PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Solar Transition Incentive

Adopted New Rules: N.J.A.C. 14:8-10

Adopted Amendments: N.J.A.C. 14:8-2.2, 2.3, 2.4, 2.8, 2.9, and 2.11

Proposed: May 18, 2020, at 52 N.J.R. 1048.

Adopted: XXX, 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: XXX, as XXX, **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. 48:2-13.

BPU Docket Number: QX20030253

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Expiration Date: XXX

Summary of Public Comments and Agency Responses:

Written Comments were submitted by: John G. Valeri, Jr. on behalf of Aero Haven Solar, LLC ("Aero Haven"), David Gahl on behalf of the Solar Energy Industries Association ("SEIA"), Joseph A. Shea, Jr. on behalf of Public Service Enterprise Group, Inc. ("PSEG"), Stephanie A. Brand and Sarah H. Steindel on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel"), Ryan J. Scerbo, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP ("Scerbo"), Derek Oosterman and Surina Diddi on behalf of Convergent Energy + Power ("Convergent"), and James F. Kellinger ("Kellinger").

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General Comments

1. COMMENT: The commenter thanks the New Jersey Board of Public Utilities ("BPU" or "the Board") for creating the Transition Incentive ("TI") program and recognizing the complicated situation of moving on from the legacy Solar Renewable Energy Certificate ("SREC") program. The commenter supports the proposed rules governing the Transition Incentive. In particular, the commenter believes that the fixed values for Transition Renewable Energy Certificates ("TRECs") more efficiently support solar project development than a tradeable program, that having the general TI rules and project maturity requirements be consistent with the previous SREC program will help solar companies adapt to this new program, and that the implementation of factors for different project types follows best practices for next generation incentive programs. Additionally, the commenter believes that the TI program helps lay the groundwork for achieving the NJ Energy Master Plan ("EMP") goals, which indicate that New Jersey should optimally build 17 gigawatts of solar by 2035, or double the current annual solar market. (SEIA)

2. COMMENT: The commenter states that BPU's TI Program follows in the footsteps of the legacy SREC program, providing smart policy that will continue to drive solar growth in New Jersey, and stability to the solar industry by establishing a fixed incentive program over fifteen years. (Convergent)

   RESPONSE TO COMMENTS 1 AND 2: The Board thanks the commenters for their comments and support for the TI Program. The TI Program is intended to provide a smooth and efficient transition from the SREC program. In doing so, the TI Program supports the continued development of solar in line with the EMP's clean energy goals, while reducing the cost to ratepayers of new solar installations.

Notice of Proposal Impact Statements

3. COMMENT: The commenter critiques the Social Impact statement for considering the number of solar installations facilitated by the SREC Registration Program ("SRP") to date but not considering the effect of the rate increases that will be necessary to pay for the proposed TI program. These rate increases, according to the commenter, will leave New Jersey households with less money to spend on food, shelter, medications, medical care and other necessities. The commenter also points to New Jersey businesses that it believes will lose sales to consumers with less disposable income and increased costs for electricity. The commenter states that some

of these businesses may close or move out of the State but are not considered in the Board's analysis. (Rate Counsel)

RESPONSE: The Board is aware of the direct costs of the program and the implications for all ratepayers from the increased costs of electricity. The failure of the electricity market to provide clean energy solutions without assistance also has costs in the form of health care expenditures due to increased morbidity and mortality resulting from power plant emissions. The Board endeavors to ensure that all New Jersey ratepayers are able to access solar energy, whether through direct purchase or lease of solar systems, or through the new Community Solar Energy Pilot Program. Furthermore, the Board believes that any job or business losses attributed to the TI Program would be difficult to identify and quantify given the relatively limited scale of this program. While there is a cost to the TI Program, the TI Program is expected to represent a significant decrease in the cost of solar incentives for ratepayers on a MWh to MWh comparison, as described further in the response to comment 4.

4. COMMENT: The commenter critiques the Economic Impact Statement for discussing the estimated $980 million in investment in new solar capacity and "additional indirect economic benefits," but not addressing the possible fallout from reduced spending on other goods and services by New Jersey ratepayers because of the surcharge they must pay on their electric bills to support the solar investment. In addition, while it acknowledges that reduced greenhouse gas emissions have positive impacts on health and biodiversity, the commenter states that rate increases can lead to adverse effects when some ratepayers are left with fewer funds to pay for food, shelter, medications, and other necessities. (Rate Counsel)

   RESPONSE: The TI Program is an incentive program funded through a surcharge on electricity ratepayers' bills. However, on a dollar per megawatt-hour ("MWh") to dollar per MWh comparison, the TI Program represents a significant cost reduction to ratepayers as compared to the current SREC market prices, which the Clean Energy Act of 2018 ("CEA") directed the BPU to close to new entrants once it determined that 5.1% of the kilowatt-hours sold in the State by each electric power supplier and each basic generation provider are generated by solar electric generation facilities connected to the distribution system ("5.1% Milestone"). The value of TRECs ranges between $91.2/MWh and $152/MWh, depending on the project's factor, versus an average value of SRECs over the past 5 years of $214/MWh.

5. COMMENT: The commenter states that the Jobs Impact Statement should have considered jobs lost in other sectors of the economy as a result of less income available to spend in those sectors, in addition to noting the TI program's contribution to maintaining jobs in the solar industry. A complete jobs impact analysis, asserts the commenter, must consider both jobs lost as well as jobs gained. (Rate Counsel)

RESPONSE: The electric distribution companies estimate the monthly cost of the program to their residential ratepayers ranges from $0.31 per month to $0.43 per month. Any job loss attributed to the TI Program would be difficult to identify and quantify given the relatively limited scale of this program. The Board again notes the cost savings that will occur from the TI Program versus the Legacy SREC Program.

6. COMMENT: The commenter contends that the housing impact analysis is based on an incorrect assumption, that the rulemaking will not affect housing costs. The commenter points to the rules of the federal "Section 8" rental assistance program, which include utility costs in the calculation of 'fair market rent,' and therefore concludes that the increased rates resulting from the proposed rulemaking will have a direct impact on the cost of housing. (Rate Counsel)
RESPONSE: The U.S. Department of Housing and Urban Development ("HUD") regulates the Section 8 rental assistance program. This program includes an allowance for utility costs and a mechanism for readjusting the utility allowance based on changes to utility rates. The Board also provides a number of programs to help reduce the energy burden for low-income ratepayers, either directly via bill assistance programs such as the Universal Service Fund, or indirectly via energy efficiency programs like Comfort Partners or access to solar through community solar.

N.J.A.C. 14: 8-2.2 Definitions

7. COMMENT: The commenter proposes that the TI rules be amended to expressly provide for projects that were conditionally certified pursuant to N.J.S.A. 48:3-87(t) ("subsection (t)") to transfer to the Transition Incentive program. Specifically, the commenter proposes to strike the phrase "after October 29, 2018" from the definition of "Transition Incentive ("TI")-Eligible Project". (Aero Haven)
RESPONSE: October 29, 2018 is an important date which denotes the transition from a 15-year to a 10-year SREC Qualification Life, and the point at which active projects were no longer automatically grandfathered into the SREC program. It therefore serves as a natural demarcation point for the start of eligibility to the TI Program. A small number of subsection (t) projects still have active SREC Registration Program ("SRP") registrations dated prior to October 29, 2018; however, the Board believes that these very few projects are better considered on a case-by-case basis. On July 15, 2020 the Board considered petitions regarding three projects which had applied for conditional certification pursuant to subsection (t) prior to October 29, 2018, and were seeking to enter the Transition Incentive program (including one project developed by the commenter). In its Order, the Board granted the projects' transfer to

the TI Program, and listed specific circumstances under which similarly situated projects would be able to transfer to the TI Program. Therefore, the Board does not believe that the suggested change is necessary.

N.J.A.C. 14: 8-2.3 Amount of Renewable Energy Required

N.J.A.C. 14:3-2.3(a) – Table A

8. COMMENT: The commenter states that the cells in Table A that are intended to show the TREC obligation for Electric Distribution Companies ("EDCs") in coming years include the statement that these obligations will be "based on retail sales," with a reference to a footnote that states that the TREC obligation is expressed as a percentage of retail sales in a given energy year, and will be calculated once the volume of retail sales subject to the Renewable Portfolio Standard ("RPS") has been determined for that year. The commenter objects to the description of TREC obligations for the EDCs as based on retail sales, stating that this language is confusing and is in contradiction with other proposed rule provisions describing the TREC obligation. The commenter notes that proposed N.J.A.C 14:8-2.3 (r) and (t) provide that each of the EDCs is obligated to pay for its proportionate share of all of the TRECS procured by the TREC Administrator during each Energy Year, while proposed subsection (s) provides that "all TRECs shall be created by GATS and procured by a TREC Administrator under contract with the [EDCs]." The commenter also cites proposed new N.J.A.C. 14:8-10.3(d), which provides that the TRECs will be automatically transferred from each meter reading "to the EDC Joint GATS Account[.]" The commenter believes that when the above-cited subsections are read together, they clearly provide that the EDCs' total TREC obligation is equal to the number of TRECs created in the Generation Attribute Tracking System ("GATS") during each Energy Year. The commenter recommends that Table A in proposed N.J.A.C. 14:8-2.3(a) be revised to reflect this as well, so that the statement appearing in the relevant cells of Table A reads that the TREC obligation is equal to the number of TRECs transferred to the EDC Joint GATS Account during each energy year. According to the commenter, the proposed rulemaking defines the TREC obligation as an obligation to procure a defined number of TRECs, and the TREC obligation laid out in Table A should be expressed in the same terms. As an alternative, the commenter proposes that if the TREC obligation must be expressed as a percentage, the language in Table A's relevant cells should be revised to refer to an amended footnote, which would read as follows: "The TREC Obligation for each energy year will be the ratio, expressed as a percentage, in which the numerator is the amount of electric generation associated with all of the TRECs transferred to the EDC Joint GATS Account in accordance

with N.J.A.C. 14:8-10.3(d) in the energy year and the denominator is the total retail electric sales in the energy year." (Rate Counsel)

RESPONSE: The market-wide TREC obligation is equal to the total number of TRECs transferred to the EDC Joint GATS Account during each energy year, as stated at N.J.A.C 14:8-2.3(r) and N.J.A.C 14:8-2.3(s). All TRECs determined to be valid by the TREC Administrator will be procured and retired by the TREC Administrator for use by the Third Party Suppliers/Basic Generation Service ("TPS/BGS") providers to reduce their NJ Class I requirements. The number of TRECs retired will be known and reported during the annual RPS true-up period at which time the amount of retail sales will also be known and reported, thus enabling the expression of the TREC obligation on a percentage basis. The Board believes that this process is adequately conveyed in the language as proposed and no change is required.

N.J.A.C. 14:8-2.3 (r) and N.J.A.C. 14:8-2.3 (t)

9. COMMENT: The commenter requests revisions to the Proposed Rule that it says will more clearly define the TREC allocation and retirement process for EDCs, the TREC Administrator, and TPS/BGS providers. Specifically, the commenter asks for the following amendment:
(r) Each megawatt-hour ("MWh") of retail electricity supplied in New Jersey by a TPS/BGS provider subject to this subchapter carries with it an accompanying TREC obligation. ~~.[For any electricity supplied by a TPS/BGS provider, such supplier/provider shall calculate its TREC obligation based upon the total number of TREC procured by the TREC Administrator within the applicable Energy Year and the market share of retail electricity sold by the provider/supplier within the Energy Year.~~]
(t) At the conclusion of each Energy Year, the TREC Administrator shall retire the TRECs that have been procured for the Energy Year and inform the Board of the total quantity of such TRECs. During the true-up period following each Energy Year, Board staff shall calculate the market share of total Statewide retail electricity sold by each TPS/BGS provider and reduce the Class I REC obligation of each TPS/BGS provider by each TPS/BGS providers' pro rata share of the retired TRECs consistent with such TPS/BGS providers' share of the total Statewide retail electricity sold. ~~The TREC Administrator will allocate a proportionate percentage of the total TRECs procured during the Energy Year to each TPS/BGS Provider. Each TREC allocated by the TREC Administrator shall be retired by, or on behalf of, the TPS/BGS Provider.~~ (PSEG)
RESPONSE: The Board does not believe that the recommended change is necessary to the understanding of the TREC allocation and retirement process. Instead, the language as

proposed provides necessary flexibility in the TREC retirement process (see response to comment 10).

N.J.A.C. 14: 8-2.3(t)

10. COMMENT: The commenter states that N.J.A.C. 14:8-2.3(t) currently provides that "The TREC Administrator will allocate a proportionate percentage of the total TRECs procured during the Energy Year to each TPS/BGS Provider. Each TREC allocated by the TREC Administrator shall be retired by, or on behalf of, the TPS/BGS Provider." The commenter recommends that the Proposed Rule be amended such that once the TRECs are automatically deposited into the EDC Joint GATS Account, pursuant to Proposed Rule N.J.A.C. 14:8-10.3(d), the TREC Administrator does not re-deliver the TRECs to Load Serving Entities ("LSEs") for retirement. Rather, the commenter believes that the TREC Administrator should retire the TRECs in a to-be-created joint EDC subaccount after the end of the energy year. In support of its proposal, the commenter notes that the current TREC Administrator, InClime, would imposes a 15% surcharge for redelivering the first 200,000 TRECs to the BGS Providers and TPS, rather than retiring them directly. In addition, the commenter asserts that once Board staff has determined the allocation of TRECs to each LSE, the TREC Administrator can most efficiently retire the TRECs by using a single "batch" transaction in PJM GATS. As envisioned by the commenter, Staff would inform all LSEs as to their respective TREC allocations and resulting Class I offsets. Then, according to the commenter, the EDCs could settle the remaining Class I obligations with each BGS provider. The commenter believes that this would be more efficient than requiring the LSEs to retire their allocated TRECs, which would necessitate the TREC Administrator to complete over one hundred batch transactions to individual LSEs, following which the BGS providers would then re-deliver the TRECs back to the EDCs for retirement on their behalf. According to the commenter, this process entails unnecessary transactions, increased costs, and increased opportunities for error. Lastly, the commenter asserts that directing the TREC Administrator to "retire" the TRECs in a to-be-created EDC subaccount would be more consistent with the language of N.J.A.C. 14:8-10.3(c), because that rule provision speaks in terms of retirement "on behalf of" the LSEs. Since the rule contemplates retirement "on behalf of" the LSEs, the commenter suggests that re-delivering the TRECs to them for retirement is arguably inconsistent. (PSEG)
RESPONSE: The rule as proposed provides flexibility for TRECs to either be retired by or on behalf of the TPS/BGS providers. This flexibility enables TRECs to be retired as recommended by the commenter, i.e. by the TREC Administrator on behalf of the LSEs. However, the TREC Administrator contract is defined for 3 years, with the possibility of one 3-year extension, after which it will be reissued. A future procurement may make it more cost effective for LSEs to

directly retire TRECs, hence the Board's preference for maintaining the flexibility proposed at N.J.A.C. 14:8-2.3(t).

N.J.A.C. 14:8-2.8(a)(4)

11. COMMENT: The commenter notes that the proposed new subsection N.J.A.C. 14:8-2.8(a)(4) provides that a TREC can be used to comply with the RPS in either "[t]he energy year in which the underlying energy was generated" or "[t]he energy year following the energy year in which the underlying energy was generated." The commenter believes that this language is inconsistent with N.J.A.C. 14:8-10.3(d), which makes procurement of TRECs by the TREC Administrator an automatic process. As argued in its comments on the amendments to N.J.A.C. 14:8-2.3(a) at Table A, the commenter believes that the total TREC obligation is, by definition, the same as the number of TRECs transferred to the TREC administrator in a given energy year. Therefore, the commenter sees no reason for TRECs to be used to satisfy the TREC obligation in any other energy year and proposes that N.J.A.C. 14:8-2.8(a)(4) be amended to read:

"A TREC shall be used to comply with RPS requirements ~~for one of two energy year periods:~~

~~i. The energy year in which the underlying energy was generated; or~~

~~ii. The energy year following the energy year in which the underlying energy was generated~~ <u>in the energy year in which it was transferred to the GATS account of TREC Administrator in accordance with N.J.A.C. 14:8-10.3(d).</u>

In the event there is some reason for the provision as proposed, the commenter believes that this should be explained by the Board, and the provision should be amended to specify the circumstances under which each of the two alternative energy years can be selected for use of the TREC. (Rate Counsel)

RESPONSE: The creation of a TREC is based upon when the electricity is generated, not when the meter reading was submitted to GATS. Once a TREC is created within GATS, it will be used by the TREC Administrator for compliance during the next RPS true up period. Based upon experience in the SREC market, solar facility owners vary in the amount of time required and optimal frequency for obtaining meter readings and entering the generation data into GATS. In other words, owners may not be able to enter generation data into GATS immediately within the year in which the electricity was generated. The proposed rule as written is designed to balance the need for sufficient flexibility required by the solar owners with the need for timely compliance to provide transparency and consistency to the level of program costs.

14:8-2.11 Demonstrating compliance, reporting, and recordkeeping

12. COMMENT: The commenter asserts that EDCs should file annual RPS compliance reports on behalf of their respective BGS providers. Specifically, the commenter proposes the following modification to N.J.A.C. 14:8-2.11(a): By December 1st of each year, each TPS or EDC, on behalf of their BGS providers, shall file an annual report with the Board, demonstrating that the TPS/BGS provider has met the requirements of this subchapter for the preceding reporting year (that is, for the reporting year ending May 31st of the same calendar year). (PSEG)
    RESPONSE: The RPS has been implemented in the manner described by the commenter for over fifteen years using the rule language as it currently exists. The Board does not believe it is necessary to amend the rules to state that the EDCs may file annual RPS compliance reports on behalf of their respective BGS providers.

13. COMMENT: The commenter believes that the proposed rules should reflect the fact that there is no Alternative Compliance Payment/Solar Alternative Compliance Payment ("ACP/SACP") applicable to the TREC program or TREC requirement. Specifically, the commenter proposes to amend N.J.A.C. 14:8-2.11(b) as follows: If the annual report required under (a) above does not demonstrate that the TPS/BGS provider has supplied the RECs and SRECs~~, or TRECs~~ required under Table A of N.J.A.C. 14:8-2.3 for the previous reporting year, the annual report shall be accompanied by ACPs and/or SACPs in sufficient quantities to make up the shortfall. (PSEG)
    RESPONSE: Table A, upon adoption, will include a description of the new TREC obligation; the proposed inclusion of TRECs in the language at N.J.A.C. 14:8-2.11(b) is therefore appropriate.

14. COMMENT: The commenter recommends that the TREC Administrator and the Board include in the monthly solar installation reporting process the monthly TREC-eligible megawatt ("MW") pipeline, the monthly TREC-eligible MW installed capacity, and monthly TRECs procured by the TREC Administrator. According to the commenter, such reporting would help to minimize costs to ratepayers by providing TPS/BGS providers the information they need to forecast the amount of TRECs that may be credited against their Class 1 obligations. Specifically, the commenter recommends adding the following provision: N.J.A.C. 14:8-2.11(g) The Board staff shall publish a monthly public report setting forth the monthly TREC-eligible MW pipeline, and the monthly TREC-eligible MW installed capacity. The TREC Administrator shall file a monthly public report on the quantity of TRECs procured by the TREC administrator. (PSEG)

RESPONSE: Board Staff has historically published a monthly public report of projects installed and in the pipeline under the SREC Registration Program, and has continued the practice for the TI Program. The Board does not believe that this administrative process necessitates inclusion in the rules.

N.J.A.C. 14:8-10.4 Transition Incentive Eligibility

15. COMMENT: The commenter asserts that solar incentive programs should incorporate incentives for including integrated storage capabilities within the solar deployment. He claims that the price of electricity during peak hours may be four times the price in off-peak hours; if solar electricity can be "load-shifted" to peak demand hours by integrating storage, he claims that solar generation revenues could increase by 400%, driving reinvestment. The commenter specifically recommends the use of Gravity Field Energy Storage, for which he provides a copy of his patent, to address addresses this issue at grid scale. He recommends that the Board push this technology forward by incorporating it into its rulemaking. In support of his proposal, the commenter states that battery systems produce environmental damage due to toxic chemicals; have high maintenance costs; have a limited life cycle; and are subject to supply chain problems because the world's supply of lithium has become subject to the control of adverse political regimes. By contrast, he claims that Gravity Field Energy Storage technology can be installed in the elevator shaft of a high-rise building with a rooftop solar grid or integrated into an ocean wind turbine. The commenter further asserts that it can be integrated by traditional energy providers like PSEG to store energy from their generators during off peak periods, to release during peak demand, thus reducing the criticality of load for their own systems. (Kellinger)

    RESPONSE: The Board is committed to achieving New Jersey's energy storage goals, and will be developing a plan to meet the long-term goal of 2,000 MW by 2030. However, the TI program was designed as a bridge between the legacy SREC program and a replacement Successor Program. As such, the TI Program is intended to facilitate the pipeline of projects that were previously registered in the SRP as well as a consistent volume of similar projects. A significant number of projects in the pipeline have proposed system configurations including energy storage without the need for an additional incentive. The Legacy SREC Program did not include a storage component, and the Board does not perceive a need for it in the TI Program. However, the Board encourages the commenter to take part in the stakeholder process on the development of the Successor Program.

N.J.A.C. 14:8-10.4(a)

16. COMMENT: The commenter proposes that the TI rules be amended to expressly provide for projects that were conditionally certified pursuant to N.J.S.A. 48:3-87(t) to transfer to the Transition Incentive program. Specifically, the commenter proposes to strike the phrase "after October 29, 2018" at proposed rule N.J.A.C. 14:8-10.4(a). (Aero Haven)
    RESPONSE: The Board refers to its answer to comment #7.

N.J.A.C. 14: 8-10.4(b)

17. COMMENT: The commenter states that the Transition Incentive Program should be limited in duration and cost to be consistent with the provisions and intent of the Clean Energy Act. The commenter generally believes that the Transition Incentive program as proposed does not appear to be consistent with the intent of the CEA to close the SRP and the direction that the Board implement an "orderly and transparent mechanism that will result in the closing of the existing SREC program on a date certain but no later than June 1, 2021." In the commenter's opinion, the rules as proposed would allow the TI Program to continue indefinitely and without limitation upon its cost, because the proposed rules provide that the TI program will remain open for new applications until the announcement of the opening of registration for the successor program (see proposed N.J.A.C. 14: 8-10.4 (e)). The commenter recommends that the proposed rule be amended to include a process and a timeline for closing the TI program and replacing it with the successor program no later than the June 1, 2021. (Rate Counsel)

18. COMMENT: The commenter urges that firmer timelines be adopted for the conclusion of the Transition Incentive program and the start of the successor program. Citing the need for stability and certainty of revenue streams for solar project development, particularly grid supply development, the commenter asks the Board to provide a firm timeline for this program's end and the initiation of the Successor Solar program. (Convergent)
    RESPONSE TO COMMENTS 17 AND 18: The Board does not believe the commenters' proposed modification is required. The Board has communicated its intent to conduct the transition from the SREC Program mandated by the CEA in two phases. The first phase is the TI Program, which provides certainty to projects in the SRP that were not certain of reaching Permission to Operate ("PTO") prior to the attainment of the 5.1% Milestone, and serves as an interim incentive program while the Successor Program is being developed. The second phase, the development of the Successor Program, is currently underway. Stakeholder meetings specifically focused on the Successor Program were held in December and March 2020; the draft of the Capstone Report currently being developed by the Board's Solar Transition

consultant was released in August 2020, and was the subject of substantial stakeholder feedback. Further stakeholder engagement has been announced for the fall 2020. This timeline evidences the Board's commitment to developing the Successor Program in a timely manner, while providing full notice and transparency to stakeholders.

19. COMMENT: The commenter contends that the proposed rulemaking does not include adequate provisions to assure that it is consistent with the CEA's limitation of Class I incentive costs to nine percent of the total retail electric cost in the State during energy years 2019 through 2021 and seven percent of that total in any energy year thereafter. In the commenter's opinion, since the cost of the TREC obligation does not offset the continuing cost of the SREC obligation, the TREC program as proposed would effectively increase the solar carve-out to levels above those provided in N.J.S.A. 48:3-87(d)(3). The commenter notes that although program costs are estimated at approximately $60 million annually over the next fifteen years, this estimate is based upon projected costs over the next eighteen months; installations over a longer period or at a faster rate than assumed could cause program costs to exceed the Board's estimate. The commenter asserts that with no limit on costs, the TI program could undermine the Board's ability to implement a successor program. Noting that the Board has not yet determined how to compensate the "legacy" solar projects that qualified for SRECs, the commenter observes that at current SREC prices of $212 per MWh, the total dollar amount needed to fund the SREC program at 5.1 percent would be over $800 million. Assuming total retail sales of 75 million MWh and an average retail rate of $0.13 per kWh, the commenter calculates a cost cap in the neighborhood of $900 million for Energy Years 2019, 2020 and 2021, and $700 million per Energy Year thereafter. The commenter concludes that unless the Board decides to compensate the legacy projects at substantially lower levels, the funds available for the TI program and the successor program are likely to be extremely limited. For this reason, the commenter recommends that the costs of the TI program should be capped at either the Board's $60 million estimate or some other level based on a careful analysis of the available budget. (Rate Counsel)

RESPONSE: On December 6, 2019, the Board issued an Order that established the Transition Incentive program and also directed Staff to initiate a proceeding on the calculation of the cost cap and to report to the Board regarding the recommendations and outcomes of said proceeding. The cost cap proceeding is still ongoing; when completed, it will provide more precise estimates of the funds available under the cost cap. In the interim, the Board believes that maintaining open access to the TI Program is critical to providing stability and consistency for the solar industry, particularly in this period of regulatory change.

20. COMMENT: The commenter recommends that transition incentives be made available for grid supply projects through Subsection (r) and Community Solar. The commenter argues that only ground-mount projects have the opportunity in aggregate to provide the capacity and energy that New Jersey will need to achieve its clean energy goals, while also reducing the State's reliance on out-of-state Renewable Energy Certificates. The commenter also asserts that such projects could create tens of thousands of well-paid, local, and often unionized jobs; provide transmission congestion relief; reduce the need for costly grid upgrades, especially if energy storage is incorporated; and deliver significant tax revenue. In further support of grid supply projects, the commenter recommends incentivizing projects on agricultural land. In its opinion, existing restrictions eliminate too many viable projects. According to the commenter, solar generation has a minimal and fully reversible impact on land and allows the landowners to receive a stable cash flow while preserving the land for agricultural use at the end of the solar project's life. If its recommended modifications cannot be incorporated into the TREC program, the commenter recommends applying them to the Successor Solar program. (Convergent)

    RESPONSE: The TI Program was designed to provide an incentive to projects that existed as part of the SRP, including existing projects that had been developed pursuant to subsection (r) and also projects developed within the new Community Solar program. As such, the Board developed TREC factors for community solar projects, subsection (r) rooftop, and subsection (r) ground mount projects. However, subsection (r) was a 2012 statutory response to concerns about both solar development on open space and farmland and SREC market viability. The SREC market is now closed to new registrants pursuant to Legislative direction; the Transition Incentive program was launched on May 1, 2020. In light of these developments, the Board determined that it would make the TI Program available to existing Subsection r projects, but would not make it available to new subsection (r) projects. The subsection (r) process, designed for balancing the SREC market, does not constitute an appropriate mechanism for facilitating the development of solar on farmland and open space in the Transition Incentive solely because it is an established process. Instead, the Board encourages the commenter to participate in the Successor Program stakeholder process, during which the Board intends to explore how grid supply policies can help the State meet its clean energy goals.

N.J.A.C. 14: 8-10.4(d)

21. COMMENT: The commenter proposes that the TI Rules be amended to recognize that a Board Order granted the commenter's project an extension of time beyond April 30, 2021 in recognition of unique circumstances. Specifically, the commenter proposes adding the following phrase to the end of the section N.J.A.C. 14: 8-10.4(d): "Electric generation facilities

may request an extension of the deadline on filing a petition with the Board." The commenter also proposes to add the phrase "unless extended by the Board" to the end of subsection N.J.A.C. 14: 8-10.4(d)(3). (Aero Haven)

22. COMMENT: The commenter proposes that in light of COVID-19, projects receive a registration of eighteen months rather than twelve upon acceptance into the Transition Incentive. Additionally, the commenter recommends that the TI rules be amended to allow Board Staff to grant 6-month extensions to project registrations. (SE
RESPONSE TO COMMENTS 21 AND 22: The Board agrees that in light of COVID-19, and to give effect to its recent Order, it is appropriate to modify the proposed timelines. The rule text has been updated to reflect that, on July 29, 2020, the Board issued an Order waiving the existing and proposed timelines for TI project registrations in light of unanticipated delays encountered by multiple solar developers. Specifically, the Board granted an immediate extension through October 30, 2021 to all currently active TI conditional registrations. Pursuant to the Order, projects granted conditional certification under the subsection (r) program will retain the registration expiration date set by the Board Order granting the project conditional certification pursuant to N.J.S.A. 48:3- 87(r)(3), as required by statute, and projects granted conditional certification under the subsection (t) program prior to April 30, 2020 will receive as an expiration date of the later of i) the date set by the Board Order granting the project conditional certification, plus any extensions that have been granted, or ii) October 30, 2021. The Board further approved an extension of time to achieve commercial operations through October 30, 2021 for all facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering that registers in the TI program between the date of the Order and October 30, 2020. The relevant registration expiration dates in the proposed rule at N.J.A.C. 14:8-10.4(d) and N.J.A.C. 14:8-10.4(e)4.ii have been updated, consistent with the directives of the Board's July 29, 2020 Order, as described above. With respect specifically to Aero Haven's comment, the Board notes that granting a waiver in response to an individual project's petition does not necessitate modifying the rule in its entirety.

N.J.A.C. 14: 8-10.4(e)

23. COMMENT: The commenter argues that the Board should revise proposed N.J.S.A. 14:8-10.4 (e) in recognition of the lengthy certification process required before projects applying pursuant to N.J.S.A. 48:3-87(t) can be conditionally approved as connected to the New Jersey distribution system. The commenter contends that the Rule Proposal as written penalizes subsection (t) projects for this lengthy certification process. Any subsection (t) project planned

at present would be based on financing involving TRECs, it would be virtually impossible for a subsection (t) project to receive conditional certification before the successor program is implemented by BPU. As a result, the commenter believes that the rule proposal would halt most subsection (t) project development. Noting that State policy favors solar development on subsection (t) sites, the commenter makes several specific suggestions to modify the Rule Proposal. First, he recommends that the Board revise the proposed regulation so that an applicant for a subsection (t) project can obtain conditional registration for the TREC program prior to obtaining conditional certification from the Board. Second, he asserts that N.J.A.C. 14:8-10.4(e) should specify timeframes for the BPU's review of subsection (t) applications to provide applicants with certainty and predictability. In addition, the commenter states that the rule should provide for an affirmative written notification to an applicant when its project has been accepted into the TREC program. (Scerbo)

RESPONSE: The Board in an Order effective July 29, 2020 extended the timeframe for required commencement of commercial operations for certain projects registered in the Transition Incentive program. As a result, certain provisions of proposed N.J.A.C. 14:8-10.4 (d) and (e) have been updated in the rule text. Additionally, the timeline for review of subsection (t) applications is dependent upon the specifics of each individual application. Once applications are received by the BPU, Staff reviews the application for administrative completeness. Administratively complete applications are shared with the New Jersey Department of Environmental Protection ("NJDEP") for a review of the qualification of the property, the history and status of environmental remediation of the property and the requirements for safely constructing a solar electric generation facility on the properly closed sanitary landfill, brownfield, or area of historic fill. The Board provides conditional approval of subsection (t) projects with the conditions for TREC eligibility being derived from those described by the NJDEP for constructing solar on the specific property qualifying as a properly closed sanitary landfill, brownfield or area of historic fill. Thus, proposed N.J.A.C. 14:8-10.4(e) reflects the necessary flexibility required for the complex, multi-agency review of subsection (t) applications as the program has been administered to date. The unique history and status of each property and the associated implications for property qualification and remediation requirements make it impractical to provide rigid timeframes for the review of subsection (t) applications. All subsection (t) applications will be treated on a case-by-case basis.

N.J.A.C. 14: 8-10.4(e)(4)(ii)(1) and N.J.A.C. 14: 8-10.4(e)(4)(ii)(2)

24. COMMENT: The commenter proposes that conditional registration should allow for either an extension to April 30, 2021 or further extensions as granted by the Board. Specifically, the commenter proposes adding to the end of the subsection: "or any deadline or extension granted by the Board." (Aero Haven)

25. COMMENT: The commenter proposes that in light of COVID-19 and the associated measures, projects receive eighteen months rather than twelve upon acceptance into the Transition Incentive. The commenter also recommends that the TI rules create standardized criteria for six-month extensions, such that Staff can grant an extension pursuant to those criteria. (SEIA)

26. COMMENT: The commenter urges the Board to revise N.J.A.C. 14:8-10.4(e)ii(2) to provide for an additional twelve-month extension for subsection (t) projects upon a request by the project owner. He argues that such an extension process is necessary because subsection (t) projects require multiple permits and approvals, interaction with multiple state agencies, and often completion of necessary remediation activities before construction can be initiated. (Scerbo)

    RESPONSE TO COMMENTS 24, 25 AND 26: The Board refers to the response to comments 21 and 22 and to the July 29, 2020 Order issued subsequent to the rule comment period which extended the term for certain TI projects from April 30, 2021 to October 30, 2021. These extended deadlines have been updated in the rule text.

N.J.A.C. 14: 8-10.4(e)(1)(vi)

27. COMMENT: The commenter proposes revising N.J.A.C. 14:8-10.4(e)(1)(vi) so that subsection (t) applicants are not required to submit an Engineering, Procurement and Construction ("EPC") contract with their applications. Arguing that binding agreements are one of the last documents obtained by a subsection (t) developer, the commenter recommends allowing subsection (t) applicants to provide BPU with a non-binding MOU addressing project development details. (Scerbo)

    RESPONSE: N.J.A.C. 14:8-10.4(e)(1)(vi) as proposed does not require that subsection (t) applicants provide an EPC contract with their application. It does require that the application include a binding legal document that provides reasonable assurances that the solar facility will be constructed, so that the market has some measure of assurance that the proposed supply will be built. This provision is intended to recognize that EPC contracts may not be available at the

time of application for subsection (t) projects and to allow some flexibility in documentation, while discouraging applications from speculative projects.

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. The Solar Transition Incentive Rule 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 rules.

Full text of the adopted new amendments and rules follows (additions to proposal indicated in boldface with asterisk ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.2 Definitions

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

...

"Generation Attribute Tracking System" or "GATS" means the platform providing Renewable Portfolio Standard and Environmental Compliance rule facilitation services to the 13 member states of PJM Interconnection LLC. GATS creates RECs based upon metered electricity supplied by project owners or their representatives and tracks RECs through the various transactions, which ultimately result in retirement for RPS compliance purposes.

...

"Transition Incentive ("TI")-Eligible Project" means a solar electric generation facility that registered its intent to participate in the SREC market pursuant to N.J.A.C. 14:8-10.4(a) after October 29, 2018, and has maintained its SREC eligibility, but has not commenced commercial operations before the Board determines that the State has attained 5.1 percent of its retail sales from solar electric generation facilities. Following the closure of the SREC Program, the Board shall allow projects that meet the TI eligibility requirements an opportunity to register to participate in the TI Program until the establishment of a registration program for a solar Successor Incentive Program.

"Transition Renewable Energy Certificate" or "TREC" means a certificate issued by the Board or its designee, representing the environmental attributes of one megawatt-hour of electric generation from a TI-Eligible Project.

"TREC Administrator" means the agent jointly procured and/or assigned by the State's Electric Distribution Companies to utilize the Generation Attribute Tracking System to procure and allocate TRECs pursuant to this subchapter.

14:8-2.3 Amount of renewable energy required

(a) Each supplier/provider, as defined at N.J.A.C. 14:8-1.2**,** that sells electricity to retail customers in New Jersey, shall ensure that the electricity it sells each energy year in New Jersey includes at least the minimum amount of qualified renewable energy[, as defined at N.J.A.C. 14:8-2.2,] required for that energy year, as specified in this section. Requirements for class I, class II, [and solar renewable energy] **SRECs, and TRECs** are set forth in Table A below:

Table A

DISCLAIMER – THIS IS A DRAFT OF A RULE ADOPTION THAT IS PENDING REVIEW BY THE OFFICE OF ADMINISTRATIVE LAW. PLEASE NOTE THAT MODIFICATIONS TO THIS RULE, MINOR AND/OR MAJOR, MAY BE FORTHCOMING UPON PUBLICATION IN THE NEW JERSEY REGISTER. FURTHERMORE, RELEASE OF THIS DRAFT DOES NOT INITIATE OR OTHERWISE INFLUENCE RULEMAKING TIME PERIODS PRESCRIBED BY LAW OR CODE.

What Percentage of Energy Supplied Must Be [Solar] **TRECs, SRECs,** Class I, or Class II Renewable **Energy**

Energy Year	**TRECs**	[Solar] **SRECs**	Class I	Class II	Total
June 1, 2018 - May 31, 2019	**0%**	4.30%	14.175%	2.50%	20.975%
June 1, 2018 - May 31, 2019*	**0%**	3.29%*	14.175%*	2.50%*	19.965%*
June 1, 2019 - Dec. 31, 2019	**0%**	4.90%	16.029%	2.50%	18.529%
June 1, 2019 - Dec. 31, 2019*	**0%**	3.38%*	16.029%*	2.50%*	21.909%*
January 1, 2020 - May 31, 2020	**0%**	4.90%	21.0%	2.50%	23.50%
January 1, 2020 - May 31, 2020*	**0%**	3.38%*	21.0%*	2.50%*	26.88%*
June 1, 2020 - May 31, 2021	**based on retail sales**	5.10%	21.0%	2.50%	23.50%
June 1, 2020 - May 31, 2021*	**based on retail sales**	3.47%*	21.0%	2.50%	26.97%
June 1, 2021 - May 31, 2022	**based on retail sales**	5.10%	21.0%	2.50%	23.50%
June 1, 2022 - May 31, 2023	**based on retail sales**	5.10%	22.0%	2.50%	24.50%
June 1, 2023 - May 31, 2024	**based on retail sales**	4.90%	27.0%	2.50%	29.50%
June 1, 2024 - May 31, 2025	**based on retail sales**	4.80%	35.0%	2.50%	37.50%
June 1, 2025 - May 31, 2026	**based on retail sales**	4.50%	38.0%	2.50%	40.50%
June 1, 2026 - May 31, 2027	**based on retail sales**	4.35%	41.0%	2.50%	43.50%
June 1, 2027 - May 31, 2028	**based on retail sales**	3.74%	44.0%	2.50%	46.50%
June 1, 2028 - May 31, 2029	**based on retail sales**	3.07%	47.0%	2.50%	49.50%
June 1, 2029 - May 31, 2030	**based on retail sales**	2.21%	50.0%	2.50%	52.50%
June 1, 2030 - May 31, 2031	**based on retail sales**	1.58%	50.0%	2.50%	52.50%
June 1, 2031 - May 31, 2032	**based on retail sales**	1.40%	50.0%	2.50%	52.50%

June 1, 2032 - May 31, 2033	**based on retail sales ****	1.10%	50.0%	2.50%	52.50%

(*BGS Providers with existing contracts)

****The TREC Obligation expressed as a percentage of retail sales in a given energy year will not be known until each energy year when the volume of retail sales subject to the RPS has been determined. Allocation of the Statewide obligation to individual TPS/BGS providers will follow the method set forth at (r) and (t) below.**

(b) Each supplier/provider that sells electricity to retail customers in New Jersey shall ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of [solar energy] **SRECs and TRECs** required for that energy year as set by the Board. The Board, in consultation with the NJDEP, EDCs, Rate Counsel, the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in this chapter, taking into account the cost impacts and public benefits of such increases including, but not limited to:

1.-4. (No change.)

(c) Each supplier/provider's [solar electric generation] **SREC** obligation shall be calculated in accordance with the requirements of [P.L. 2012, c. 24] **P.L. 2018, c. 17**. A supplier/provider shall meet the requirements for [solar electric generation] **SRECs** through:

1.-2. (No change.)

(d) Beginning in EY20, SREC obligations **and TREC obligations** are a component of class I renewable energy requirements, and satisfaction of SREC **and TREC** obligations shall be counted toward class I renewable energy requirements.

(e)-(i) (No change.)

(j) The same renewable energy shall not be used for more than one of the following:

1. (No change.)

2. Creation of a REC under N.J.A.C. 14:8-2.8 or 2.9; [or]

3. Creation of a REC, or of any other type of attribute or credit, under authority other than N.J.A.C. 14:8-2.9**,** such as another state's renewable energy standards or any voluntary clean electricity market or voluntary clean electricity program[.]**; or**

4. Creation of a TREC under N.J.A.C. 14:8-10.

(k) (No change.)

(l) Each megawatt-hour (MWh) of retail electricity supplied in New Jersey by a TPS/BGS provider subject to this subchapter carries with it an accompanying [solar] **SREC** obligation. For any electricity supplied by a TPS, such TPS shall calculate its [solar] **SREC** obligation by multiplying its total retail sales by the applicable percentage requirement in Table A **above**. For Energy Year 2019, 2020, or 2021, each BGS provider shall calculate its [solar] **SREC** obligation as set forth in (m) or (n) below. Subsection (m) allocates the [solar] **SREC** obligation of BGS providers with electricity supply contracts that were effective prior to date of enactment of P.L. 2018, c. 17. Subsection (n) below allocates the Table A Statewide [solar] **SREC** obligation among all BGS providers that are subject to this subchapter. All BGS provider [solar] **SREC** obligations, taken together, must equal the Statewide [solar] **SREC** obligation set forth in Table A above for Energy Year 2019, 2020, or 2021.

(m) Notwithstanding any other provision of this section, if a BGS provider has, prior to May 23, 2018, executed a BGS contract to provide retail electricity, the [solar] **SREC** obligation resulting from the electricity supplied under that contract shall be determined using the provisions of this subchapter that were in effect at the time the contract was executed. For the purpose of this

section, the electricity supply covered by these contracts shall be called "exempt electricity," and electricity supply not covered by such a contract shall be called "non-exempt electricity."

(n) All contracts subject to exemption under (m) above will expire on or before May 31, 2021. Therefore, for EY 2019, 2020, or 2021, the [solar] **SREC** obligation that attaches to exempt electricity supply must be calculated separately from the [solar] **SREC** obligation for non-exempt electricity supply, in accordance with the applicable provisions of (o) and (p) below. If a BGS provider's energy portfolio includes both exempt and non-exempt electricity supply, the [solar] **SREC** obligation for each shall be calculated separately and summed to determine that BGS provider's total [solar] **SREC** obligation for the energy year.

(o) For any exempt electricity supplied, a provider shall calculate its [solar] **SREC** obligation as follows:

1. (No change.)

2. Determine the [solar] **SREC** electric generation percentage requirement in effect when the BGS contract subject to (m) above was executed; and

3. Multiply (o)1 by (o)2 above.

(p) For any non-exempt electricity supplied during EY 2020, 2021, 2022, or 2023, a BGS provider shall calculate its [solar] **SREC** obligation as follows:

1. Determine the provider's contemporaneous [solar] **SREC** obligation for non-exempt electricity by multiplying their total non-exempt retail electricity sales in MWh during the energy year by the applicable percentage requirement in Table A above.

2. Determine the provider's share of the banked obligations from the increased [solar] **SREC** requirements avoided by exempt retail electricity in the previous energy year or previous two energy years, as follows:

i. (No change.)

3. Determine the total deferred [solar] **SREC** obligation incurred from exempt electricity supply during the previous energy year(s) as follows:

i. Consult Table A above to determine the total Statewide [solar] **SREC** obligation for all electricity supplied during the energy year and the percentage requirement for exempt supply.

ii. Consult the Board's NJCEP website to obtain the deferred [solar] **SREC** obligation for the exempt electricity that was supplied during the previous energy year or previous two energy years, as applicable.

iii. The total amount of increased [solar] **SREC** obligation avoided by exempt electricity supply in an energy year shall be allocated to the following two energy years.

4. Multiply the BGS provider's non-exempt market share from (p)2i above by the total deferred [solar] **SREC** obligation from (p)3 above. The result is the provider's [solar] **SREC** obligation for the deferred exempt electricity based on the share of non-exempt electricity that it supplied during the energy year.

5. Add the BGS provider's contemporaneous [solar] **SREC** obligations in MWh resulting from (p)1 above to the banked share resulting from calculated (p)4 above in MWh above to arrive at the total RPS [solar] **SREC** obligation.

(q) For electricity supplied during EY 2024 or later, a BGS provider shall calculate its [solar] **SREC** obligation by multiplying its total retail sales by the applicable percentage required in Table A above.

(r) Each megawatt-hour (MWh) of retail electricity supplied in New Jersey by a TPS/BGS provider subject to this subchapter carries with it an accompanying TREC obligation. For any electricity supplied by a TPS/BGS provider, such supplier/provider shall calculate its TREC obligation based upon the total number of TRECs procured by the TREC Administrator within the applicable Energy Year and the market share of retail electricity sold by the supplier/provider within the Energy Year.

(s) All TRECs shall be created by GATS and procured by a TREC Administrator under contract with the State's electric distribution companies.

(t) During the true-up period following each Energy Year, Board staff shall calculate the market share of total Statewide retail electricity sold by each TPS/BGS provider. The TREC Administrator will allocate a proportionate percentage of the total TRECs procured during the Energy Year to each TPS/BGS Provider. Each TREC allocated by the TREC Administrator shall be retired by, or on behalf of, the TPS/BGS Provider.

14:8-2.4 Energy that qualifies for an SREC; registration requirement; additional approval, designation, and certification processes for grid supply projects; termination of registration program

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

(k) When construction of the solar electric generating facility is complete **and the facility has commenced commercial operations consistent with the determination made pursuant to (b)7iii above,** the facility owner shall submit, **no later than 90 days following the commencement of commercial operations,** a post-construction certification package that meets the requirements of (l) below, and shall request an inspection of the facility by Board staff, or an inspection waiver, through the Board's [NJDEP] **New Jersey Clean Energy Program (NJCEP)** website at www.njcleanenergy.com.

(l)-(s) (No change.)

14:8-2.8 Using RECs, SRECs, **TRECs,** and ORECs for RPS compliance

(a) An REC, SREC, **TREC,** or OREC shall be used to meet New Jersey RPS requirements for specific energy years, based on the type of renewable energy upon which the REC, SREC, **TREC,** or OREC is based, and the energy year during which the renewable energy was generated, as follows:

1.-2. (No change.)

3. An SREC based on energy generated on or after July 23, 2012**,** shall be used to comply with RPS requirements for any of the following energy year periods:

i. (No change.)

ii. Any of the four energy years immediately following the energy year in which the underlying energy was generated[.]**; and**

4. A TREC shall be used to comply with RPS requirements for one of two energy year periods:

i. The energy year in which the underlying energy was generated; or

ii. The energy year following the energy year in which the underlying energy was generated.

(b) Once a REC [or]**,** SREC**, or TREC** has been used for compliance with this subchapter, the REC [or]**,** SREC**, or TREC** shall be permanently retired and shall not be used again.

14:8-2.9 Issuance of RECs [and]**,** SRECs**, and TRECs**

(a) The Board has designated PJM-EIS GATS as the entity that issues class I RECs, class II RECs**, TRECs,** and SRECs for use in complying with this subchapter.

(b) The Board may issue an order discontinuing the designation of PJM-EIS GATS under (a) above, and/or approving use of RECs**, TRECs,** or SRECs issued by another entity for compliance with this subchapter. The Board shall post a notice of its intent to issue such an order at least 30 days prior to issuing the order, and may, in its discretion, choose to accept public comment on the notice.

(c) Beginning December 4, 2012, in measuring generation to determine the number of RECs**, TRECs,** or SRECs to issue, the Board or its designee shall accept only readings of a meter that records kilowatt-hour production of electrical energy, and which meets all applicable requirements at (c)1 and 2 below. The readings may be taken or submitted by any person, but shall be verified by the Board or its designee:

1.-2. (No change.)

(d) The Board or its designee shall issue RECs**, TRECs,** and SRECs in whole units, each representing the environmental attributes of one megawatt-hour of electric generation.

(e) Electric generation qualifies for issuance of RECs**, TRECs,** or SRECs only if:

1. -2. (No change.)

(f) If a generator has accumulated a fraction of a megawatt hour by the end of an energy year, the fraction may be carried over and combined with energy generated in a subsequent energy year in order to make a full megawatt hour that is eligible for a REC**, TREC,** or SREC. In such a case, the combined energy shall be eligible for issuance of a REC**, TREC,** or SREC only during the energy year in which accumulated generation reaches one full megawatt hour. Only a fraction of a megawatt hour shall be carried over.

(g) The Board shall require submittal of information and certifications needed to enable the Board**,** or its designee**,** to verify the generation that forms the basis of the requested RECs. The Board shall require inspections, as appropriate, of generation equipment, monitoring and metering equipment, and other facilities relevant to verifying electric generation. The Board shall impose application fees, inspection fees**,** and/or other charges for any work required to verify electric generation and issue RECs**, TRECs,** or SRECs.

(h) The Board**,** or its designee**,** shall not issue a REC**, TREC,** or SREC based on electric generation that has previously been used for compliance with this subchapter, or that has been used to satisfy another state's renewable energy requirements or any voluntary clean electricity market or program.

(i) (No change.)

14:8-2.11 Demonstrating compliance, reporting**,** and recordkeeping

(a) By [October] **December** 1st of each year, each TPS/BGS provider shall file an annual report with the Board, demonstrating that the TPS/BGS provider has met the requirements of this subchapter for the preceding reporting year (that is, for the reporting year ending May 31st of the same calendar year).

(b) If the annual report required under (a) above does not demonstrate that the TPS/BGS provider has supplied the RECs**,** [or solar RECs] **SRECs**, **or TRECs** required under Table A of N.J.A.C. 14:8-2.3 for the previous reporting year, the annual report shall be accompanied by ACPs and/or SACPs in sufficient quantities to make up the shortfall.

(c) The annual report shall contain the following basic information for the preceding reporting year:

1.-5. (No change.)

6. The total number of SRECs **and TRECs** retired for the purpose of compliance with this chapter;

7. (No change.)

8. The total amount of solar electric generation, class I renewable energy, and class II renewable energy represented by RECs**, SRECs, and TRECs** submitted with the annual report;

9.-11. (No change.)

12. The price of each REC [and/or]**,** SREC**, and/or TREC** that was retired during the energy year.

(d) The documentation required under (c) above shall include the following:

1.-3. (No change.)

4. For each [solar REC] **SREC and TREC** submitted, certification of compliance with the requirement at [*N.J.A.C. 14:8-2.4(b)*] **N.J.A.C. 14:8-2.4(b) or 10.6(b)** that the REC has not been used to satisfy another state's renewable energy requirements. The certification shall be in a form required by the Board, and available on the BPU website at www.njcleanenergy.com.

(e)-(f) (No change.)

SUBCHAPTER 10. SOLAR TRANSITION INCENTIVE

14:8-10.1 Purpose and scope

This subchapter sets forth the rules for the establishment of a solar energy Transition Incentive (TI) Program designed to provide a bridge between the SREC Program and a solar Successor Incentive Program under development by the Board. Owners and developers of proposed solar electric generation facilities that received a conditional registration pursuant to N.J.A.C. 14:8-2.4(h)4 that has not expired, been cancelled, or commenced commercial operations prior to the State's attainment of 5.1 percent of its retail electricity sales from solar electric generation facilities (5.1% Milestone), which the Board determined to be April 30, 2020, and submitted a post-construction certification package within 90 days of the 5.1% Milestone, will be instructed by Board staff on how to transfer their project to the Transition Incentive registration pipeline. Following April 30, 2020, and prior to the Board's announcement of the opening of a registration process for the solar Successor Incentive Program, solar electric generating facilities meeting the TI eligibility criteria established in this subchapter may register for the Transition Incentive Program.

14:8-10.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

"Net-metered non-residential" means a solar system that receives a net metering credit on a non-residential tariff. A net-metered non-residential system must be a "customer-generator" as the term is defined at N.J.A.C. 14:8-4.2.

"Net-metered residential" means a solar system that receives a net metering credit on a residential tariff. A net-metered residential system must be a "customer-generator" as the term is defined at N.J.A.C. 14:8-4.2.

"PJM Environmental Information Services" or "PJM-EIS" means the unregulated affiliate of PJM Interconnection LLC, that operates the Generation Attribute Tracking System (GATS).

"Subsection (r)" means the provision of the Solar Act of 2012 that provides the criteria for SREC eligibility for grid supply solar installations not addressed by Subsection (q), Subsection (s), or Subsection (t) of the Solar Act of 2012.

"Subsection (t)" means the provision of the Solar Act of 2012 that provides the criteria for SREC eligibility for grid supply solar installations located on properly closed sanitary landfills, brownfields, or areas of historic fill.

"Transition Incentive Renewable Portfolio Standard" or "TI-RPS" means the total sum of TRECs retired each year, which shall be a carve-out of the current standard Class I RPS requirement with each TREC allocated to, and retired on behalf of, the TPS/BGS provider.

"TREC qualification life" means, pursuant to N.J.A.C. 14:8-10.6(f), TI-Eligible Projects that create TRECs for 15 years following the date of commencement of commercial operations as evidenced by the authorization to energize provided by a project's local electric distribution company through a Permission to Operate (PTO) letter or email.

14:8-10.3 Transition Incentive Program structure

(a) The Transition Incentive Program shall be comprised of TRECs that are created by PJM-EIS on the Generation Attribute Tracking System (GATS) for each megawatt-hour generated and metered by eligible solar projects.

(b) TRECs shall be jointly procured by the EDCs to satisfy compliance obligations pursuant to the Transition Incentive Renewable Portfolio Standards (TI-RPS) at (c) below. The EDCs shall work with Board staff to jointly procure a TREC Administrator, who will be responsible for administering the procurement, allocation, and coordinating retirement of TRECs

(c) The TI-RPS is a carve-out of the Class I RPS requirement. Each TREC shall be allocated to, and retired on behalf of, New Jersey's TPS/BGS providers based on their respective market share of retail sales. Each TREC retired shall reduce the Class I requirement by one REC as set forth at N.J.A.C. 14:8-2.3(d) and (r).

(d) Irrevocable Standing Orders shall be treated as follows.

1. An Irrevocable Standing Order, defined in the GATS Operating Rule as "A reoccurring automatic transfer of certificates for a given generating unit from the account holder's active subaccount to the active subaccount held by different account holders," shall

be created in GATS for each TREC eligible project. The Irrevocable Standing Order will cause the automatic transfer of TRECs created by an eligible solar project to the EDC Joint GATS Account.

i. The Irrevocable Standing Order shall require for that Generator that 100 percent of the certificates be automatically transferred from each meter reading to the EDC Joint GATS Account.

ii. A Standing Order is not activated until the transferor confirms, and the TREC administrator accepts, the Standing Order transfer.

2. Solar aggregators, brokers, and installers acting on behalf of solar project owners may perform the role of transferor, register as the project owner and create an Irrevocable Standing Order for each eligible project for which it is reporting generation into GATS.

3. The TREC Administrator will confirm that:

i. Each account holder has created the Irrevocable Standing Order;

ii. Each Irrevocable Standing Order is complete, identifies the transferor, and represents 100 percent of all TRECS for that generator;

iii. The solar aggregator, broker, installer, or other account holder has the authority to create the Irrevocable Standing Order; and

iv. The automatic transfer of TRECs has occurred.

4. Irrevocable Standing Orders authorizing transfers can only be terminated with the assent of both parties.

14:8-10.4 Transition Incentive eligibility

(a) The Transition Incentive shall be available to projects that submitted a complete SREC Registration Program registration or a complete subsection t application after October 29, 2018, but have not received a Permission to Operate at the time the Board determines that the State has attained 5.1 percent of its retail sales from solar electric generation facilities and closes the SRP to new registrations. The Transition Incentive shall also be available to the Subsection r applications that received conditional certification from the Board in an Order dated March 29, 2019, if they have not received a Permission to Operate at the time the Board determines that the State has attained 5.1 percent of its retail sales from solar electric generation facilities (5.1% Milestone). The Transition Incentive eligibility criteria for these projects that will be transferred into the Transition Incentive Program are set forth at (d) below.

(b) In the event that the SREC Registration Program is closed to new registrations before the establishment of a registration program for the solar Successor Incentive Program, the Board may allow projects that comport with the SREC eligibility requirements at N.J.A.C. 14:8-2.4, the Board's Implementing Orders, and the definition of "connected to the distribution system" at N.J.A.C. 14:8-1.2, to register for the TI Program. However, no new registrations for Subsection (r) applications shall be accepted. The Transition Incentive eligibility criteria for these new projects registering for the Transition Incentive Program after the attainment of the 5.1% Milestone are set forth at (e) below.

(c) A proposed project submitted for registration in the TI-RPS following the closure of the SREC registration program must be registered prior to the Board's establishment of a

registration program for the Successor Incentive Program. Said projects shall not be subject to the deadline set forth at N.J.A.C. 14:8-2.4(c)1, which requires projects to register within 14 days of the execution of a contract. Projects will, therefore, also not be subject to the penalty for non-compliance with this 14-day deadline set forth at N.J.A.C. 14:8-2.4(e). In lieu of an executed contract, a TI registration package must contain a consumer disclosure form executed by the solar developer and customer-generator on a standard form made available on the website of the New Jersey Clean Energy Program (NJCEP).

(d) Solar electric generation facilities that have received a conditional registration for SRECs pursuant to N.J.A.C. 14:8-2.4(h)4 that has not expired, been cancelled, or commenced commercial operations prior to the 5.1% Milestone and have not submitted a post-construction certification package within 90 days of the 5.1% Milestone that have been transferred to the Transition Incentive registration program will receive a new conditional registration. The new registration will incorporate a requirement to commence commercial operations and submit a post-construction certification package within *[one year**]* *eighteen months* of the date that the Board determines that the 5.1% Milestone has been attained, except for projects granted conditional certification under the Subsection (r) program (N.J.S.A. 48:3-887(r)), which will retain the registration expiration date set by the Board Order granting the project conditional certification; projects granted conditional certification under the Subsection (t) program (N.J.S.A. 48:3-87(t)) prior to April 30, 2020, which will receive a new registration on the later of the date set by the Board Order granting the project conditional certification, plus any extensions that have been granted or *[**April 30, 2021**]* *October 30, 2021*, which is *[**one year**]* *eighteen**

months* from the date that the Board determines that the 5.1% Milestone has been attained.

1. Such facilities must utilize the NJCEP website to confirm registration transfer from the SREC registration program to the Transition Incentive registration program and identify the defined market segment described at N.J.A.C. 14:8-10.5(b)1.

2. Facilities registered for TREC eligibility, if they commence commercial operations and submit a post-construction certification package prior to the one-year anniversary of the date that the Board determined the 5.1% Milestone was attained (or as described in this subsection for Subsection (t) and Subsection (r) projects), will be assigned a New Jersey State Certification Number for use in obtaining TRECs from PJM-EIS GATs.

3. Facilities registered for TREC eligibility, if they do not commence commercial operations and submit a post-construction certification package prior to the one-year anniversary of the date that the Board determined the 5.1% Milestone was attained (or as described in this subsection for Subsection (t) and Subsection (r) projects), will not be eligible for TRECs.

(e) Solar electric generation facilities seeking Transition Incentive program eligibility following the determination that the 5.1% Milestone has been met and prior to the Board's announcement of the opening of a registration process for the Successor Incentive Program must complete the following process in order to be issued a notice of conditional registration:

1. The registrant shall submit a complete registration package to the Board prior to the Board's announcement of the opening of a Successor Incentive program. Each initial registration package shall be completed in accordance with the instructions found on the Board's New Jersey Clean Energy Program website at www.njcleanenergy.com. The registration instructions shall require the following basic types of information:

i. Information identifying and describing the owner, host location, builder/installer, and operator of the solar electric generating facility;

ii. Basic information describing the solar facility, including its capacity, manufacturer, and expected output;

iii. A technical worksheet, in a form provided on the Board's NJCEP website, detailing the technical specifications of the solar facility;

iv. A construction schedule for completing the solar facility, including significant milestones;

v. For net metered projects, a consumer disclosure agreement executed between the owner and installer of the solar facility;

vi. For grid supply projects applying under Subsection (t), a binding legal document that provides reasonable assurance that the solar facility will be constructed;

vii. Basic information regarding the cost of equipment and installation, presented as a simple budget;

viii. A site map of the land upon which the generating facility will be located, including all features that may affect the construction and/or performance of the solar facility; and

ix. Any other data or information necessary for Board staff to determine whether the solar electric generation from the facility will meet the requirements for TRECs under this subchapter;

2. Upon receipt of an initial registration package, Board staff shall review the package for completeness. If the initial registration package is incomplete or deficient, Board staff shall notify the registrant in writing of the deficiencies. The registrant shall revise the package and resubmit it within seven business days of this notice. Failure to resubmit within this time will result in cancellation of the registration process, in which case a complete new registration process shall be required for the solar facility to obtain a New Jersey State Certification Number;

3. Once the registration package is complete, Board staff shall review the package to determine whether the solar facility meets the TREC eligibility requirements of this subchapter. If the facility does not meet these requirements, Board staff shall notify the registrant; and

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

i. State that, if the solar facility is constructed as described in the initial registration package, Board staff will issue a New Jersey State Certification Number for the solar facility upon construction completion and inspection subject to conditions referenced in this subsection;

ii. Include an expiration date occurring on:

(1) The *[one-year**]* *eighteen month* anniversary of the registrant's notice of conditional registration for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering *and that registered in the Transition Incentive Program prior to October 30, 2020*; *[**or**]***

(2) The one-year anniversary of the registrant's notice of conditional registration for facilities that are net metered, provide on-site generation, or provide power for a qualified customer engaged in aggregated net metering and that registered in the Transition Incentive Program after October 30, 2020; or

***[(2)]* *(3)* For Subsection (t) projects (that is, projects granted conditional certification pursuant to N.J.S.A. 48:3-87(t)), the two-year anniversary of the registrant's Board Order granting conditional certification; and**

iii. Include notice that construction of the facility must be completed prior to the expiration of the conditional registration.

(f) When construction of the solar electric generating facility is complete, the facility owner shall submit a post-construction certification package that meets the requirements of (g) below, and shall request an inspection of the facility by Board staff, or an inspection waiver, through the Board's NJCEP website at www.njcleanenergy.com.

(g) A post-construction certification package shall include all of the following:

1. A copy of the conditional registration notice issued by the Board under this section;

2. A final "as built" technical worksheet, detailing the technical specifications of the completed solar electric generating facility, including any changes from the technical worksheet submitted as part of the initial registration package;

3. Digital photographs of the site and the completed solar facility;

4. A shading analysis, detailing any shade that will affect the facility;

5. An estimate of the electricity production of the solar facility;

6. Where applicable, documentation of compliance with all applicable Federal, State, and local law, including eligibility for any tax incentives or other government benefits;

7. A copy of the initial application, executed by the relevant EDC, to interconnect the facility to the corresponding EDC's distribution system, as well as the EDC or PJM approval to interconnect and energize the facility; and

8. A statement that an inspection of the solar facility, or an inspection waiver, has been requested through the Board's NJCEP website, and the date of the request.

(h) Additional requirements to establish TI eligibility for Subsection (t) projects are enumerated at N.J.S.A. 48:3-87(t), the Solar Act of 2012, and the Board's Implementing Orders, and are incorporated herein by reference. Developers must apply to the Board for conditional certification of projects seeking eligibility for TRECs using the same process developed for SREC eligibility pursuant to P.L. 2012, c. 24 (N.J.S.A. 48:3-87(t)).

(i) Except as modified in this subchapter, all TI Program projects must comply with all rules and regulations of the SREC Registration program at N.J.A.C. 14:8-2.4.

14:8-10.5 TREC value

(a) The base compensation value of a TREC shall be $152.00 per mega-watt hour (MWh) for eligible electricity generated during each year of a project's 15-year TREC qualification life.

(b) Each project registered in the SREC or TREC registration program shall be assigned a TREC factor by staff based on the following defined market segments.

1. The factors for the defined market segments are as follows:

Defined Market Segments	Factor
Subsection (t) landfill, brownfield, areas of historic fill.	1.0
Subsection (r) rooftop	1.0
Net-metered non-residential rooftop and canopy	1.0
Community solar	0.85
Subsection (r) ground mount	0.6
Net-metered residential ground mount	0.6
Net-metered residential rooftop and canopy	0.6
Net-metered non-residential ground mount	0.6

2. A TI-Eligible Project that, in its entirety, is eligible for multiple factors shall be assigned the lower project classification factor.

3. A TI-Eligible Project with multiple segments eligible for multiple factors must separately meter each segment as separate projects to enable application of the appropriate factor to the electricity generated by each segment.

(c) The actual value of a TREC will be calculated based upon the factor assigned to each TI-Eligible Project, by multiplying the base compensation value by the appropriate project factor.

14:8-10.6 Mechanism for creation of TRECs

(a) TRECs shall be created in the same manner in which SRECs are created pursuant to N.J.A.C. 14:8-2.4 and 2.9, which is based upon metered generation supplied to GATS by the owners of eligible facilities or their agents.

(b) One TREC shall be created for each mega-watt hour (MWh) of eligible electricity produced from a TI-Eligible Project. A TREC created for eligible electricity shall not be used for a purpose other than satisfying the TI-RPS and upon retirement the reduction in the Class I obligation of a TPS/BGS provider.

(c) All solar electricity must be metered using an ANSI c-12 certified meter consistent with the provisions governing SREC creation at N.J.A.C. 14:8-2.9(c)1 and 2.

(d) A TREC may be redeemed in GATS in the energy year in which the electricity was produced or in the following energy year.

(e) Electricity generated by an eligible facility more than two years before it is entered into the GATS system, shall not be eligible for a TREC, but is eligible to create a New Jersey Class I REC.

(f) A TI-Eligible Project shall be eligible to generate TRECs for 15 years following the date of commencement of commercial operation (the TREC Qualification Life).

(g) Qualified projects may be eligible for a New Jersey Class I REC at the conclusion of the 15-year TREC Qualification Life.