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# 53 N.J.R. 1476(a)

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## RULE PROPOSALS

### Reporter

53 N.J.R. 1476(a)

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▶ Interested Persons Statement

### Agency

PUBLIC UTILITIES > BOARD OF PUBLIC UTILITIES

### Administrative Code Citation

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

### Text

#### Cost Cap Calculation

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: QX21060944.

Proposal Number: PRN 2021-083.

Comments may be submitted through November 6, 2021, by email in Microsoft Word format, or in a format that can be easily converted to Word, to: [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov) or on paper to:



New Jersey Board of Public Utilities  
ATTN: BPU Docket Number: QX21060944  
44 S. Clinton Ave., 9th Floor, PO Box 350  
Trenton, NJ 08625-0350

The agency proposal is as follows:

### Summary

The Board of Public Utilities ("Board" or "BPU") is proposing a new rule at N.J.A.C. 14:8-2.12 to implement the requirements of Section 38.d(2) of the Clean Energy Act of 2018, P.L. 2018, c. 17 (N.J.S.A. 48:3-87.d(2)) (Cost Cap). The Cost Cap requires the Board to perform several complex calculations to determine whether spending on specified clean energy programs remains within acceptable levels, as defined by the Clean Energy Act, which will, in turn, inform the Board's future issuance of financial incentives for new solar energy resources, as well as how many Class I Renewable Energy Certificates (RECs), the Board requires load serving entities in New Jersey to purchase on behalf of New Jersey electricity consumers.

Historically, the Board has not had a documented process of calculating the Cost Cap, instead relying on Board staff estimates to ensure compliance. The purpose of this new rule is to provide additional transparency and rigor to Board staff's calculation of the Cost Cap, and to create a formal process for the Board to approve those calculations and to take any necessary steps to maintain compliance with the Cost Cap.

In formally proposing this rulemaking, the Board is mindful that several of the metrics involved in calculating the Cost Cap necessarily vary on an annual basis and that the underlying data are often only available on a lagging basis. To account for this fact, the proposed new rule would require Board staff to develop an estimate of the Cost Cap prior to the beginning of each energy year (which runs from June 1 to May 31 of each year), using the best data available at the time. The Board staff report would also incorporate any true-ups to calculations performed in prior energy years. Board staff's report would then allow the Board to issue an order, if necessary, to ensure that spending on covered programs remains compliant with the Cost Cap. The proposed new rule clarifies that any reduction in incentives or incentive availability attributable to Cost Cap compliance will apply only to projects that have not yet registered in the new Successor Solar Incentive (SuSI).

### Statutory and Administrative Background

The Cost Cap has been amended several times over the past few years and has been the subject of lengthy Board notice and comment proceedings. Section 38.d(2) of the Clean Energy Act of 2018 (CEA) initially read as follows:

... the board shall ensure that the cost to customers of the Class I renewable energy requirement imposed pursuant to this subsection shall not exceed nine percent of the total paid for electricity by all customers in the State for energy year 2019, energy year 2020, and energy year 2021, respectively, and shall not exceed seven percent of the total paid for electricity by all customers in the State in any energy year thereafter.

The CEA further states that "in calculating the cost to customers of the Class I renewable



directed that the Board "shall take any steps necessary to prevent the exceedance of the cap on the cost to customers including, but not limited to, adjusting the Class I renewable energy requirement." N.J.S.A. 48:3-87.d(2).

On January 21, 2020, Governor Murphy signed into law amendments to the Clean Energy Act that provide the Board with more flexibility in implementing the Cost Cap. P.L. 2019, c. 448 (2019 Cost Cap Legislation). The 2019 Cost Cap Legislation, specifically, allowed the Board to utilize banking for EY 2019 through 2024, stating that:

...if in energy years 2019 through 2021 the cost to customers of the Class I renewable energy requirement is less than nine percent of the total paid for electricity by all customers in the State, the board may increase the cost to customers of the Class I renewable energy requirement in energy years 2022 through 2024 to a rate greater than seven percent, as long as the total costs to customers for energy years 2019 through 2024 does not exceed the sum of nine percent of the total paid for electricity by all customers in the State in energy years 2019 through 2021 and seven percent of the total paid for electricity by all customers in the State in energy years 2022 through 2024.

On July 9, 2021, Governor Murphy signed an additional set of amendments to N.J.S.A. 48:3-87.d(2) (P.L. 2021, c. 169, hereinafter referred to as the "Solar Act of 2021"), which added a requirement that the Board quantify and include energy and environmental savings attributable to the Class I program in its calculation of the Cost Cap:

In calculating the cost to customers of the Class I renewable energy requirement, the board shall reflect any energy and environmental savings attributable to the Class I program in its calculation, which shall include, but not be limited to, the social cost of carbon dioxide emissions at a value no less than the most recently published three percent discount rate scenario of the United States Government Interagency Working Group on Social Cost of Greenhouse Gases.

[page=1477] The U.S. Government Interagency Working Group on the Social Cost of Greenhouse Gases produces an evaluation of the harm to society caused by adding carbon dioxide (CO<sub>2</sub>) into the atmosphere, measured in dollars of economic harm per ton of CO<sub>2</sub> emitted, which includes, among other things: "changes in net agricultural productivity, human health effects, property damage from increased flood risk natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services." [footnote in original - Interagency Working Group on Social Cost of Greenhouse Gases February 2021. *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide*. [http://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf?source=email](http://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf?source=email).]

The Solar Act of 2021 also directed the Board to create two solar incentive programs, which the Board proposes to collectively refer to as the SuSI Program. On July 14, 2021, the Board approved the publication of proposed rules establishing the SuSI Program at Docket number QX21040728. The SuSI Program is made up of two distinct programs. Section 3 of the 2021 Solar Act establishes the small facilities program, which is designed to provide incentives to



current (dc)). The Board refers to the program implementing Section 3 of the 2021 Solar Act as the Administratively Determined Incentive (ADI) Program. Section 4 of the 2021 Solar Act establishes a market-based competitive program, to determine incentive levels for grid supply solar projects and net metered non-residential projects over five MW. The Board refers to the program implementing Section 4 of the Act as the Competitive Solar Incentive (CSI) Program. The Board has announced that it intends to conduct further stakeholder engagement through the summer and early fall of 2021, with a goal of launching the CSI Program in early 2022.

The Solar Act of 2021 states that the incentive payments provided by the Board pursuant to Section 4 of the Act, that is, the CSI Program, are not subject to the Cost Cap:

The costs of the competitive solicitation process, including the issuance of renewable energy incentive payments pursuant to paragraph (4) of subsection c. of this section, shall not be subject to the Class I renewable energy requirement cost cap established by paragraph (2) of subsection d. of section 38 of P.L.1999, c.23 23 (N.J.S.A. 48:3-87).

The Solar Act of 2021 does, however, direct the Board to include the costs of incentives paid pursuant to Section 3 of the Act, that is, the ADI Program, in the Cost Cap calculation.

The Board first established a stakeholder process to investigate how best to calculate the Cost Cap on December 6, 2019, when the Board directed Board staff to initiate "a proceeding on the calculation of the cost cap, and to report back to the Board regarding the recommendations and outcomes of said proceeding." On January 6, 2020, following the passage of the 2019 Cost Cap Legislation, Board staff issued a straw proposal and request for stakeholder comments. A public comment session was held on January 15, 2020, and written stakeholder comments were received until January 30, 2020.

Board staff made recommendations regarding the design of the SuSI Program and the calculation of the Cost Cap as part of its "Solar Successor Program: Staff Straw Proposal," in Docket No. QO20020184, issued on April 26, 2021, and amended on May 5, 2021 (Solar Successor Straw). Board staff held several public stakeholder comment sessions, and received written feedback on the straw proposal from interested stakeholders until May 14, 2021. Board staff's Solar Successor straw proposal included a detailed description of Board staff's proposed approach to the Cost Cap, including sample calculations.

### **Description of the Cost Cap Calculation**

The Cost Cap is defined in the Clean Energy Act as a percentage, derived by dividing the cost to ratepayers of the Cost Cap-Applicable Programs defined below (the numerator) by the total paid for electricity by all customers in the State (the denominator), and multiplying by 100.

In designing the process for calculating the Cost Cap, the Board is mindful of two key uses for the Cost Cap: first, the Cost Cap must be implemented in such a way as to provide regulatory certainty to developers and investors who need clear line of sight into how much capacity will be made available in the Board's Class I programs, including the new ADI component of the SuSI Program, for purposes of planning new development; and second, the Cost Cap will be considered in determining how much new capacity will be incentivized through the ADI

Program. In both cases, the end goal of the Cost Cap is to ensure that New Jersey's Class I



statute.

Pursuant to the CEA, as amended through the Solar Act of 2021, the Class I renewable energy programs subject to the Cost Cap are:

1. The Solar Renewable Energy Certificate (SREC) program;
2. The Transition Incentive (TI) Program that provides Transition Renewable Energy Certificates (TRECs);
3. The ADI Program proposed to be established by the Board as part of a new SuSI Program pursuant to the 2021 Solar Act, which provides Solar Renewable Energy Certificate-IIIs (SREC-IIIs); and
4. Class I Renewable Energy Certificates (Class I RECs) used to meet the Class I Renewable Portfolio Standard (RPS).

Collectively, these programs are referred to as the "Cost Cap-Applicable Programs." Pursuant to section 38.d(2) of the CEA, the costs of Offshore Wind Renewable Energy Certificates (ORECs) are omitted from the Cost Cap-Applicable Programs. As discussed above, the Solar Act of 2021 specifies that the costs of the CSI component of the SuSI Program are also exempted from the Cost Cap.

The CEA further directs that the Board "shall take any steps necessary to prevent the exceedance of the cap on the cost to customers including, but not limited to, adjusting the Class I renewable energy requirement." N.J.S.A. 48:3-87.d(2). In light of this mandate, the proposed rules also set forth measures that the Board may take, including reducing the size of the new ADI Program and/or reducing the size of the Class I RPS.

For context, the Board notes that the SREC and TI Programs were "uncapped," which meant that there were no limits on the number of qualifying solar facilities that could register to receive an incentive; any project was free to register for an SREC or TREC incentive, so long as the project met the program rules and regulations. The proposed rules for the ADI Program, however, change this dynamic and propose to direct the Board to set a limit on the number of megawatts that can be registered to receive incentives each year. This limit, known as "MW blocks" is proposed to be established annually, by Board order, taking into account the Cost Cap calculation performed pursuant to this rulemaking. Implementation of the Cost Cap for the ADI Program, therefore, requires careful program design that accounts for the possibility that the Cost Cap may be a constraint on the Board's ability to authorize annual incentives under the ADI Program.

### **Addressing the Lag in Cost Cap Calculation Data**

The proposed new rule also addresses the inherent lag in the availability of several of the inputs into the Cost Cap. The Cost Cap is a backwards looking indicator, because the data needed to definitively calculate the Cost Cap only become available after the end of an energy year, once retail sales, SREC prices, TRECS retired, and other factors become known. However, the Board is required to make decisions about how much to spend on Cost Cap-Applicable Program incentives, prospectively. For example, the Board must determine the capacity allocated to MW blocks within the ADI Program or whether to make any changes to



N.J.A.C. 14:8-2.12(d), the Board proposes that prior to the start of each energy year, Board staff will develop a forecast of the Cost Cap calculation, based on a forecast of total paid for electricity by all customers in the State, and on how much is forecasted to be spent in the Cost Cap-Applicable Programs in the upcoming energy year. On the basis of this forecast, the Board will issue an order determining the capacity allocations for the ADI Program, and, if it deems necessary, adjusting the Class I RPS compliance obligations established at N.J.A.C. 14:8-2.3(a) for the upcoming energy year. Second, at the end of each energy year, the Board proposes, at N.J.A.C. 14:8-2.12(e), to conduct a "true-up" that compares the Board's forecasted spending for the energy year with the [page=1478] actual expenditures for that energy year, once the data become available. After conducting the true-up, if the Board finds that funds were spent in excess of the Cost Cap, those funds would be deducted from the amount eligible to be spent in the next energy year for which ADI Program targets have not yet been set. The forecast and the true-up for the prior energy year may be conducted as part of the same order, or as separate orders.

### **Calculation of Modifications to the Cost Cap**

The Solar Act of 2021 directs the Board to "reflect any energy and environmental savings attributable to the Class I program in its calculation" of the cost to customers of the Class I renewable energy requirement. The Act effectively directs the Board to conduct two separate adjustments to the "cost to customers." In interpreting the Act, the Board understands the term "savings" as requiring the quantification of ancillary benefits of the Class I resources, either in terms of reducing wholesale electricity market costs or in reducing the emissions of greenhouse gases. The Board proposes to calculate these "savings" as the sum of two numbers. First, the proposed rules consider the energy benefits attributable to the Class I program. Second, the proposed rules consider environmental benefits attributable to the Class I program, "which shall include, but not be limited to, the social cost of carbon dioxide emissions at a value no less than the most recently published three percent discount rate scenario of the United States Government Interagency Working Group on Social Cost of Greenhouse Gases." N.J.S.A. 48:3-87.d(2). The proposed new rule would require that Board staff conduct a forecast of the two calculations, as discussed below, prior to each energy year, followed by a true-up at the end of the energy year.

### Energy Savings Attributable to the Class I Program

For energy savings, the Board proposes to assess what electricity costs would have been without the Class I REC program, compared to the actual costs reported by the regional electricity market operator, PJM Interconnection (PJM). As Board staff explained in the Solar Successor Straw proposal:

The reduced load associated with solar deployment is expected to reduce indirect energy and capacity prices for all New Jersey consumers. PJM operates a single-clearing price market, and the price is set at the point that supply and demand meet. PJM determines the clearing price by creating a "supply stack" of all eligible resources based on their strike price. The least expensive resources are lower on the supply stack and are selected first. The penultimate least expensive resource is selected next, and so on, until supply matches the anticipated demand. However, solar investments reduce demand, which in turn



capacity markets.

See Board staff's Solar Successor Straw at p. 33. Furthermore, the addition of low-marginal-cost supply of electricity through grid-supply solar projects shifts the merit-order supply curve to the right, that is, adds low-cost resources to the bottom of the supply stack.

Studies of energy markets (NREL 2018. Jenkin, Thomas, Andrew Larson, Ben King, Mark Ruth, and Paul Spitsen. The Use of Statistically Based Rolling Supply Curves for Electricity Market Analysis: A Preliminary Look. Golden, CO: National Renewable Energy Laboratory. NREL/TP-6A20-70954. <http://www.nrel.gov/docs/fy18osti/70954.pdf> and LBNL 2021. Mills, A., R. Wiser, D. Millstein, J.P. Carvallo, W. Gorman, J. Seel, and S. Jeong. The Impact of Wind, Solar, and Other Factors on the Decline in Wholesale Power Prices in the United States, in Applied Energy. Pre-print November 2020) have shown that reduced energy demand, attributable to behind-the-meter solar, for example, reduces total demand in the wholesale market. While the impact of additional solar on energy prices is relatively small when expressed in terms of an impact on market prices, it can be significant when expressed in absolute dollar terms and applied to all wholesale purchases for New Jersey consumers. The two effects identified above translate directly into reduced wholesale prices for all market participants. These savings represent a societal benefit to all consumers in New Jersey, whether they invested in solar themselves or not, and are, therefore, appropriate to include as benefits from deploying solar energy projects in New Jersey.

To estimate the impact of the energy and capacity market savings attributable to the Class I Program, the Board proposes, at new N.J.A.C. 14:8-2.12(a), that Board staff estimate the annual energy savings to determine the impact of reduced load and lower cost clean energy resources on electric and capacity energy prices. Board staff will use publicly available analyses of these impacts, as well as data from PJM, to estimate the energy savings. Energy savings values will be calculated on an energy year basis (June-May) and published by Board staff annually.

#### Environmental Savings to the Class I Program

The health benefits of clean energy are well understood and documented and are commonly used in analysis of clean energy and environmental programs at both the Federal and State level. Further, the environmental benefits of clean energy are specifically identified in the Clean Energy Act and the 2019 Energy Master Plan as key New Jersey policy goals. As required by the Solar Act of 2021, the Board is now required to calculate some of these benefits for purposes of Cost Cap implementation.

The Board proposes to determine the environmental savings attributable to the Class I REC Program by analyzing the tons of carbon dioxide (CO<sub>2</sub>) that would have been emitted without the Class I REC Program, and then comparing that to the amount of CO<sub>2</sub> that was created with the Class I REC Program. The Board believes that doing this type of comparison of emissions with and without Class I REC Program energy represents the best expression of the statutory intent that the Board identify the "environmental savings" of these programs. Specifically, in implementing the requirements of the Solar Act of 2021, the Board proposes to calculate the environmental savings attributable to Class I REC Program by multiplying the tons of CO<sub>2</sub> emissions reduced as a result of the Class I REC Program by the value of each ton of CO<sub>2</sub> emission avoided, as published by the U.S. Environmental Protection Agency



estimated reduction in emissions and the financial value of those benefits, which will form the basis for further Board action, if necessary. In determining the reduction in CO<sub>2</sub> emissions, the Board proposes to rely on publicly available calculations of the average carbon intensity of electric generators in the PJM region produced by PJM and available at:

<http://www.pjm.com/-/media/library/reports-notice/special-reports/2020/2020-emissions-report.ashx>. Electricity produced by clean energy resources tends to displace an equivalent amount of fossil fuel generation, thereby reducing total CO<sub>2</sub> emissions for any given amount of electricity used by consumers. To calculate the reduction in CO<sub>2</sub>, the proposed new rule requires Board staff to, on an annual basis, consider historical average CO<sub>2</sub> electric emissions data and to determine the impact of increased carbon-free generation on CO<sub>2</sub> emissions.

In terms of valuing the CO<sub>2</sub> emissions avoided, the Solar Act of 2021 directs the Board to use the EPA Interagency Working Group values for the social cost of CO<sub>2</sub> for valuing the benefits associated with electricity produced by electric generators participating in the Class I Program "at a value no less than the most recently published three percent discount rate scenario of the United States Government Interagency Working Group on Social Cost of Greenhouse Gases." The EPA publishes the most recent social cost of carbon data here: <http://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html>. The proposed new rules also allow the Board to determine, through a Board order and after conducting a stakeholder comment process, whether to use a discount rate in the future that is higher than the three percent rate. In deciding whether to use a higher discount rate, the Board will consider whether the expected harm to New Jersey's future economic output warrants the use of a higher discount rate.

In addition to benefits associated with reducing CO<sub>2</sub> emissions, installing solar energy projects may reduce harmful air pollutants from fossil fuel combustion, including sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and particulate matter (PM<sub>2.5</sub>). However, for purposes of efficiency and ease of administrative implementation, the Board does not propose specific rules to quantify these additional environmental savings at this time, but does propose that the Board may elect to do so through a Board order after seeking public comments.

#### [page=1479] **Summary of Proposed New Rules**

At new N.J.A.C. 14:8-2.12(a), the Board proposes to define the process that the Board will use to calculate the annual anticipated costs of Class I renewable energy resources for the next energy year that are subject to the statutory Cost Cap (the numerator of the Cost Cap calculation), which shall be equal to the annual cost of SRECs, TRECs, SREC-IIIs from the ADI Program, Class I RECs, and any future Class I program, as reported in the annual RPS compliance reports produced by Board staff. Board staff will then adjust that value by the dollar value of any energy and environmental savings attributable to the Class I program. The Board also proposes the calculation of the total paid for by electricity (the denominator of the Cost Cap calculation).

At N.J.A.C. 14:8-2.12(b), the Board proposes to annually certify through a Board order that the annual cost percentage calculated at N.J.A.C. 14:8-2.12(a) does not exceed the Cost Cap set forth at N.J.S.A. 48:3-87.d(2), which is nine percent in energy years 2019, 2020, and 2021, and does not exceed seven percent in any energy year thereafter, except as may otherwise be allowable pursuant to the statute and further detailed at proposed N.J.A.C.





year 2024 any amount that was not spent in a given energy year but was eligible to be spent under the Cost Cap, between energy year 2019 and energy year 2024, as directed by the 2019 Cost Cap Legislation.

At N.J.A.C. 14:8-2.12(d), the Board proposes that prior to the start of each energy year, Board staff will develop a forecast of the Cost Cap calculation, which will inform the Board's estimated budget for Class I program incentives in the coming energy year. Because the Board is required to make decisions about how much to spend on Cost Cap-Applicable Program incentives prospectively, the forecast represents the best data available at the time. Based on the forecast, the Board will issue an order determining the capacity allocations budgeted to the ADI Program, and, if it deems necessary, adjust the Class I RPS compliance obligations established at N.J.A.C. 14:8-2.3(a) for the upcoming energy year.

At N.J.A.C. 14:8-2.12(e), the Board proposes to create an annual true-up mechanism of the calculation of the Cost Cap for prior energy years. Any funds spent in excess of the Cost Cap in a given energy year are deducted from the amount eligible to be spent in the next energy year for which ADI Program MW blocks have not yet been set.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

Customer affordability is one of the key metrics the Board looks at when approving new clean energy incentives. The proposed new rule has a positive social impact because it requires the Board to formally report on its attempt to balance the need to protect our environment with the need to keep electricity rates affordable. Implementing the Cost Cap constitutes an important protection for New Jersey consumers in that it caps the total percentage of electricity costs that the Board proposes to spend to meet the Class I programs, which include many of the State's signature clean energy initiatives. Balancing affordability and expanded access to clean energy are both key to an equitable and just transition to a clean energy future.

Another positive social impact of the proposed new rule is that it will ensure that the Board formally considers how increased clean energy provides numerous public health and environmental benefits to all New Jersey citizens. As stated above, the social cost of carbon measures a wide variety of impacts of climate change damages, including human health, natural disasters, and disruption of energy systems. The proposed new rule ensures that the Board expressly estimate the benefits associated with reducing carbon emissions, thus providing the public a transparent understanding of the savings that New Jersey consumers receive from the Class I programs in the form of better human health, fewer healthcare-related expenses, job opportunities in the clean energy economy, reduced emissions, and energy savings.

### **Economic Impact**

Affordable access to electricity is a key driver of New Jersey's economy. The proposed rulemaking does not impose any costs or have any direct economic impact on the regulated community or the public, in general. However, the rule is expected to have indirect economic impacts, including ensuring an appropriate balance between electricity affordability and



on an annual basis, post-2021. In the short term, the implementation of the Cost Cap is not expected to drive significant changes in the availability of solar incentives to new projects. In the longer-term, the implementation of the Cost Cap will require the Board to balance the costs of incentivizing the development of additional clean energy resources with the need to keep electricity rates affordable.

Generally, higher electricity rates make New Jersey businesses less competitive against businesses located in states with lower electricity rates, while cleaner air and the attendant health benefits make New Jersey's workforce healthier and more resilient. The proposed new rule explicitly quantifies the environmental benefits of the Board's clean energy programs. As noted above, various studies have put a high value on the environmental benefits reducing planet-warming greenhouse gases, as well as reductions in harmful particulate and other emissions. Further, the rules propose to quantify the energy benefits of clean energy resources incentivized under the Board's programs, which tend to reduce the cost of wholesale electricity and capacity costs by reducing demand for electricity in the wholesale market.

As discussed in the Jobs Impact below, the solar industry is an important source of jobs in New Jersey. The proposed rules would play a critical function in ensuring the success of New Jersey's solar industry and the over 5,000 jobs it brings to the State by enabling the development of new solar facilities.

The changes in the proposed rulemaking and the transparency afforded will help provide regulatory certainty to developers, improving their ability to invest and obtain financing for new solar development. The investment of private capital into New Jersey's clean energy economy likewise produces substantial direct and indirect benefits.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. This rulemaking has no Federal analogue and is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the proposed new rule.

### **Jobs Impact**

The proposed new rule is not expected to have an immediate direct impact on jobs, because the statutory limit is not expected to impact the Board's clean energy program until the mid-to-late 2020s, if at all. While, over time, it is possible that the Cost Cap could ultimately limit the growth of solar jobs in New Jersey, given the expected decrease in solar electricity costs anticipated over the same time period, there may never be a conflict between the size of the solar program and consumer costs. However, should the Cost Cap be in danger of being breached, the proposed new rule would require the Board to reduce spending on new Class I resources, including potentially limiting purchases of additional solar or reducing incentives paid under the ADI program. Any such changes would only affect projects that have not yet successfully registered in the ADI Program. The Board is mindful that higher electricity rates



aggressive solar and clean energy programs do tend to increase the cost of electricity to end-use consumers, including, residents and businesses. At the same time, affordable access to solar energy can result in substantial savings for those same residents and businesses. The proposed new rule sets a cap on the overall cost of the Class I renewable energy programs, while maintaining the benefits for [page=1480] customers that opt to invest in solar, therefore, balancing the need to keep cost of electricity competitive for New Jersey residents and businesses.

Additionally, the proposed new rule plays a critical function in ensuring the success of New Jersey's solar and clean energy industries. Solar energy alone provides over 6,000 jobs in New Jersey. In particular, the proposed new rule provides a clear policy and process for the continuation of the solar industry in New Jersey. The process laid out in this rule, which includes an initial estimate followed by a true-up after actual data becomes available, substantially lowers the risk of an unanticipated slowdown in solar development. This transparency around the Board's decision-making process tends to make businesses and investors more willing to put capital to work in the New Jersey solar market. The continuation of the solar program will lead to direct job creation and retention in the State.

#### **Agriculture Industry Impact**

The rulemaking to define the method by which the Board will calculate and enforce the Cost Cap does not affect the siting of solar facilities. It is, therefore, not expected to have any impact on the agriculture industry.

#### **Regulatory Flexibility Statement**

This rulemaking will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees.

#### **Housing Affordability Impact Analysis**

This rulemaking will not impact the affordability of housing in New Jersey, nor will it have an impact on the average cost of housing. This rulemaking only addresses compliance with the Cost Cap, and will not directly affect housing prices or the housing market.

#### **Smart Growth Development Impact Analysis**

This rulemaking will not impact smart growth development in New Jersey. This rulemaking will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The scope of the rulemaking is limited to establishing a methodology for establishing and enforcing the statutory Cost Cap on the Class I RPS program.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Board evaluated this rulemaking and determined that it will not have an impact on pretrial, detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.



#### 14:8-2.12 Class I RPS Cost Cap

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

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

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

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

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

iii. The environmental savings attributable to the Class I program shall be equal to the tons of carbon dioxide not emitted by electric generators located in the PJM region as a result of the Class I renewable energy requirement multiplied by the social cost of carbon value. To calculate the tons of carbon dioxide not emitted, staff shall, on an annual basis, multiply the average historical electric carbon dioxide emissions rate as most recently published by PJM Interconnection by the number of megawatt-hours of zero-carbon electricity generated by



published United States Government Interagency Working Group on Social Cost of Greenhouse Gases, which is currently set at the three percent discount rate. The Board may elect, through a Board order, to adjust the social cost of carbon value used based on society's evolving understanding of the costs imposed on society by global climate change, after a notice and comment proceeding, provided that the Board shall not select a scenario that results in a social cost of carbon less than the three percent discount rate. The Board may consider, through a Board order, additional environmental savings associated with reduced particulate matter and other harmful emissions from fossil fuel power plants after a notice and comment proceeding. Any changes to the metrics for calculating the social cost of carbon or the addition of additional environmental savings shall be made only after publication of the proposed changes on the Board's website and a public comment period of at least 30 days.

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

- i. The energy costs, as reported by the Energy Information Administration (EIA); and
- ii. The capital costs of electric generating facilities not otherwise covered in the EIA data amortized over their expected life, including, but not limited to, host-owned behind-the-meter solar projects.

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

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

(c) Annually, the Board shall identify, through a Board order, any amount that was not spent in a given energy year, but was eligible to be spent under the Cost Cap, between energy years 2019 through 2024. [page=1481] Those values shall be carried over and made available in future energy years until energy year 2024, so long as the total costs to customers for energy years 2019 through 2024 do not exceed the sum of nine percent of the total paid for electricity by all customers in the State in energy years 2019, 2020, and 2021 and seven percent of the total paid for electricity by all customers in the State in energy years 2022, 2023, and 2024.

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



is reestablished.

(e) Board staff shall provide, on an annual basis, a true-up calculation of the Cost Cap for the prior energy years based on new data that has become available since the prior true-up. In the event that the true-up finds that funds were spent in excess of the Cost Cap in a given energy year, those funds shall be deducted from the amount eligible to be spent in the next energy year and the Board shall take actions as specified at (d) above. Any reduction in incentives or incentive availability attributable to Cost Cap compliance will only apply to projects that have not yet registered in the SuSI program or, in the case of projects located on contaminated lands temporarily eligible for the ADI Program (see N.J.A.C. 14:8-11.7(b)7), those that have not yet received a conditional certification issued by the Board.

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