

PUBLIC UTILITIES

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BOARD OF PUBLIC UTILITIES

Dual-Use Solar Energy Pilot Program

Adopted Amendments: N.J.A.C. 14:8-13.3, 13.5, 13.7, 13.8, 13.9, 13.10, and 13.13

Proposed: December 2, 2024, at 56 N.J.R. 2271(a).

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: January 5, 2026, at 58 N.J.R. 14(a).

Adopted: May 21, 2026, by the New Jersey Board of Public Utilities, Christine Guhl-Sadovy, President, Dr. Zenon Christodoulou, Ph.D., Michael Bange, Emma Rebhorn, and Joseph Coviello, Commissioners.

Filed: May 21, 2026, as R.2026 d.077, with substantial changes to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10 and 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, 48:3-87.13, and 48:3-114 through 119.

BPU Docket Number: QX24080597.

Effective Date: June 15, 2026.

Expiration Date: December 17, 2032.

Summary of Public Comments and Agency Responses:

Written comments on the original proposal were received from BlueWave; ForeFront Power; Lightstar; Mid Atlantic States Career and Education Center (MASCEC) and Tatleaux Solar Group (Tatleaux) (MASCEC-Tatleaux); New Jersey Division of Rate Counsel (RC); Renewable Properties; and Vermont Agency of Agriculture, Food, and Markets (VAAFMM).

Written comments on the notice of proposed substantial changes upon adoption to proposed amendments were received from: Advanced Solar Products (ASP), American Farmland Trust (AFT), BlueWave, Coalition for Community Solar Access, Distributed Energy Infrastructure, Finicky Farm, LLC, ForeFront Power, Lightstar, New Jersey Farm Bureau, Renewable Properties, Solar Agricultural Services, Inc., and Solar and Farming Association (Joint Commenters); Michael Winka; and RC, ASP, ForeFront Power, and Lightstar, who were among the Joint Commenters, each also submitted a comment on their own behalf as an individual comment.

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal Upon Adoption

N.J.A.C. 14:8-13.7 Pilot Program Solicitation Process

1. COMMENT: The commenter states that it supports the requirements for the applicants outlined at N.J.A.C. 14:8-13.7. However, the commenter recommends amending N.J.A.C. 14:8-13.7(a)3 and 4 to require more extensive accounting, specifically, a detailed breakdown of all sources of project financial support, to provide greater transparency in the application process, facilitate a more accurate assessment of financial needs, and help avoid over-subsidizing projects. (RC)

RESPONSE: The Board of Public Utilities (“Board” or “NJBP”) agrees with the commenter that over-subsidization should be avoided, but does not believe that N.J.A.C. 14:8-13.7(a)3 and 4 are the appropriate rules for revision. These paragraphs detail requirements to submit an Expression of Interest (EOI). Pursuant to the Board’s rules, the EOI constitutes a pre-qualification application process through which a limited number of details are provided by an applicant to enable a determination of whether the applicant may submit a “full” or more detailed application. Thus, the detailed breakdown of financial support suggested by the commenter is beyond the scope of the EOI. The application requirements at N.J.A.C. 14:8-13.7(f) pertain to the full application. Pursuant to subsection (f), the applicant must update the information provided with an EOI submission and must also provide documentation demonstrating how an applicant proposes to meet the application criteria. The Board believes that adding clarity to the type of documentation is important to establish

in the rules for consistency throughout the duration of the Pilot Program specific to understanding any sources of financial support and information supporting the adder. The Board is revising the rules at N.J.A.C. 14:8-13.7(f)2 to require a detailed breakdown of all sources of project financial support, and any additional information Board staff may need to determine the support for the requested adder. In addition, the method and instructions on the requirements to meet the application criteria are determined by the Board’s orders for each solicitation round and can be modified as needed for each application period.

N.J.A.C. 14:8-13.8 Conditions for a Project Awarded an Incentive

2. COMMENT: The commenter states that the Board and/or Rate Counsel should have the ability to examine the accounting books of developers in relation to the projects receiving incentives. (RC)

RESPONSE: The Board agrees with the commenter that the Board should have the authority to investigate the accounting books of selected projects but disagrees that Rate Counsel should be involved to the same extent as the Board during the Pilot Program. The Pilot Program has a maximum capacity limit of 200 MW over three years, and the Board suggests revisiting the level of involvement by Rate Counsel in the future as it relates to the development of a permanent program when there will be a potential for a greater impact to ratepayers. As such, the Board has added N.J.A.C. 14:8-13.8(g) to expressly allow for the Board to evaluate the financial records of a selected project, as necessary.

N.J.A.C. 14:8-13.9 Installation, Construction, and Operational Requirements

3. COMMENT: Two commenters recommend that the research control area be permitted to be located on a separate, nearby parcel of land and fenced separately from the array area. (BlueWave and ForeFront Power)

4. COMMENT: The commenter suggests that the Board consider an alternative approach to the size of a research control area to allow for siting the research control area on an adjacent property within 0.25 miles of the array site, as long as the Board’s requirements are met pertaining to equivalency of farming practices and other agricultural factors, such as soil. The commenter also asks if the research control area can be on an adjacent or abutting parcel and on preserved farmland. (Lightstar)

RESPONSE TO COMMENTS 3 AND 4: The Board declines to make any changes to the rules regarding fencing requirements because the proposed rules allow for a research control area to be separately fenced, depending upon the requirements imposed by any code, ordinance, permit requirement, or statute. The Dual-Use Act specifies that a Dual-Use Solar Energy Project must be sited on unpreserved farmland and makes no exception for fencing or a control area. N.J.S.A. 48:3-87.13.a. The Board concurs with the recommendation that a change be made to allow for alternative siting to account for potential siting issues with the project site, provided that a control area on a separate parcel of land would be nearby, at a maximum distance of 50 yards, and would comply with the Board’s rules pertaining to equivalency for the land where the solar array is located. However, the Board believes that such an allowance or exception should be made only when adequate justification is provided to the Board as part of the application process. The Board incorporates the changed language at new N.J.A.C. 14:8-13.9(e)5iii.

N.J.A.C. 14:8-13.10 Monitoring and Research Requirements

5. COMMENT: The commenters request clarification on research requirements, specifically with respect to the time commitment to conduct the research pursuant to the Pilot Program at N.J.A.C. 14:8-13.10(b) through (n) and research control area requirements at N.J.A.C. 14:8-13.9(e)5. The commenters question if the requirements are in place for three years pursuant to N.J.A.C. 14:8-13.10(a) or the lifetime of the project pursuant to N.J.A.C. 14:8-13.10 and request clarification on what is considered the “life of the project,” and the length of applicable lease terms for the research control area. ForeFront Power also expresses concern over the ability to estimate project costs, while BlueWave states that these aspects of the rulemaking will have significant impacts on the project submissions. (BlueWave and ForeFront Power)

RESPONSE: The Board appreciates the commenters’ request for clarification and agrees that clarity in the timeframe to conduct research and monitoring required by the Pilot Program will help support successful project planning, including costs. The Board advises that research

pursuant to the Pilot Program should be achievable within the duration of the Pilot Program set by the Dual-Use Act (P.L. 2021, c. 170 (N.J.S.A. 48:3-87.13 et seq.)) of 36 months with results produced to inform the permanent program but understands that unless consideration is given to the timelines for project approvals, construction, installation, and agricultural or horticultural growing seasons, it may be impractical to have sufficient data from these projects. Thus, the Board is adding new N.J.A.C. 14:8-13.10(o)1, so that the research requirements shall be in place for three years from the date that a selected project receives permission to operate from an electric distribution company. The Board does not dictate a specific length of applicable lease terms but rather accepts any such lease terms that enable the research to be fully executed. The Board declines to make any further changes to the rules regarding the lifetime of the project because this timeframe is already defined and the Board does not find that any changes are needed. Pursuant to N.J.A.C. 14:8-13.13(c)1, a project's qualification life for receipt of incentives is 15 years because a Dual-Use Solar Energy Pilot Program award is in the form of an NJ SREC-II. Pursuant to N.J.A.C. 14:8-11.6(a), a SuSI-eligible facility is eligible to generate NJ SREC-IIs for 15 years following the date of commencement of commercial operation. This 15-year period is defined as the New Jersey SREC-II Qualification Life at N.J.A.C. 14:8-11.2.

2. Comments Received Upon Publication of Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments

General Comments

6. COMMENT: The commenter noted that the Board providing notice for substantial changes upon adoption to a rulemaking that has been adopted is "unusual and not explicitly contemplated in the rules" pursuant to N.J.A.C. 1:30-6.3, while simultaneously noting the Board gave adequate time to comment on the substantial changes, which did not alter the initial impact statements for the rulemaking issued on December 4, 2024. (RC)

RESPONSE: The Board acknowledges Rate Counsel's comment and confirms that it acted in accordance with the rules for rulemaking at N.J.A.C. 1:30-6.3(c), which sets forth the process for proper notice of making substantial changes to a rule proposal upon adoption.

7. COMMENT: The commenter generally supports rule development for the Pilot Program and recognizes its potential benefits, including increased production of clean energy, increased revenues for farmers and rural landowners, and more efficient use of agricultural land compared to utility-scale solar. The commenter states that the implementation of a Pilot Program will reduce the impact of unanticipated outcomes in a permanent program and is likely to reduce costs to ratepayers. (RC)

8. COMMENT: The commenter supports the Board's mandate to use competitive market mechanisms to evaluate and score eligible projects and market forces to guide the establishment of financial incentives in the Pilot Program, which reduces costs to ratepayers. (RC)

RESPONSE TO COMMENTS 7 AND 8: The Board thanks Rate Counsel for its support.

9. COMMENT: The commenter fully supports the proposed rule amendments. (Michael Winka)

RESPONSE: The Board thanks Mr. Winka for his support.

10. COMMENT: The commenter states that the increase in winter electric load peak is a more pressing issue for New Jersey than the increase in summer peak, supporting his claim with detailed information from PJM Interconnection LLC's (PJM's) 2025 Long-Term Load Forecast report pertaining to New Jersey's electric distribution companies (EDC) forecasts and with calculations using PV Watts. According to the commenter, solar and storage programs are currently designed to promote maximizing solar generation in the shoulder and summer months. He argues that the Pilot Program offers an especially effective mechanism for increasing winter solar generation through the installation of more panels with a tilt of greater than 60 percent.

In the commenter's opinion, vertical tilt systems are a good fit for the Pilot Program since they allow for maximum sunlight to crops, encouraging crop production, and can also provide an additional benefit as a hedgerow. In addition, maintains the commenter, such panels will provide less generation in the summertime and, thus, will tend to reduce oversupply and the need to curtail solar resources. The commenter also

believes that distributed solar and storage are a more realistic and appropriate means of managing load growth in New Jersey than large grid supply systems, offshore wind, or small modular nuclear reactors.

The commenter acknowledges that his proposal would reduce total annual generation. He proposes that the Board address this issue either by increasing the value of the SREC-II value for the Pilot Program for vertical panels or by creating a winter distributed resource program incentivizing solar facilities that reduce winter peaks. (Michael Winka)

RESPONSE: The Board appreciates the commenter's thoughtful analysis of the potential for vertical panel systems in the Pilot Program to assist in managing peak load growth in New Jersey. The Pilot Program has not; however, received any EOIs during the first Program Year for projects with vertical panels, which could be due to a variety of reasons.

The Board declines to incorporate, upon adoption, the recommendation to increase the value of an SREC-II for a project that uses vertical panels. The purpose of the Pilot Program is to collect data from applicants on their requested incentive levels, in addition to other criteria, evaluate the applications accordingly, and then make a determination on an award given the entirety of the details of a project submitted in the application. The solicitation process will inform the appropriate incentive levels for a permanent program; thus, memorializing a predetermined decision regarding a specific system type in the regulations for a Pilot Program would be premature and negate the purpose of the process.

Regarding the commenter's suggestion for a winter-distributed resource program incentivizing the reduction of winter peaks, this comment is beyond the scope of this rulemaking. The Board encourages the commenter to participate in other public process opportunities afforded by the NJBPU and New Jersey's Clean Energy Program where the commenter's recommendations could be more appropriately considered.

11. COMMENT: The commenter states that it supports comments made by the Joint Commenters, but would like to add an additional comment about allowing non-profit and governmental entities that conduct farming activities, but do not pay taxes, to be eligible to participate in the Pilot Program. The commenter further states that these entities cannot apply for farmland tax assessment and are, therefore, rendered ineligible to apply to the Pilot Program. The commenter considers these entities to be an important part of New Jersey's market and their participation in the Pilot Program would allow for benefits to be broadly applied to the public. Thus, the commenter strongly urges the Board to deem these entities eligible to participate in the Pilot Program. (ASP)

RESPONSE: The Board concurs that non-profit and governmental entities serve the public interest, generally. However, the Board is limited in its authority to make changes to the eligibility requirements for the Pilot Program in this case pursuant to the Dual-Use Act. The Dual-Use Act's definition of "unpreserved farmland" means any land that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), and is not preserved farmland. If the land in question is not "valued, assessed, and taxed" pursuant to the Farmland Assessment Act, the land does not meet the definition of "unpreserved farmland." Therefore, dual-use projects cannot be located on such land. Furthermore, there are no farmland assessment exemptions for non-profit entities since they are not applying for farmland assessment due to already being tax exempt. Thus, non-profit farm entities are not eligible for the Pilot Program and the Board does not have the authority to change the Dual-Use Act. The Board declines ASP's request to modify the eligibility requirements for the Pilot Program, but encourages these entities to apply for incentives offered through other existing solar programs in the State.

12. COMMENT: The commenters request that the Board accelerate making awards for Program Year 1 to allow for securing ITC eligibility requirements. In their opinion, such acceleration would align with New Jersey's Executive Order No. 2 (2026) and its acceleration of timelines for other procurements and clean energy technologies. Specifically, the commenters request that awards be made by May 2026, a schedule which they believe would align with and signal ITC eligibility. The commenters' understanding of the existing award timeline is that awards may not be made until August 2026, or 180 days from the date on which the application window closed. The commenters note that either a July or an

August award date would be past the ITC safe harbor deadline of July 4, 2026; they add that even if projects are eligible for the safe harbor, they would remain in jeopardy of losing ITC eligibility due to the normal timelines for permitting, interconnection, and construction requirements needed prior to the commercial operation date (COD). In a related argument, the commenters recommend accepting the maximum number of projects into Program Year 1 to increase the number of projects that might qualify for ITC benefits, a benefit that the commenters claim would reduce costs to the Pilot Program. The commenters maintain that maximizing the number of projects accepted in Program Year 1 would support a diverse and representative pilot. (Joint Commenters, ForeFront Power, and Lightstar)

RESPONSE: The comments are more about the first year solicitation than the rules. The Board appreciates the commenters' point that a speedier implementation of Program Year 1 would support the New Jersey Governor's initiatives for affordability and for bringing renewable energy online in an accelerated fashion. The Board notes that the Dual-Use Act requires that the Board, in consultation with the New Jersey Department of Agriculture, make determinations on applications "within" 180 days after receipt of applications. N.J.S.A. 48:3-87.13.c1. In addition, the Board refers the commenter to the Board's Order addressing the Board's evaluation and approval process for making determinations, including awards, *In the Matter of the Dual-Use Solar Energy Pilot Program, Order for the First Application Period of the Dual-Use Pilot Program, Program Year 1*, Docket No. QO23090679, Order dated November 21, 2025 (Dual-Use Solar Energy Pilot Program Order 2025), specifically on page 16. The Board is committed to making decisions on applications by the statutory deadline and establishing New Jersey's position as a marketplace leader in agrivoltaics, and will work toward making decisions as quickly as is practicably feasible. Furthermore, the solicitation is a competitive process, and the applications have not been made public. Thus, it is unclear what support commenters have for their claim that accepting the maximum number of applications will support a diverse range of projects and be representative for the entire Pilot Program. Finally, the Board notes that this is the first round of the application process in the Pilot Program; there will be future opportunities for submitting projects in the Pilot Program in which the Board will evaluate the need for additional projects to have a fully representative pool of projects to adequately inform a permanent program.

13. COMMENT: The commenters request that, "[w]hen the award timeline is accelerated," the Board open Program Year 2 for applications in 2026. The commenters state that such a timeframe would allow adequate time for project teams to plan high quality and grid-ready projects. According to the commenters, there is an assumption among many farmers, financiers, and executives that there is no program beyond Program Year 1. (Joint Commenters, ForeFront Power, and Lightstar)

RESPONSE: The comments are more about the first year solicitation than the rules. By statute, the Board is required to implement a full three-year or 36-month Pilot Program. See N.J.S.A. 48:3-87.13.e. Further detail on the planned implementation of the Pilot Program is found in the Dual-Use Solar Energy Pilot Program Order 2025, specifically on page 18 where the Board ordered Program Year 2 to begin on February 26, 2026.

N.J.A.C. 14:8-13.3 Pilot Program Structure

14. COMMENT: The commenter does not oppose the addition of language at N.J.A.C. 14:8-13.3(k), clarifying that the total incentive value shall be a fixed value. (RC)

RESPONSE: The Board appreciates the commenter's support.

N.J.A.C. 14:8-13.5 Pilot Program Eligibility

15. COMMENT: The commenter supports the proposed shift to a lower baseline incentive value for CSI-eligible facilities that have not received an award from the Board in the CSI Program at N.J.A.C. 14:8-13.5(f)3i. Rate Counsel also commented that it supports the Board's efforts to protect ratepayers from excessive and unnecessary programmatic costs. (RC)

RESPONSE: The Board appreciates the commenter's support. The Board is balancing the dual goals of minimizing the impact to ratepayers and simultaneously providing a sufficient incentive to support a nascent sector of the solar marketplace. In furtherance of this goal, the Board is

adopting this provision as originally proposed to better support a successful Pilot Program. The proposed decrease received significant adverse public comment, summarized below. The Board is charged with developing a Pilot Program that involves a diverse set of project types, whether in size, location, technical design, and/or agricultural and horticultural production to inform a permanent program. As discussed further at Comment 16, to incorporate the incentive reduction contemplated in the notice of proposed substantial changes upon adoption to proposed amendments, 58 N.J.R. 14(a), would result in a disadvantage for small- and medium-sized farms, effectively undermining the Board's ability to assess the success of the Pilot Program across a wide spectrum of projects.

The Board highlights, however, that the Pilot Program is intended to study the efficacy and applicability of an agrivoltaics program in the State of New Jersey, with the goal of informing the development of a permanent dual-use program. As information is compiled throughout the Pilot Program, the Board will continue to evaluate the size and impact of the incentive in future solicitations and also in the development of a permanent program.

16. COMMENT: The commenters request that the Board restore the reference value for CSI eligible projects at \$95.00 per MWh for Program Year 1 projects or allow for projects to participate as community solar with a project size less than five MWdc. As part of their justification and rationale for this request, the commenters cite the recent Board awards made in the third CSI Program solicitation and note that the amount of the original CSI incentive used as a reference value is below two of the awards made in the third CSI Program solicitation and below the average award made. The commenters also argue that dual-use projects operate at a structural retail disadvantage since they do not receive retail compensation such as community solar; in addition, the commenters state that wholesale energy prices in New Jersey have declined since the EOI process in 2025, narrowing the margins even further. They also point to the additional costs of research and monitoring requirements borne by Pilot Program participants, requirements that the commenters state are expanded in the proposed amendments.

Although the commenters acknowledge the Board's need to consider the impacts to ratepayers, they also maintain that the Pilot Program has the potential to align with the Governor's affordability goals while supporting farmers, food security, and grid resiliency, and that it needs stability to succeed. The commenters assert that the incentive reduction makes their projects financially infeasible, particularly in the case of several small- and medium-sized farms. Noting that the 30 percent decrease was announced only weeks before the Program Year 1 application period launched, the commenters maintain that the change in baseline compensation has caused a decrease in participation in the Pilot Program; in particular, they claim that it has caused confusion among developers for how to include solar project costs in the adder calculation. The commenters claim that the reduction in the base incentive forces solar developers to include solar project costs in their adder, which they say is contrary to the direction given in previous orders and rules. As a result, say the commenters, the adder amounts submitted for Program Year 1 will give a distorted picture of agrivoltaics compensation. Thus, the commenters state that while farmers and project teams have participated in a multi-year process in good faith, "it is not clear ... that the BPU wants the Pilot Program to succeed." With respect to future years, the commenters request the Board return to using the highest awarded bid from Tranche 1 from the most recent solicitation in the CSI Program, alleging that such a value would better reflect current market conditions and more appropriately reflect Dual-Use Pilot Project sizes. (Joint Commenters, ForeFront Power, and Lightstar)

RESPONSE: The Board agrees with the commenters that the change in the baseline incentive value for CSI-eligible projects was likely a major factor in several of the pre-qualified applicants not submitting applications and will not adopt the proposed substantial change that would have set the base incentive at 90 percent of the lowest incentive awarded in the most recent CSI solicitation. The Board thanks the commenters for bringing to its attention the concern for small- to-medium-sized farms being disadvantaged by the reduction in incentives. The Board recognizes that changing the reference value for the base incentive from the highest to the lowest awarded Tranche 1 bid in the most recent CSI Program solicitation

will likely impact project financial feasibility for smaller operations and agrees that projects in the Pilot Program do not operate at the same level as the larger, utility scale projects in the CSI Program that benefit from economies of scale. As discussed in the Board's Response to Comment 15, the Pilot Program is intended to attract a diverse pool of applicants, and the Board has determined that the proposed reduction would have an unintended bias toward larger projects. Therefore, the Board agrees that the originally proposed baseline incentive, based on the highest awarded bid in Tranche 1 of the most recent CSI solicitation, is a more appropriate base incentive; the Board further acknowledges that the swift change in the baseline incentive value for CSI-eligible projects caused confusion among developers. The confusion may have contributed to the receipt of applications from only 17 of the 28 prequalified projects in the first year solicitation. The originally proposed incentive is more likely to facilitate a more diverse set of projects; furthermore, a more appropriate base incentive is less likely to cause the inflation of incentive adder values, values which will be a crucial dataset for the development of a permanent program. The Board agrees with the commenters that using the highest awarded bid from Tranche 1 from the most recent solicitation in the CSI Program is more appropriate for the project sizes allowed in the Pilot Program, meaning projects sized up to 10 MW. With respect to the commenters' claim that the changes made to the monitoring and research requirements increase the costs of participating in the Pilot Program, the Board continues to believe, as explained in the notice of proposed substantial changes upon adoption to proposed amendments, 58 N.J.R. 14(a), that these changes constituted minor adjustments and clarifications to the original proposal will result in only minimal additional costs.

Regarding the commenters' request to allow projects to participate as community solar with a project size less than five MW, the Board reiterates its response to similar comments in the notice of adoption: "While the Board understands that dual-use solar energy projects are likely to have limited on-site load and the ability to combine these generation facilities with remote load as in CSEP would be welcome, the requirements of the two programs are not compatible." 58 N.J.R. 60(a). Most tellingly, the Community Solar Energy Program (CSEP) does not allow projects proposed on open space or farmland. The Board also notes that, because community solar bill credits are based on retail rates, allowing dual-use projects in CSEP may increase costs to ratepayers. The proposed substantial changes, which the Board is now adopting, included a new provision at N.J.A.C. 14:8-13.3(k)2 to clarify that the value of the total incentive, including the adder, shall be a fixed value and would not be subject to increase if project costs are greater than anticipated. The Board will take into account the concerns for project costs outlined in the comments as it continues to implement the Pilot Program and refers the commenters to the additional information provided in the Dual-Use Solar Energy Pilot Program Order 2025, which addresses the Board's evaluation and approval process for making determinations, including awards.

N.J.A.C. 14:8-13.7 Pilot Program Solicitation Process

17. COMMENT: The commenter states that it supports the added proposed requirement for more details of a project's financial information upon Board request as part of the application, thereby facilitating a more accurate assessment of financial needs and avoiding over-subsidizing projects. The commenter also referred back to a previous suggestion for the inclusion of an initial deposit requirement in order to discourage uncommitted applicants, with an additional deposit upon project selection to ensure that developers remain dedicated and have secured the capital necessary for the project to be developed. (RC)

RESPONSE: The Board thanks the commenter for their support regarding the proposed revision at N.J.A.C. 14:8-13.7(f)2. With regard to the commenter's suggestion of incorporating deposits, the Board reiterates its response to the commenter's recommendation as provided in the original notice of adoption and continues to believe that the commenter's proposed revisions would not promote the optimum functioning of the Pilot Program. 58 N.J.R. at 62, Comment 16. Rather, the Board believes that Board staff should continue to have the flexibility to determine the need and establish the amount of application deposits and/or fees in each solicitation round. Thus, the Board declines to make the commenter's recommendation.

N.J.A.C. 14:8-13.8 Conditions for a Project Awarded an Incentive

18. COMMENT: The commenter states that the Board's proposed rule revision at N.J.A.C. 14:8-13.8(g) requiring a selected project to provide project cost information to Board staff upon request is insufficient because it does not allow Rate Counsel the ability to review this information. The commenter continues to recommend that Rate Counsel should be given the ability to examine the accounting books of developers in relation to the projects receiving incentives due to its statutory role in protecting the interest of the State's ratepayers. In contrast to the Board's previous suggestion of involving Rate Counsel for the development of a permanent program when there will be a greater impact to ratepayers, the commenter believes that Rate Counsel's involvement at the pilot stage is critical to provide input that will inform the foundational development of a permanent program and its inability to be involved prevents the public from understanding the amount of incentives being provided in the Pilot Program. The commenter states the Board "downplays" its response to its previous comments about Rate Counsel being involved and believes its involvement to be critical for acting in the best interest of the ratepayer. (RC)

RESPONSE: The Board appreciates Rate Counsel's comments and its dedication to protecting the interest of the State's ratepayers. The Board maintains its original response that Rate Counsel not be intricately involved with the review of project applications during the Pilot Program and respectfully disagrees that Rate Counsel should be involved to the same extent as the Board during the Pilot Program. The Pilot Program is inherently different from rate cases, whereby Rate Counsel is intricately involved with decisions when utilities are requesting rate changes for consumers. The Pilot Program's incentives through an adder are not specifically published in the regulations and do not follow a public input process for the inherent reason that the goal of the Pilot Program is to learn about what financial incentives are needed to support establishing an agrivoltaics industry in New Jersey.

The Pilot Program is designed to inform a permanent program and it is necessary to collect data and information in order to do so. Thus, revisiting the level of involvement by Rate Counsel in the future as it directly relates to the development of a permanent program is more appropriately aligned with the establishment of an agrivoltaics market segment in New Jersey. With respect to Rate Counsel's comment regarding the need for public transparency, the Board refers the commenter to its Responses to Comments 21 and 25 in the notice of adoption, whereby the Board committed to providing as much of the data from the projects that is reasonably allowed pursuant to governing laws and rules pertaining to confidentiality. 58 N.J.R. at 63, Comments 21 and 25. In conclusion, the Board declines to make any revisions to the rules based on the commenter's feedback.

3. Comments Received During the Initial Comment Period, Not Giving Rise to Changes in the Rule Proposal

All comments received not giving rise to the notice of substantial changes can be found at 58 N.J.R. 60(a).

Summary of Agency-Initiated Changes Upon Adoption:

1. N.J.A.C. 14:8-13.3(k)2 is changed to clarify that the value of the total incentive, including the adder, shall be a fixed value and would not be subject to increase if project costs are greater than anticipated.

2. N.J.A.C. 14:8-13.10(b), (c), and (k), which outline soil and environmental health parameters as part of the research and monitoring requirements in the Pilot Program are changed. The Board, in consultation with the New Jersey Department of Agriculture and the Rutgers Agrivoltaics Program at Rutgers University, determined that these proposed changes and additions to the soil and environmental parameters are necessary and critical to better understand the impacts to farmland in New Jersey from Pilot Program projects. During the installation of a solar system, many factors can affect the soil significantly and the Board is adjusting the originally proposed parameters, as set forth in the notice of proposed substantial changes. Each modification is described in detail, along with other necessary minor adjustments to the original proposed new rules. While the Board recognizes that the additional soil health parameters being proposed may potentially add costs to applicants, the Board anticipates that the additional costs will be minimal and, moreover,

the purpose of the adder is to account for such incremental costs of participation in the Pilot Program.

i. Pertaining to N.J.A.C. 14:8-13.10(b), which outlines the parameters required to assess the soil quality characteristics before construction or any site preparation work begins, adding the requirement for a soil map will enable both the selected project teams and the Board to more effectively and efficiently evaluate these soil quality characteristics as part of the report required at N.J.A.C. 14:8-13.8(f). Thus, the Board is combining soil textural classification, hydrologic soil group, salinity, and overall slope into one group with the addition of soil type(s) at proposed N.J.A.C. 14:8-13.10(b)1. Additionally, at N.J.A.C. 14:8-13.10(b)1, the Board is modifying the proposed parameter “soil map unit” to “soil map unit(s)” in case there is more than one soil type at a project site.

ii. At N.J.A.C. 14:8-13.10(b)2 and 3, the Board is adding “soil volumetric water content” as part of the metric for bulk density and “penetration resistance,” respectively. Water content is a measurement that is used together with penetration resistance to calculate compaction. “Penetration resistance” is a measurement that can be used as a proxy for determining soil compaction, which it is imperative to prevent and minimize as much as possible to be able to ensure that the farmland remains in active agricultural or horticultural use. Therefore, these metrics are necessary measurements to include concurrently as part of the evaluation for the Pilot Program. Finally, the Board is clarifying, upon adoption, that the sampling protocol for bulk density, soil volumetric water content, and penetration resistance to be measured covering the depth range of zero to at least 15 inches, or zero inches to the depth of a restrictive layer.

iii. At N.J.A.C. 14:8-13.10(b)6, pertaining to the original parameters proposed as “macro- and micro-nutrient content,” the Board determined that it is more appropriate to refer to “nutrients” at N.J.A.C. 14:8-13.10(b)4 to avoid confusion about what “macro” and “micro” mean for implementation. At N.J.A.C. 14:8-13.10(b)9, regarding the original parameters proposed as “[t]opography of the project site,” the Board re-evaluated accessing this information and determined that obtaining it through a soil map is not feasible and, therefore, requiring it presents a hardship and burden for applicants/project teams participating in the Pilot Program. Thus, the Board is removing it upon adoption. Also, at N.J.A.C. 14:8-13.10(b)4, the Board is making a change to include the measurement of pH because it influences the availability of nutrients to plants. Changes in pH, therefore, affect crop growth and yields if these changes mean that nutrients are less available. The installation of photovoltaic panels can potentially lead to changes in soil pH levels (often causing acidification) due to alterations in the microclimate, vegetation patterns, and organic matter content under the panels compared to surrounding areas. Tracking any potential changes in pH after installing the photovoltaic system is important to reduce negative impacts on the farmland and the crops growing in an agrivoltaics system, as well as to make necessary changes in agricultural practices, such as fertilizing rates. Furthermore, pH is used as an indicator of the absence of inorganic carbon in soil.

iv. Additionally, at N.J.A.C. 14:8-13.10(b)4, the Board is replacing the original proposed parameter “organic matter content,” with the proposed term “total soil carbon” upon adoption. Soil organic matter (SOM) and soil organic carbon (SOC) content are important properties in determining soil health. Both properties are related through conversion factors, but SOC is more accurately determined from total carbon, that is, organic plus inorganic, when inorganic carbon is absent from the soil. Selected project teams will be required to determine SOC and, if required, convert SOC to SOM using the conversion factor 1.724, with the caveat that a single conversion value may not represent SOM/SOC ratios for fields across New Jersey. Additionally, at N.J.A.C. 14:8-13.10(b)4, the Board is adding a test for “soil respiration” because it is an important measurement for soil health and biological activity. Photovoltaic systems can affect soil respiration by altering the microclimate under the solar panels, which can lead to changes in soil temperature and moisture levels, thereby impacting microbial activity and subsequently affecting the rate of carbon dioxide release from the soil. The test is a cost-effective alternative to more expensive respiration methods requiring titration or gas analyzers.

v. To more accurately represent the laboratory analysis needed at N.J.A.C. 14:8-13.10(b)4, the Board is changing the term “soil textural

classification” at N.J.A.C. 14:8-13.10(b)2 to reflect “particle-size (texture).”

vi. At N.J.A.C. 14:8-13.10(b)4, the Board is adding the parameters for “cation exchange capacity (CEC)” and “exchangeable cations” upon adoption. A cation is a positively charged ion or particle. CEC quantifies the capacity of soil to store or retain cations, and it is an inherent property of the soil that depends on its pH and on the contents of clay and organic matter. CEC influences the soil’s ability to hold onto essential nutrients and provides a buffer against soil acidification, making it an important parameter for fertility management. The installation and operation of a photovoltaic system can indirectly affect CEC and exchangeable cations by altering the microenvironment of the soil, primarily through changes in vegetation cover, water infiltration patterns, and soil disturbance during construction, potentially leading to changes in soil pH and organic matter content which influence CEC level. CEC is one of the required measurements in the pilot project because it will allow contextualized changes introduced by the installation and operation of a photovoltaic system, such as changes in vegetation cover, water infiltration patterns, and soil disturbance during construction. Those disturbances will likely have a greater effect on sandy soils (low CEC values) than in fine textured soils. Thus, knowledge of CEC, along with sand, silt, clay, and soil organic carbon contents, will allow comparing the effects of installation and operation of PV systems on soil health across soil types.

vii. At N.J.A.C. 14:8-13.10(b)5, the Board is adopting a parameter to measure an “infiltration rate,” based on the fact that this property is used to predict how water moves through soil and how much water is available to plants. Infiltration rates quantify the ease of water movement in soils and are commonly used to evaluate the effect of soil management on soil ecosystems. Soil-water dynamics are especially relevant in photovoltaic systems because of the influence of the panels on soil moisture behavior, affecting crop growth and productivity.

viii. Similar to the changes at N.J.A.C. 14:8-13.10(b) for assessing soil health prior to the construction of a solar facility, the Board is making many of the same substantial changes at N.J.A.C. 14:8-13.10(c), which outlines the parameters required for monitoring the soil quality characteristics and environmental conditions after an agrivoltaics facility is constructed. These parallel changes will enable comparison of these parameters to determine any impacts to the soil during the construction phase. The changes are as follows:

(1) At N.J.A.C. 14:8-13.10(c)1, the Board is slightly modifying “soil density and compaction” upon adoption to reflect “bulk density and soil volumetric water content covering the depth range of zero to at least 15 inches below the surface, or zero inches below the surface to the depth of a restrictive layer”;

(2) At N.J.A.C. 14:8-13.10(c)2, the Board is modifying “organic matter content” upon adoption to instead reflect a more accurate depiction of the range of parameters, specifically, “nutrients, pH, total soil carbon, soil respiration, cation exchange capacity (CEC), and exchangeable cations,” to be collected and analyzed by a laboratory;

(3) At N.J.A.C. 14:8-13.10(c)3, the Board is adding “penetration resistance covering the depth range of zero to at least 15 inches below the surface, or zero inches below the surface to the depth of a restrictive layer” upon adoption;

(4) “Mesh-marker method to assess erosion” is added at N.J.A.C. 14:8-13.10(c)4 because erosion is one of the biggest concerns when building a photovoltaic system. In the Act and in the Board’s rules, pilot projects are required to prevent erosion. This measurement will provide quantitative data to inform the applicants and the Board about potential erosion caused by the panels even when an erosion plan was in place, and therefore, mitigation and remediation strategies are needed in an agrivoltaics system; and

(5) At N.J.A.C. 14:8-13.10(c)5, the Board is requiring “infiltration rate” as one of the soil health parameters to assess after the installation of a selected project.

ix. With respect to N.J.A.C. 14:8-13.10(k), which outlines data collection requirements pertaining to environmental conditions, the Board is removing using an “actively aspirated box” to measure both air temperature and air relative humidity at paragraphs (k)2 and 3, respectively, because it is difficult to find this tool in the market at a reasonable price.

x. Additionally, the Board is modifying upon adoption, paragraphs (k)4 and 5 pertaining to the depth to which soil temperature and soil volumetric water content, respectively, are measured. The Board is making changes to include measurements including measurements at 12 inches below the surface because the type of recommended equipment to use for these parameters does not only measure at one depth.

3. The Board is removing a clause from proposed N.J.A.C. 14:8-13.13(c)2 upon adoption to reflect that the Pilot Program will have a unique milestone reporting form and will not rely upon any existing milestone reporting form for the SuSI Program. Upon further evaluation, the Board believes that having one distinct and separate form for the Pilot Program will be more efficient in implementation.

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 a Federal standards analysis in the rulemaking document. This rulemaking has no Federal analogue and is not promulgated pursuant to the authority of, or in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to 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 amendments.

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 13. DUAL-USE SOLAR ENERGY PILOT PROGRAM

14:8-13.3 Pilot Program structure

(a)-(j) (No change.)

(k) ***[(Reserved)]*** Selected projects shall be subject to the terms and conditions for participating in the Pilot Program as described in this subchapter, as well as to any additional terms or conditions specified by the Board in an order conditionally approving a selected project. The Dual-Use Solar Energy Pilot Program shall provide an adder, the value of which is determined through the solicitation process, to each selected project. The adder shall supplement an incentive amount equivalent to that provided to projects registered in the ADI Program or CSI Program pursuant to N.J.A.C. 14:8-11, based on the applicable market segment or awarded incentive value, if the selected project meets all requirements in this subchapter and the Board order conditionally approving the selected project. The total incentive, consisting of the combined value of the Dual-Use Solar Energy Program adder and the appropriate SuSI Program incentive, shall be paid to each selected project that has received a New Jersey State Certification Number pursuant to N.J.A.C. 14:8-11.5(j) in the form of NJ SREC-IIs that are created by PJM-EIS GATS for each megawatt-hour generated, metered, and reported to PJM-EIS GATS.

1. A CSI-eligible facility is not required to receive an award in the Board's CSI Program pursuant to its solicitation process pursuant to N.J.A.C. 14:8-11.10 in order to receive a Dual-Use Solar Energy Pilot Program award. The process for applying to the Pilot Program pursuant to this scenario is described at N.J.A.C. 14:8-13.7(f).

2. The value of total incentive, including the adder, shall be a fixed value and shall not be subject to increase if project costs are greater than anticipated.

(l)-(m) (No change.)

14:8-13.5 Pilot Program eligibility

(a)-(e) (No change.)

(f) The Pilot Program shall be open to the solar generation facilities set forth in this subsection, subject to successful registration requirements for a selected project pursuant to N.J.A.C. 14:8-13.8.

1.-2. (No change.)

3. For the CSI Program, a CSI-eligible facility may apply to the Pilot Program if:

i. ***[(Reserved)]*** It has not received an award from the Board in the CSI Program and uses the highest awarded bid as its base incentive value approved by the Board for the Basic Grid Supply market tranche,

categorized as Tranche 1, from the Board's most recent CSI Program solicitation; or

ii. (No change.)

(g)-(i) (No change.)

14:8-13.7 Pilot Program solicitation process

(a)-(e) (No change.)

(f) The application must include the information listed at (a) above that is required to be submitted with the EOI and must also include the following:

1. An updated municipal tax map or site plan, with block and lot location of the farm parcel clearly identified, that shows the delineation of the proposed site, its associated research control areas, its proposed location of the balance of system equipment and solar array, and fencing, and whether any changes have been made to the submission pursuant to the EOI***[.]****; **and***

2. ***[(Reserved)]*** Documentation demonstrating how the applicant proposes to meet the application criteria*, **including a detailed breakdown of all forms of financial support and any additional information Board staff may need to determine the need for the requested adder*.**

(g)-(m) (No change.)

14:8-13.8 Conditions for a project awarded an incentive

(a)-(f) (No change.)

*** (g) A selected project shall provide an overview of project costs upon Board staff requests.***

14:8-13.9 Installation, construction, and operational requirements

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

(e) Participants shall also incorporate the following additional design practices when developing a project for the Pilot Program:

1.-4. (No change.)

5. The project site of a selected project must include a research control area, or area of farmland without solar panels but otherwise equal in potential agricultural productivity and all extraneous factors affecting agricultural productivity characteristics compared to the area under and adjacent to the solar array or balance of system equipment. The research control area will be used to compare the performance of the crop or animals raised with the same crop or animals below and adjacent to the solar array or balance of system equipment.

i.-ii. (No change.)

iii. If the research control area is located on a separate farm parcel or is otherwise separated from the location of the project site at a distance of more than 50 yards from the Dual-Use Solar Energy Project, the project team will be required to submit a justification to the Board as part of the application process pursuant to N.J.A.C. 14:8-13.7.

6.-9. (No change.)

(f)-(g) (No change.)

14:8-13.10 Monitoring and research requirements

(a) The COMPR shall establish the minimum monitoring and research requirements for a selected project throughout the life of the project. A New Jersey public research institution of higher education may serve as the primary designer and organizer of research studies involving projects selected as part of the Pilot Program.

1. The Board, or its designee, will manage and collect the research data listed at ***[(d) through (j), (m), and (n)]*** *** (b) through (n)*** below for the first three years of a selected project at no cost to the participant. Participants may choose to contract with a non-Board appointed entity to collect the data at their own cost. The cost of the research equipment shall be the responsibility of the applicant, including the equipment needed for collecting data pertaining to environmental metrics.

2.-3. (No change.)

(b) ***[(Reserved)]*** Monitoring of the pre-construction soil quality characteristics*, **before site preparation begins,*** across the project site, solar array, and research control area as required at N.J.A.C. 14:8-13.8(f) must include the following parameters:

1. Soil map unit*(s), textural classification, hydrologic soil group, salinity, and overall slope, as provided by a soil map*;

*[2. Soil textural classification;

3. Hydrologic soil group;
4. Organic matter content;
5. Salinity;
6. Macro- and micro-nutrient content;
7. Bulk density;
8. Overall slope; and
9. Topography of the project site.]*

***2. Bulk density and soil volumetric water content covering the depth range of zero to at least 15 inches below the surface, or zero inches below the surface to the depth of a restrictive layer;**

3. Penetration resistance covering the depth of zero to at least 15 inches below the surface, or zero inches below the surface to the depth of a restrictive layer;

4. Nutrients, pH, total soil carbon, soil respiration, particle-size (texture), cation exchange capacity (CEC), and exchangeable cations, as provided by a laboratory analysis; and

5. Infiltration rate.*

(c) *[(Reserved)]* Monitoring of the soil and environmental conditions for selected projects after construction of the facility is required and must include the following parameters:

- *[1. Soil density and compaction;
2. Organic matter content; and]*

***1. Bulk density and soil volumetric water content covering the depth range of zero to at least 15 inches below the surface, or zero inches below the surface to the depth of a restrictive layer;**

2. Nutrients, pH, total soil carbon, soil respiration, cation exchange capacity (CEC), and exchangeable cations, as provided by a laboratory analysis;

3. Penetration resistance covering the depth range of zero to at least 15 inches below the surface, or zero inches below the surface to the depth of a restrictive layer;

4. Mesh-marker method to assess erosion;

5. Infiltration rate; and*

[3.] *6.* Any other environmental parameters specified for the project site pursuant to the COMPR and deemed necessary for the Board to inform a permanent program, as established by Board order for each application period.

(d)-(j) (No change.)

(k) *[(Reserved)]* Data collection for Dual-Use Solar Energy Projects not located on covered agricultural lands must include the following information pertaining to environmental conditions:

1. Solar radiation measured horizontally;
2. Air temperature *[using an actively aspirated box]*;
3. Air relative humidity *[using an actively aspirated box]*;
4. Soil temperature at six ***and 12*** inches below the surface;
5. Soil volumetric water content*, **also known as pressure potential**,* at six ***and 12*** inches below the surface; and
6. Any additional metric(s) deemed necessary to inform a permanent program, as established by Board order with each application period.

(l) *[(Reserved)]* Data collection for Dual-Use Solar Energy Projects located on covered agricultural lands must include the parameters established at (k) above for environmental conditions in addition to precipitation, including date and amount.

(m)-(n) (No change.)

(o) After the completion of the Pilot Program, the terms and the conditions in a selected project's COMPR, including any conditions specified by the Board in an order, shall be the responsibility of a selected project.

1. In order for the Board to effectively evaluate the results of selected projects and make informed decisions about a permanent program, the monitoring and research requirements required pursuant to this section shall be in effect for three years beginning on the date that a selected project receives permission to operate from an EDC.

14:8-13.13 Reporting and recordkeeping

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

(c) The selected project team shall keep the COMPR current over the life of the project with updates supplied by the project team. The Board will post the COMPR to the Board's Public Document Search page on its website, including any updates submitted to the Board Secretary's Office in consultation with Board staff.

1. (No change.)

2. *[(Reserved)]* The selected project team shall submit a milestone reporting form to the SuSI Program registration manager on a quarterly basis*, if one is not already required for the project pursuant to SuSI Program rules at N.J.A.C. 14:8-11.5]*.

(d)-(i) (No change.)