Staff's plan to propose changes to the Energy Efficiency and Renewable Energy Rules (N.J.A.C. 14:8) to implement the Solar Act 2012

June 2014 (Revised)

Comments due by June 30 for discussion at the July RE Stakeholder meeting.
Send comments to publiccomments@njcleanenergy.com

1. Prescriptive and Near Term Changes to Chapter 8

➢ ***Definitions:***

- ***Redefined Class I and Class II*** *[N.J.S.A. 48:3-51]*

*"**'Class I renewable energy'** means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, **small scale hydropower facilities with a capacity of three megawatts or less and put into service after the effective date of P.L.2012, c.24,** and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner;"*

- Class I renewable energy is now to include small scale hydropower facilities of 3 MW or less that are placed in service after July 23, 2012 (the effective date of S.B. 1925); located in the state and connected to the distribution system.

*"**'Class II renewable energy'** means electric energy produced at a hydropower facility with **a capacity of greater than three megawatts or a resource recovery facility**, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities;"*

- The definition of Class II renewable energy is expanded to include electricity generated by hydropower facilities larger than 3 megawatts (MW)

- **Connected to the distribution system** *[N.J.S.A. 48:3-51]*

  "'Connected to the distribution system' means, for a solar electric power generation facility, that the facility is: (1) ***connected to a net metering customer's side of a meter****, regardless of the voltage at which that customer connects to the electric grid, (2)* ***an on-site generation facility****, (3)* ***qualified for net metering aggregation*** *as provided pursuant to paragraph (4) of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87), (4)* ***owned or operated by an electric public utility*** *and approved by the board pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1), (5)* ***directly connected to the electric grid at 69kilovolts or less****, regardless of how an electric public utility classifies that portion of its electric grid, and is designated as "connected to the distribution system" by the board pursuant to subsections q. through s. of section 38 of P.L.1999, c.23 (C.48:3-87), or (6) is certified by the board, in consultation with the Department of Environmental Protection,* ***as being located on a brownfield, on an area of historic fill, or on a properly closed sanitary landfill facility.*** *Any solar electric power generation facility, other than that of a net metering customer on the customer's side of the meter, connected above 69 kilovolts shall not be considered connected to the distribution system;"*

- **Farmland** (subsection s) *[N.J.S.A. 48:3-51]*

  "'Farmland' means land ***actively devoted to agricultural or horticultural*** *use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.);"*
  - Farmland is defined due to its pertinence to subsection s, as the board looks to phase out solar project development on farmland and encourage development on brownfields, properly closed landfills, and historic fills.

- **"On-site generation facility"** *means a generation facility, including, but not limited to, a generation facility that produces Class I or Class II renewable energy, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located 2 [~~for the specific purpose of supplying generation to the end use customer's property. The total output of the on-site generation facility shall be used to serve the load of the on-site end use customer~~]2 [~~unless the customer is eligible for and engaged in virtual net metering aggregation~~]1 An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way, or if the end use customer is purchasing thermal energy services produced by the on site generation facility, for use for heating or cooling, or both, regardless of whether the customer is located on property that is separated from the property*

on which the on-site generation facility is located by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way;

- ***Definitions Pertinent to Subsection t.-*** regarding solar development on brownfields, properly closed landfills and historic fills. They have been newly defined to encourage solar development on those types of sites. *[N.J.S.A. 48:3-51]*

  "'Brownfield' *means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant;*

  "'Properly closed sanitary landfill facility' *means a* ***sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities*** *associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility;*

  "'Historic fill' *means generally* ***large volumes of non-indigenous material, no matter whatdate they were emplaced on the site, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement*** *and which include, but are not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non-hazardous solid waste. "Historic fill" shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slags, or tailings;"*

- **RPS return to percentage requirement** *[N.J.S.A. 48:3-87(d)]*

  "the board establish a multi-year schedule, applicable to each electric power supplier or basic generation service provider in this State, beginning with the one-year period commencing on June 1, 2010, and continuing for each subsequent one-year period up to and including, the one-year period commencing on June 1, 2028, that ***requires the following number or percentage, as the case may be, of kilowatt-hours sold in this State*** *by each electric power supplier and each basic*

generation service provider to be from solar electric power generators connected to the distribution system in this State"

- The legislation passed in 2010 detailed that the RPS would be in GWh. In 2010 the legislation required that electric suppliers obtain a minimum of 195 GWh of solar electric power in EY 2010 and increasing to 5, 316 GWhs in EY 2027. (N.J.A.C. 14:8-2)

- The 2012 legislation returns the RPS back to a percentage requirement and accelerates the requirements with the following schedule for the solar carve out beginning in EY 2014: *[N.J.S.A 48:3-87(d)(3)]*

➢ ***RPS Solar requirements* 4.1%** of sales from qualifying solar electric generation facilities by EY 2028 *[N.J.S.A. 48:3-87(d)(3)]*

*"…**EY 2028 4.100%, and for every energy year thereafter, at least 4.100% per energy year to reflect an increasing number of kilowatt-hours** to be purchased by suppliers or providers from solar electric power generators connected to the distribution system in this State, and to establish a framework within which, of the electricity that the generators sell in this State, suppliers and providers shall each obtain at least 3.470% in the energy year 2021 and 4.100% in the energy year 2028 from solar electric power generators connected to the distribution system in this State…"*

Previous Solar Requirements Solar Advancement Act of 2010 (P.L. 2009, c. 289)		*Adjusted Solar Requirements* Solar Act of 2012 (P.L. 2012, c. 24)	
EY 2011	306 GWhrs	EY 2011	306 GWhrs
EY 2012	442 GWhrs	EY 2012	442 GWhrs
EY 2013	596 GWhrs	EY 2013	596 GWhrs
EY 2014	772 GWhrs	EY 2014	2.050%
EY 2015	965 GWhrs	EY 2015	2.450%
EY 2016	1,150 GWhrs	EY 2016	2.750%
EY 2017	1,357 GWhrs	EY 2017	3.000%
EY 2018	1,591 GWhrs	EY 2018	3.200%
EY 2019	1,858 GWhrs	EY 2019	3.290%
EY 2020	2,164 GWhrs	EY 2020	3.380%
EY 2021	2,518 GWhrs	EY 2021	3.470%
EY 2022	2,928 GWhrs	EY 2022	3.560%
EY 2023	3,433 GWhrs	EY 2023	3.650%
EY 2024	3,989 GWhrs	EY 2024	3.740%
EY 2025	4,610 GWhrs	EY 2025	3.830%
EY 2026	5,316 GWhrs	EY 2026	3.920%
EY 2027 +>	5,316 GWhrs	EY 2027	4.010%
		EY 2028 +>	4.010%

- **SREC Registration Program (SRP) @ N.J.A.C. 14:8-2.4**

  - Change the submittal time for SRP registrations for Net Metered, Aggregated Net Metered and onsite generation projects from 10 days to 14 calendar days from contract execution date.
  - Changes to accommodate grid supply projects that require Board approval:
    - Require SRP within 14 days of Board approval.
    - Extend construction period to two years with the availability of one six month extension, if needed.

- **SREC Projects addition to Prevailing Wage Statute** *[N.J.S.A. 48:3-87(v)]*

"The issuance of SRECs for all solar electric power generation facility projects pursuant to this section, for projects connected to the distribution system with a capacity of one megawatt or greater, **shall be deemed "Board of Public Utilities financial assistance"** as provided pursuant to section 1 of P.L.2009, c.89 (C.48:2-29.47)"

  - Solar electric projects that generate SRECS will be deemed as receiving "Board of Public Utilities financial assistance", and added to the existing Prevailing Wage Statute, which details that workers employed for the construction of projects that receive Board of Public Utility financial assistance will not be paid less than the prevailing wage rate.

- Assorted RPS Housekeeping issues
  - Change NJDEP Address to request a Biomass Sustainability and Environmental Compliance Determination to "Office of the Commissioner" in N.J.A.C. 14:8-2.5 and 2.6.

- **Readopt Net Metering Aggregation** (subsection e-4) *[N.J.S.A. 48:3-51]*

  "'Net metering aggregation' means a procedure for calculating the combination of the annual energy usage for all facilities owned by a single customer where such customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority, and which are served by a solar electric power generating facility as provided pursuant to paragraph (4) of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87):"

  "Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing: (1) net metering standards for electric power suppliers and basic generation service providers. The standards shall require electric power suppliers and basic generation service providers to offer net metering at non-discriminatory rates to

industrial, large commercial, residential and small commercial customers, as those customers are classified or defined by the board, that generate electricity, on the customer's side of the meter, using a Class I renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period. Systems of any sized capacity, as measured in watts, are eligible for net metering."

- Public entities have the ability to aggregate usage at multiple facilities; any extra electricity generated at the end of the annualized period will be the credited at the wholesale price not the retail price.
- The board is directed to adopt standards within 270 days after the Solar Act enactment date.

Special Adoption Effective Date: March 21, 2013, Expiration Date: September 20, 2014. Re-adoption needs to be proposed before expiration date.

- **Subsection r Applications for Board Approval as "Connected to the Distribution System"** *[N.J.S.A. 48:3-87 (r)]*

"For all proposed solar electric power generation facility projects except for those solar electric power generation facility projects approved pursuant to subsection q. of this section, and for all projects proposed in each energy year following energy year 2016, a ***proposed solar electric power generation facility that is neither net metered nor an on-site generation facility, may be considered "connected to the distribution system" only upon designation as such by the board****, after notice to the public and opportunity for public comment or hearing,"*

- Any solar generation project that is not already defined as connected to distribution, other than those under subsection q., projects after EY 2017, and that are not considered net metered or on site generation, must be designated and approved as "connected to the distribution system" by the board.

  - The board shall approve designation of the proposed solar electric generation facility as "connected to the distribution system" based on the following criteria:
    a) *"the SRECs forecasted to be produced by the facility do not have a detrimental impact on the SREC market or on the appropriate development of solar power in the State;*
    b) *the approval of the designation of the proposed facility would not significantly impact the preservation of open space in this State;*
    c) *the impact of the designation on electric rates and economic development is beneficial; and*
    d) *there will be no impingement on the ability of an electric public utility to maintain its property and equipment in such a condition as to enable it to provide safe, adequate, and proper service to each of its customers."*

- **Subsection t Applications Encourage solar project on landfill, brownfields, and historic landfills** [N.J.S.A 48: 3-87(t)] In compliance with the statute, the board acted within 180 days of the passage of the Solar Act, and established a Subsection t application process, however is mindful of the rule making obligation needed to further define the subsection (See I/M/O The Implementation of the L. 2012, C. 24, N.J.S.A. 48:3-87 (T), Docket Number EO12090832V, 1/23/13).

  "No more than 180 days after the date of enactment of P.L.2012, c.24, the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to ***establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility****, including those owned or operated by an electric public utility and approved pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1)."*

  - Codify the Subsection t. certification process established by the Board to provide SRECs to owners of solar generation projects certified as being located on a brownfield, historic land fill or a properly closed sanitary land fill property.
    - Eligible projects which demonstrate consistency with the definitions provided by the Solar Act require a certification process under this section to be considered as "connected to the distribution system" in order to generate SRECS,
    - Provide a conditional certification process for proposed projects which require additional remedial action, construction permit compliance with the NJDEP with full certification provided by staff after applicants demonstrate compliance with all state permits
    - Link the Subsection t application process with the RPS SREC Registation process at N.J.A.C. 14:8-2.4