



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> )	
2012, <u>C.</u> 24, THE SOLAR ACT OF 2012; )	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> )	
2012, <u>C.</u> 24, THE SOLAR ACT OF 2012, N.J.S.A. 48:3- )	
87(Q)(R) AND (S) – PROCEEDINGS TO ESTABLISH )	
THE PROCESSES FOR DESIGNATING CERTAIN )	
GRID-SUPPLY PROJECTS AS CONNECTED TO THE )	
DISTRIBUTION SYSTEM; AND )	DOCKET NO. EO12090880V
)	
IN THE MATTER OF THE IMPLEMENTATION OF )	
N.J.S.A. 48:3-87(R), DESIGNATING GRID-SUPPLY )	
PROJECTS AS CONNECTED TO THE DISTRIBUTION )	
SYSTEM - ORDER IMPLEMENTING CERTAIN )	
PROVISIONS OF N.J.A.C. 14:8-2.4(G) FOR ENERGY )	
YEAR 2020 )	DOCKET NO. QO16020130

**Party of Record:**

**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**

**BY THE BOARD:**

In this Order, the Board of Public Utilities ("Board") considers the recommendations of Board staff ("Staff") on the implementation of provisions of N.J.A.C. 14:8-2.4(g). N.J.A.C. 14:8-2.4(g) which establishes the process and eligibility criteria for certain grid supply projects to become eligible for Solar Renewable Energy Certificates ("SREC") that can be used to satisfy the New Jersey Renewable Portfolio Standards ("RPS").

**BACKGROUND**

N.J.A.C. 14:8-2.4(g) must be understood in its statutory and administrative context. The Board promulgated this rule to implement Subsection r of P.L. 2012, c. 24 ("the Solar Act"), which was signed into law by Governor Christie on July 23, 2012. The Solar Act amended certain aspects of the statute governing the generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the Board to conduct proceedings to establish new

standards and to develop new programs to implement its directives. Specifically, with respect to future grid supply solar generation projects, Subsection r of the Solar Act provides that:

r. (1) For all proposed solar electric power generation facility projects except for those solar electric power generation facility projects approved pursuant to subsection q. of this section and for all projects proposed in each energy year following energy year 2016, a proposed solar electric power generation facility, may be considered "connected to the distribution system" only upon designation as such by the board, after notice to the public and opportunity for public comment or hearing. A proposed solar power electric generation facility seeking board designation as "connected to the distribution system" shall submit an application to the board that includes for the proposed facility: the nameplate capacity; the estimated energy and number of SRECs to be produced and sold per year; the estimated annual rate impact on ratepayers; the estimated capacity of the generator as defined by PJM for sale in the PJM capacity market; the point of interconnection; the total project acreage and location; the current land use designation of the property; the type of solar technology to be used; and such other information as the board shall require.

(2) The board shall approve the designation of the proposed solar power electric generation facility as "connected to the distribution system" if the board determines that:

(a) the SRECs forecasted to be produced by the facility do not have a detrimental impact on the SREC market or on the appropriate development of solar power in the State;

(b) the approval of the designation of the proposed facility would not significantly impact the preservation of open space in this State;

(c) the impact of the designation on electric rates and economic development is beneficial; and

(d) there will be no impingement on the ability of an electric public utility to maintain its property and equipment in such a condition as to enable it to provide safe, adequate, and proper service to each of its customers.

(3) The board shall act within 90 days of its receipt of a completed application for designation of a solar power electric generation facility as "connected to the distribution system," to either approve, conditionally approve, or disapprove the application. If the proposed solar electric power generation facility does not commence commercial operations within two years following the date of the designation by the board pursuant to this subsection, the designation of the facility as "connected to the distribution system" shall be deemed to be null and void, and the facility shall thereafter be considered not "connected to the distribution system."

[N.J.S.A. 48:3-87(r).]<sup>1</sup>

On January 27, 2016, the Board approved a Rule Proposal to implement the criteria set forth in the statute.<sup>2</sup> On March 7, 2016, the proposal was published in the New Jersey Register and the Board accepted comments on the Rules for a period of 60 days.

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<sup>1</sup> "Energy year" or "EY" as defined at N.J.A.C. 14:8-2.2 means the 12-month period from June 1st through May 31st and shall be numbered according to the calendar year in which it ends.

As noted above, Subsection r directs the Board to evaluate all proposed projects for which applications are submitted on or after June 1, 2016, the first day of EY17. The Board recognized that the Rules would not take effect prior to the start of EY17 and established an interim process to "implement Subsection r from June 1, 2016 until such time as a final rule is promulgated and an application window can be opened."<sup>3</sup> May 25 Order at p. 4. Among other matters, the interim process allowed interested parties seeking approval of projects in EY17 to submit Expressions of Interest ("EOI"). While allowing for these submittals, the May 25 Order prohibited Staff from accepting applications prior to the effective date of the Rules.

On February 22, 2017, the Board issued an Order modifying the May 25 Order by approving an extended and amended administrative process to implement Subsection r until such time as the first application window opened.<sup>4</sup> The February 22 Order instructed all entities that were considering filing an application in the coming energy year to file an EOI, using the EOI form to be posted on the NJCEP webpage, by April 1, 2017. Applicants who had previously submitted an EOI pursuant to the May 25 Order were not required to resubmit unless the earlier EOI had been rejected; did not contain a PJM interconnection queue number; or was no longer accurate because of changes to the project. February 22 Order at p. 4. In addition, the Board ordered that a public stakeholder process be initiated as soon as practicable to request comments on the optimal number of megawatts that the Board should not exceed for grid supply projects in EY18. *Ibid.* Finally, the Board stated that it would approve a specific number of megawatts as the upper limit which it might approve for designation as "connected to the distribution system" in EY18. *Ibid.*

The Board approved adoption of the Rule Proposal at the same February 22, 2017 agenda meeting. Since the Rules took effect without sufficient time to implement the necessary provisions prior to the opening of an application window, the Board's Order dated April 21, 2017 modified the administrative process approved in the February 22 Order.<sup>5</sup> To allow adequate time to consider public stakeholder input on the maximum amount of capacity to make available pursuant to Subsection r for EY18 and to best achieve a fair and efficient process for addressing potential grid supply applicants that have submitted Expressions of Interest, pursuant to the April 21 Order:

1. Deferred the opening of the first application window from June 1, 2017 to September 1, 2017.
2. Directed Staff to initiate a public process to accept comment on the capacity that the Board make available for designation as "connected to the distribution system" in EY18.
3. Announced its intention to establish a capacity cap following the close of the comment submittal period, and no less than 30 days prior to opening the first application window for EY18 on September 1, 2017.

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<sup>2</sup> I/M/O the Renewable Energy and Energy Efficiency Rules - N.J.A.C. 14:8 Amendments to Subchapter 8 – Rule Proposal, BPU Dkt. No. QX15091096, Order dated January 27, 2016.

<sup>3</sup> I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System, BPU Dkt. No. QO16020130, Order dated May 25, 2016 ("May 25 Order").

<sup>4</sup> I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System, BPU Dkt. No. QO16020130, Order dated February 22, 2017 ("February 22 Order").

<sup>5</sup> I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System – Order Modifying February 22, 2017 Order and Waiving Certain Provisions of N.J.A.C. 14:8-2.4 (G), BPU Dkt. No. QO16020130, Order dated April 21, 2017 ("April 21 Order").

Pursuant to the April 21 Order, on June 15, 2017, Staff issued a Request for Comments on Subsection r with a deadline for submission by close of business on June 29, 2017. The Request for Comments was distributed via the RE Stakeholder email distribution list and posted to the NJCleanenergy.com website. Nine entities submitted comments in response to Staff's Request. Five entities suggested that no capacity should be made available in Subsection r due to the current state of the SREC market and potential for adverse impacts from an approval of any Subsection r capacity. Two commenters recommended 100 MWs or more; and one commenter recommended no limit on the capacity available for designation. These positions cannot be easily reconciled.

On July 26, 2017, in response to the comments received, the Board found it reasonable to undertake additional analysis so that the impact of differing possibilities might be weighed. Specifically, the Board directed Staff to analyze whether the capacity caps proposed by the commenters will have an adverse impact on the SREC market. The impact of new capacity under Subsection r was to be considered in combination with forecasted installation growth based on historic trends.

The July 26 Order directed a process that superseded the procedure set forth in the April 21, 2017 Order.<sup>6</sup> The Board took the following steps:

1. Deferred the opening of the first application window from September 1, 2017 to December 1, 2017.
2. Directed Staff to conduct analysis concerning the market potential for new solar capacity.
3. Advised that a specific number of megawatts would be announced as an upper limit which the Board may approve for designation as "connected to the distribution system" in EY18, based upon the market research, no less than 30 days prior to opening the first application window for EY18 on December 1, 2017.
4. Directed Staff not to accept applications prior to December 1, 2017. Following that date, Staff might accept applications according to the schedule set forth in the Rules.

By Order dated September 22, 2017,<sup>7</sup> the Board initiated the Generic Solar Proceeding to "review the development of the New Jersey solar market." September 22 Order at 1. This Order also suspended N.J.A.C. 14:8-2.4 (g) and by doing so suspended the implementation of Subsection r. Id. at 3.

On May 23, 2018, Governor Murphy signed into law the Clean Energy Act ("2018 Act"), which mandated significant changes to policies underlying the state's solar market. As a result, the solar market in existence when the Generic Solar Proceeding began has changed significantly and the findings from that stakeholder process are now outdated. Among many other changes the 2018 Act amends the statutory provisions for Subsection r eligibility by making additional

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<sup>6</sup> I/M/O the Implementation of Designating Grid-Supply Projects as connected to the Distribution System – Order Implementing Certain Provisions of N.J.A.C. 14:8-2.4 (g) for Energy Year 2018, BPU Dkt. No. QO16020130, Order dated July 26, 2017 ("July 26 Order").

<sup>7</sup> I/M/O the Board's Establishment a Generic Proceeding to Review the State of the Solar Market, Dkt. No. 17090949 (September 22, 2017) ("September 22 Order").

capacity available to this market segment in Energy Year 2019 ("EY19") and Energy Year 2020 ("EY20"). "The Board may approve projects for up to 50 MW annually ... as long as the Board is accepting applications." N.J.S.A. 48:3-87(r).

In other relevant provisions, the new law requires the Board to close the SREC Registration Program ("SRP") once the Board has determined that 5.1% of the total kilowatt-hours sold in New Jersey have been generated by SREC-eligible solar generation installations ("5.1% Milestone"). The Board must modify or replace the existing SREC Registration Program ("SRP"). The 2018 Act also modified the solar RPS schedule of percentage obligations, effectively increasing SREC demand for EY19 by an estimated 750,000 MWh. As a result, the solar market became able to accommodate an estimated additional 620 MWdc of solar generation capacity. The 2018 Act also capped the annual cost to ratepayers of the New Jersey Class I RPS, including the solar RPS, at nine percent of retail electricity costs in EY19, EY20, and EY21 and at seven percent thereafter.

On December 26, 2018, Staff issued a straw proposal and request for comments on the New Jersey Solar Transition, SREC Transition Principles, and certain Program Assumptions ("Straw Proposal"). The Straw Proposal also announced a stakeholder process for implementing an SREC Transition in compliance with statutory requirements. Since issuance of the Straw Proposal, and as part of promoting a smooth transition process, Staff has edited SREC registration materials to reflect the new legal requirements, as well as instructional and educational materials on the New Jersey Clean Energy Program website.

The first Solar Transition stakeholder meeting was held on Friday, January 18 in New Brunswick. The second stakeholder meeting took place on Friday, February 22 in Newark. The deadline for written comments is March 1, 2019.

On January 17, 2019, in light of the above developments, the Board issued an Order closing the Generic Solar Proceeding.<sup>8</sup> In addition to closing the Generic Solar Proceeding, the January 17 Order directed staff to "seek comment from all interested parties on the further steps to be taken with respect to the suspended Subsection r Rules and the Expressions of Interest received pursuant to those rules prior to their suspension." Staff posted a Request for Comments on Subsection r Capacity on February 11, 2019. Comments were due on February 22, 2019.

## **SUMMARY OF COMMENTS AND RESPONSES**

Commenters: Mr. Brett Nolt of MVC Group, Inc. ("Mr. Nolt"); New Jersey Solar Energy Coalition ("NJSEC"); Conti Solar, LLC ("Conti"); Lakehurst Solar, LLC ("Lakehurst"); Rockland Electric Company ("RECO" or "the Company"); Holocene Clean Energy; New Jersey Resources ("NJR" or "the Other Company"); Mid-Atlantic Solar and Storage Industries Association ("MSSIA"); Public Service Enterprise Group ("PSEG" or "the third Company"); Black Bear Energy Inc. ("Black Bear").

## **STAKEHOLDER COMMENTS AND RESPONSES**

### **General Comments**

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<sup>8</sup> I/M/O the Implementation of N.J.S.A. 48:3-87(r), Designating Grid-Supply Projects as connected to the Distribution System – Order Implementing Certain Provisions of N.J.A.C. 14:8-2.4 (g), BPU Dkt. No. QO16020130, Order dated January 17, 2019 ("January 17 Order").

1. COMMENT: NJSEC states that Staff has erred by limiting the questions posed in the Straw Proposal to EY20 and should have made the Subsection r process available for the remaining months of EY19. Noting that four of the projects for which NJSEC members filed EOIs in 2016 and 2017 are still in the PJM queue, NJSEC asserts that these projects are now hard pressed to meet contractual deadlines because of the lengthy suspension of Subsection r. The commenter states that in the absence of Board action in the near future some of these projects will no longer be viable and urges the Board to reopen the Subsection r process for the remaining eligible projects in EY19.

RESPONSE: In referencing EY20 in the Request for Public Comment, Staff made note of the provisions of the 2018 Act which mandate closure of the SRP upon the state's attainment of 5.1% of kilowatt hours sold by solar electric generation facilities. The 2018 Act also provides Board discretion to approve in EY19 and EY20 up to 50 MW annually "as long as the board is accepting applications". Given that less than four months remain in EY19, the time required to review applications in light of the criterion for approval is uncertain and the 2018 Act enables rolling unused capacity from EY19 into EY20, Staff have purposefully structured the Subsection r application process to account for conclusion in EY20.

2. COMMENT: Conti states that it appreciates the Board's recent actions toward resuming the Subsection r approval process and urges the Board to begin accepting applications and issuing approvals for the remaining Subsection r projects quickly. Conti emphasizes that it has invested significant time and money developing the 20 MW solar farm it hopes to install at the Naval Weapons Station Earle, that it has continued to do so during the suspension of the Subsection r process, and that it needs the Board to act immediately on its application. In support of this claim, Conti states that its project is at a critical juncture because it is "shovel ready" but that Conti must complete site preparation by April 1, 2019 to comply with the terms of its environmental permit. This timeline requires Conti to begin work immediately. Unless the Board determines that the project is eligible for SRECs prior to the commencement of the site preparation activities, Conti says that it must either risk \$3 million on site preparation activities or defer site preparation until after October 1, 2019. Conti contends that it has received clear guidance from the Board and from state legislation and that immediate approval for SRECs is the only equitable action for the Board to take and is consistent with the Solar Act.
3. COMMENT: Lakehurst states that it has spent years developing an approximately 13.8 MW solar project at the Joint Base McGuire-Dix-Lakehurst. According to Lakehurst, its project is "shovel ready" and has all necessary approvals. The commenter notes that it has a pending Subsection t application in addition to its suspended Subsection r application.

RESPONSE: 2 and 3 Staff is cognizant of the implications from the suspension of implementation of Subsection r which shortly followed rule promulgation in 2017. However, the suspension was instituted in the context of the Generic Solar Proceeding so that the Board's determinations on Subsection r applications might be informed by a comprehensive understanding of current conditions in the solar market. Moreover, the suspension served to ensure compliance with the threshold criteria for approval that the "SRECs forecasted to be produced by the facility do not have a detrimental impact on the SREC market or on the appropriate development of solar power in the State." Subsection r is the only means provided the Board to manage the entry of new capacity to the SREC market.

4. COMMENT: RECO states its support of New Jersey's clean energy goals, but states that in recent years the price of SRECs has been "excessive" and produces incentives "well beyond what is needed." RECO notes that Electric Distribution Company ("EDC") ratepayers bear the cost of these incentives.

RESPONSE: The Board appreciates the support and concerns of the commenter.

- 1) Aggregate Subsection r Capacity
  - a. What maximum amount of aggregate capacity should the Board make available via subsection r in EY20?

5. COMMENT: NJSEC and Black Bear state that inasmuch as Subsection r authorizes the Board to approve projects for up to 50 MWdc in both EY19 and EY20, the Board should reopen the application process as soon as possible to allow the remaining PJM eligible projects the opportunity to move forward. In support of its position, the commenters assert that the total capacity of the "remaining PJM eligible projects" do not add to the 50 MW statutory limit so that no additional selection process would be necessary. Conti concurs with the thrust of these comments, urging approval for SRECs for the remaining Subsection r projects on the Board's February 27, 2019 Agenda Meeting. Holocene's comments also align with NJSEC, as do those of MSSIA. NJR recommends that any Subsection r projects which remain active in PJM and have filed an EOI be deemed eligible.

RESPONSE: Staff's review of the PJM queue found slightly more than 50 MWdc of potential capacity from five projects for which Expressions of Interest were filed. Staff recommends that notwithstanding the lesser risk of potential adverse impact on the SREC market from this relatively low aggregate amount of MWdc, Subsection r approval requires meeting several other criteria described further in the statute and addressed in the Board's rules. Thus far, no application for designation of eligibility for SRECs pursuant to Subsection r has been made public.

6. COMMENT: Lakehurst asserts that the Board should make 100 MW of capacity available in EY 19 and EY20 combined, preferably 50 MW in each year. Lakehurst believes that approving 50MW in each year would mitigate any concerns regarding possible negative market impact.

RESPONSE: Staff reiterates that less than four months remains in EY19 and that a Subsection r application has yet to be made available. Staff also notes that the 2018 Act provides the Board with the ability to move unused capacity from EY19 to EY20 as long as the Board is accepting applications.

7. COMMENT: RECO recommends that the Board approve the aggregate capacity of solar projects necessary to meet the solar RPS obligations, regardless of whether projects apply under Subsection r or in some other way. The Company stresses that the total capacity made available to any type or size of solar project is subject to the statutory cost cap. RECO adds that after a project is designated as connected to the distribution system, the SRECs it produces will continue to be counted toward the cost cap.

RESPONSE: Staff appreciates the commenter's perspective and suggests that the solar RPS obligations are not at risk of being unmet. The Board has considered the RPS cost caps

introduced in the 2018 Act in the context of the BGS exemptions and will continue to provide stakeholders the opportunity to recommend means to remain in compliance. Due to the statutory design of the RPS, including the five year bankability for SRECs, prices have been unresponsive to supply and demand and the size of projects is unlikely to influence the ability to comply with the statutory cost cap.

b. Can the current SREC market accommodate additional capacity?

8. COMMENT: NJSEC and Black Bear state that the market is currently open to all market segments and that applicants in the other segments do not need to seek the Board's determination that a given project will not impact the SREC market. Noting that there are approximately 660 MW of SRP "approved" capacity in the pipeline<sup>9</sup>, and that its members' Sub r projects total less than 50 MW, the commenters calculate that their inclusion would increase the pipeline capacity by 7.5% and increase the total SRECs by 1.5%. The commenters also quote the recently added disclaimer to the SRP approval form, which explains that SRECs are not guaranteed to projects which only commence commercial operations after the 5.1% Milestone has been achieved; the commenters then assert that this language does not discuss the SREC market's ability to accommodate additional capacity. NJSEC asks why a capacity limit is being applied only to Subsection r projects which have maintained their eligibility since September 2017. Holocene submits similar comments.

RESPONSE: Staff reiterates that the only discretion provided the Board in approving projects for SREC eligibility is with Subsection r. The closure of the SREC Registration program was mandated by the 2018 Act. The closure of the SREC market upon attainment of the 5.1% Milestone, the requirement that applications approved after October 29, 2018 must commence commercial operations prior to the milestone's attainment, and the prerequisite of submission of an EOI for filing a Subsection r application eliminate the need for a capacity limit on individual projects.

9. COMMENT: Conti asserts that the market can accommodate additional capacity. Conti's comments align with those of NJSEC, but the commenter also points to the 5.1% Milestone in the 2018 Act. Conti reasons that the current SREC program will close and a new program take its place whether the 5.1% Milestone is reached with megawatts produced by Subsection r projects, Subsection t projects, or behind the meter projects.

RESPONSE: The 2018 Act provides that the SREC market can accommodate additional capacity until the state attains the 5.1% Milestone. The Staff straw proposal issued on December 26, 2018 anticipates a transition incentive program for projects that are not eligible for the "legacy SREC program", i.e., that submitted complete registrations or applications after October 29 and do not commence commercial operations prior to the state's attainment of the 5.1% Milestone.

10. COMMENT: Lakehurst maintains that the Legislature has made a policy determination that 50 MW per year in EY19 and in EY20, or 100 MW over the two energy years, is the appropriate amount of megawatts to add to the New Jersey solar market pursuant to Subsection r. In Lakehurst's view, the fact that the 2018 Act also substantially increased the solar RPS for EY 19, EY 20, and Energy Year 2021 ("EY21") means that there is

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<sup>9</sup> The commenter appears to mean "accepted" SRP capacity.



little likelihood of an SREC oversupply as a result of approving 100 megawatts for SRECs via Subsection r.

RESPONSE: The 2018 Act provides the Board with the discretion to make capacity available through Subsection r as long as the Board is accepting applications. The 2018 Act also mandates that the SREC Registration Program close upon the markets attainment of the 5.1% Milestone. It is likely that the milestone will be attained prior to EY21. And it is unlikely that each of the projects with an EOI can commence commercial operations prior to the closure of the SRP.

11. COMMENT: RECO states that the Board will be able to determine whether there is a need for additional capacity after it has adopted a method for calculating when the 5.1% Milestone is reached. Going forward, RECO recommends that Subsection r projects be governed by the same rules that will be effective for all solar projects upon the closing of the current SREC program and implementation of a successor program. In addition, RECO believes that Subsection r projects must be included in the determination of the 2018 Act's RPS goals and cost caps.

RESPONSE: It is unnecessary to defer a decision on Subsection r capacity until a method is adopted for calculating when the 5.1% Milestone is achieved. In fact, further delay on Subsection r would likely result in no capacity being designated as eligible for SRECs in time to ensure the ability to commence commercial operations prior to the 5.1% Milestone. It is anticipated that all solar projects will be governed by the same rules unless specific statutory directives should require otherwise. The language of the 2018 Act does not exempt Subsection r projects from inclusion in determination of that Act's RPS goals and cost caps so these projects will be included in those figures.

12. COMMENT: MSSIA does not believe that the current SREC program can accommodate 50 MW of Subsection r projects, but believes that the question is moot because in MSSIA's opinion the 5.1 Milestone which will trigger the closure of the current program will be reached prior to November of this year. In the event that the Board does not share this opinion, MSSIA suggests that the Board approve Subsection r applications explicitly for the transition program to avoid any possibility that these larger projects "trigger volatility" in the marketplace.

RESPONSE: Regardless of when the 5.1% Milestone is reached, a Subsection r project will be eligible for SRECs if it achieves commercial operation prior to that point. Whether or not a Subsection r project will be eligible for the transition program if it does not achieve commercial operation until after the 5.1 Milestone is reached will depend on the duration of the transition program and the date on which such a project achieves commercial operation.

2) Individual System SREC Eligibility

- a. If the Board makes capacity available under this subsection in EY20, should there be a maximum size? What should the maximum size be?

[The Request for Comment goes on to note that the 2014 report on mitigating solar development volatility found that projects greater than 2 MW contributed most significantly to solar market volatility. Some of the following comments refer to that report]

13. COMMENT: NJSEC and Black Bear state that the Board has not raised project size as a potential criterion prior to this point, while according to the commenters the remaining Subsection r projects continued to invest during this time to maintain their eligibility. In NJSEC's and Black Bear's opinion, it would be inappropriate to "change the rules retroactively" when the remaining projects have relied on the reopening of the program and represent less than 50 MW of project capacity in aggregate. Holocene's comment aligns with this statement.
14. COMMENT: Conti notes that the question implies a possibility of its own project being foreclosed and states that the answer is "no." Conti also contends, as do Holocene and Black Bear, that the issue of project size should be raised, if at all, only in connection with new projects and not Subsection r projects.
15. COMMENT: Lakehurst asserts that since the Legislature imposed size limits on solar projects approved pursuant to Subsection q, but did not do so for solar projects evaluated pursuant to Subsection r, the Legislature did not intend to limit the size of such projects. Lakehurst believes that the Board should defer to what Lakehurst considers the Legislature's judgment on this issue.

RESPONSE: 13, 14, and 15. The Subsection r rules provide a process for determining that each of the criterion for eligibility are met including SREC market impact, ratepayer impact, distribution system impact and impact on open space preservation. As noted above, the closure of the SREC market upon attainment of the 5.1% Milestone, the requirement that applications approved after October 29 must commence commercial operations prior to the milestone's attainment, and the prerequisite of submission of an Expression of Interest for filing a Subsection r application eliminate the need for a capacity limit on individual projects. In addition, the 2018 Act's mandate to close the SRP upon reaching the 5.1% Milestone and the attrition of projects with Expressions of Interest from the PJM queue limits the potential risk of adverse impact from an individual application.

16. COMMENT: RECO states that if a project is otherwise eligible, as discussed in RECO's comment on Question 3(a), that project should qualify for interconnection. NJR makes the same statement.
17. COMMENT: MSSIA states that the Subsection r projects should be capped at 10 MW in order to ensure diversity within its recommended 50 MW total for 2020. However, MSSIA adds that to achieve the renewable energy goals of the 2018 Act at a low cost it will soon be necessary to encourage projects above 10 MW.

RESPONSE: 16 and 17. Interconnection approval through the PJM interconnection process is a prerequisite for Board approval of SREC eligibility. Pursuant to the criteria established in Subsection r, an applicant must demonstrate that the prospective project would have no detrimental impact on the ability of an electric public utility to maintain its property and equipment. As noted above, the closure of the SREC market upon attainment of the 5.1% Milestone, the requirement that applications approved after October 29 must commence commercial operations prior to the milestone's attainment, and the prerequisite of submission of an Expression of Interest for filing a Subsection r application eliminate the need for a capacity limit on individual projects.

- b. If the Board were to make capacity available for Subsection r projects in EY20, should individual project SREC eligibility approval be based solely on a project's proposed capacity if all other criteria have been met?
18. COMMENT: NJSEC reiterates its assertion that projects otherwise eligible for an EY19 SRP approval should not be subject to new requirements "never even mentioned" prior to this point. PSE&G believes that no requirements beyond compliance with existing statutes and regulations should be imposed. NJSEC also states that the Board could raise its concerns in a subsequent stakeholder process prior to the start of the EY20 application process, an application process the commenter believes will address new projects just entering the PJM queue. Conti, Holocene, and Black Bear also favor a subsequent stakeholder process to address new projects only.
19. COMMENT: Conti believes that the referenced report on mitigating solar development volatility is both out of date and inapplicable to the current market conditions. Conti and Holocene both contend that the report focused mainly on solar market dynamics prior to the Solar Act of 2012 but that today's grid supply market is highly regulated. In support of its position, Conti supplies a chart which it says demonstrates that a number of projects greater than 2 MW and some over 10 MW have been approved for SRECs since the enactment of the Solar Act without "any noticeable impact" on volatility or SREC pricing. Moreover, Conti asserts that the four largest projects approved for SRECs were all approved either under Subsection t or as behind-the-meter projects. Conti maintains that to impose a size limit on Subsection r projects would be arbitrary and unfair.
20. COMMENT: Lakehurst rejects project size as a criterion for approval or prioritization. The commenter argues that the Legislature has anticipated and mitigated concerns over adverse impacts by limiting annual market entry under Subsection r to 50 megawatts in EY19 and EY20 and simultaneously increasing the solar RPS. Moreover, Lakehurst maintains that prioritizing smaller projects would not provide incremental benefit because 50 one-megawatt projects would have the same incremental impact on the solar market as ten five-megawatt projects. In fact, Lakehurst asserts that a larger number of smaller projects would likely increase the cost to ratepayers by missing economies of scale. Instead, Lakehurst argues for "project maturity" as the appropriate criterion under Subsection r, coupled with the likelihood of achieving commercial operation within two years or less. In support of its position, Lakehurst quotes from the same solar market volatility report referenced by Staff, as well as a report by an industry group, the New Jersey Solar Grid Supply Association. Judged by the criteria of project maturity and likelihood of commencing commercial operation within two years, the commenter contends that the five remaining Subsection r projects which submitted EOIs in 2016 and 2017 become very competitive, whether Lakehurst itself is approved pursuant to Subsection r or certified under Subsection t.
21. COMMENT: RECO believes that it would be more equitable to base individual project eligibility upon the order in which projects requested approval than to base it upon project capacity.
22. COMMENT: NJR asserts that New Jersey public policy supports the development of Subsection r projects, pointing to the language in the 2018 Act that provides development targets of 50 MW a year in EY19 and EY20, "with carryover until 100 megawatts has been approved by the Board." NJR also believes that large solar

projects such as those awaiting Subsection r approval are necessary to meet the State's goal of 50% clean energy by 2030. Holocene makes a related argument, claiming that Subsection r projects should be "favored" because they would primarily sell energy into wholesale markets, while net metered projects would shift certain costs to non-net metering ratepayers. NJR also cites job creation and economic development for local communities as reasons to approve the remaining Subsection r projects. Finally, NJR urges prompt approval for the Subsection r projects so that the developers can commence construction prior to December 31, 2019 and take advantage of the federal Investment Tax Credit before its anticipated expiration.

23. COMMENT: MSSIA states that given its recommended 10 MW cap, it does not believe that size should be a factor in ranking projects. It suggests that the Board may wish to use criteria such as location on landfills or brownfields, benefit to public entities, and other public policy considerations.

RESPONSE: 18 through 23. The Solar Act provides criteria - SREC market impact, ratepayer impact, distribution system impact and impact on open space preservation - by which each application must be judged. The Board may grant designation as eligible for SRECs only after making a favorable determination on each of these factors. The Board's rules implementing Subsection r thus provide a process for determining that each of the criteria for eligibility has been met. The 2018 Act's mandate to close the SRP and the attrition of projects with Expressions of Interest from the PJM queue limits the potential risk of adverse impact from an individual application.

The Board does not disregard the other public policy interests referred to by the commenters, but the statute speaks specifically to the four factors identified in this Response.

- c. Should SREC approval to Subsection r applicants be conditioned upon a project commencing commercial operations prior to the State's attainment of 5.1% of retail sales from solar electric generation facilities?

24. COMMENT: Conti states that as long as a project such as its own commences construction within 60 days of SREC approval and achieves commercial operation within one year of approval, that project should be guaranteed eligibility for SRECs under the current program. Conti asserts that to do otherwise would be unfair and would also undermine the "orderly and transparent" transition directed by the 2018 Act. Holocene makes a similar statement.
25. COMMENT: PSE&G states that after a project has been approved under Subsection r, it should be treated in the same way as all other solar projects. Black Bear submits similar comments. NJSEC substantially agrees, adding a reference to the standards articulated in the recent SRP Acceptance Letter disclosure language.
26. COMMENT: RECO recommends that any application filed prior to the closing of the current SREC program upon attainment of the 5.1% Milestone should be eligible to generate SRECs.
27. COMMENT: MSSIA believes that Subsection r projects are very unlikely to achieve commercial operation before attainment of the 5.1 Milestone but that if even if they did, these projects should not be eligible for SRECs.

28. COMMENT: Holocene believes that all remaining Subsection r projects should be allowed to apply for SREC eligibility and that if a project becomes eligible it should not lose that eligibility. Holocene supports this position with the statement that during the time Subsection r was suspended other solar projects totaling in aggregate 500 MW have been approved and questions why the approximately 50 MW of remaining Subsection r projects should be considered to have a greater impact than those other projects, regardless of project size.

RESPONSE: 24 through 28. The 2018 Act significantly amends the Solar Act of 2012. One of the most significant amendments is the mandate for closure of the SRP to new applications upon attainment of the 5.1% Milestone. It is impossible at this time to determine when this milestone will be attained since it is dependent upon future retail electricity sales and solar electricity generation each of which are dependent upon weather and economic factors. Participants in the SREC market have been placed on notice that registrations and applications deemed complete after October 29, 2018 must commence commercial operations prior to the Board's determination that the 5.1% milestone has been achieved in order to be eligible for SRECs. For Subsection r applicants, the Board's rules require the submission of an EOI as one prerequisite for submitting an application. The rules also require the Board to determine a maximum limit to the amount of capacity that will be made available to potential applicants. The Board has not yet authorized an application round for potential Subsection r projects.

- d. How should projects be treated which commence commercial operations after the State's attainment of 5.1% of retail sales from solar electric generation facilities?

29. COMMENT: NJSEC, Holocene, and Black Bear assert that the Board has an obligation to provide information on the financial elements of a transition program that will allow projects to obtain financing. In the absence of that information, NJSEC believes that no solar project financing will be available in New Jersey.
30. COMMENT: Conti reiterates its belief that if its project begins construction within sixty days of receiving "SREC approval"<sup>10</sup> and achieves commercial operation within one year of approval, it should be eligible for SRECs. If its project does not meet one of these deadlines, Conti says, it should be eligible for the transition program to be established by the Board.
31. COMMENT: RECO recommends that any application received after the current SREC program is closed should be considered under any successor program developed by the Board. RECO further recommends that a successor program provide that all applications received in that program, including Subsection r applications, be eligible to generate Class I RECs only.
32. COMMENT: NJR believes that Subsection r projects may not achieve permission to operate prior to achievement of the 5.1% Milestone due to their long lead time. To accommodate their development, NJR recommends that the Board incorporate the Subsection r projects into the design of the "pipeline" program as defined in the Board's solar transition straw proposal. The commenter suggests the Board adjust incentives "as necessary to stimulate development of these projects."

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<sup>10</sup> The commenter appears to be referring to the SRP Letter of Acceptance.

33. COMMENT: MSSIA believes that the Board should approve Subsection r projects for inclusion in a one-year transition program. The commenter states that it will make a detailed recommendation on such a program in its comments on the SREC transition.

34. COMMENT: PSE&G states that Subsection r projects which do not achieve commercial operation prior to attainment of the 5.1% Milestone should be treated in the same manner as all other solar projects.

RESPONSE: 29 through 34. Staff has undertaken a stakeholder process toward developing a transition incentive program. A request for comment was issued on December 26, 2018 with two public stakeholder meetings held on January 18 and February 22 with comments due on March 1, 2019. Staff is currently reviewing the comments received and planning additional outreach with the goal of developing a straw proposal for public review. Eligibility, terms and conditions for a transition incentive program will be components of the program design open for public comment.

### 3) Other Factors

a. The rule currently requires a PJM interconnection queue number or equivalent documentation from an electric distribution company ("EDC") demonstrating status of interconnection planning and demarcation of an established interconnection point. What if any additional information should be required to support a determination that no adverse impact on the EDC distribution system would accrue from an individual solar electric generation facility receiving a Subsection r approval?

35. COMMENT: NJSEC, Holocene and Black Bear state that for a project to clear the PJM queue and obtain an Interconnection Services Agreement ("ISA") or a Small Generator Interconnection Agreement, the relevant local distribution company ("LDC") must have completed a study of the project's impacts on the LDC's system. Should that study have revealed any adverse impacts, the LDC will have required the applicant to pay for any system upgrades necessary. Since each of the four remaining Subsection r projects has been through this process, the commenters believe that no further vetting is necessary. MSSIA makes a similar statement. Conti and Lakehurst state that an ISA should be required.

36. COMMENT: Lakehurst contends that possibly the most critical criterion is the extent to which a project contributes to other important federal and state goals. In that regard, Lakehurst states that there is "a clear Federal policy to identify underutilized portions of military facilities for utilization by private parties for projects such as Lakehurst Solar." The commenter states that the Federal government has confirmed that the site of the proposed solar facility is underutilized. In addition, Lakehurst notes the site's history of industrial chemical weapons development and quotes New Jersey policy on the need to promote development on brownfields.

37. COMMENT: RECO recommends that the information required by N.J.A.C. 14:8-5.4 through -5.6, - the information required for interconnection review of Level 1, Level 2, and Level 3 projects as those are defined in the Board's rules - be required to be submitted with an application under Subsection r. RECO also recommends requiring that a Subsection r application for a project of 10 kilowatts or less include Customer-Generator Facility Information, while an application for a larger project include

Attachment A for Level 2 or for Level 3, whichever is applicable. In addition, the Company believes that an applicant should demonstrate that distribution voltage interconnections comply with N.J.A.C. 14:8-5.2 General Interconnection Provisions. Lastly, RECO recommends that the Board require any information required by PJM for either sales into PJM markets or transmission voltage interconnections.

38. COMMENT: MSSIA asserts that it will be necessary to modernize and expand the interconnection standards in the State to achieve the renewable energy goals of the 2018 Act and that current technological capabilities should be used in that effort.
39. COMMENT: PSE&G believes that the Board should require a Subsection r applicant to submit a completed interconnection application and to obtain a Feasibility Study and an Impact Study, or the equivalent if the EDC has waived the requirement for separate studies.

RESPONSE: 35 through 39. An application for qualified projects to demonstrate compliance with the Subsection r criteria has been drafted and when approved by the Board will be made publicly available.

- b. In addition to a PJM interconnection queue number, what if any additional information should be required to demonstrate a reasonable likelihood that a project might satisfy the requirement to commence commercial operations within two years of the Board-approved designation date?

40. COMMENT: NJSEC, Holocene, and Black Bear point to the forfeiture of the required escrow payment if a project does not achieve commercial operations by the date set.
41. COMMENT: Conti states that in addition to an ISA, project owners should be required to have "clear land rights," such as an executed lease, and all critical permits.
42. COMMENT: RECO refers to its response to question 3(a) above. RECO also recommends requiring an escrow comparable in amount to the \$40,000 per megawatt required by Subsection q of the Solar Act. RECO appears to suggest that such an escrow would be forfeited if the facility did not commence commercial operation within two years of Board approval. In addition, the Company proposes that for any project intended to sell into the PJM markets, the Board require that an applicant provide studies demonstrating the reasonable likelihood of commencing commercial operations within two years.
43. COMMENT: MSSIA believes that the existing minimum requirements are adequate to demonstrate a reasonable likelihood of completion, provided "reasonable approval timelines, a viable incentive program, and rational interconnection standards are present."
44. COMMENT: PSE&G asserts that developers should be required to commit to paying any interconnection costs identified in the Feasibility Study or Impact Study because this commitment would ensure that any negative impacts to the EDC's infrastructure have been addressed and would further support a determination that there exists a reasonable likelihood of achieving commercial operation.

RESPONSE: 40 through 44. An application for qualified projects to demonstrate compliance with the Subsection r criteria has been drafted and when approved by the Board will be made publicly available.

- c. Should additional documentation be required to demonstrate that a project will not be built on farmland or have an adverse impact on open space preservation in the State? What should this additional documentation be?

45. COMMENT: NJSEC says no additional document is needed. Conti, Holocene, and Black Bear concur.

RESPONSE: An application for qualified projects to demonstrate compliance with the Subsection r criteria has been drafted and when approved by the Board will be made publicly available.

46. COMMENT: Mr. Nolt, a "PM/Designer" for MVE Group, Inc., states that the term "farmland" is too generic. He recommends that the status of land be determined by its zoning rather than by its current status only. If currently tillable acreage is zoned for commercial or industrial use by the township in which it lays, Mr. Nolt contends that restrictions should not be placed upon its development as ground-mounted solar through Subsection r. MSSIA makes a similar comment.

RESPONSE: "Farmland" was defined in the Solar Act of 2012 and was not amended with the 2018 Act.

47. COMMENT: RECO states that it will defer to agencies such as the NJ Department of Environmental Protection to propose adequate rules and safeguards.

RESPONSE: The Board appreciates the commenter's deference to State agencies.

### **STAFF RECOMMENDATION**

New solar installations have continued to join the SREC market at their typical, seasonally variable rates. The installed capacity for solar electric generation facilities known to have received Permission to Operate as of January 31, 2019 currently stands at 2,738 MWdc. At the same time, the SRP pipeline has grown to over 550 MWdc from the 546 MWdc in place at the signing of the 2018 Act. Project capacity from new registrations has been replacing capacity that leaves the pipeline because it completes construction, is cancelled, or has its registration expire. It appears likely that the pipeline already contains the project(s) that will produce the megawatt hour that meets the 5.1% milestone and triggers SRP closure. This estimate is based upon the assumption of constant retail sales at EY18's 73.6 million megawatt hours and solar productivity of 1200 MWh per MW installed.

It is conceivable that a project approved pursuant to Subsection r could commence commercial operations prior to the Board's determination that electricity sold by NJ solar installations have attained 5.1% of retail electricity sales. As a result, Staff believes the market could accommodate additional capacity from among the nineteen projects that submitted EOIs in Subsection r in 2016 and 2017. Among the nineteen projects, Staff is aware of at least three that are no longer viable Subsection r candidates because they have either been denied or been certified for SRECs pursuant to Subsection q or Subsection t and thirteen projects that have withdrawn from the PJM interconnection queue. Therefore, Staff anticipates that the



number and capacity of projects with EOs that are likely to commence commercial operations prior to the State's attainment of the 5.1% milestone is relatively low. Staff further notes that the Legislature, by authorizing the Board to approve up to 50 new MWdc rather than requiring it to do so, has provided the Board with the discretion to consider the ability of the SREC market to accommodate additional capacity when determining how many MWdc should be made available.

In consideration of these various developments, Staff recommends that the Board take the following actions:

- announce that the upper limit of aggregate capacity for which qualifying projects may seek conditional designation as "connected to the distribution system" is 100 MWdc,
- announce the project qualifications for SREC eligibility, including the requirement that commercial operations commence prior to the Board's determination that the market has attained 5.1% solar electricity.
- announce that an alternative transition incentive is currently under development for which other projects may be eligible,
- open a Subsection r application round authorizing Staff to accept applications from March 1 to March 14, and
- approve the attached draft Subsection r application form and escrow agreement for immediate release.

### **DISCUSSION AND FINDINGS**

The Clean Energy Act of 2018 mandates that the Board modify or replace the State's primary incentive program for solar electric generation facilities. The Board has proposed and adopted rules that initiate the closure of the existing SREC Registration Program and limit eligibility for SRECs to those that commence commercial operations prior to the State's attainment of 5.1% of electricity sales from solar electric generation facilities. Subsection r also requires the Board to determine that the SRECs forecast to be produced by a facility designated for SREC eligibility will not have a detrimental impact on the SREC market or on the appropriate development of solar power in the State. The statute further requires the Board to determine that any approval will not detrimentally impact the preservation of open space, the ratepayers, or the electric distribution system. The Board would be remiss if it did not provide an opportunity to ensure that each of the criterion were able to be met before an application process were undertaken. The Board **FINDS** that allowing Subsection r projects possessing EOs to submit applications is consistent with the policies underlying the Solar Act of 2012 and the 2018 Act.

The Clean Energy Act of 2018 amends the Solar Act of 2012 to provide an opportunity for capacity to be made available for certain types of projects that are not net metered or located on brownfields, landfills or areas of historic fill. The Legislature has authorized the Board to approve projects in EY19 and EY20 for up to 50 MW of capacity annually pursuant to Subsection r as long as the Board is accepting applications. Taken together with the directive to close the SREC program, this authorization implies a legislative intent for the Board to open SREC eligibility to projects satisfying the Subsection r criteria while the current SREC program is still available to these projects. A limited number of projects meeting the qualification for Subsection r may receive approval, commence commercial operations prior to the closure of the

SRP, and not adversely impact the SREC market. Therefore, the Board **FINDS** that announcing the opening of a Subsection r application round for the limited number of qualifying projects is consistent with state law.

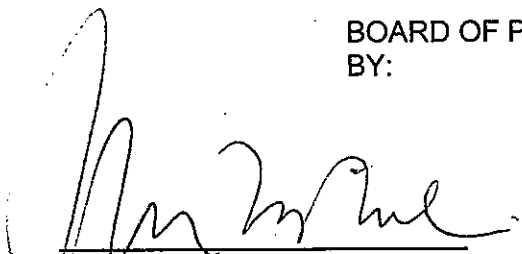
The Board **FINDS** that making a maximum of 100 MW of capacity available in EY20 for the conditional approval of Subsection r projects possessing active EOs is consistent with the legislative intent behind the 2018 Act. In addition, the Board **REAFFIRMS** its earlier finding that it is reasonable to limit the acceptance of EOs to those which have PJM interconnection queue numbers previously submitted for EY17 between June 1, 2016 and July 15, 2016 and for EY18 by April 1, 2017. The Board **FURTHER FINDS** that Subsection r applicants conditionally designated by the Board as having demonstrated meeting all other statutory and regulatory criteria for SREC eligibility must also commence commercial operations prior to the Board's determination of the state's attainment of 5.1% of kilowatt hours sold by solar electric generation facilities to be eligible for SRECs.

Therefore, the Board **HEREBY APPROVES** the application and application process recommended by Staff. Specifically, the Board **HEREBY DIRECTS** Staff to take applications from Subsection r projects with valid EOs until March 14, 2019.

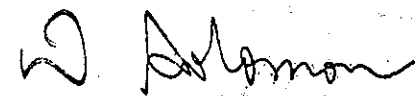
The effective date of this Order is March 9, 2019.

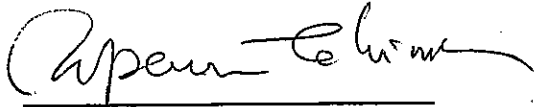
DATED: 3/6/19

BOARD OF PUBLIC UTILITIES  
BY:

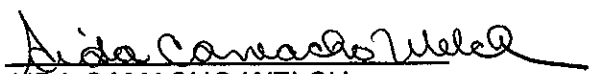
  
\_\_\_\_\_  
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ATTEST:   
\_\_\_\_\_  
AIDA CAMACHO-WELCH  
SECRETARY

IN THE MATTER OF THE IMPLEMENTATION OF N.J.S.A. 48:3-87(R), DESIGNATING GRID-SUPPLY PROJECTS AS CONNECTED TO THE DISTRIBUTION SYSTEM - ORDER IMPLEMENTING CERTAIN PROVISIONS OF N.J.A.C. 14:8-2.4(G) FOR ENERGY YEAR 2020

DOCKET NO. QO16020130

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## Solar Act Subsection r. Application Form

### Application Requirements, Instructions, Terms and Conditions

The following application is intended only for developers of grid-supply solar electric power generation facilities that have satisfied the regulatory requirement at N.J.A.C. 14:8-2.4 (g) to file an Expression of Interest with the New Jersey Board of Public Utilities ("NJBP" or "Board") of intent to seek designation pursuant to N.J.S.A. 48:3-87 (r) and the requisite Board approval pursuant to N.J.A.C. 14:8-2.4 (g) as "connected to the distribution system" for purposes of Solar Renewable Energy Certificate ("SREC") or eligibility in the alternative for a Transition Incentive ("TI"). Projects must receive Board conditional designation as "connected to the distribution system" and commence commercial operations prior to the Board's determination that 5.1% of the retail electricity sales were attained from solar electric power generators to be eligible for an SREC. Projects that do not commence commercial operations prior to the Board's determination that 5.1% of the retail electricity sales were attained from solar electric power generators will be eligible for a TI. **Before completing the attached Subsection r. application, please carefully read all of the information in I., II., and III. below.**

#### I. Minimum Qualification Requirements

1. Only those applications which meet all the statutory requirements under N.J.S.A. 48:3-87(r) will be considered for designation as "connected to the distribution system" for purposes of SREC or TI eligibility. A Facility must enter commercial operations within two (2) years of the date of designation by the Board and prior to the Board's determination that 5.1% of the retail electricity sales were attained from solar electric power generators or the Facility will not be eligible to earn SRECs and the escrow described at I. 4 will be forfeited. A Facility that enters commercial operations within two (2) years of the date of designation by the Board but after the Board's determination that 5.1% of the retail electricity sales were attained from solar electric power generators the Facility will not be eligible to earn SRECs but may qualify for a TI and will retain ownership of the escrow described at I. 4.
2. Applications for projects proposed to be located on agricultural land taxed pursuant to the "Farmland Assessment Act of 1964" ("Farmland") which meet the statutory requirements under N.J.S.A. 48:3-87(s) will be rejected.
3. The applicant must have filed an Expression of Interest for the subject project with the Board in response to the May 2016 or February 2017 directive by the Board. The applicant must attach to this application, as Attachment 2, a copy of the Expression of Interest filed with the Board.
4. For any such application for a project greater than 25 kilowatts, the applicant must enter into the affixed Escrow Agreement with an Accredited Financial Institution in the amount of \$40,000 per MWdc. The applicant must submit a copy of the executed Escrow Agreement as Attachment 3.

#### II. Instructions for Completing the Subsection r. Application Form

1. Complete each section A. through G. of this application form, and affix the attachments required under I. Minimum Filing Requirements, as described above, and in the questions contained in section F below. Incomplete applications will not be processed.
2. The complete subsection r. application package must be submitted to the Board at the address specified below by 5:00 P.M. March 14, 2019.
3. Original signatures are required on all forms and within the certification in section G.
4. Five (5) completed application packages must be submitted to the Board.

#### III. Important Terms and Conditions

The "applicant" is defined to be the entity, specifically the project developer, contractor, installer, land speculator, or agent of any thereof, that submits the subsection r. application form.



## Solar Act Subsection r. Application Form

1. The applicant, by signing the application and certification, acknowledges on behalf of all project participants, that approval pursuant to subsection r. is a condition of SREC or TI eligibility, i.e., the incentive authorized by the Board as a transition incentive, but does not obviate the need to comply with the SREC Registration Program requirements, and meet all relevant local, state or federal laws. The Board may attach specific conditions, including setting the effective date of the project's qualification life, when the Board issues a decision on the application.
2. The NJBPU reserves the right to modify the application information requirements or require the applicant to supplement the information provided during this application process.
3. Board staff will review each application for completeness, and notify the applicant within two weeks of receipt of application whether the application has been accepted for processing or is deficient and/or incomplete. **Incomplete applications will not be processed.**
4. By submitting an application, the applicant acknowledges on behalf of all project participants that the information included in the application may be subject to disclosure under the Open Public Records Act. Aggregated information will be used by the Board and/or other state, federal, county, regional or local agencies in reports and evaluations, and the geographic location may be used to update GIS mapping. The Board will issue a Board Order decision on all applications. All Board Orders will be posted on the Board's website at [www.nj.gov/bpu](http://www.nj.gov/bpu).

**All notifications regarding any modifications to the subsection r. application requirements will be posted on the Board website at [www.nj.gov/bpu](http://www.nj.gov/bpu) and NJCEP website at [www.njcep.com](http://www.njcep.com).**

All projects approved under the subsection r. application process must also comply with all appropriate provisions of the Renewable Portfolio Standards rules, including the SREC Registration Program ("SRP"), and must comply with all applicable local, state, and federal laws, permit requirements and regulations.

### APPLICATION DELIVERY:

**Five (5) completed application packages must be mailed or hand-delivered, and received by 5:00 PM March 14, 2019 to:**

**(Faxes and e-mails will not be accepted.)**

Solar Act Subsection r. Application Package  
**New Jersey Board of Public Utilities**  
44 South Clinton Avenue, 3rd Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350

Attn: Division of Clean Energy



# Solar Act Subsection r. Application Form

## A: Applicant Contact Information

Applicant Company Name (if applicable): \_\_\_\_\_  
 Mr. \_ Ms. \_ Dr. \_ First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
 Daytime Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Applicant Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

## B: Applicant Role (Indicate with checkmark the nature of the applicant; check all that apply)

Applicant is:  Project Developer  Proposed Facility Owner  Contractor/Solar Installer  
 Agent (if Agent, what role is represented) \_\_\_\_\_  
 Other (if Other, describe applicant's role in project development) \_\_\_\_\_

## C: Proposed Facility Owner (Who will own the Proposed Facility?)

*Fill out if known. Duplicate data in A, above, if applicable.*

Company Name (if applicable): \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Daytime Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## D: Contractor/Solar Installer (Who will construct the Proposed Facility?)

*Fill out if known. Duplicate data in A, above, if applicable.*

Company Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Federal Tax I.D. Number: \_\_\_\_\_  
 Daytime Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

## E: Proposed Solar Facility Characteristics: N.J.A.C. 14:8-2.4 (g) 1 & 2 - viii

- i. Proposed Solar Facility Nameplate Capacity: \_\_\_\_\_ MW ac \_\_\_\_\_ MW dc
- ii. Estimated Energy to be Produced Annually: \_\_\_\_\_ MWh per year
- iii. Estimated SRECs to be Produced Annually: \_\_\_\_\_ SRECs per year
- iv. Estimated Commissioning Date: \_\_\_/\_\_\_/\_\_\_ (Day, Month, Year)  
 Estimated Decommissioning Date: \_\_\_/\_\_\_/\_\_\_ (Day, Month, Year)
- v. Total Project Acreage: \_\_\_\_\_ site acres  
 Proposed Solar Facility Location or Address: \_\_\_\_\_  
 Proposed Solar Facility Block and Lot Number(s): \_\_\_\_\_  
 Proposed Solar Facility Township: \_\_\_\_\_  
 Proposed Solar Facility Zip Code: \_\_\_\_\_
- vi. Estimated Annual Rate Impact on Ratepayers: \_\_\_\_\_
- vii. Point of Interconnection: \_\_\_\_\_  
 Electric Distribution Company accommodating facility interconnection: \_\_\_\_\_  
 PJM Interconnect Queue Number: \_\_\_\_\_
- viii. Type of Solar Technology to be Used: \_\_\_\_\_



# Solar Act Subsection r. Application Form

## E. Proposed Solar Facility Characteristics: N.J.A.C. 14:8-2.4 (g) 1 ix - xvi

- ix. Required State permits or approvals: \_\_\_\_\_
- x. Required Municipal permits, approvals, or waivers already received or anticipated: \_\_\_\_\_
- xi. Current Zoning Designation(s) for the proposed host site: \_\_\_\_\_
- xii. Date of most recent change in zoning designation: \_\_\_\_\_
- xiii. Zoning Ordinance: \_\_\_\_\_
- xiv. Maps and other documents showing the location and associated impacts, including identification of any farm parcels or lands preserved for agricultural, conservation, or recreational purposes, including, but not limited to, lands preserved pursuant to New Jersey's Green Acres Program, located within 0.5 miles of the host site. Maps and other documents submitted must also show the host site's location in proximity to an Agricultural Development Area or Farmland Preservation Program project area, as Appendix 4;
- xv. Maps and other documents showing the location of other grid supply projects proposed, under construction, or existing within the nearest Agricultural Development Area, land preserved under the Green Acres Program, and land preserved under the Farmland Preservation Program. Maps and other documents must also show the location of all solar grid supply projects proposed, under construction, or existing within five miles of the host site, as Appendix 5;
- xvi. Project decommissioning plans, prepared by an independent entity, for the end of the useful life of the facility. A decommissioning plan shall set out the process through which any lands disturbed by the construction and/or operation of the solar facility shall be restored to pre-existing condition and shall include, at a minimum as Appendix 6:
  - (1) A plan for removal of all solar energy generation facilities and all electrical appurtenances;
  - (2) A plan for removal of foundations and any access roads not needed for future purposes by the owner of the site; and
  - (3) A plan to ensure that environmental impacts are minimized and mitigated during decommissioning activities, including a plan for replacement of surface materials;

## F: Other Information Required by the Board

- 1. ~~What is the current status of project development? (Designed, Site Cleared, Majority of Materials Onsite, Construction Initiated, Construction Completed, Interconnection Completed, Authorized to Energize, circle each that apply to the project)~~
- 2. ~~Has equipment been purchased? yes or no?~~
- 3. ~~If yes, provide proof of all equipment expenditures to date as Appendix 7?~~
- 4. ~~Has construction begun? yes or no?~~
- 5. ~~If yes, when was construction initiated? (day, month, year) \_\_\_\_\_~~





## Solar Act Subsection r. Application Form

6. If no, when will construction be initiated? (day, month, year) \_\_\_\_\_
7. Are materials currently onsite, yes or no? \_\_\_\_\_
8. If yes, what materials are onsite? \_\_\_\_\_  
Attach pictures of materials located onsite as Appendix 8.
9. If yes, when were materials delivered onsite? (day, month, year) \_\_\_\_\_
10. If no, when are materials to be delivered onsite? (day, month, year) \_\_\_\_\_
11. Is any part of the project currently installed? yes or no? \_\_\_\_\_
12. If yes, what materials are installed? \_\_\_\_\_  
Attach pictures of completed construction as Appendix 9.
13. How much has been invested in project development? \$ \_\_\_\_\_
14. What is the anticipated total installed facility cost? \$ \_\_\_\_\_
15. Has the PJM Construction Service Agreement (CSA) and Interconnection Service Agreement (ISA) been executed? yes or no? \_\_\_\_\_
16. If yes, provide the executed pages of each document and the construction schedule and scope of work as well as documentation of interconnection costs expended in compliance with the PJM CSA as Appendix 10.
17. Has the project been interconnected and authorized to energize? yes or no? \_\_\_\_\_
18. If yes, when was the system authorized to energize? (DD, MM, YY): (\_\_\_\_, \_\_\_\_\_)
19. If no, when is the system interconnection anticipated to be completed? (DD, MM, YY): (\_\_\_\_, \_\_\_\_\_)
20. Has an application been submitted to safe harbor Treasury Federal Investment Tax credit at 30%? yes or no? \_\_\_\_\_
21. If yes, provide the cover letter for submission of documentation to safe harbor Federal Investment Tax credit at 30% as Appendix 11.
22. Has project construction financing been secured? yes or no? \_\_\_\_\_
23. If yes, provide documentation such as an affidavit or contract execution page demonstrating that project finance has been secured as Appendix 12.
24. Has an SREC offtake contract been secured? yes or no? \_\_\_\_\_
25. If yes, provide documentation such as an affidavit or contract execution page demonstrating that SREC offtake has been contracted for outside of the SREC spot market as Appendix 13.



# Solar Act Subsection r. Application Form

## G: Certifications

The undersigned warrants, certifies, and represents that:

- 1) the information provided in this application package is true and correct to the best of his or her knowledge; and
- 2) the system proposed in the application will be constructed, installed and operated as described in the application and in accordance with all Board rules and applicable laws; and
- 3) the system proposed will be constructed, installed and operated in accordance with all NJBPU policies and procedures for the SRP program;
- 4) all signing parties realize that certain information in this application may be subject to disclosure under the Open Public Records Act; and
- 5) all signing parties acknowledge that if any of the foregoing statements are willfully false, they are subject to punishment to the full extent of the law.

### Applicant

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

### Project Developer

(if known)

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

### Proposed Facility Owner

(if known)

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

Signed and sworn to before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name



State of New Jersey

BOARD OF PUBLIC UTILITIES

ESCROW AGREEMENT

N.J.S.A. 48:3-87r

Name of Financial Institution

Name of Proposed Solar Electric Power Generation Facility Owner

Address

Address of Proposed Solar Electric Power Generation Facility

Telephone Number

SRP Facility Registration Number

Escrow Account Number

Address of Proposed Solar Electric Power Generation Facility Owner

Telephone Number

Pursuant to Subsection r of Section 2 of L. 2012, c.24, the Solar Act of 2012 ("Act"), codified at N.J.S.A. 48:3-87, this Escrow Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between

Owner/Operator Name \_\_\_\_\_ (hereinafter called "Depositor" ),

and

Accredited Financial Institution Name \_\_\_\_\_ (hereinafter called "Escrow Agent" )

(1) Escrow Account/Purpose

The Depositor agrees to deposit, with the Escrow Agent, the funds described in N.J.S.A. 3-87r for the proposed solar electric power generation facility (Solar Facility) described above; and the Escrow Agent agrees to hold said funds in escrow in an interest bearing account pursuant to the Act, and the terms and conditions of this Agreement. The sole purpose of the escrow account shall be to insure that funds are set aside and kept available in the event that the Solar Facility is designated by the BPU as connected to the distribution system pursuant to N.J.S.A. 48:3-87 r, and fails to commence commercial operations within two (2) years of the date of designation.

(2) Approval of the Escrow Agreement

This Agreement shall be of no force and effect unless approved in writing by the BPU which approval may be withdrawn at any time by BPU within its sole discretion. This Agreement may only be amended by a written agreement approved in writing by BPU which may, from time to time, require such amendment in its discretion, or as otherwise set forth herein.

(3) Separation of Funds

The Depositor and the Escrow Agent agree that the escrow account shall be a separate account apart from all other accounts. The escrow account shall be the sole escrow fund maintained by the Depositor pursuant to the Act for the Solar Facility designated above. In cases where a Depositor has ownership or control over more than Solar Facility in the State of New Jersey, a separate escrow account shall be established for each facility.

(4) **Escrow Deposit**

The Depositor agrees to make the deposit into the escrow account of all monies required by N.J.S.A. 48:3-87 r to be deposited in connection with the above designated Solar Facility. The Depositor agrees to make no deposits into the escrow account except such funds as are so required. The Escrow Agent shall not be responsible for determining the amount to be deposited into the escrow account.

(5) **Investment of Escrow Account Funds**

In all cases, the escrow account shall be invested and maintained so as to maximize yield and minimize risk (subject to the approval of BPU). In the event this Agreement contains Investment Guidelines attached hereto, the escrow account shall also be invested and maintained in a manner fully consistent with such Guidelines. These Investment Guidelines may from time to time be revised or modified by BPU, in its discretion, as circumstances as prevailing financial market and economic conditions may change. Any such revisions or modifications by BPU to the Investment Guidelines shall be immediately incorporated into the terms of this Agreement upon receipt by the parties hereto, and thereafter the investment and maintenance of the escrow account shall be fully consistent with such revised or modified Investment Guidelines. Liquidity shall be maintained as directed by the BPU. ("Liquidity" shall mean the availability of funds for drawdown consistent with the BPU's strategy for commencement of commercial operation for the Solar Facility.)

(6) **Interest and Other Income**

The Depositor and the Escrow Agent agree that all interest and other income earned as a result of investment of funds in the escrow account shall be deposited as earned into the escrow account, to be applied toward any BPU-approved fees charged by the Escrow Agent for administering the account. Such interest and other income shall be subject to the same restrictions applicable to the principal of the escrow account as set forth in the Act, and this Agreement.

(7) **Direction of investments**

The Depositor shall have no right to direct the investment of the escrow account funds. Investments shall be directed by the Escrow Agent, subject to the provisions of the Act, and the determination of BPU, as set forth in this Agreement.

(8) **Account as Non-Asset**

All funds deposited in the escrow account shall not be considered an asset of the Depositor and shall not be available to any creditor of the Depositor in the event of the bankruptcy, reorganization, insolvency or receivership of the Solar Facility or the Depositor, or for any other reason. Depositor and the Escrow Agent agree that funds deposited in the escrow account are for the sole benefit of the purposes established by this Agreement and N.J.S.A. 48:3-87 r, and may be withdrawn only pursuant to the express provisions of this Agreement and N.J.S.A. 48:3-87 r. Funds will only be available for use by the owner/operator, or by a court-appointed receiver or other legal representative of the owner/operator upon written approval of the BPU.

(9) **Quarterly Statement-Financial Institution**

The Escrow Agent hereby agrees to submit quarterly statements of the escrow account to the BPU. The statements shall report on all transactions charged and credited to the escrow account, and shall include an itemization of all accrued interest and all opening and closing balances of principal and income.

(10) **Withdrawal or Disbursement of Funds**

The Depositor and the Escrow Agent agree that withdrawals from the escrow account will not be made or permitted without the written approval or directive of the BPU. Written approval will be given only upon submission and approval of a written request identifying the specific provision(s) of N.J.S.A. 48:3-87 r supporting the withdrawal. Written directive may be issued to the Escrow Agent by BPU upon a written request or in the absence of a written request upon a determination by BPU, in its discretion, that a) the Depositor is entitled to return of the funds because designation of the Solar Facility as connected to the distribution system is denied, b) the Depositor is entitled to return of the funds because the Solar Facility has achieved commercial operation within two (2) years of the date of designation or c) the State is

entitled to the funds because the Solar Facility has failed to achieve commercial operation within two (2) years from the date of designation as connected to the distribution system. Upon the issuance and delivery to the Escrow Agent of such written approval or directive by BPU, the Escrow Agent shall immediately disburse the funds called for by said approval or directive, for use solely for the purposes and in the manner specified in said written approval or directive.

(11) **Compensation of Escrow Agent**

Notwithstanding the terms of paragraph 10 of this Agreement, the Escrow Agent shall be entitled to take reasonable compensation for its services in administering the escrow account to be established under this Agreement. Such compensation may be deducted by the Escrow Agent directly from the escrow account from time to time, but in no event more frequently than once a month, unless more frequent deductions are approved in writing by BPU. All such deductions shall be fully documented and shown as a debit to the escrow account by the Escrow Agent under the quarterly statements to be submitted to BPU, pursuant to paragraph 9 of this Agreement. In all cases, the amount or rate of such compensation shall be reasonable, shall not exceed the amount or rate of compensation customarily charged by the Escrow Agent for like services, and shall be subject to the written approval of BPU. For purposes of this Agreement, and unless and until written approval to modify such compensation is given by BPU, the amount or rate of compensation to be charged by the Escrow Agent hereunder shall be as follows (detailed):

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(12) **Liability of the Escrow Agent**

The Depositor agrees to indemnify and hold the Escrow Agent harmless from and against all liabilities, fees, costs and expenses incurred by the Escrow Agent, with respect to the performance of its duties hereunder, unless said liabilities, fees, costs or expenses shall arise from the Escrow Agent's failure to perform its duties hereunder with reasonable cost and care.

(13) **Termination**

This Agreement may be terminated by either party on 90 days' written notice to BPU and to the other party to this Agreement, which notice shall state the reasons for such termination, and the provisions of this Agreement shall remain in full force and effect until the expiration of said 90 days' notice. In the case of termination by the Depositor, such termination shall be ineffective in the absence of prior written consent by BPU, on such terms as BPU, in its discretion, may require. In the event of termination, the Depositor shall submit a new escrow agreement to BPU, for review and approval as set forth in paragraph 2, within 60 days from the notice of termination. Upon such approval, BPU will give the Escrow Agent hereunder written approval to transfer the funds in the escrow account, with accumulated interest and other income from investment of the funds in the escrow account, to the new Escrow Agent under the new escrow agreement, and the Escrow Agent shall immediately transfer all such funds to the new Escrow Agent upon receipt of such written approval. No such transfer shall be made without such written approval by BPU. Such transfer of funds must be through an inter-financial institution transaction and shall not be transferred through the Depositor. Nothing herein shall limit the right of BPU to withdraw its approval of this Agreement at any time, in its discretion, as set forth in paragraph 2 herein.

(14) **Notice and Instructions**

All notices and instructions related to this Agreement shall be in writing and, except for bank statements to BPU under paragraph 9, shall be made by certified or registered mail, return receipt requested. All notices and instructions sent to the parties hereto shall be sent to the addresses of the parties set forth at the beginning of this Agreement. For purposes of this Agreement, and until notification of a change of address is supplied by BPU to the parties hereunder, all notices to the NEW JERSEY BOARD OF PUBLIC UTILITIES shall be addressed to,

**B. Scott Hunter**  
Manager,  
Division of Clean Energy  
44 South Clinton Ave., 3rd Floor, Suite 314  
P.O. Box 350,  
Trenton, NJ 08625

In Witness Whereof, the parties to this Escrow Agreement have executed same on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Owner/Operator Name)

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

ATTEST:

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

(Accredited Financial Institution Name)

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\*\*\*\*\*

**APPROVED BY THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

By \_\_\_\_\_  
B. Scott Hunter  
Manager, Division of Clean Energy  
NJBPU

\_\_\_\_\_  
Date

NEW JERSEY BOARD OF PUBLIC UTILITIES  
OFFICE OF CLEAN ENERGY

**SUBSECTION R ESCROW ACCOUNTS  
INVESTMENT GUIDELINES TO BE FOLLOWED BY ACCREDITED FINANCIAL INSTITUTION\***

**PORTFOLIO OBJECTIVES**

*Maximize Return, Minimize Risk*

**GUIDELINES**

*The Escrow Agent shall use all reasonable efforts to invest in funds at the highest available rates of interest, consistent with the timing of the escrow fund withdrawal requirements, in the following:*

- A. Obligations issued or guaranteed by an instrumentality or agency of the United States of America, whether now existing or hereafter organized;*
  - B. Obligations issued or guaranteed by any State of the United States or the District of Columbia;*
  - C. Repurchase agreements (including repurchase agreements of the Escrow Agent) fully secured by obligations of the kind specified in (A) or (B) above, as well as in money market funds and in common funds of the Escrow Agent invested in obligations specified in (A) and (B) above;*
- and*
- D. Interest bearing deposits in any bank or trust company (which may include the escrow agent) which has combined capital surplus and retained earnings of at least \$50,000,000. Any interest payable on said funds shall become part of the escrow account balance.*
  - E. Maximum maturity of individual securities limited to 3 years.*
  - F. The average maturity should be between 1 and 2 years.*
  - G. For all county, municipal, and local governments, please refer to N.J.S.A. 40A:5-15.1, which provides specific guidance for the allowable investment of public funds.*

\*Accredited financial institution" means any commercial bank, savings bank or savings and loan association with its principal office located in the State of New Jersey, and insured by the Savings Association Insurance Fund (SAIF) or the Federal Deposit Insurance Corporation (FDIC); or a limited purpose trust company that meets the requirements set forth in N.J.S.A. 17:9A-28 and 17:9A-31 with its principal office located in the State of New Jersey maintaining assets in excess of \$ 50,000,000.