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**Board of Public Utilities**  
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CLEAN ENERGY

IN THE MATTER OF THE REVIEW OF )  
UTILITY SUPPORTED SOLAR PROGRAMS )  
 )  
 ) DOCKET NO. EO11050311V

Parties of Record:

**Stefanie Brand**, Director, Rate Counsel  
**Greg Eisenstark, Esq., Morgan, Lewis & Bockius, LLP**, on behalf of Jersey Central Power & Light Company  
**Phil Passanante, Esq.**, for Atlantic City Electric Company  
**Jane Quinn**, for Orange & Rockland Utilities  
**Alex Stern, Esq.** for Public Service Electric & Gas Company

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities ("Board") at its May 23, 2012 public meeting, where the Board considered policies related to the Renewable Portfolio Standards ("RPS").

**BACKGROUND AND PROCEDURAL HISTORY**

The New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA") provided for the Board to adopt New Jersey's RPS, and authorized the Board to amend those standards by regulation. The RPS requires retail electricity suppliers and basic generation service ("BGS") providers<sup>1</sup> to include a minimum percentage of qualified renewable energy in the electricity they sell during each one-year period beginning on June 1 and ending on May 31 of the next year known as an Energy Year ("EY").<sup>2</sup>

<sup>1</sup> As currently implemented, BGS providers bid in an annual auction for the right to provide electricity to customers who do not shop for their electric supply and continue to take their commodity from the electric distribution companies.

<sup>2</sup> While this period was originally known as a "Reporting Year," the terminology has since been changed to "Energy Year" as discussed later in this Order.

Effective May 17, 2006, the Board amended the RPS to set steadily increasing requirements for renewable energy through the EY ending May 31, 2021. In those regulations, by EY 2021, 20% of the electricity was to be supplied to New Jersey customers by each supplier and provider from Class I renewable energy systems, and 2.12% of the electricity was to be supplied from solar electric generation systems connected to an electric distribution system serving New Jersey customers. As discussed further below, the RPS was further amended in 2009 and 2010.

Suppliers and providers may comply with the solar RPS in either of two ways, or by a combination of both. They may submit Solar Renewable Energy Certificates ("SRECs"), and/or pay a Solar Alternative Compliance Payment ("SACP")<sup>3</sup>. An SREC represents the solar renewable energy attributes of one megawatt-hour of generation from an eligible solar renewable energy facility. The Board's RPS rules establish the requirements and conditions for the creation and use of SRECs. A supplier or provider that holds too few SRECs to comply with the RPS can make up the shortfall by paying the SACP for each megawatt-hour of the shortfall. Since a supplier or provider has the option of either paying the SACP or obtaining SRECs to comply with the solar RPS, the amount of the SACP, in practice, becomes the upper limit on the price of an SREC in the market.

Immediately after the Board adopted the 2006 amendments to the RPS rules, Board Staff began a stakeholder process to consider various models to enhance the ability of energy suppliers and providers to meet the targets for solar electric generation established in the RPS rules, and to support the continued growth of New Jersey's solar market. At that time the Board stated its belief that the electricity markets alone will not produce the necessary growth, primarily because solar electric generation requires a significantly larger capital investment for each kilowatt of capacity than more conventional means of generating electricity, even though once installed, solar generates each kilowatt-hour of electricity at a much lower cost than the more conventional sources. In addition, a lack of familiarity with the technology and its benefits and performance, a limited (but growing) installation infrastructure, and long-term uncertainties about markets and their regulatory underpinnings have threatened to hamper the growth of the solar market.

Following the stakeholder process that commenced in May 2006, the Board decided on September 12, 2007, to reduce reliance on rebates and to transition to a more market-based means of providing incentives towards achieving the solar RPS. In a December 6, 2007, Order in Docket No. EOO6100744 ("December 6 Order"), the Board set a course toward transition to that market-based model. The Board's primary considerations in that transition included the cost that ratepayers bear, fairness and equity to all ratepayer classes, job growth improving the reliability and security of New Jersey's electricity infrastructure; achieving sustained orderly development of solar; reducing transaction costs, and supporting other policy goals, especially with respect to environmental protection and public health. The Board also ordered that rebates for small projects be continued for EYs 2009-2012.

In the December 6 Order, the Board established a rolling eight-year SACP schedule, establishing the SACP for each of the eight Energy Years up to and including the year ending May 31, 2016. The Board also proposed rules to establish annually the SACP for the next EY

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<sup>3</sup> N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87.

after the end of the then current SACP schedule. The Board provided more flexibility in the trading of SRECs by establishing a two-year SREC trading life, and allowed each solar electric generation system to continue generating SRECs over a 15-year qualification life. The Board also put controls in place to limit the overall cost of solar incentives.

The December 6 Order also noted the importance of "securitization," in which financing of a solar electric generation project can be supported by the cash flow expected from the project's ability to generate and sell SRECs. The Board noted that the rolling 8 Year SACP schedule would send an important signal to financial markets that there would be a certain amount of predictability in the price of SRECs. The Board determined that this predictability is essential, because the SACP effectively caps the price of SRECs, and the SACP schedule showed that for a period of eight years, the SACP would not prevent SREC prices from rising to a level that could provide sufficient cash flow to support SREC-based financing.

SREC-based financing provides not only certainty about long-term maximum prices for SRECs; it also provides greater certainty that a project can generate a minimum cash flow from the creation and sale of SRECs. For that reason, the December 6 Order stated that "there is a widespread consensus that an additional mechanism or mechanisms will be necessary for the market to achieve levels of growth sufficient to meet RPS requirements at an acceptable cost." Id. at 32.

The Board directed the Office of Clean Energy ("OCE") to initiate a proceeding to explore whether additional securitization is warranted, and if so, to provide specific recommendations regarding the methods and costs of providing such securitization. At its September 12, 2007 meeting, the Board directed staff to commence the solar financing proceeding on or about November 1, 2007, and to report to the Board with a final recommendation by October 1, 2008.

As directed by the Board, on November 20, 2007, the OCE commenced a stakeholder proceeding to identify and evaluate ways to support SREC-based financing. The stakeholder meetings were attended by over 50 participants, including solar industry representatives, non-utility load-serving entities ("LSEs") including third party suppliers ("TPS"), the electric distribution companies ("EDCs"), environmental and business organizations, and the Division of Rate Counsel ("Rate Counsel").

At the conclusion of the stakeholder proceeding, the OCE submitted recommendations for consideration by the Board. By Order dated August 7, 2008 in Docket No. EO06100744, the Board directed the EDCs to undertake renewable energy improvements by facilitating SREC-based financing of solar electric generation projects, in a manner that supports the transition to a market-based approach of delivering incentives for solar electric generation.

Since 2008 the Board has issued numerous Orders related to EDC SREC financing. These Orders have resulted in the implementation of an SREC solicitation process managed by three of the EDCs, Jersey Central Power and Light Company ("JCP&L"), Atlantic City Electric Company ("ACE") and Rockland Electric Company ("RECO"), and in a solar loan program managed by Public Service Electric and Gas Company ("PSE&G")<sup>4</sup>.

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<sup>4</sup> PSE&G also runs a solar program where the utility owns the solar facility, a program known as Solar4All. This Order only addresses PSE&G's solar loan programs.

Two significant events have occurred since the issuance of the Board's 2008 SREC financing Order: enactment of the Solar Energy Advancement and Fair Competition Act; and, issuance of the State Energy Master Plan. Each of these is described further below.

### *Solar Energy Advancement and Fair Competition Act*

The Solar Energy Advancement and Fair Competition Act ("SEAFCA" or the "Solar Act") included a number of provisions that impact the Board's consideration of policies related to SREC financing. The following summarizes the key components of the Solar Act:

- The solar RPS requirement changed from a percentage of total electric usage to an absolute number of gigawatt hours (GWhrs).
- The Solar Act exempts BGS providers' existing supply contracts that are:
  - (a) Effective prior to the enactment date of SEAFCA; and
  - (b) Effective prior to any future increase in the solar RPS beyond the amounts set by multi-year schedule established by SEAFCA.

Non-exempt contracts are required to make up the kilowatt hours not procured under exempt contracts in order to meet the State's RPS.

- Systems of any sized capacity, as measured in watts, are eligible for net metering.
- After the Board establishes a schedule of solar kilowatt-hour sale or purchase requirements, the Board may increase minimum solar kilowatt-hour sale or purchase requirements, but it shall not reduce previously established minimum solar kilowatt-hour sale or purchase requirements.
- The Board shall establish a 15-year SACP schedule. The Board may increase the SACP, but it shall not reduce previously established levels of solar alternative compliance payments.
- Any SACP payments collected shall be refunded directly to the ratepayers by the EDCs.
- The Board may allow electric public utilities to offer long-term contracts and other means of financing, including but not limited to loans for the purchase of SRECs and the resale of SRECs to suppliers or providers or others, and the Board's approvals shall not be modified by subsequent Board orders.
- Class I RECs shall be eligible for use in RPS compliance in the EY in which they are generated and for the following two EYs. SRECs shall also be eligible for use for three EYs.
- Changed the terminology used to classify an RPS compliance period from a "Reporting Year" to an "Energy Year", each designated by the year in which it ends.

On March 30, 2011, the Board approved as a "Special Adoption" amendments to the RPS that were effective upon adoption and subsequently published in the New Jersey Register on May 2, 2011. These special provisions implemented several legislative directives contained in the Solar Act, including the transformation of the solar obligations from a percentage basis of regulated entities' retail sales to an absolute gigawatt hour requirement based upon market share. Rules required by other provisions of the Solar Act were developed under the standard rulemaking process including a proposal approved on March 30, 2011, and published in the New Jersey Register for public comment on May 2, 2011. These regulatory amendments, including some legislated directives, some stakeholder recommendations, and a re-adoption of

the remaining rules were approved by the Board on May 1, 2012 and will be effective upon publication in the New Jersey Register.

### *Energy Master Plan*

In December 2011, Governor Christie announced the release of the 2011 New Jersey Energy Master Plan ("EMP"). The EMP included a number of recommendations that inform the Board's consideration of policies related to SREC financing as follows:

By Order dated April 27, 2011, under Docket No. EO09020125, *I/M/O Petition of Public Service Electric and Gas Company for Approval of a Solar Generation Investment Program and Associated Cost Recovery Mechanism – Order Approving Capacity Transfer* ("April Order"), the Board directed Staff to evaluate existing utility solar programs and to conduct a thorough review of the utility supported solar programs to help the Board determine whether these programs should continue, be allowed to expire, be modified or expanded. Staff reports that several stakeholders encouraged it to develop recommendations which include changes requiring legislation. However, Staff determined that its recommendations would not include any requiring legislation. Instead, Staff's recommendations are bound by existing legislation with the full recognition there is a high likelihood that legislation related to solar financing will be introduced in the near term that may alter Staff's recommendations included herein.

### *Stakeholder Process*

The OCE convened a series of meetings starting on November 2, 2011 to discuss issues related to the EDC solar financing programs. Meetings were held on November 2 and 17, 2011, December 1, 2011, January 12 and 26, 2012, February 16, 2012 and March 8, 2012 in either Iselin or Trenton, New Jersey. Notices of the meetings were circulated to the Renewable Energy service list ("RE listserv") and posted on the New Jersey Clean Energy Program ("NJCEP") web site. Starting in November 2011, the OCE framed the issues being reviewed which had been discussed generally at the initial meetings.

The meetings were all well attended and included representatives of Rate Counsel, DEP, the four EDCs, the unregulated affiliate of one gas utility, electric suppliers including BGS providers and third party electric suppliers, large and small solar developers, solar trade associations, SREC brokers and aggregators, municipalities, members of the public and others. Copies of presentations and meeting summaries were circulated and posted on the NJCEP web site.

OCE engaged Rutgers Center for Energy, Economic and Environmental Policy ("CEEPP") to perform an analysis of the comparative costs of the SREC financing programs. CEEPP presented its preliminary findings at the January 12, 2012 meeting, and updated findings at the February 16, 2012 meeting.

CEEPP analyzed the costs of administering the EDC financing programs including a comparison of the costs of the EDC SREC solicitation program to PSE&G's solar loan program. CEEPP assessed the costs of administering the programs, the long-term SREC purchase prices that resulted from the EDC SREC solicitations and various vintages of the PSE&G solar loan program, and compared the SREC purchase prices to the SREC auction process. CEEPP also determined the direct costs or direct benefits of the EDC financing programs at varying future SREC auction prices. CEEPP's report concluded that there is not a significant difference in the cost to ratepayers between the EDC financing program and PSE&G solar loan program,

although the analysis recognizes that there are important differences between the programs. The results of the CEEEP<sup>5</sup> report are incorporated here by reference.

Information regarding the status of the solar industry was provided by Honeywell, the Renewable Energy ("RE") Market Manager, and updated at each meeting. This included a summary of the number of new solar projects constructed each month and the capacity associated with those projects, the total solar capacity installed in the State, the number of solar projects in the pipeline and a forecast of installed solar capacity based in part on the number of projects in the pipeline. Honeywell also compared actual and forecasted levels of solar capacity to future RPS solar requirements.

Subsequent to the initial discussions, Staff proposed two options for further discussion at the January 12, 2012 meeting as follows:

*1. Increase the solar RPS:*

Establish an incremental increase in the solar RPS to address the oversupplied SREC market. This increase in the solar RPS would be a specific set aside for the EDC SREC programs and would implement the Board's solar policies for both economic and environmental benefits. The increase in the solar RPS would be based on a detailed cost benefit analysis performed by CEEEP similar to the cost benefit analysis performed to increase the Class I RPS from 4% in 2012 to 20% in 2020 with a 2.15% solar set aside. Since the increase in the solar RPS would be allocated to the EDC SREC programs, this would keep downward pressure on SREC prices.

*2. Do not increase the solar RPS but only increase the EDC program capacity:*

The additional EDC SREC program capacity can be set aside to implement the Board's solar policies for both economic and environmental benefits. In this manner the solar developers can continue to build solar based on the Board's policies. This will also keep downward pressure on the SREC prices and make the EDC SREC program very price competitive.

Staff reports that its proposed options were discussed at subsequent meetings, and additional proposals were submitted by various meeting participants. The pros and cons of the two proposals, as well as options to address perceived shortcomings of Staff's proposal were vigorously debated.

Based on the results of the CEEEP assessment, the various options submitted and discussed, and the extensive input, discussion and debate regarding the various options, Staff developed a Straw Proposal regarding solar transition and the EDC SREC financing programs. The Straw Proposal was circulated to the listserv and posted to the NJCEP web site on or about March 6, 2012. Staff requested written comments on its Straw Proposal which were due by March 16, 2012. The Straw Proposal was discussed and debated at the March 8, 2012 meeting of the Solar Transition Work Group.

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<sup>5</sup> The CEEEP Report can be found at: <http://www.njcleanenergy.com/renewable-energy/program-updates-and-background-information/solar-transition/solar-transition>

## **OCE STRAW PROPOSAL**

As directed by the Board in its April Order, Staff initiated in November 2011 a stakeholder process to develop recommendations related to the EDC SREC programs and the PSEG Solar for All Program. These programs were approved for a three or four year period which has expired or will be expiring shortly and the Board sought recommendations regarding whether the programs should continue, terminate or be modified. The programs, as previously approved by the Board, include the following:

1. JCPL/ACE/RECO SREC Solicitation
2. PSE&G Solar Loan
3. PSE&G Solar 4 All

The process was informed by an analysis of the EDC SREC programs performed by CEEEP. The analysis was completed and the results were presented to the Solar Transition Work Group. The CEEEP report focused on the SREC Solicitation and the Solar Loan programs.

The stakeholder process was further informed by the provisions of SEAFCA as well as the EMP. Based on the Governor's policy direction set forth in the EMP, the scope of the stakeholder process was expanded to include an evaluation of options to increase the solar RPS.

According to Staff, the following goals, which are set out in the EMP, were used to inform the discussions:

1. Lower the SACP or total future costs for the SREC programs.
2. Maximize the dual economic and environmental benefit of solar.
3. No solar grid supply facilities on productive farmland and open space.
4. Support the extension of the EDC – SREC Programs.
5. Accelerate the near term solar RPS and reduce the outlier years in the Solar RPS.
6. Promote the use of solar on brownfields and landfills.

Based on discussions at the initial meetings of the Solar Transition Work Group, the requirements of SEAFCA and other solar related legislation, the recommendations included in the EMP and the directive of the Board, Staff considered the following factors in developing its proposal:

1. The legislative mandate, as set forth in EDECA, to transition all renewable energy and energy efficiency ("EE") programs through market transformation mechanisms to a point where they can be supported in the market without direct incentives and operate in the marketplace similar to all other energy projects, programs or facilities.
2. The solar transition initially occurred by reducing and then eliminating upfront rebates and replacing that incentive structure with an SREC structure to support the long term financing of solar facilities.
3. New Jersey's solar RPS is one of the most aggressive solar requirements in the country, and New Jersey's solar program is second only to California in terms of installed solar capacity.
4. New Jersey's solar program helps to shape the national and global solar marketplace.

5. New Jersey's solar RPS has been developed over the years through a variety of statutory, regulatory and policy provisions and procedures.
6. New Jersey's initial goal for solar set in 2003 was for the installation of 90 MW of solar by EY 2008. This goal was achieved.
7. In January 2012 New Jersey installed 84 MW of solar in one month.
8. The New Jersey solar RPS was increased from 2.12% of total retail electric sales by EY 2021 established by regulation in 2006 to 5,316 GWH by 2027 established through SEAFCA.
9. New Jersey will meet the solar RPS for the current EY and will be significantly long in terms of the number of SRECs generated.
10. New Jersey SRECs have a 3 year trading life.
11. Conservative estimates are that the solar RPS will be long through at least EY 2014. Depending on the near term installation rate, the New Jersey solar RPS could be long through EY 2016.
12. New Jersey went from installing 1 – 10 projects per month or hundreds of kW per month in 2007 to 400 to 500 projects per month for 20 to 40 MW per month in 2011.
13. In 2007 the largest size solar facility was less than 1 MW. New Jersey solar developers are now installing solar grid supply projects between 5-20 MW in size.
14. The New Jersey solar RPS went from issuing SRECs to only net metered projects to allowing SRECs for all net metered and grid supply projects that are connected to the distribution system in New Jersey in 2008.
15. There are several locations on the EDCs' systems that currently cannot have any additional solar added to specific distribution lines without significant upgrades to those lines. There are several dozen locations on the EDCs' systems which have limits on the size of the solar system that can be added within a specific feeder.
16. PJM has listed several GW of solar in its queue for interconnection.
17. In the recent EYs, New Jersey solar projects were receiving over \$600 per SREC in the spot market. A representative of a large manufacturer in New Jersey has indicated to Staff that those SREC prices, combined with the federal and other State incentives, resulted in solar projects that had simple paybacks of approximately 4 years with a return on investment of over 25 percent.
18. The overall goal of the SREC program was to provide a 7 to 10 year simple payback with an Internal Rate of Return of 12%.
19. More recently, SRECs traded in the \$200 per MWh range with the last EDC central auction selling SRECs at \$170 per MWh.
20. The pace of construction, installation and operations in the New Jersey solar market is not sustainable within the current solar RPS.

Staff initially proposed two options which were discussed at subsequent meetings of the Solar Transition Work Group. Staff states that it has reviewed all of the comments, proposals, discussion points and the CEEEP data analysis. Based on this review, Staff issued a revised Straw Proposal in March 2012 that included the following recommendations:

1. The EDC SREC financing programs should be extended, and include a total capacity of 120 MW of capacity over 3 years.
2. The total capacity should be divided up among the 4 EDCs based on retail sales.
3. EDCs will be requested to submit a new filing under N.J.S.A. 48:3-98.1.
4. EDCs can file for a loan program, solicitation or both.
5. The timeframe of the loan or solicitation shall be 10 years decreasing in years over the 3 year program.



6. The loan or solicitation shall be "competitive," based on the market rate and the Board will not set a floor price to provide for the lowest achievable and available cost within the market segments.
7. Any capacity not requested by an EDC can be allocated to the remaining EDCs on request.
8. The extended EDC SREC financing programs will not include grid supply projects except for a set aside to be established for landfills or brownfields.
9. All grid supply projects on landfills or brownfields shall be in areas that can be supported by the distribution system.
10. The maximum size of a project would be based on the net metering limit set out in the Board's regulations.
11. The extended EDC SREC programs can be filed by the EDCs for different market segments or allocated based on size.
12. There would be a set aside for residential and small businesses market segments.
13. All EDC costs for developing, implementing and managing the extended EDC SREC financing programs including all SREC transition fees, all loan serving fees, any fees associated with the EDCs' cost of capital, and all administrative fees, would be paid for by the solar generation customer.
14. The SRECs generated by the extended EDC SREC financing program will be available for sale in a centralized auction in EY 2016.
15. The RPS would be revised to reflect an increase in solar capacity of 120 MW, effective in EY 2016.
16. The solar RPS rule revisions will include a reduction of the SREC qualification life to 10 years for new projects, and establish a decreasing trend for the qualification life through EY 2027.
17. Board Staff and CEEEP will coordinate to develop a revised SACP schedule for EY 2017 to EY 2026 to reflect lower solar installation costs.

The EY dates may change based on when the extended EDC SREC programs are filed and if and when they are approved by the Board.

While many of the options that were discussed would require legislative changes, Staff's Straw Proposal was developed based upon actions that can be taken within the constructs of existing law. For example, Staff supports the recommendations to simultaneously roll back the RPS requirements and to lower the SACP, as set out in the EMP. However, under current law, the Board cannot lower the SACP until EY 2017. Therefore, this option was not recommended by Staff.

Staff understands additional changes may be discussed that take a more global approach but may require legislative changes. Staff will participate in any such discussions as directed by the Board.

Staff has also informed the Board its recommendations set out herein represent a "short term fix" that does not address longer term issues. Specifically, Staff is concerned that even if the Board adopts its recommendations the same conditions currently being faced may once again happen in two to three years, i.e. the market again overheats and exceeds the RPS, and SREC prices drop dramatically. Therefore, Staff recommends that the Board continue to explore longer term solutions.

## **SUMMARY OF COMMENTS**

The Straw Proposal set out above was posted on the NJCEP web site and circulated to the public stakeholder group on or about March 8, 2012. The Board held a public hearing on March 22, 2012, in Trenton, New Jersey to solicit comments from interested stakeholders and members of the public regarding the Straw Proposal. The Board also accepted written comments on the Straw Proposal through March 22, 2012.

The following persons testified at the March 22, 2012 public hearing: Katie Bolcar of the Solar Energy Industries Association ("SEIA"); Evan Dube, SunRun; Al Matos, Public Service Electric & Gas ("PSE&G"); Larry Barth, NJR Clean Energy Ventures ("NJR"); Dennis Wilson and Lyle Rawlings, Mid-Atlantic Solar Energy Industry Association ("MSEIA"); Gary Weisman and Fred DeSanti, New Jersey Solar Energy Coalition ("NJSEC"); Christine Guhl, New Jersey Chapter of the Sierra Club ("Sierra Club"); Gabriella Figueroa, Retail Energy Supply Association ("RESA"); David Roncinske, Local Union 454; Rida Rizvi, Constellation Energy ("Constellation"); Paul Flanagan, New Jersey Division of Rate Counsel ("Rate Counsel"); and Joe Joyce, Ray Angellini, Inc. ("Ray Angellini").

In addition, written comments were received from Michael Boches, Geoscape Solar; George St. Onge, RR Renewable Energy Consultants ("RRREC"); Rodney Richards ("RR"); Ryan Mark Gorey, New Age Energy; Gary Weisman, New Jersey Solar Energy Coalition ("NJSEC"); Patrick McCort, PowerLease Solar Solutions; Bryan Miller, Constellation Energy ("Constellation"); Katie Bolcar, SEIA; Evan Dube, Sunrun Home and Trinity Solar ("Sunrun"); Melissa MacCarthy, Ecological Systems; Matthew Weissman, PSE&G; Michael Dressel, New Jersey League of Municipalities ("League of Municipalities"); Gregory Eisenstark, Jersey Central Power & Light Company ("JCP&L"); Sarah Steindel, Rate Counsel; Gabriella Figueroa, RESA; Stephen Wemple, Con Edison Companies ("Con Ed"); Philip Passanante, Atlantic City Electric Company ("ACE"); Scott Markwood, Rockland Electric Company ("RECO"); David Appelbaum, NextEra Energy Resources, LLC ("NextEra"); Larry Barth, NJR Clean Energy Ventures ("NJR"); Christine Guhl, Sierra Club; Cathy and Dave Sims, Ecological Systems; David Klockner, ENERACTIVE Solutions; Lyle Rawlings, MSEIA; John Jenks, Quantum Solar Solutions ("Quantum"); and Ernie Troiano, City of Wildwood ("Wildwood").

The following paragraphs summarize the written comments received as well as the oral comments presented at the public hearing. The summary is organized by major topics, and while the comments are summarized, the Board emphasizes that it has considered all comments in their entirety in reaching the decisions in this Order.

### *General Comments*

Rate Counsel stated that, overall, it supported the Straw Proposal but that its support was contingent upon an analysis of rate impacts, the comments of the other parties, and on the entire set of recommendations being retained as proposed – that a change to any one recommendation could impact Rate Counsel's position. With these provisos, Rate Counsel supported the proposed 120 MW over three years.

PSE&G was generally supportive of the Straw Proposal with a few specific concerns noted below.

ACE does not support the Straw Proposal, submitting that there is no urgent need to commit to extension of significant State-mandated subsidies at this time because, as noted in the Straw Proposal, installed solar capacity is anticipated to exceed the solar RPS through at least EY 2014. The commenter believes that the Board should take more time to allow the market to develop in order to determine what steps would be best.

RECO submits that the Board should undertake a macro-level cost-benefit analysis of available options prior to asking customers to contribute additional subsidies to the solar market. With that disclaimer, RECO supports many elements of the Straw Proposal, as noted below.

NJSEC, comprised of New Jersey solar developers and contractors, associated engineering, legal and financial firms, and developers of commercial and industrial properties that have direct involvement in solar development, is generally supportive of the direction taken in the Straw Proposal.

New Age Energy argues that Staff's straw proposal simply tweaks the existing system when much more substantial changes are needed; the commenter states that the current growth will mean the collapse of renewable energy development in 2012. The commenter asks a series of questions which will be addressed at the appropriate sections below. For example, the commenter asks whether the long term cost/benefit of renewable energy for the consumer / State has been modeled against existing sources at the SACP. The commenter claims that the January 2012 MSEIA Comparative study models are already meaningless since SRECs are currently traded at \$140 and expected to drop while in the assumptions used for the study, SREC prices don't fall to these levels until 2026.

NextEra believes that the Straw Proposal will do little to help the market recover and, in fact, increases SREC supply in an already long market while artificially suppressing price signals that should properly advise the market when investment is needed. Moreover, NextEra expresses concern that the solar industry will be back in a short period of time seeking similar "tide over" programs.

**Staff Response:** The comments above are indicative of the wide range of opinions, responses and recommendations regarding Staff's proposal, from do not do anything to Staff's proposal is not nearly enough. Starting with EY 2012, for the first time since EY 2006, the New Jersey SREC market produced more SRECs than were required for RPS compliance. This has led to a significant reduction in SREC prices which could negatively impact the solar market by reducing the incentives for the continued development of solar projects until the SREC prices recover. The Board, and ratepayers have supported the development of the solar industry since 2001, and Staff believes that in the long run, a stable solar marketplace will benefit ratepayers compared to a market in which development occurs when SREC prices are high and stops or significantly decelerates when SREC prices are low.

As noted above, Staff recognizes that its Straw Proposal addresses a limited number of issues that currently affect the solar industry. The Straw Proposal is intended as one tool to maintain momentum in the solar industry while the legislature and others develop more global and longer term solutions.

*1. Total Capacity of Extended EDC SREC Program Would be 120 MW Over 3 Years*

ACE states that "no support is provided" for the proposal to extend and expand the SREC

programs by 120 MW over three years. Given this lack of supporting evidence, ACE cannot agree to file for an extension of its SREC Financing Program.

RECO and JCP&L recommend that the size of any continuation of EDC SREC Financing programs be limited to 120 MW over three years in order to avoid any unnecessary subsidization of solar energy

NJSEC, Sunrun and Trinity propose that the program be increased to 80 MW per year because the proposed 40 MW per year is insufficient to maintain market momentum.

SEIA , the national trade association for the U.S. solar industry, proposes that the capacity for a continued EDC SREC financing program should be established at 40% of the market and last for four years rather than three, as it believes that 120 MW over three years will be too small to maintain real market momentum.

Ecological Systems recommends that the solar carve out be increased by 450 MW for EY 2012 through EY 2017, which could be balanced out by decreasing the solar carve out by 450 MW in EY2020-2026. MSEIA supported an increase in the EDC solar programs but, stating its belief that the Legislature appears willing to accelerate the solar RPS as envisioned in the EMP, discusses an increase of approximately 450 MW and recommends that the EDC programs should ideally be 80% of this amount. The Sierra Club recommended an increase of the solar RPS by 480 MW, with the majority allocated to the structured market, in order to avoid a market crash. Ray Angellini recommended 400 to 500 MW in the EDC programs over the next three years.

RRREC recommends that the Board authorize a one-time issuance of 150 MW of solar contracts for EY13, which the commenter estimates would produce approximately 180,000 SRECs, to be known as "Series B 13." The commenter proposes a fixed price of \$225 per SREC, for the first five years, costing approximately \$40.5 million, to be paid exclusively by the New Jersey Economic Development Authority using SBC funds. After the first five years, the commenter states that "the projects would be issued regular NJ SRECs."

Quantum supports a "tiered" EDC financing program that includes at least 50% of the annual increase in RPS and has varying caps and floor prices based upon the size of the system.

New Age Energy asks how the NJ Clean Energy Program can support continual sustained managed development.

**Staff Response:** For those that support Staff's Straw Proposal, the comments focused on the size of the block of solar capacity that would be available through EDC financing programs. The comments above range from a marginal increase in the capacity proposed by Staff to a doubling or tripling of the level of capacity proposed by Staff.

Staff's proposal is intended to balance the costs to ratepayers against the desire to provide sufficient incentives to continue the development of solar projects until the SREC prices recover and more long-term solutions are identified by the Board or through new legislation. Staff also desires to wean the solar industry from ratepayer subsidies.

Based on the comments submitted, the current market and a balancing of the competing interests, Staff is modifying its proposal to increase the block of solar capacity offered through the EDC solar financing programs from 120 MW to 180 MW over three years within the clarifications to the Straw Proposal as noted below in the Staff recommendation section of this Order.

Staff is strongly opposed to RRREC's recommendation to create a new class of SRECs and to require the EDA to purchase such SRECs at \$225 per SREC. This proposal runs counter to several objectives of Staff's proposal including relying on market based mechanisms to set SREC prices and minimizing costs to ratepayers. This proposal would also further bifurcate the SREC market and could create additional costs to administer.

*2. Total Capacity Would Be Divided Up Among the EDCs Based on Retail Sales*

Rate Counsel supported this provision provided other provisions remained unchanged. RECO supports this proposal as a fair starting point.

**Staff Response:** There was no opposition to this recommendation, and it will be included in Staff's final recommendations.

*3. EDCs Will be Requested to Submit a new Filing Under N.J.S.A. 48:3-98.1.*

Rate Counsel does not object to this proposal but recommends that the EDCs file a letter of intent within thirty days of any Board Order on this matter to clarify the amount of available program capacity discussed in the Straw Proposal's recommendation number seven. Rate Counsel also asks the OCE to clarify that all filings should be in accordance with the minimum standards established under N.J.S.A 48:3-98.1.

JCP&L states that it would propose "an appropriate cost recovery mechanism" in any filing. RECO strongly supports the "voluntary" nature of this proposal, and believes the EDCs should be provided maximum flexibility in offering and designing programs.

NJSEC, Trinity and Sun Run recommend that the Board consider creating a comprehensive Order requiring the EDCs to submit new filings and guiding the EDCs in their filing process.

**Staff Response:** Staff concurs with Rate Counsel's comments, and has clarified the process for notification of the intent to file or not file. These would be new filings that build on the existing programs. The filings would be made in accordance with the provisions at N.J.S.A. 48:3-98.1 and the minimum standards as approved by the Board in its May 18, 2008 Order in Docket number EO08030164. Staff anticipates that the utility filings will include a proposed cost recovery mechanism which will be addressed in the review of the utility filings.

RECO supports a voluntary filing while NJSEC, Sunrun and Trinity recommend that the Board require the EDCs to submit a new filing. Staff continues to prefer a voluntary approach at this time.

#### *4. EDCs Can File for a Loan Program, Solicitation, or Both*

Rate Counsel does not oppose this proposal provided that the set-aside for residential and small business customers contained in proposal number thirteen is maintained.

RECO supports the flexibility provided the EDCs by this proposal.

NJSEC expresses a preference for a solicitation program over a solar loan program because the commenter feels that loan products “crowd out” participation by outside investors and thus preclude potentially less expensive sources of capital for the industry.

With respect to any solar loan programs, Trinity and Sun Run recommend allowing multiple projects to participate under a single application and commercial borrower’s credit review; allowing for ownership transfer of third-party projects in order to prequalify investors; allowing transfer of third-party ownership of proposed borrower Special Purpose Entity to prequalify investors; and allowing residential third-party customer projects to participate in the loan program under the program’s residential interest rate.

Geoscape Solar suggests that the Board consider withdrawing PSE&G’s Solar for All projects from the SREC market, with PSE&G “separately compensated” for its existing investments.

NJR suggests that EDC auctions could channel competitive forces to lower SREC prices while helping to reduce oversupply by matching SRECs to a specific quantity of solar installation.

**Staff Response:** PSE&G has expressed its support for continuing its solar loan program and opposition to the solicitation approach utilized by the other three EDCs. Further, CEEEP’s assessment determined that the cost to ratepayers of PSE&G’s solar loan program and the other EDC financing programs were relatively equal. In the interest of implementing a solution that can be put into place quickly, and given that the costs to ratepayers are essentially the same, Staff continues to support its recommendation to provide the utilities with the flexibility to file for approval of either a loan program or a solicitation program.

Trinity, Sun Run and NJN’s comments concern the details of the EDCs’ programs. Such details will be discussed and clarified within the context of the review of the EDC filings. Geoscape Solar’s comments concerning PSE&G’s Solar for All program are not being considered within this Order.

#### *5. Timeframe of Loan or Solicitation Shall be Ten Years, Decreasing in Time Over the 3-year Program*

Rate Counsel does not object to this proposal provided that the reduction in qualification lives minimizes rate impacts, is consistent with the reduction in SREC qualification life recommended in proposal number seventeen, and includes meaningful reductions in the SACP as outlined in proposal number eighteen.

RECO believes this proposal will serve to limit the cost burden on ratepayers.

NJSEC does not support reducing the ten-year term of a loan or solicitation over the three years the program would be in effect, arguing that the message sent by the program to the market should be as simple and consistent as possible.

SEIA recommends that each year of the program have a ten-year contract term, with an option for bidders to take a declining price contract; SEIA believes that such an arrangement would support condensing developer SREC revenues to the term of the agreement and that the declining price option will facilitate SREC sales in the later years because these SRECs will be more in line with then-existing market realities.

**Staff Response:** The proposal to limit the term of a solar loan or solicitation is a detail that can be addressed further within the review of the EDC filings. Therefore, Staff will modify its proposal to defer consideration of this issue pending further discussions with the EDCs, Rate Counsel and other interested stakeholders.

*6. Loan or Solicitation Shall Be "Competitive" Based on Market Rate – Not Set by the Board as a Floor Price – and Shall Provide for Lowest Achievable and Available Cost within Market Segments*

Rate Counsel does not object to this proposal provided that for loan-based programs, if over-subscribed, the EDCs seek to fund the lower cost projects first. Rate Counsel would not object to this rank-ordering being segmented within set-aside classes provided other provisions of the Straw Proposal are maintained.

RECO believes this proposal will limit the cost burden on ratepayers.

NJSEC states that it does not understand how a loan program could work without establishing a floor price from which the contract for differences could be calculated annually during the term of the loan.

Geoscape Solar recommends that all solar projects be evaluated using the Net Present Value ("NPV") of their proposed pricing schedules.

Ecological Systems states that while the SACP price set through 2017 is no longer required and \$250 SRECs would likely be adequate for continued growth, a minimum purchase price must be established if there is to be movement away from the existing SACP. The commenter alleges that such a floor price is justified because the State and its ratepayers are currently making over \$142 million a year from the investment in solar, based on 700 MW of installed capacity and what the commenter believes is an average rate of \$0.17/kWh multiplied by 1200 hours per year.

Quantum Solar recommends establishing a floor price to insure market doesn't collapse, with floor prices differing for residential versus commercial customers, while New Age Energy asks whether a floor price of a Feed-In Tariff can be implemented.

**Staff Response:** Staff continues to support the proposal to establish the SREC prices used to amortize loans or solicit long term contracts through a competitive process. The details regarding how to implement this recommendation can be discussed further within the review of the EDC filings.

*7. Any Capacity Not Requested by an EDC Can be Allocated to the Remaining EDCs on Request*

Rate Counsel does not object to this proposal provided that certain conditions are met. Rate Counsel would like an EDC's letter of intent, as requested in response to proposal number three, to indicate whether each EDC would like to do a loan program, a long-term contract, or a combination, and program size. Rate Counsel recommends that total program capacity (across all EDCs) be locked in at the time of the last approved EDC program, and no additional requests be made unless or until the Board has made a finding that additional market support is needed.

RECO supports this proposal assuming both EDCs involved are in agreement.

JCP&L requests that Staff clarify that any reallocation of capacity from one EDC to another would not result in the implementation of an EDC's SREC program being implemented in another EDC's service territory.

ACE states that it is unclear whether this proposal would result in increasing the allocation of solar capacity under the program extensions in another EDC's service territory to be subsidized by that EDC's customers.

**Staff Response:** Staff continues to support the proposal to reallocate any capacity not requested by an EDC to other EDCs upon request. Staff has addressed Rate Counsel's comments and has clarified the notification and allocation processes as noted below in Staff's recommendations. Staff reiterates that the EDC filings would be consistent with the provisions of N.J.S.A. 48:3-98.1 and the Board approved minimum filing requirements. The issues raised by JCP&L and ACE would be details discussed and clarified further within the review of the EDC filings.

*8. Extended EDC SREC Programs Will be Limited to Net Metered Projects Except for a Set-Aside to be Established for Grid Supply Projects on Landfills or Brownfields*

Rate Counsel does not oppose this proposal provided other provisions of the Straw Proposal are maintained.

Ray Angellini strongly supports this provision. The League of Municipalities supports this direction to the extent that the straw proposal promotes, encourages and incentivizes solar projects where they belong on shopping centers, warehouses, office complexes, carports and commercial, landfill and brownfield sites, and results in diminished or elimination of allowances for grid-connected projects on farmland and open space.

JCP&L does not object to a set aside for grid supply projects on landfills and brownfields but states that such a set-aside should be voluntary by the EDC.



NJR suggests restrictions on grid supply projects as one means of avoiding overbuilding in the future.

ENERActive Solutions states that it has been working with one of its clients and various local and state authorities to create an "Energy Enterprise Zone" and that such a designation would allow for expeditious approvals in supporting renewable energy. The commenter asks that the set-aside for grid supply projects include a provision to support specific areas of the State as "Energy Enterprise Zones."

Wildwood, whose plans to develop solar to cover the costs of capping a landfill have been disrupted by the sharp drop in SREC prices, asks that the Board adopt a "brown to green" carve out component to the rules that would enhance the incentives for developing solar projects on former municipal landfills.

Local Union 454, representing pile drivers, has members who work on large scale utility ground mounted solar projects. The commenter does not want to see grid supply projects excluded from any proposal because these projects provide the greatest amount of employment for its members, as well as making the market more affordable and accessible because of their scale. Local Union 454 did not object to projects on landfills and brownfields but thinks that a set aside will bring heavy costs; in addition, they are unlikely to provide employment for the union's members. Local Union 454 also objected to limitations on placing solar projects on farmland, stating that if all of New Jersey's goals were met with projects on farmland, only 3% of the State's total territory would be used.

New Age Energy asks what the present Grid can absorb for net metering.

**Staff Response:** Staff's proposal to limit the EDC solar financing programs to net metered projects and grid projects located on landfills or brownfields is consistent with the recommendations included in the State EMP and Staff continues to support this recommendation.

ENERActive Solutions recommends that grid projects in an "Energy Enterprise Zone" be allowed to participate in the EDC programs as well. Staff notes that such a designation does not yet exist, but is one being pursued by certain municipalities. Staff will review any such legislation, if enacted, and consider its impact on any policies that result from this Order.

Wildwood asks that the Board adopt a "brown to green" carve out component to the rules that would enhance the incentives for developing solar projects on former municipal landfills. This recommendation would require a change in the Board's RPS regulations. Staff is concerned that additional "carve outs" for different types of projects or technologies will further bifurcate the REC/SREC markets, essentially creating numerous sub-markets, which will complicate the administration of the RPS rules and reduce competition within each sub-market which could result in higher costs to ratepayers. Therefore, Staff does not support this recommendation. However, Staff is clarifying that this provision applies to municipal landfills as defined by the New Jersey Department of Environmental Protection.

*9. All Grid Supply Projects on Landfill or Brownfields Shall be in Areas that can be Supported by the Distribution System*

Rate Counsel states that Staff will need to provide a definition of "areas that can be supported."

RECO believes this proposal will limit ratepayer exposure.

SEIA suggests that the Board require EDCs to identify areas within their territories where solar projects can provide the most benefit to the grid.

JCP&L requests clarification as to whether the location of grid supply projects only in areas that can be served by existing distribution system includes any project-funded upgrades that might be necessary.

**Staff Response:** This recommendation is intended to address the fact that certain utilities are experiencing technical issues related to their ability to interconnect additional solar systems to their distribution systems. Staff has clarified this provision to state that the cost of any upgrades needed to the distribution system to accept the project beyond the standard interconnection costs are not part of this Extended EDC SREC Program.

*10. The Limit on the Size of the Projects would be Based on the Net Metering Limit*

Quantum states that costs have been dropping steadily over the last four years with average installation costs for large projects dropping to slightly over \$3/Watt for large scale projects. Quantum believes the Legislature should exclude large projects, which it appears to define as projects over 100 kW, from the SREC program, and make their energy eligible to form the basis for Class I Renewable Energy Credits only.

JCP&L and Ray Angellini object to the maximum size of a project being limited only by the net metering limit and propose a 2 MW limit instead. Ray Angellini argues that lifting the 2 MW cap on eligibility for SRECs has caused a sharp drop in SREC prices which has in turn led to the loss of many solar businesses and jobs.

NJSEC urges that all stakeholders consider the imposition of a moratorium on development of any projects greater than 2 MW for the next three years.

**Staff Response:** Staff continues to support the recommendation to limit the size of projects that can participate in the EDC solar financing programs based on the current limits in the net metering rules. Larger projects have lower costs which in theory should drive down SREC prices and the resultant cost to ratepayers. Staff will consider carve outs for smaller projects within the EDC programs.

*11. Extended EDC SREC Programs can be Filed by EDCs for Different Market Segments or Allocated Based on Size*

Rate Counsel does not oppose this proposal provided other provisions of the Straw Proposal are preserved but asks that future versions of Straw Proposal offer some preliminary percentages on these potential set-asides.

RECO supports allowing the EDCs to tailor their programs for different market segments.

**Staff Response:** There was no opposition to this recommendation which is included in Staff's final recommendations.

*12. There Would be a Set Aside for Residential and Small Business Market Segments*

Rate Counsel does not oppose this proposal provided other provisions of the Straw Proposal are preserved but asks that future versions of Straw Proposal offer some preliminary percentages on these potential set-asides and reserves its right to object if the set-asides result in "unnecessary" rate impacts. Rate Counsel also recommends that any un-filled set-asides be allowed to expire rather than be bundled with later period solicitations or transferred to other market set-asides.

NJSEC strongly supports the proposed set-side for residential and small commercial market segments, which it characterizes as "particularly vulnerable." Ecological Systems supports the set aside, stating that it is in this sector that the majority of local New Jersey businesses operate; that it will support development of a permanent skilled solar workforce and contracting infrastructure; and that many small systems widely scattered- requiring little infrastructure is more desirable than large projects requiring upgraded infrastructure costs.

Sun Run and Trinity Solar state that implementing the residential/small commercial set-aside at 25% is critical to increasing the residential market share. The commenters suggest several administrative adjustments to the SREC financing programs aimed at facilitating residential sector participation: allowing residential projects to be built ninety days prior to submittal; requiring that programs create a bid process tailored to the residential business cycle; reducing processing time; and removing the requirement of an additional utility grade meter where one is already provided by the third-party system owner.

RRREC proposes a specific allocation of its proposed additional 150 MW of solar projects among the following sectors: 25 MW residential, 25 MW non-profit, 25 MW small business (up to 100 kW), 25 MW commercial (101 kW up to 500 kW), 25 MW large commercial (501 kW up to 2 MW) and 25 kW "XXL" commercial (2.01 MW up to 5 MW).

SEIA is concerned that the Straw Proposal will result in over-segmentation of the market, resulting in bid blocks that are too small to support meaningful market opportunities and robust competition. SEIA proposes continuing the current program structure with a few modifications: including landfill and brownfield projects; changing the current aspirational goal for the residential/small commercial systems with a soft cap whereby unallocated capacity could be redirected to other market segments; and enabling any net metered project of any size to participate but with no more than 2 MW of any system being eligible.

JCP&L proposes that there be no set-aside for residential and small business segments because their past experience shows that these projects are able to compete effectively.

**Staff Response:** With the exception of JCP&L and Rate Counsel, there was strong support for this recommendation which is included in Staff's final recommendation. The details regarding the specific allocations will be discussed further in the review of the EDC filings.

*13. All EDC Costs for Developing, Implementing, and Managing the Extended EDC SREC Program, Including all SREC Transition Fees, all Loan Servicing Fees, any Fees*

*Associated with the EDC Weighted Average Cost of Capital, and all Administrative Fees would be Paid for by Solar Generation Customers*

Rate Counsel strongly supports this provision and believes it to be a key component. Loan-based programs should rank-order solicitations based upon cost, with least-cost installations receiving first call to loans; rank-ordering can be done by size or customer type. Rate Counsel also states that Staff must clarify who bears the risk associated with SREC revenue auctions and the ability or inability to cover program costs. If, for example, the SRECs sold from a loan program do not generate enough revenues to cover the loan payments, will the EDC, the developer, or the ratepayer bear the recovery risk. If solar developers bear the risk, Staff must clarify how true-ups associated with the differences in recovery will arise.

RECO believes this proposal will limit ratepayer exposure and that it is appropriate for the cost of the programs to be borne by the solar developer or participant.

JCP&L wants to see full recovery of an EDC's costs, and would not object to recovering them from the solar developers or customer-generators but does not see a proposed mechanism for doing so and would require more detail before it could support this concept. The commenter would also like to see the RGGI recovery clause as a "back-up" recovery mechanism in the event it proved impossible to collect from a developer or customer-generator.

ACE states that it is not clear how this proposal could be implemented and again recommends that more time be taken to consider whether this is a viable method of cost recovery.

To ensure that project bids are viable, SEIA recommends that the programs continue to require that developers post a security requirement; NJR recommends more material SREC Registration Program fees which would be forfeited if the projects are not built.

RR states that ground mounted solar systems that do not use the energy produced onsite appear to have an unfair advantage, in that they are permitted to sell SRECs, contributing to an over-supply and they do not have to pay to PJM, the EDC or the State the added costs of upgrading electrical equipment to accept their solar power. The commenter recommends that all such costs be borne by the solar owner or lessor.

SEIA recommends that the Board establish clear guidance on the level of EDC costs to be borne by the developer or customer and that to spread the cost burden, there be a two-part fee: a small application fee on all bidders, and a larger fee on winners. In addition, SEIA asks the Board to explore lower cost options for program administration, particularly for the SREC auction process, claiming that there are numerous entities conducting auctions for a much lower cost than that of the NERA auction.

NJSEC states that the EDCs should be made whole for all expenses but suggests that Staff recommend to the Board that it consider reducing the level of interest required by the EDC program, on the ground that the over 11% interest rate now allowed does not reflect the relatively low level of risk associated with the loans.

Quantum recommends that the EDCs bear the costs for developing the EDC financing programs, stating that the development costs add considerably to project costs and is a heavy burden on small system developers.

**Staff Response:** The comments all generally support this recommendation which is included in Staff's final recommendation. The details regarding the specific methods for determining how to recover such costs from the solar projects, and related utility cost recovery issues, will be discussed further in the review of the EDC filings.

Several commenters recommended that the Board charge an application fee to program participants. While Staff supports this approach in concept, Staff has been advised that the Board does not have the statutory authority to charge such fees at this time.

*14. SRECs Generated by the Extended EDC SREC Program will be Available for Sale in a Centralized Auction in EY 2016*

Rate Counsel does not oppose this provision provided other provisions of the Straw Proposal are maintained. Rate Counsel further states that it does not object to the timing of offering these additional SRECs provided there is not an attempt to "unduly" manage market outcomes through the creation of differing qualification lives or other mechanisms that may lead to unnecessary increases in SREC prices and ratepayer costs.

RECO supports delaying the release of SRECs to EY 2016 because it should theoretically limit the exposure of EDCs, suppliers, and their customers to further over-supply issues.

ACE states that holding back SRECs has the potential to impose significant additional cost burdens on New Jersey ratepayers. JCP&L states that EDCs must be able to recover their carrying costs for holding on to SRECs for three years as proposed in the Straw Proposal.

MSEIA states that there will be carrying costs and risks associated with the EDCs holding on to SRECs until 2016, and suggests that the EDCs retire the SRECs obtained through the EDC programs and then allocate these retired SRECs among the LSEs on an annual basis at the time of the annual true-up so that allocation percentages are known.

JCP&L asks that consideration be given to allow special banking provisions such that all SRECs generated from new EDC programs prior to 2016 can be used not only in EY 2016 but also EY 2017 and 2018.

Geoscape Solar, a solar integrator which both sells and leases behind-the-meter projects to the residential and commercial markets, proposes accelerating the RPS schedule by two years to achieve 5,316 GWhs in 2024 rather than 2026. The commenter argues that the savings achieved through up-front SREC reverse-auction procedures will offset the cost of RPS acceleration. Project applications would be approved monthly and the annual RPS would be divided into monthly goals.

**Staff Response:** Staff believes that JCP&L's recommendation to allow special banking provisions deserves additional consideration. Staff will entertain comments on specific

proposals regarding how to implement this recommendation in the context of consideration of any proposed changes to the RPS rules.

Staff recognizes that having EDCs bank SRECs for up to three years may impose additional costs on ratepayers, and recommends that the EDCs be permitted to recover such costs after Board review and approval. Such costs will depend on various factors such as the SREC price and the amount of time between the EDCs' purchase of the SRECs and their sale, and any carrying costs based on each participating EDC's cost of capital. Staff will further assess such costs and address any related ratemaking issues in the review of the EDC filings.

Staff does not support MSEIA's proposal to retire the SRECs and allocate them to LSEs. This proposal would be burdensome to administer and create uncertainty for the LSEs since they would not know how many SRECs they would be allocated at no cost and therefore how many they would need to purchase. Further, this proposal runs counter to Staff's support for a market where prices are determined competitively, not through an administrative process.

Geoscape Solar proposes an acceleration of the RPS solar requirements. As discussed elsewhere herein, Staff supports an acceleration of the RPS solar requirements conditioned upon the ability to simultaneously lower the SACP which would require legislation. Within the context of the Straw, Staff proposed an acceleration of the solar RPS in 2016 for the addition of 120 MW (now 180 MW) in which we also proposed a re-evaluation of the SACP for 2017 forward. Therefore, Staff does not support this larger and more global recommendation at this time because of the need for legislation.

*15. The Sale of these Additional SRECs will be Timed to Minimize the Additional Impact on the Market and will be Addressed through a Solar RPS Amendment*

Rate Counsel does not oppose this provision provided there is not an attempt to "unduly" manage market outcomes through the creation of differing qualification lives or other mechanisms that may lead to unnecessary increases in SREC prices and ratepayer costs.

NJR recommends restrictions on new SREC project applications once a certain ratio, not specified, of pipeline projects to RPS is achieved.

**Staff Response:** Staff continues to support this recommendation. Details regarding how it will be implemented can be discussed further in the context of the EDC filings. Staff does not support NJR's proposal to restrict market entry which works against the desire to develop a competitive solar market without subsidies and could result in higher costs to ratepayers.

*16. The Additional Capacity of the Extended EDC SREC Programs will be Reflected in the Solar RPS Regulatory Amendments that will be Effective in EY 2016*

Rate Counsel does not object to this provision provided the other provisions of the Straw Proposal are maintained.

JCP&L requires more detail on any changes to RPS rule amendments before it could support them but does recommend that any change be an acceleration rather than an increase.

RESA, the Con Edison Companies, and Constellation strongly support this provision because, in their view, any earlier implementation would be a major competitive disadvantage to retail suppliers because under SEAFCA retail supplier contracts, but not BGS provider contracts, are responsible for any increases in RPS requirements.

New Age Energy asks whether there is a benefit to New Jersey residents in reaching higher levels of state produced renewable energy production faster than the current targets, which have already been exceeded.

NJR recommends increasing the RPS beginning in 2013, reflecting installed capacity through 2012 as well as capacity that has been contracted but not yet installed. NJR argues that such an acceleration would allow investors to capitalize on the federal Investment Tax Credit which expires after 2016.

RRREC, which proposed a one-time issuance of 150 MW for EY2013, recommends that to absorb the additional SRECs, the 2013 RPS goal, and each subsequent year's goal, be increased by 150 MW over the final 2012 EY installation year, with these additional SRECs subtracted from the 2026 RPS requirement.

**Staff Response:** Staff continues to support this recommendation. As noted by RESA, the Con Edison Companies, and Constellation, this provision is necessary since any earlier implementation would be a major competitive disadvantage to retail suppliers because under SEAFCA retail supplier contracts, but not BGS providers, are responsible for any increases in RPS requirements implemented after the approval of the relevant BGS provider contract. Specific details regarding this proposal will be discussed further in the context of the proposed changes to the RPS rules that will be required to implement this recommendation.

*17. The Solar RPS Rule Revisions will Include a Reduction of the SREC Qualification Life to Ten Years for New Projects, and Establish a Decreasing Trend for the Qualification Life Through EY 2027.*

JCP&L supports Staff's proposed reduction in the SREC qualification life.

Rate Counsel does not support an attempt to "unduly" manage market outcomes through the creation of differing qualification lives or other mechanisms that may lead to unnecessary increases in SREC prices and ratepayer costs.

RECO opposes this proposal on the grounds that it will have the effect of raising the quantity of solar facilities that must be supported by ratepayers by 50% in later years and also effectively institute a vintaging system for solar facilities, with earlier facilities providing more SRECs to the owner than facilities constructed later. MSEIA states its concern that projects with a ten-year qualification life will not be able to compete on a level playing field against projects with a fifteen-year qualification life.

Constellation, a solar developer, urges Staff to clarify that a decrease in qualification life from fifteen to ten years would apply only to new projects. Constellation also states that such a decrease would not serve to limit ratepayer exposure because SREC prices would increase to support the RPS demand, thus replacing a longer SREC life with higher SREC prices.

NJSEC opposes reducing the SREC qualification life for new projects to ten years because it feels that this shift would increase risk in a fragile market environment.

SEIA believes that the Board needs more information before reducing the SREC qualification life to ten years.

PSE&G believes that the recommendation to shorten the SREC qualification life should be addressed in a more global forum such as the fifteen year SACP schedule in the RPS.

Geoscape Solar recommends that all solar projects apply for OCE approval with a 15-year SREC price schedule, not to exceed a price ceiling established by the Board; projects would be evaluated using the Net Present Value ("NPV") of their proposed pricing schedules.

**Staff Response:** Staff does not concur with the comments that the Board should not address this issue at this time. As with the rebates program, the solar market needs to transition at some point to operate without SRECs and discussion of how to accomplish this should begin now. Staff does concur with the comment that the recommendation to shorten the SREC qualification life should be addressed in a larger rulemaking proceeding. Staff has clarified this provision to request that the Board direct Staff to solicit additional input on the issue, and that this issue be considered further in the context of a rulemaking.

*18. Board Staff, with CEEEP, will Develop a Revised SACP Schedule for EY 2017 to EY 2026 to Reflect Lower Solar Installation Costs*

Rate Counsel does not object to this provision but reserves its rights to argue positions with regard to future SACP revisions as a member of the SACP Advisory Committee.

SEIA and NJR urge the Board to issue an SACP schedule for EY2017 to EY 2026 as soon as possible since uncertainty is detrimental to the market; NJR further recommends that the Board to coordinate with the Legislature to adjust both the SACP and the RPS over the entire 2013-2026 period.

Quantum recommends not setting the SACP beyond three years, saying market is too dynamic for 8-year forecasts. The commenter also states its belief that volatility in the SREC market is caused by the wide divergence between the "cap" established by the SACP and the "fire sale" value when over-supply drives prices far down. Quantum believes this problem can be reduced by reducing the SACP, based on data from the CEEEP study, and thereby narrowing the range of prices.

**Staff Response:** SEAFCA requires the Board to establish a 15 year SACP schedule. Staff will take these comments into consideration along with other comments that will be filed related to the development of an SACP schedule for consideration by the Board consistent with the requirements of the Board's RPS rules.

*Comments Not Specific to Itemized Proposals in Straw Proposal*



**Comment:** Quantum recommends that the DEP be enlisted to help monetize the value of such benefits of solar energy as reducing air pollution and global warming. Quantum relies on SEAFCA, which directs the Board specifically to consider, in consultation with DEP, the “cost impacts and public benefits of”, among other items, reductions in air pollution and greenhouse gas emissions.

**Staff Response:** The Board considers externalities such as reduced emissions in developing its policies that support energy efficiency and renewable energy. However, monetizing such benefits is difficult and there are wide ranges of viewpoints regarding the value of such benefits.

Staff will continue to coordinate with DEP, CEEEP and other stakeholders to include the value of such benefits in any cost benefit analysis.

**Comment:** Quantum suggests that the number of recent applications in New Jersey indicates that commercial entities are not deterred from solar investment by falling SREC prices, though residential customers are. Quantum also points to Pennsylvania, alleging that that installed capacity nearly doubled, to 88 MW, from 2010 to 2011 despite SREC prices falling to a current value of approximately \$20. Quantum sees this as evidence that there is no need for the solar industry to “throttle itself.”

**Staff Response:** The majority of the comments submitted reached the opposite conclusion, i.e., that without the EDC solar financing programs and other changes the State risks a significant slowdown in the development of solar projects and the resultant loss of related jobs. While Staff agrees conceptually that the Board should minimize changes to the SREC market as it matures, Staff concludes that intervention at this time is warranted.

**Comment:** Quantum recommends allowing the “REIPR systems” to participate in the new EDC financing programs, saying this would be only fair as they have invested approximately \$3 billion in solar. Moreover, Quantum believes that many entities and individuals believed that when the Board announced its “securitization program” in 2008 it was committing to ensure an Internal Rate of Return (“IRR”) of 12% but that in fact these market participants are realizing only an IRR closer to 8%.

**Staff Response:** Staff strongly disagrees with this recommendation. The proposed EDC financing programs are intended to stimulate development of additional solar projects, not provide a specific rate of return to customers that have already invested in solar. It is Staff’s position that nothing in the Board’s Orders approving a solar financing program suggests that the Board was committing to ensure a specific rate of return to projects. Alternatively, the program was designed to encourage customers to participate in an SREC financing program which would provide customers with certainty regarding the price they would be paid for SRECs, and reduce the near term cost to ratepayers. This proposal also runs counter to the objective of developing a market based approach to SREC financing that minimizes ratepayer subsidies.

**Comment:** Geoscape Solar suggests that binding contracts be issued for all approved projects to purchase all SRECs at the agreed price, with either the OCE through its market manager or the EDCs acting as SREC purchaser and payment made through SBC funds. Purchasers would not be permitted to void the contract based on changes in law or policy. Geoscape proposes that new contracts be written for projects already built using the PSE&G floor price in

effect at the time the project was approved and that projects which have been approved but not yet constructed re-submit under the new rules.

**Staff Response:** As noted above, Staff objects to expanding the proposal to include already built projects. Staff believes that these projects have already enjoyed the benefit of very high SREC prices during the past three years, and it is disingenuous to argue that now that SREC prices have dropped they should also have the benefit of price certainty and higher SREC prices.

### **STAFF RECOMMENDATIONS**

Based on the discussions at the Working Group meetings held between November 2011 and March 16, 2012, review of the proposals submitted, the written comments and the comments at the public hearing, Staff has revised and clarified the initial Straw Proposal ("Revised Straw Proposal"). The Revised Straw Proposal was discussed with each of the EDCs, and includes the following Staff recommendations: (i) the expansion of utility supported solar programs following a structure similar to the SREC-based financing programs and the solar loan programs ("Extended EDC SREC Programs") and (ii) certain rulemaking initiatives.

Staff's recommends that the total capacity to be allocated under the Extended EDC SREC Programs would be 180 MW, to be split among the participating EDCs over 3 years.

- a. The total capacity would be divided up among the EDCs based on retail sales. The EDCs will be requested to submit a new filing under N.J.S.A. 48:3-98.1.
- b. Within 5 business days of the service of this Order, the EDCs shall submit a notice of their intent to file or not file for the Extended EDC SREC Program.
- c. If any EDC declines to file for its allocated capacity under the Extended EDC SREC Program, this capacity may be offered to the remaining EDCs. The Board will notify the remaining EDCs by Secretary's Letter of the additional available capacity.
- d. Within 3 business days of receipt of that notice, the remaining EDCs shall submit a notice of their intent to file for all or a portion of the remaining capacity.
- e. OCE Staff will distribute this remaining capacity to the EDCs that requested additional capacity based on the remaining EDCs' proportionate share of retail sales up to 100% of the 180 MW.
- f. This may result is a total capacity for the EDC that requests additional capacity larger than the EDC's total percentage of retail sales.
- g. Within 30 days or less of the final notification of capacity allocation, the EDC shall request a 30 day pre-filing meeting as required under the May 8 Order.

Staff's recommends the following criteria for the Extended EDC SREC Programs, and recommends that the specific and details of the performance criteria below be jointly determined through review of the EDC's filing for the Extended EDC SREC Program:

- h. The EDCs can file jointly or separately for the Extended EDC SREC program. However, all administrative activities such as the sale of acquired SRECs, in order to maximize the efficiencies of the administration and implementation will occur jointly to reduce administrative cost and the increase the effectiveness of the program.
- i. EDCs can file for a loan program, solicitation or both.

- j. If beneficial to the ratepayers, the timeframe of the loan or solicitation as set forth in the current EDC SREC financing programs shall be on a decreasing trend for the Extended EDC SREC Programs to assist in transitioning to a competitive solar market. The rate and term of this decreasing timeframe can be determined through the review of the EDCs' filings.
- k. The loan or solicitation process shall be developed to provide for the lowest achievable and available cost within the market segments on a "competitive" basis that tracks the market rate and without a set floor price.
- l. The extended EDC SREC Programs are for net metered projects except for a set aside for grid supply projects for municipal landfills or brownfields.
- m. All grid supply projects on municipal landfills or brownfields shall be in areas that can be supported by the current distribution system. The cost of a required upgrade to the distribution system beyond that of any standard interconnection for the size system being interconnected is not to be included within the Extended EDC SREC Program.
- n. The limit on the size of the projects, except for municipal landfills and brownfields grid supply projects, would be based on the net metering limit.
- o. The extended EDC SREC Programs can be filed by the EDCs for different market segments or allocated based on size. The size and types of these different market segments should be determined through the review of the EDC filing for the Extended EDC SREC Program based on the underserved markets in the EDC area.
- p. There should be a set aside for residential and small businesses market segments.
- q. The EDC's costs for developing, implementing and managing the extended EDC SREC program including all SREC transition fees, all loan serving fees, and any fees associated with the EDC's weighed average cost of capital, and all administrative fees would be paid for by the solar developer or the generation customer.
- r. The SRECs generated by the extended EDC SREC Program will be available for sale in a centralized auction in EY 2016. If the SREC market is in balance or under supplied before 2016 or if the Extended EDC SRECs could exceed their trading lives then, the EDC can jointly sell the Extended SRECs before 2016.
- s. The recovery of costs for the Extended EDC SREC Programs should also include the carrying costs of the SRECs held before sale. The recovery mechanism and method can be determined through the EDC's Filing for the Extended EDC SREC program.
- t. The sale of these additional SRECs will be timed to minimize the additional impact in the market and the ratepayer. The specifics of this sale will be addressed through a solar RPS rule amendment and can be determined through the EDC Filing for the Extended EDC SREC program.

Staff recommends that the following items be part of a rulemaking:

- u. The additional capacity of the extended EDC SREC Programs will be reflected in the solar RPS regulatory amendments that will be effective for EY 2016. Staff will, at the direction of the Board and consistent with N.J.S.A. 48:3-87(i) initiate a solar RPS rulemaking process with stakeholders to determine the specifics of this rule. This will include working with CEEEP to develop a detailed rate impact, bill costs and benefits analysis of any solar RPS rule.
- v. The solar RPS rulemaking process will include a stakeholder process to determine a process for the transition from SREC programs to a competitive solar marketplace. The solar RPS rule revisions will include a reduction of the SREC qualification life to 10 years for new projects, and establish a decreasing trend for the qualification life through

EY 2027. Staff will, at the direction of the Board, initiate a solar RPS rulemaking process with stakeholders to determine the specifics of this rule.

- w. Staff will work with CEEEP to develop a revised SACP schedule for EY 2017 to EY 2026 to reflect lower solar installation costs, and present this to the Board within 120 days of the date of this Order.

The EY dates noted above may change based on when the Extended EDC SREC Programs are filed, and if and when they are approved by the Board.

## **DISCUSSION AND FINDINGS**

The OCE held numerous public meetings with the Solar Transition Work Group between November 2011 and March 2012 to receive comments and input into the development of the Straw Proposal. Notice of the meetings were posted on the NJCEP web site and widely circulated to the RE listserv. Input was provided by Rate Counsel, DEP, solar installers, developers and trade associations, SREC aggregators and brokers, gas and electric utilities, BGS providers and third party electric suppliers, municipalities, and members of the public.

In addition, as described above, a public hearing was held on March 22, 2012, to solicit additional input on Staff's Straw Proposal and written comments were accepted from the public.

Accordingly, the Board **HEREBY FINDS** that the process utilized in developing Staff's recommendations related to the EDC SREC programs was appropriate and provided stakeholders and interested members of the public the opportunity to comment.

The Board has considered the extensive public stakeholder input received. Based on its review of the comments and after due consideration, the Board believes that OCE's recommendations related to the structure of new EDC SREC financing programs will deliver significant benefits to the State, fairly balance the desire to maintain a healthy solar industry in the State with the desire to minimize costs to ratepayers are consistent with the recommendations included in the EMP, and meet the requirements set out in SEAFCA and will satisfy the objectives of EDECA. The OCE's recommendations, if properly executed, will move the RE program closer to a market-based approach and, accordingly, reduce ratepayer subsidies as required by EDECA.

The Board has reviewed the OCE's recommendations regarding the proposed EDC Extended SREC Financing Programs. The Board **HEREBY FINDS** the OCE's recommendations to be reasonable and consistent with the policies of the Board, the EMP and the requirements of EDECA and SEAFCA.

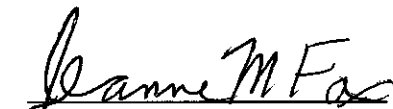
Based on the above, the Board **HEREBY ADOPTS** Staff's recommendations set out herein and **HEREBY APPROVES** an extension of the EDC SREC Financing Programs for a capacity of 180 MWs over three years subject to the development of programs that appropriately implement the goals stated in this Order, and subject to subsequent Board review and approval. The Board **DIRECTS** the Staff to coordinate with Rate Counsel, the EDCs and other interested stakeholders to develop the Extended EDC SREC Programs, and to resolve as many issues as possible prior to submitting the proposed programs to the Board for consideration. The Board **HEREBY DIRECTS** ACE, JCP&L, PSE&G and RECO to file within, 5 business days of service of this Order, a notice of their intention to participate or not to participate in the Extended EDC SREC Programs consistent with Staff's recommendations adopted by the Board herein. The

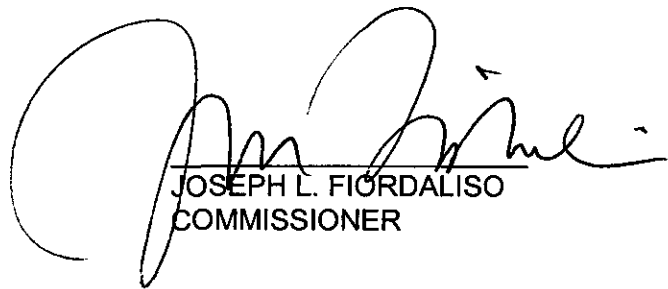
Board also **HEREBY DIRECTS** the OCE to coordinate with Rate Counsel, the EDCs and other interested stakeholders to develop proposed modifications to the RPS rules and the SACP schedule consistent with the recommendations set out herein.

DATED: 5/23/12

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I HEREBY CERTIFY that the within  
document is a true copy of the original  
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IN THE MATTER OF THE RENEWABLE ENERGY PORTFOLIO STANDARD: SUBMITTAL  
OF FILINGS IN CONNECTION WITH SOLAR FINANCING  
DOCKET NO. EO06100744

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