stated in the Response to Comment 11, it is appropriate that the rules provide flexibility for the Board to adapt the calculation methodology based on available modeling tools and information. The decision to utilize a statistical analysis, third-party modeling software, or other methodology is best made annually during the Board’s implementation of the rule, based on an assessment of the practicality, availability, and effectiveness of various tools, and recognizing that more effective tools may become available in any given year. It would be particularly inappropriate for the rules to include mention of any specific brand of modeling software, and the Board, therefore, declines to make the change requested by the commenter.

N.J.A.C. 14:8-2.12(a)2iii

13. COMMENT: Noting that the Board proposed to rely upon publicly available reports of “average” carbon intensity of the generators in PJM territory, the commenter recommends using marginal carbon intensity instead, on the grounds that this would more accurately estimate the value of the carbon displacement attributable to solar generation. The commenter also urges a “balanced” approach to estimating the social cost of carbon that takes into account the relative costs of all carbon-free sources, including solar, offshore wind, and nuclear energy. (PSE&G)

14. COMMENT: As noted in a comment pertaining to the Summary of the notice of proposal, the commenter recommends that references to

“average” CO₂ emissions be changed to “marginal” CO₂ emissions. In support of this change, the commenter states that Class I renewable generation does not displace “average” generation, but rather displaces “marginal” generation, which tends to be fossil fuel. (Gabel)

RESPONSE TO COMMENTS 13 AND 14: The cost cap calculation requires that the Board include an estimate of the environmental savings associated with the clean energy generation in the Cost Cap-Applicable Programs. Estimating the tons of CO₂ not emitted by electric generators in the PJM region as a result of the Cost Cap-Applicable Programs means conducting a “but-for” analysis that compares the tons of CO₂ that were emitted compared with the tons of CO₂ that would have been emitted in the absence of these Cost Cap-Applicable Programs. PJM wholesale markets are cleared on price, rather than emissions, meaning that the emissions profile of the generating unit that is displaced will vary. It cannot be assumed that the Cost Cap-Applicable generation always displaces the highest source of emission. The Board is concerned that using “marginal” rather than “average” emissions would overestimate the environmental benefits associated with the clean energy generation measured under the cost cap. While it is possible that using “average” emissions may underestimate the environmental savings, the Board believes that this simpler and more straightforward approach is safer and more appropriate. Additionally, the Board notes that the environmental disclosure labels used to inform third-party supplier customers regarding the emissions profile of their energy purchases use “average” emissions. Therefore, the Board declines to make the change requested by the commenter.

N.J.A.C. 14:8-2.12(a)3

15. COMMENT: The commenter asserts that the proposed methodology for estimating the electricity costs paid by all customers does not accurately reflect the total paid for electricity. Specifically, the commenter believes that the Energy Information Administration (EIA) data that is proposed for staff to use does not comprehensively represent the total costs of electricity, particularly with respect to small cogeneration and net metered solar generation. The commenter points to the difference between the EIA sales data for energy year 2020 (EY2020) and that of the Board’s Division of Clean Energy as evidence that the EIA significantly underestimates New Jersey’s behind the meter and generation and cogeneration. The commenter, therefore, recommends adjustments to the EIA data, and the inclusion of additional items, such as the costs of third-party owned solar, customer-owned solar, and small cogeneration facilities. The commenter proposes to amend the proposed rule as follows (additions underlined):

“3. The total paid for electricity shall be reported by Board staff on an annual basis based on its estimate of the electricity costs paid by all customers in the State (the denominator). To determine the denominator, Board staff shall report the sum of the following:

i. The energy costs, as reported by the Energy Information Administration (EIA);

ii. The raw EIA data shall be adjusted to include small cogen and behind-the-meter solar generation, such that it be made consistent with New Jersey’s Energy Master Plan Cogen estimates, New Jersey Clean Energy Program’s historical Solar Activity Reports for behind-the-meter solar and the Final Retail Sales MWh for the corresponding year as reported in the Clean Energy Program’s compliance documentation;

iii. Adjustments for forecasted incremental additions in behind-the-meter solar generation for the forthcoming energy year;

iv. Adjustments as needed to reflect retail rate changes in the forthcoming energy relative to the year for which data was collected;

v. Adjustments as needed to reflect forecasted load growth in the forthcoming energy year;

vi. The inclusion of any additional costs to be paid for electricity, such as incremental solar program costs, new OREC costs, increases to energy efficiency program costs, etc. that are not already included in estimated retail electric rates;

vii. The capital costs of electric generating facilities not otherwise covered in the EIA data amortized over their expected life, including, but not limited to, host-owned behind-the-meter solar projects, valued at no less than \$300,000/year per MW installed for ten (10) years.” (Gabel)

RESPONSE: The commenter recommends several adjustments to the total paid for electricity (the denominator in the cost cap calculation). The Board believes that EIA data remains the best single source of sales data, as it is collated from multiple sources by the Federal government and is widely accessible and used. The Board does agree that some adjustments to the EIA data are justified due to the methodology by which that data is collected. For example, with respect to the recommendation to include small cogen and behind-the-meter generation, the Board notes that the rules already require the addition of capital costs of electric generating facilities not otherwise covered in the EIA data, including, but not limited to, host-owned behind-the-meter solar projects. The Board does not believe that cogen (also known as Combined Heat and Power (CHP)) facilities should be separately included in the calculation of the Cost Cap, as the EIA data typically includes CHP facilities of over one MW in their cost estimates based on data from Form EIA-860. The sales associated with smaller facilities are included in Schedule 3B and, thus, are already included in the total sales data. The Board also does not believe that third-party owned net metered systems need to be separately included: pursuant to the EIA, these projects are already represented in the EIA data; <https://www.eia.gov/electricity/data/eia861m/>. With respect to the recommendation to include adjustments based on forecasts of new solar generation, retail rate changes, load growth, and additional costs for electricity, the Board notes that any future changes in costs will be accounted for in the forecasted cost cap calculations and, therefore, their inclusion in the rule would introduce unnecessary complexity and likely cause confusion. Finally, the Board has explicitly provided for the inclusion of an estimate of the costs associated with net metered solar projects that are host-owned, amortized over their expected life. However, the inclusion in the rules of a specific valuation of these projects would be inappropriate in light of the changing costs of solar development over time and would run counter to the Board's goal of maintaining up-to-date cost cap inputs and calculations, whenever possible. Therefore, the Board declines to make the change requested by the commenter.

16. COMMENT: The commenter believes that the cost cap formula should provide more detail regarding the methodology for calculating the capital costs of electric generating facilities not otherwise covered in the EIA data, as defined at N.J.A.C. 14:8-2.12(a)3ii. The commenter asserts that the cost of these electric generating facilities is reduced by the benefits of renewable energy incentive programs and that this reduction should be reflected in the formula, as should any decrease in the costs of solar panels and installation. The commenter notes that these costs are projected to decrease over time and recommends that they be reviewed and updated annually. In the alternative, the commenter states that, at a minimum, such changes should be considered in true-up calculation. Further, the commenter recommends transparency in the process of identifying the technologies eligible for incentives, and any related cost cap calculation impacts, as critical to providing certainty to developers and minimizing ratepayer impacts. (RECO)

RESPONSE: The Board agrees with the commenter's emphasis on ensuring that the cost cap calculation is both accurate and clear. The rules provide for annual re-calculation of the cost cap, as well as an annual forecasting and true-up mechanism. This iterative process will ensure that the Board considers up-to-date information, as available, including reductions in energy costs to ratepayers. The Board does not agree with the commenter's recommendation that the cost of electric generating facilities not otherwise included in the EIA data be reduced by the benefits of renewable energy programs: N.J.S.A. 48:3-87.d(2) directs the Board to reflect any energy and environmental savings when calculating the cost to customers for those Class I programs specified in the statute (the Cost Cap-Applicable Programs). In other words, these savings are applied only to the numerator (the cost of the Cost-Cap Applicable Programs); the denominator (the total paid for electricity) is not adjusted for any benefits.

N.J.A.C. 14:8-2.12(d)

17. COMMENT: The commenter notes that proposed N.J.A.C. 14:8-2.12(d) requires staff to provide an annual forecast of the cost cap calculation for the upcoming energy year prior to the start of each energy year. The commenter believes that the rule should provide a specific date on which this calculation will be performed and made public, preferably near the beginning of each calendar year. (Rate Counsel)

RESPONSE: The proposed rule required that the forecast be performed prior to the start of the next energy year in order to inform the next year's capacity allocations, but the exact date by which the forecast will be complete will likely vary from year to year. Indeed, the ability to forecast the cost cap calculation will depend in part on the availability of data. For instance, the Renewable Portfolio Standards (RPS) compliance reports are generally finalized between January and March following the end of the relevant energy year, depending in part on whether there have been any complicating factors, such as bankruptcies or reporting errors. Setting a specific date by which the forecast calculations should be published, therefore, risks creating an arbitrary deadline that may not match actual practice. Therefore, the Board declines to make the change requested by the commenter.

N.J.A.C. 14:8-2.12(d) and (e)

18. COMMENT: The commenter suggests that the Board publish a report each year that details the actual calculations used for both the forecast and the true-up of the cost cap and recommends that these calculations be updated every two to three years. The commenter states that this report will provide transparency into the exact methodology, the source of each input, and the numerical calculations, and will increase public confidence in the cost cap calculation and the ADI Program. The commenter believes that such a report would also provide an opportunity for review of the calculation and inputs to determine whether a different approach might be more appropriate in pursuit of increasing solar installations and keeping costs affordable. (RECO)

RESPONSE: The Board agrees with the commenter that it is important that there be transparency in the method and inputs used for the cost cap calculation. The rules include specific requirements regarding the implementation of the cost cap, including milestones requiring Board action through Board Order. The Board Orders required pursuant to N.J.A.C. 14:8-2.12(b) and (c), combined with staff's calculations required at N.J.A.C. 14:8-2.12(a), (d), and (e), will provide the public disclosure of information that the commenter requests; a separate annual report would, therefore, be duplicative.

N.J.A.C. 14:8-2.12(e)

19. COMMENT: The commenter notes that proposed N.J.A.C. 14:8-2.12(e) requires staff to provide true-up calculations for prior years on an annual basis. In the commenter's opinion, the rule should include a specific date when these calculations will be performed and made public. (Rate Counsel)

RESPONSE: As stated in the Response to Comment 17, the ability to conduct the true-up will depend on the availability of data. The rules instead require that the true-up calculations be conducted as new data becomes available, no less frequently than once a year, ensuring that the calculations will be regularly updated without creating an arbitrary deadline that does not match actual practice. Therefore, the Board declines to make the change requested by the commenter.

20. COMMENT: The commenter expresses caution regarding the true-up mechanism that provides for an adjustment to spending in the corresponding energy year. In the commenter's opinion, the adjustment mechanism creates a possibility for under-achieving the target capacity, especially when energization of projects is delayed by processing times in the interconnection queue and other delays. The commenter believes that the adjustment process may cause the State to under-achieve its RPS target and may undermine calculation of the cost cap estimate. (SRETrade)

RESPONSE: The cost cap is intended to manage the total amount of ratepayer spending devoted to certain clean energy programs. The forecasting and true-up mechanism is an important component in the implementation of the cost cap, as it enables the Board to conduct accurate calculations as new data becomes available, without compromising the timely establishment of megawatt allocations and incentive values upon which the solar industry relies to develop new projects. If the cost cap is found to have been exceeded, the Board will be required to take action to reduce costs that may, as the commenter indicates, include reducing ADI Program capacity allocations or the RPS. However, the cost cap adjustment mechanism provided for at N.J.A.C. 14:8-2.12(e) specifies that the excess funds will be deducted from the amount eligible to be spent in the next energy year. Any changes to the megawatt targets would,

therefore, take effect on a forward-looking basis and would not impact past capacity allocations.

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 adopted new rule.

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

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.12 Class I RPS Cost Cap

(a) To calculate the Cost Cap established by statute at N.J.S.A. 48:3-87.d(2), Board staff shall calculate the annual cost of the Class I renewable energy requirement (excluding ORECs and SREC-IIs created through the CSI Program) as a percentage of the total paid for electricity by all customers in the State, using a methodology as follows:

1. The annual cost as a percentage shall be calculated by dividing the cost to customers of the Class I renewable energy requirement (excluding the cost of ORECs and SREC-IIs created through the CSI Program) (that is, the numerator) by the total paid for electricity by all customers in the State (that is, the denominator), and multiplying by 100.

2. The cost to New Jersey customers of the Class I renewable energy requirement (the numerator) shall be equal to the annual cost of the Cost Cap-Applicable Programs as defined at (a)2i below, reduced by the dollar value of any energy and environmental savings attributable to the ***[Class I program]* *Cost Cap-Applicable Programs***, as described at (a)2ii and iii below.

i. The Cost Cap-Applicable Programs shall be the Solar Renewable Energy Certificate (SREC) Program; the Transition Incentive (TI) Program, which provides incentives through the Transition Renewable Energy Certificates (TREC)s; the Administratively Determined Incentive (ADI) Program established pursuant to P.L. 2021, c. 169, which provides incentives through Solar Renewable Energy Certificate-IIs (SREC-IIs); the Class I Renewable Energy Portfolio (RPS), which provides incentives through the Class I Renewable Energy Certificates (Class I RECs); and any future Class I program created as part of the RPS. The annual cost of SRECs, TRECs, eligible SREC-IIs, Class I RECs, and any future Class I program shall be found in the annual Renewable Portfolio Standard compliance reports produced by Board staff. In calculating the annual cost of SREC-IIs, the Board shall include only the cost the SREC-IIs created and retired through the ADI Program. SREC-IIs created and retired through the CSI Program established pursuant to P.L. 2021, c. 169 shall not be considered eligible SREC-IIs for purposes of the Cost Cap calculation and shall not be included in the calculation of the cost of the Class I renewable energy requirement.

ii. Energy savings attributable to the ***[Class I program]* *Cost Cap-Applicable Programs*** shall be determined annually by Board staff, and shall equal the sum of the reduction in prices in the PJM wholesale markets for energy that results from the reduction in demand or increases in low cost supply associated with the ***[Class I renewable energy requirement]* *Cost Cap-Applicable Programs***; and the reduction in prices in the PJM wholesale markets for capacity that results from the reduction in demand or the increases in low cost supply associated with the ***[Class I renewable energy requirement]* *Cost Cap-Applicable Programs***. Board staff shall conduct an analysis, using data on electric energy and capacity prices available from PJM and other sources, to determine the impacts caused by ***[Class I program]* *Cost Cap-Applicable Programs*** resources on electric energy and capacity costs for New Jersey ratepayers.

iii. The environmental savings attributable to the ***[Class I program]* *Cost Cap-Applicable Programs*** shall be equal to the tons of carbon

dioxide not emitted by electric generators located in the PJM region as a result of the ***[Class I renewable energy requirement]* *Cost Cap-Applicable Programs*** multiplied by the social cost of carbon value. To calculate the tons of carbon dioxide not emitted, staff shall, on an annual basis, multiply the average historical electric carbon dioxide emissions rate as most recently published by PJM Interconnection by the number of megawatt-hours of zero-carbon electricity generated by resources participating in the Cost Cap-Applicable Programs. The social cost of carbon value shall initially be set equal to the midpoint of social cost of carbon in the most recently published United States Government Interagency Working Group on Social Cost of Greenhouse Gases, which is currently set at the three percent discount rate. The Board may elect, through a Board order, to adjust the social cost of carbon value used based on society's evolving understanding of the costs imposed on society by global climate change, after a notice and comment proceeding, provided that the Board shall not select a scenario that results in a social cost of carbon less than the three percent discount rate. The Board may consider, through a Board order, additional environmental savings associated with reduced particulate matter and other harmful emissions from fossil fuel power plants after a notice and comment proceeding. Any changes to the metrics for calculating the social cost of carbon or the addition of additional environmental savings shall be made only after publication of the proposed changes on the Board's website and a public comment period of at least 30 days.

3. The total paid for electricity shall be reported by Board staff on an annual basis based on its estimate of the electricity costs paid by all customers in the State (the denominator). To determine the denominator, Board staff shall report the sum of the following:

i. The energy costs, as reported by the Energy Information Administration (EIA); and

ii. The capital costs of electric generating facilities not otherwise covered in the EIA data amortized over their expected life, including, but not limited to, host-owned behind-the-meter solar projects.

4. Board staff shall calculate the annual cost percentage pursuant to (a) above based on data available at the time, including projections where actual data is not available.

(b) The Board shall certify, through a Board order, that the annual cost percentage calculated by staff at (a) above, does not exceed nine percent in energy year 2019, energy year 2020, and energy year 2021, respectively, and does not exceed seven percent in any energy year thereafter, except as otherwise permitted at (c) below, and take any necessary actions to maintain statutory compliance as set forth at (e) below.

(c) Annually, the Board shall identify, through a Board order, any amount that was not spent in a given energy year, but was eligible to be spent under the Cost Cap, between energy years 2019 through 2024. Those values shall be carried over and made available in future energy years until energy year 2024, so long as the total costs to customers for energy years 2019 through 2024 do not exceed the sum of nine percent of the total paid for electricity by all customers in the State in energy years 2019, 2020, and 2021 and seven percent of the total paid for electricity by all customers in the State in energy years 2022, 2023, and 2024.

(d) Prior to start of each energy year, Board staff shall develop a forecast of the Cost Cap calculation and estimate whether or not the annual cost percentage calculated pursuant to (a) above is at risk of exceeding the annual cap set forth at (b) above. If the forecast for a given energy year shows that the annual cost percentage is at risk of exceeding the annual cap for that energy year, the Board shall take measures to reduce the cost of the Cost Cap-Applicable Programs in the upcoming energy year, until such time as the forecasted annual cost percentage falls below the annual cap. The Board shall first reduce the capacity allocations budgeted to the ADI Program established at N.J.A.C. 14:8-11.7 for the upcoming energy year. If the reduction in the ADI Program capacity allocations is insufficient to enable compliance with the Cost Cap, the Board shall reduce the upcoming energy year's Class I RPS compliance obligations established at N.J.A.C. 14:8-2.3(a) until compliance with the Cost Cap is reestablished.

(e) Board staff shall provide, on an annual basis, a true-up calculation of the Cost Cap for the prior energy years based on new data that has become available since the prior true-up. In the event that the true-up finds

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that funds were spent in excess of the Cost Cap in a given energy year, those funds shall be deducted from the amount eligible to be spent in the next energy year and the Board shall take actions as specified at (d) above. Any reduction in incentives or incentive availability attributable to Cost Cap compliance will only apply to projects that have not yet registered in the SuSI program or, in the case of projects located on contaminated lands

temporarily eligible for the ADI Program (see N.J.A.C. 14:8-11.7(b)7), those that have not yet received a conditional certification issued by the Board.
