

1. Have completed at least six hours of education or training in telesupervision. The education or training shall:
 - i. Include, at a minimum, the following topics:
 - (1) Appropriateness of telesupervision;
 - (2) Handling clinical emergencies;
 - (3) Best practices and informed consent;
 - (4) Teletherapy theory and practice;
 - (5) Modes of delivery of supervision, including Health Insurance Portability and Accountability Act (HIPAA)-compliant technology; and
 - (6) Legal and ethical issues.
 - ii. Be a course or program approved by one of the entities set forth at N.J.A.C. 13:34-5.3(a)1, from a regionally accredited institution of higher education, or by the Board.
2. Have at least one in-person, face-to-face meeting with the intern or licensed associate marriage and family therapist prior to utilizing telesupervision.
3. Determine that telesupervision is appropriate for the intern or licensed associate marriage and family therapist, considering the individual's professional, intellectual, emotional, and physical needs;
4. Be competent in the use of technology-assisted media;
5. Take necessary precautions to protect the privacy and security of all client information;
6. Inform interns and licensed associate marriage and family therapists of the potential risks and benefits associated with telesupervision;
7. Consider the risks and responsibilities associated with telesupervision, and advise interns and licensed associate marriage and family therapists, in writing, of these risks, as well as the respective responsibilities for minimizing these risks; and
8. Consider the potential benefits and limitations in the supervisor's choices of technology-assisted media for a specific intern or licensed associate marriage and family therapist in a particular situation.
 - (b) A qualified supervisor who engages in telesupervision shall use interactive, real-time, two-way communication technologies, which shall include a video component that allows the qualified supervisor to see the intern or licensed associate marriage and family therapist.
 1. Notwithstanding (b) above, a qualified supervisor shall consider that asynchronous communications may augment telesupervision.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Siting Rules for Grid Supply and Large Net Metered Solar Facilities

Adopted Amendment: N.J.A.C. 14:8-1.2

Adopted New Rule: N.J.A.C. 14:8-12

Proposed: February 6, 2023, at 55 N.J.R. 135(a) (see also, 55 N.J.R. 523(a)).

Adopted: August 16, 2023, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dr. Zenon Christodoulou, Christine Guhl-Sadovy, Marian Abdou, Commissioners.

Filed: August 22, 2023, as R.2023 d.107, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-12, 48:3-49 et seq., 48:3-87, 48:3-115, and 48:3-119.

BPU Docket Number: QX22100654.

Effective Date: September 18, 2023.

Expiration Date: February 27, 2026.

Summary of Public Comments and Agency Responses:

Written comments were received by: Atlantic City Electric (ACE); CS Energy; and New Jersey Division of Rate Counsel (RC).

General Comments

1. COMMENT: The commenter remains very supportive of New Jersey's environmental protection and clean energy policy goals. (ACE)
RESPONSE: The Board of Public Utilities (Board) thanks ACE for its support.

2. COMMENT: The commenter is glad to see the Board drawing on lessons from similar programs in other states in developing the Competitive Solar Incentive (CSI) Program. (CS Energy)

RESPONSE: The Board thanks CS Energy for its comment.

3. COMMENT: The commenter supports the adoption of the Board's notice of proposal, with its recommended amendments as detailed in their comments, and subject to its recommended re-publication with substantial amendment of the provisions governing CSI facilities located on covered agricultural lands. (RC)

RESPONSE: The Board thanks Rate Counsel for its support of the Board's notice of proposal; however, the Board disagrees with making the substantial changes regarding CSI facilities on covered agricultural lands recommended by Rate Counsel and explains its rationale in the Response to Comments 28 through 32 made specific to N.J.A.C. 14:8-12.8(g).

N.J.A.C. 14:8-1.2 Definitions

4. COMMENT: The commenter notes the Board has not implemented a pilot program pursuant to the Dual-Use Pilot Program legislation. Thus, the commenter indicates the usage of the term "dual-use" be removed from the proposed definitions and the last sentence at proposed N.J.A.C. 14:8-12.4(d), since the commenter also recommends deleting this sentence and the term is only used once in the proposed new rules. (RC)

RESPONSE: The Board disagrees with removing the term "dual-use" from N.J.A.C. 14:8-1.2. "Dual-use" was added and defined for its use exclusively at N.J.A.C. 14:8-12.4(d) and is not used anywhere else in this chapter at this time. The Board anticipates fulfilling its statutory responsibility pursuant to the Dual-Use Solar Act at N.J.S.A. 48:3-87.13 in the near future. The Board also disagrees with removing the last sentence of proposed N.J.A.C. 14:8-12.4(d) and explains its rationale below at Response to Comment 17.

N.J.A.C. 14:8-12.1 Scope

5. COMMENT: The commenter supports the proposed scope because it will allow the projects to be monitored and ensure project developers are not "hoarding" available space or participating in other anti-competitive activity. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

6. COMMENT: The commenter notes previous stakeholder comments from the solar industry regarding concerns with registration requirements due to claims of disclosing confidential information should not deter the Board from implementing the proposed registration requirements. The commenter cites the Board's procedures in place pursuant to N.J.A.C. 14:1-12 and 12.1(b) should be sufficient to protect from any disclosures that would adversely affect the solar developers' ability to compete fairly in the Board's solicitation process. (RC)

RESPONSE: The Board thanks Rate Counsel for its comment.

N.J.A.C. 14:8-12.2 Definitions

7. COMMENT: The commenter is concerned with potential confusion between terminology used in the Board's existing rules and its proposed rule, namely "Aggregated Net Metering" and "Aggregate Solar Development," respectively. The commenter cautions that the resulting confusion will create more administrative burden for the Board and utilities. As such, the commenter recommends replacing the word "aggregate" with a synonym for the proposed new term. (ACE)

RESPONSE: The Board appreciates the commenter's concern and has changed the term to "cumulative solar development" throughout the rule in order to avoid confusion. The regulatory effect of the text remains the same.

8. COMMENT: While the commenter notes several of the proposed definitions for new terms appear consistent with the relevant statutory directives, the commenter disagrees with the definition of "Statewide threshold." Based on its evaluation of the Solar Act of 2021 (Act), the commenter believes the intent of the provision of the two and a half percent calculation is to apply to unreserved farmland, not preserved

farmland. The commenter states that changing the definition to reflect that unreserved farmland is included in the calculation of the Statewide threshold will align with the definition of the county concentration limit of five percent at N.J.S.A. 48:3-119(f) which specifies “unreserved” farmland. Thus, the commenter recommends revising the definition to indicate the Statewide limit as two and a half percent to be calculated based on the covered agricultural land located on unreserved farmland, that is, “unreserved” covered lands. (RC)

RESPONSE: The Board declines Rate Counsel’s proposal to modify the rule. Rate Counsel reasons that applying the two and a half percent calculation to unreserved farmland will align that calculation with the definition of the county concentration limit of five percent. However, the Act specifically excludes preserved farmland from the designation of the five percent county concentration limit, but does not exclude preserved land in the designation of the two and a half percent Statewide threshold. The Board relies on this distinction and inference in the statutory language: the Statewide cap is to be calculated by looking at preserved and unreserved farmland, while the per-county cap is to be calculated on the basis of unreserved farmland only. Section 6(e) of the Act prohibits siting of solar projects on preserved farmland, unless undertaken consistent with the requirements at N.J.S.A. 4:1C-32.4 et seq., which governs the construction of solar electric power generation facilities on those lands. Nothing in the Board’s rules alters the process for siting solar facilities on preserved farmland.

N.J.A.C. 14:8-12.3 Siting prohibitions

9. COMMENT: The commenter supports the proposed requirements for prohibited land uses at N.J.A.C. 14:8-12.3(a), indicating they reflect the prohibitions pursuant to the statute. (RC)

RESPONSE: The Board thanks Rate Counsel for its comment.

10. COMMENT: With respect to the siting restrictions within the preservation area of the Pinelands area and land designated as forest area in the Pinelands Comprehensive Management Plan, the commenter indicates these land categories occupy a significant portion of its service territory. The commenter indicates the restrictions will reduce the number of solar projects that can be developed in its service territory, thus incentivizing projects in other service territories, and the Board should recognize this discrepancy when analyzing the success of the solar program in New Jersey. (ACE)

RESPONSE: The Board notes that the restrictions referred to by the commenter mirror those in the statute. However, the Board recognizes the challenges ACE describes and will take the individual characteristics of each of the electric distribution company (EDC) territories into consideration upon evaluating the success of New Jersey’s solar program.

11. COMMENT: With respect to the prohibited land uses proposed applicable to land within the Pinelands and Highlands areas, the commenter believes that the provisions are “overly restrictive” and could limit the development of solar in areas where infrastructure exists, and population densities are high. The commenter suggests land within these protected areas can be developed for solar projects that comply with existing requirements specific to the Pinelands Comprehensive Management Plan or the Highlands Regional Master Plan. The commenter further suggests the Board rely upon the existing regulatory bodies that oversee the applicable rules pertaining to these areas to be the primary authority for making a determination for siting solar on land within these areas instead of the Board. Finally, the commenter suggests that the Board implement a review process similar to what was established for projects subject to Subsection (t) of the Solar Act of 2012 and require that projects located in the Pinelands or Highlands be required to demonstrate that they have approval from the regulatory bodies for these areas prior to seeking pre-qualification. In addition, the commenter proposes that the Board rely on staff review of the applicable permit approval rather than requiring the Board’s approval. (CS Energy)

RESPONSE: With respect to revising the proposed provisions for prohibiting solar siting within the Pinelands and the Highlands, the Act gives authority to the Board, in consultation with the New Jersey Department of Environmental Protection (NJDEP) or the New Jersey Department of Agriculture (NJDA), to consider and potentially grant a waiver to site a solar project within these areas if the project is deemed to be in the public interest. Based upon the statute, the Board does not agree

with CS Energy that changes to the prohibited land uses pursuant to N.J.A.C. 14:8-12.3 are permitted. Instead, the Board has proposed waiver provisions pursuant to N.J.A.C. 14:8-12.6, as contemplated by Section 6(f) of the Solar Act. With respect to the implementation of the solar siting provisions for CSI-eligible facilities, the Act delegates the authority to the Board and, as stated previously, requires consultation with the NJDEP and/or NJDA, as appropriate. Accordingly, proposed N.J.A.C. 14:8-12.6 indicates that the Board’s designee or the Board itself would be reviewing waivers by consulting with other agencies, as appropriate. As such, the Board declines to make the suggested changes to the approval process or rules.

12. COMMENT: The commenter supports the proposed requirements at N.J.A.C. 14:8-12.3(b), indicating they provide two clarifications which are needed to ensure the preservation of forested lands. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

N.J.A.C. 14:8-12.4 Siting limitations for covered agricultural lands

13. COMMENT: The commenter supports proposed N.J.A.C. 14:8-12.4, except as noted in its comments on specific subsections, namely proposed N.J.A.C. 14:8-12.4(c) and (d). (RC)

RESPONSE: The Board thanks Rate Counsel for its support and addresses Rate Counsel’s comments on N.J.A.C. 14:8-12.4(c) and (d) in the Response to Comments 15 and 17.

14. COMMENT: The commenter supports implementing separate provisions for prohibiting the development of solar projects when the Statewide and county thresholds are exceeded at proposed N.J.A.C. 14:8-12.4(a) and (b), respectively. The commenter indicates the Board made the correct decision for rejecting stakeholder recommendations to apply the five percent county concentration limit after the two and a half percent Statewide limit is reached, as supported by N.J.S.A. 48:3-119(f). (RC)

RESPONSE: The Board thanks Rate Counsel for its support and comment.

15. COMMENT: The commenter supports the intent of proposed N.J.A.C. 14:8-12.4(c), which outlines the methodology for determining the acreage used by a solar facility and its supporting infrastructure, but the commenter believes additional language is needed. Specifically, the commenter recommends additional language to ensure that the acreage occupied by both the solar facilities constructed and any other land removed from agricultural use on prime agricultural soils and soils of Statewide importance are counted toward the Statewide and county-wide limits. Such language would, the commenter believes, prevent solar developers from reducing the acreage of a project due to counting some agricultural activities in the areas occupied by a solar facility. The commenter recommends revising language pursuant to proposed N.J.A.C. 14:8-12.4(c) and provides the following edit for clarification:

“In determining the acreage for aggregate solar development, the size of a CSI-eligible facility shall equal the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include, in addition to the solar facilities...” (RC)

RESPONSE: The suggested language adding “in addition to the solar facilities” is duplicative and not needed. N.J.A.C. 14:8-12.4(c) is clear as written that the determination of acreage must include “...the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure.” By including “noncontiguous” areas and “related infrastructure,” the rule requires the calculation to include the solar facilities and associated areas of land specific to the production of solar energy. With respect to the commenter’s concern about developers, the calculation excludes areas where the land remains in agricultural or horticultural use or production. Moreover, the Board will be implementing a separate program for dual-use projects, in accordance with the Dual-Use Solar Act. See N.J.S.A. 48:3- 87.13. As such, the Board declines to make the suggested change.

16. COMMENT: The commenter believes the methodology for calculating the total area no longer available for agricultural or horticultural use due to the siting of solar facilities at proposed N.J.A.C. 14:8-12.4(c) is too restrictive and could result in the inclusion of land not associated with the solar facility. Thus, the commenter requests the Board re-evaluate the methodology to better distinguish between areas of land which are essential to the operation of a solar facility versus areas of land

which are non-essential. Specifically, the commenter recommends the definition be restricted to the area(s) directly inside the fence of a solar project and believes a general definition, as proposed, exaggerates the impacts of some supporting facilities. The commenter provided examples where areas of land may be incorrectly included in the total area calculation, such as those associated with transmission lines and suggests that agricultural activities could still occur; the commenter proposes that easement agreements between landowners and developers could include stipulations around accessing an area to compensate for damage to crops. The commenter also mentions the setbacks required by most local zoning ordinances, stating that there is enough area to support agricultural activities in some cases. (CS Energy)

RESPONSE: The Board considers the intent of the siting provisions regarding farmland in the Act to be to limit the quantity of farmland that will be removed or severely limited from active farming operation or agricultural use and has defined the calculations accordingly. Thus, the Board disagrees with the commenter's proposal to restrict the total area considered to that which is directly inside the fence of a solar project, as such an approach would not comport with the intent of the Act. With respect to the setbacks in local zoning ordinances, the commenter's statement that some setbacks might be available for agricultural activities appears to imply that in such cases the setback could double as available agricultural land, presumably to reduce the number of acres included as part of the solar facility. Again, the Board is not persuaded that relying on these setbacks to "count" as agricultural land would comport with the legislative intent to preserve New Jersey farmland and, therefore, declines to make the suggested change.

17. COMMENT: While the commenter supports the registration requirements at proposed N.J.A.C. 14:8-12.4(d) because it believes they will prevent hoarding of land and promote competition; the commenter recommends not adopting the last sentence: "[f]acilities approved by the Board as dual-use solar facilities will not be counted towards aggregate solar development." The commenter believes the legislation passed in New Jersey for a Dual-Use Solar Program, pursuant to N.J.S.A. 48:3-87.13, did not intend to exempt these projects from development limits and indicates the Act does not provide for such exemptions. The commenter indicates there was no statutory authority cited in the Board's Notice of Proposal for not counting dual-use projects toward the Act's development limits for covered agricultural land. However, if the Board adopts the last sentence, then the commenter suggests revising it to the following language: "[f]acilities approved by the Board as dual-use solar facilities in accordance with the provisions of [N.J.S.A.] 48:3-87.13 will not be counted towards aggregate solar development." (RC)

RESPONSE: The Board interprets the Legislative intent behind the Act as being to limit the amount of development on farmland; as such, the total calculation should not include solar facilities categorized as dual-use since the acres dedicated to those facilities, by definition, remain in agricultural use. Furthermore, the legislative intent behind the Dual-Use Solar Act of 2021 was also to limit the loss of land under active agricultural and horticultural production. The Board will be implementing a separate program for dual-use projects, in accordance with the Dual-Use Solar Act, and accepts Rate Counsel's suggested language referencing approved dual-use solar facilities. Consistent with the Board's Response to Comment 7, "aggregate" has also been replaced with "cumulative."

18. COMMENT: The commenter notes its support for the provisions implementing a waiver for projects exceeding the Statewide threshold; prohibiting a developer from exceeding the acreage indicated on a project's registration; and requiring developers to provide the actual acreage for a completed project at proposed N.J.A.C. 14:8-12.4(e), (f), and (g), respectively. The commenter also provides its support of the prohibition of solar development on preserved farmland at proposed N.J.A.C. 14:8-12.4(g). (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

N.J.A.C. 14:8-12.5 Calculating the Statewide limit and county thresholds for solar development on prime agricultural soils and soils of Statewide importance located within agricultural development areas in New Jersey

19. COMMENT: While the commenter is generally supportive of the calculation methodology pursuant to proposed N.J.A.C. 14:8-12.5, the commenter believes preserved farmland should be excluded from the

definition of "Statewide threshold," per its comments to the definitions at proposed N.J.A.C. 14:8-12.2, and, therefore, recommends edits be made accordingly to the methodology outlined, immediately after proposed N.J.A.C. 14:8-12.5(d)1. The commenter notes its recommended language mimics the language used at proposed N.J.A.C. 14:8-12.5(e)2 for the calculation of the county threshold. The recommended language is as follows:

"2. Exclude areas designated as preserved farmland, Highlands, Pinelands, Green Acres, and State, Local and Nonprofit Open Space;" (RC)

RESPONSE: As explained in the Response to Comment 8, the Board interprets the statute to include both preserved and unpreserved farmland in calculating the Statewide cap, since only the per-county cap specifies that it is to be calculated on the basis of unpreserved farmland only. Therefore, the Board declines to make the suggested change.

20. COMMENT: The commenter believes the methodology for calculating the county threshold outlined at proposed N.J.A.C. 14:8-12.5(e) to be "overly restrictive" and recommends modifications it believes will allow for more areas of land to be available to site solar projects on a county level. Specifically, the commenter recommends reordering the steps by moving proposed N.J.A.C. 14:8-12.5(e)2 (the exclusion of statutorily protected lands) to the last step at proposed N.J.A.C. 14:8-12.5(e)4, following calculation of the maximum acreage of covered agricultural lands, so that proposed N.J.A.C. 14:8-12.5(e)3 would become N.J.A.C. 14:8-12.5(e)2 and proposed N.J.A.C. 14:8-12.5(e)4 would become N.J.A.C. 14:8-12.5(e)3. (CS Energy)

RESPONSE: The Act at Section 6(b)(1) directed the Board to "minimize, as much as practicable, potential adverse environmental impacts" from CSI-eligible facilities. The CSI Program forms the first incentive structure designed to facilitate general large-scale grid supply solar development in the State, which has been shown in other states to provide clean energy at competitive prices. This type of solar development comes at a risk of unintended impacts to vulnerable farmland and open space, which in New Jersey is already under significant development pressure from other economic and social trends. As such, a sizable portion of the CSI Program will be dedicated to projects on the built environment. The Board has "a stated preference for solar projects that make use of the built environment and that minimize impacts on open space (for example, rooftops and similar installations on the built environment)." Solar Successor Incentive Program Pursuant to P.L. 2018, C.17, 2021 N.J. PUC LEXIS 300 (July 28, 2021). ("SuSI Order"). In short, the Board's methodology intentionally limits the amount of farmland made available for solar development and the CSI Program as a whole seeks to promote solar development in other areas. For these reasons, the Board disagrees with CS Energy's recommendation to change the methodology for calculating the county concentration limit.

N.J.A.C. 14:8-12.6 Waiver provisions for siting on prohibited land uses

21. COMMENT: The commenter recommends allowing a waiver to exceed the county threshold to allow for more solar projects to be developed specifically in areas where land could be limited but the availability of interconnections and hosting capacity is greater. (CS Energy)

RESPONSE: The Board lacks authority to make CS Energy's proposed change, as the Act explicitly prohibits a waiver for exceeding the county threshold at N.J.S.A. 48:3-119(f).

22. COMMENT: While the commenter is generally supportive of the provisions pursuant to proposed N.J.A.C. 14:8-12.6, the commenter believes the process to file a petition for a waiver at proposed N.J.A.C. 14:8-12.6(a) to be deficient. The commenter specifies that the proposed language does not cover the statutory standard for waivers at N.J.S.A. 48:3-119(f), which requires the showing of "unique factors that make the project consistent with the character of the specific parcel, including whether the property is a contaminated site or landfill, otherwise marginal land, or whether the project utilizes existing development or existing areas of impervious coverage..." Thus, the commenter recommends revisions by inserting the following language: "4. Determining that the project is consistent with the character of the specific parcel sought to be developed." (RC)

RESPONSE: The Board does not agree with Rate Counsel's recommended addition. In context, the language quoted by Rate Counsel reads: "The petition shall set out the unique factors that make the project consistent with the character of the specific parcel, including whether the property is a contaminated site or landfill, otherwise marginal land, or whether the project utilizes existing development or existing areas of impervious coverage." The Board's rule permits a finding that such a project is in the public interest only if the petitioner has "documented sufficient facts and circumstances" to establish the public interest in siting the solar facility within the otherwise prohibited land use. Requiring that the petition supply sufficient facts to support a finding that the subject solar facility would be in the public interest subsumes the statutory requirement of "unique factors that make the project consistent with the character of a specific parcel" and thus effectuates the intent of the language pursuant to N.J.S.A. 48:3-119(f) cited by Rate Counsel. Any petitioner will have to meet the statutory requirement.

23. COMMENT: The commenter suggests the Board prioritize the use of land which no longer has productive use for any purpose, including land which has been damaged from farm operations, particularly in densely populated areas where available land may be limited. The commenter uses a term it created, "fallowed land," to describe land that fits this description. The commenter believes prioritizing solar projects on fallowed land will provide a unique opportunity to reuse land which has limited or no productive use with respect to encouraging remediation of contaminated land, revitalizing communities, and providing economic benefits. Based on the commenter's experience in other states, it believes remediation of such fallowed land, such as contamination from chemicals and pesticides, can be performed successfully with "extensive controls" thereby limiting disturbance to the applicable soils and restricting movement of the contaminants to groundwater and areas outside of a solar project. (CS Energy)

RESPONSE: The Board agrees with the commenter that there may be instances where the use of the type of land the commenter describes for solar installation would be beneficial, and siting on such properties is allowed within the CSI Program (subject to the caps in adopted N.J.A.C. 14:8-12.4 if the property fits the definition of covered agricultural land). Although "fallowed land" is not a category that is recognized in the land use/land cover classification used by the Board to determine eligibility or preferential siting, there could be limited situations where the characteristics of a formerly farmed site, including factors such as those cited by the commenter, could be relevant to a petition for a waiver from otherwise applicable siting limitations. To the extent that the commenter seeks changes to proposed N.J.A.C. 14:8-11.10(b)3, which excludes contaminated agricultural sites from Tranche 3 of the CSI program (which is reserved for landfills and contaminated sites, but excludes sites in agricultural use), that is outside the scope of this rulemaking because it concerns rules proposed as part of the proceeding for the Competitive Solar Incentive Program rules at N.J.A.C. 14:8-1.2, BPU Docket No. QX22100653, OAL Proposal No. PRN 2023-012. The Board notes, however, that the while such properties were excluded from Tranche 3 in consultation with NJDA and NJDEP due to the differences between contaminated farmland, on the one hand, and landfills and other brownfields and contaminated sites, on the other hand, projects located on contaminated farmland may compete in other tranches of the CSI program, subject to the agricultural land caps, if applicable.

24. COMMENT: The commenter believes proposed N.J.A.C. 14:8-12.6(b), deeming a solar project on prohibited land uses to be automatically in the public interest if the facility will be located exclusively on the built environment is reasonable, but recommends revising the definition of "built environment" pursuant to its comments on the Board's CSI Program proposal (55 N.J.R. 127(a) (February 23, 2023)), BPU Docket No. QX22100653. The commenter believes that its proposed revision would ensure that the CSI Program is not used to evade applicable land use requirements, and that "built environment" projects are limited to those located on structures or improvements that have a substantial purpose other than solar development, not just any purpose. As such, the commenter recommends the following language at proposed N.J.A.C. 14:8-1.2:

"Built environment" means the surface of one or more existing, serviceable structures or serviceable, improved, and impervious roadways

that were properly permitted and were built for a substantial purpose other than solely to facilitate solar development." (RC)

RESPONSE: The Board thanks Rate Counsel for its support of the public interest determination for facilities located exclusively on the built environment. Rate Counsel's comments raise a definition that is not subject in this proceeding; the Board will address these comments in the proceeding for the Competitive Solar Incentive Program rules at N.J.A.C. 14:8-1.2, BPU Docket No. QX22100653, OAL Proposal No. PRN 2023-012.

25. COMMENT: The commenter supports the provision regarding the Board's ability to request additional information prior to making a determination on a waiver request at proposed N.J.A.C. 14:8-12.6(c) because it is a reasonable and necessary function of the Board's administrative authority. The commenter also supports the provision for Board staff, or its designee, to administratively deny waiver requests for solar projects sited on preserved farmland or areas whereby the county concentration limit would be exceeded at proposed N.J.A.C. 14:8-12.6(d) because these instances are not eligible for waivers. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

N.J.A.C. 14:8-12.7 Permission to operate a competitive solar incentive-eligible (CSI-eligible) facility

26. COMMENT: The commenter notes that proposed N.J.A.C. 14:8-12.7, which outlines the requirements for a CSI-eligible facility to operate, seems reasonable and consistent with the milestone reporting and project maturity requirements pursuant to N.J.A.C. 14:8-11. The commenter believes that the provision limiting a project's ability to register until it is mature should assist with competition among solar developers because it will limit their ability to increase prices by withholding projects for solicitations. (RC)

RESPONSE: The Board thanks Rate Counsel for its comment.

27. COMMENT: The commenter notes its concerns regarding an apparent inconsistency between the requirement at proposed N.J.A.C. 14:8-12.7 that Board approval be obtained before a developer submits its interconnection application to an EDC and the proposed CSI rules, which appear to the commenter to desire application processing prior to Board approval. The commenter supports the requirement at N.J.A.C. 14:8-12.7 for Board approval first, but expresses concern about the apparent inconsistency. (ACE)

RESPONSE: The Board agrees that the requirement at N.J.A.C. 14:8-12.7 requires clarification and is revising the proposed rule on adoption to require that the EDC verify receipt of the notice of conditional registration before providing permission to operate. This step is required for all CSI-eligible projects, including those that forego an incentive, in order to ensure compliance with the siting stipulations detailed at N.J.A.C. 14:8-12.

N.J.A.C. 14:8-12.8 Construction requirements for competitive solar incentive-eligible (CSI-eligible) facilities

28. COMMENT: The commenter supports many of the construction provisions applicable to CSI-eligible facilities pursuant to proposed N.J.A.C. 14:8-12.8, specifically proposed N.J.A.C. 14:8-12.8(a) through (f), and recommends the Board work with the NJDEP to ensure that the standards to be adopted will accommodate solar developers who wish to maintain the use of farmland for agricultural or horticultural production. (RC)

RESPONSE: Section 6 of the Act (N.J.S.A. 48:3-119) directs the Board, in consultation with the NJDEP and the Secretary of the NJDA, to establish solar siting rules that will apply to projects eligible to participate in the CSI Program. The Board concurs with Rate Counsel and has been coordinating, and will continue to coordinate, with the NJDEP, as well as the NJDA, on the requirements for solar siting.

29. COMMENT: The commenter indicates the provisions at proposed N.J.A.C. 14:8-12.8(g) for construction requirements on covered agricultural lands for CSI-eligible projects, other than those mounted on the built environment, are significantly deficient and necessitate republication with amendments to correct the deficiencies it notes in its comments. Specifically, the commenter notes the Board's proposal is substantially different from the Board's prior Straw Proposal which included, as Appendix B, a draft proposal by the NJDA for guidelines to

mitigate the impacts of CSI-eligible projects on covered agricultural lands (“Draft Mitigation Guidelines”). The commenter provides several instances from the Draft Mitigation Guidelines that were not included or were weakened in the proposed rules, such as the following:

- Section b pertaining to the identification of pre-construction soil conditions;
- Section biii pertaining to requirements to identify and avoid impacts to nearby existing and planned organic farms;
- Sections d and g covering using existing access roads and timber matting to prevent compaction of topsoil, respectively; and
- Section e specific to the removal of trees and other vegetation.

The commenter further suggests the Board should include a justification for changes from the Draft Mitigation Guidelines. (RC)

RESPONSE: The Board disagrees with Rate Counsel’s contention that the rule is inadequate because it does not include all the specific provisions of the appendix to the Straw Proposal. The Board’s construction provisions pertaining to CSI-eligible solar facilities located on covered agricultural lands, other than those mounted on the built environment, were developed in cooperation with the NJDEP, the NJDA, and the State Agriculture Development Committee (SADC). The Draft Mitigation Guidelines included in the Board’s Straw Proposal were developed by the NJDA and the SADC and the Board included them as an appendix to encourage stakeholder comments and feedback. An important function of the coordinated development of the proposed rules was to prevent duplication of and conflict between different agencies’ rules. Thus, the Board has worked with the NJDA and SADC to eliminate requirements those agencies already enforce pursuant to the N.J. Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) and rules at N.J.A.C. 2:90-1.

30. COMMENT: The commenter notes concerns that the provisions for topsoil at proposed N.J.A.C. 14:8-12.8(g)5 do not include many of the provisions to protect topsoil that appeared in the Draft Mitigation Guidelines, including the lack of requirements to minimize the disturbances of topsoil, of requirements to restore topsoil that has been moved, and of any consequences if the soil is not properly maintained or is removed from the site. The commenter raises specific concerns regarding language from which it infers that topsoil can be stripped and contrasts the proposed provisions with the Draft Mitigation Guidelines, which it reads as protecting topsoil and not implying long-term stockpiling of it (Section f). The commenter further suggests that Section f of the Draft Mitigation Guidelines was intended to minimize the movement of topsoil and contemplated the use of timber matting during construction, or removal and stabilization with “temporary control measures” prior to the restoration of the topsoil and any removed subsoil. The commenter also references methodology for restoring the topsoil, and requirements for restoration and monitoring that follow Section j of the Draft Mitigation Guidelines. (RC)

RESPONSE: As discussed in Response to Comment 29, which addressed the construction requirements set forth at N.J.A.C. 14:8-12.8(g) in its entirety, the Board worked in conjunction with the NJDEP, the NJDA, and the SADC on these provisions and does not believe changes to N.J.A.C. 14:8-12.8(g)5 are necessary. In accordance with N.J.S.A. 4:24-39 et seq., all construction sites in New Jersey which meet the definition of a soil disturbance “project” must adhere to the standards established by the NJDA for soil erosion and sediment control. Moreover, N.J.A.C. 14:8-12.8(g)3 assigns the responsibility to ensure compliance with all applicable mitigation, construction, and restoration procedures identified in Federal, State, and county permits, State rules, and the project plan, to an “environmental inspector.”

31. COMMENT: The commenter says that the proposed rules imply that land occupied by solar facilities will be taken out of use as farmland for as long as the solar facility remains in operation. The commenter believes the Board is making an assumption for the purpose of the proposed rule “to allow this [covered agricultural] land to be returned to agricultural use at the end of life of the solar installation, if so desired.” The commenter states that, on the contrary, the continued productive use of farmland during the life of the solar project should be encouraged and cites an example of a successful farm in Colorado. The commenter recommends that the Board’s rules include standards to allow for continuing to use the land as farmland and urges the Board to work with

NJDEP, as noted above in Comment 29, to ensure the NJDEP’s pollinator habitat standards will accommodate the agricultural or horticultural use of land under and around solar installations. While the commenter acknowledges New Jersey’s separate legislation for dual-use projects, it states there is nothing in the Solar Act prohibiting projects participating in the CSI Program from continuing the productive use of farmland in and around the solar facilities. (RC)

RESPONSE: The Board agrees that the Solar Act does not prevent the continued agricultural use of the lands on which CSI-eligible projects are sited. However, the Legislature chose to provide for the joint solar and agricultural use of farmland in a separate law, the Dual-Use Solar Act, which the Board is implementing separately, and did not choose to require that all solar projects sited on agricultural land accommodate continued agricultural production. The Board notes that the development of appropriate supports for dual-use projects will be undertaken as part of New Jersey’s Dual-Use Solar Energy Pilot Program, to be established pursuant to the Dual-Use Solar Act. Dual-use projects that will be approved by the Board pursuant to the pilot program will not be included in the calculation of the caps on covered agricultural land. While the Board does not believe that the proposed CSI Program rules will prevent projects participating in the CSI Program from being designed in such a way as to allow continued agricultural production, establishing special treatment for dual-use projects within the CSI Program prior to implementation of a pilot program would be premature.

32. COMMENT: The commenter recommends the Board include provisions to ensure the mitigation requirements are not evaded through transfers of ownership of the affected land. The commenter further recommends including conditions that affect the continued use of farmland, such as requirements to stockpile topsoil, be reflected as deed restrictions that are promptly recorded by the Board with the clerk of the county where the property is located. To support its recommendation, the commenter cites *Island Venture Associates v. NJ Department of Environmental Protection*, 179 N.J. 485 (2004), a case in which the New Jersey Supreme Court held that a property use restriction contained within a permit issued by the NJDEP was not binding on a subsequent owner that purchased the property. (RC)

RESPONSE: The provisions for mitigation at N.J.A.C. 14:8-12.8 require a plan to be created and followed, including the identification of the party responsible for removal and restoration back to prior agricultural conditions in the event that solar installations will be removed. These provisions also require the assignment of an environmental inspector who would be responsible for ensuring compliance with all applicable mitigation, construction, and restoration procedures identified in Federal, State, and county permits, State rules, and the project plan. Thus, the Board does not believe additional requirements are needed at this time.

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 pursuant to Federal law or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the adopted amendments and new rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

14:8-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1, 14:4-1.2, and 14:8-2.2.

...

“Dual-use” means the practice of siting energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unreserved farmland in agricultural or horticultural production that ensures the continued simultaneous use of the land below and adjacent to the panels for agricultural or horticultural production.

SUBCHAPTER 12. SITING RULES FOR GRID SUPPLY AND LARGE NET METERED SOLAR FACILITIES

14:8-12.1 Scope

(a) This subchapter sets forth the criteria for siting of grid supply solar facilities connected to the distribution or transmission system operated by a New Jersey electric distribution company and net metered solar facilities over five megawatts, as measured in direct current (MWdc). Collectively, projects subject to this section’s siting requirements are referred to as “Competitive Solar Incentive-Eligible Facilities” or “CSI-eligible facilities.”

(b) All CSI-eligible facilities must register with the Board and are subject to the provisions of this section, regardless of whether the facility participates in the Competitive Solar Incentive (CSI) Program, another incentive program, or whether the CSI-eligible facility foregoes solar incentives.

14:8-12.2 Definitions

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

“*[Aggregate solar development]” means the total number of acres of covered agricultural lands that are used to host CSI-eligible facilities, including those registered with the Board and those that have been constructed after implementation of the CSI Program.*

“Agricultural development area” or “ADA” means an area identified by a county agriculture development board, pursuant to the provisions at N.J.S.A. 4:1C-18, and certified by the State Agriculture Development Committee.

“Committee” means the State Agriculture Development Committee created pursuant to P.L. 1983, c. 31 (N.J.S.A. 4:1C-4).

“County concentration limit” means five percent of the area of unreserved covered agricultural lands in a single New Jersey county.

“Covered agricultural land” means all land containing prime agricultural soils or soils of Statewide importance, as identified by the U.S. Department of Agriculture’s Natural Resources Conservation Service, located within an individual county’s designated agricultural development area, as determined by the Committee.

“Cumulative solar development” means the total number of acres of covered agricultural lands that are used to host CSI-eligible facilities, including those registered with the Board and those that have been constructed after implementation of the CSI Program.*

“Forested land” or “forestland” means land that is at least 1.0 acre in size and 120.0 feet wide and that has, or has had within the past 10 years, at least 10 percent crown cover by live tally trees of any size or at least 10 percent canopy cover of live tally species, based on the presence of stumps, snags, or other evidence. Forested land includes transition zones, such as areas between forest and non-forestland that meet the minimal tree stocking/cover and forest areas adjacent to urban and built-up lands.

“Prime agricultural soils” shall have the meaning as identified by the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) as available through the NRCS websoil survey (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>).

“Soils of Statewide importance” shall have the meaning as identified by the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) as available through the NRCS websoil survey (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>).

“Statewide threshold” means two and one-half percent of the Statewide area of covered agricultural lands.

“Transition zone” means an area between forested land and non-forestland that meets the minimal tree stocking or tree cover level, forest areas adjacent to urban and built-up lands, or other land that is adjacent to both forested land and to non-forested land.

“Wetlands” means those areas regulated by the NJDEP pursuant to N.J.A.C. 7:7 and 7:7A, or the Army Corps of Engineers. Included in this category are naturally vegetated swamps, marshes, bogs, and savannas that are normally associated with topographically low elevations, but may be located at any elevation where water perches over an aquiclude.

14:8-12.3 Siting prohibitions

(a) CSI-eligible facilities are prohibited from locating on the following land types (collectively “prohibited land uses”), unless they receive a waiver pursuant to N.J.A.C. 14:8-12.6:

1. Land preserved pursuant to the Green Acres Program, as defined at N.J.A.C. 7:36;

2. Land located within the preservation area of the Pinelands area, as designated in subsection b. of section 10 at P.L. 1979, c. 111 (N.J.S.A. 13:18A-11);

3. Land designated as forest area in the Pinelands Comprehensive Management Plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

4. Land designated as freshwater wetlands, as defined pursuant to P.L. 1987, c. 156 (N.J.S.A. 13:9B-1 et seq.), or coastal wetlands, as defined pursuant to P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.);

5. Lands located within the Highlands preservation area, as designated in subsection b. of section 7 at P.L. 2004, c. 120 (N.J.S.A. 13:20-7b);

6. Forested land and associated transition zones; and

7. Covered agricultural lands in excess of the Statewide threshold of 2.5 percent of such soils, as set forth at N.J.A.C. 14:8-12.4.

(b) In determining whether a CSI-eligible facility is proposed to be sited on forested land, the following will apply:

1. Any roadside, streamside, or shelterbelt strips of trees shall constitute forested land if it has a width of at least 120 feet and a continuous length of at least 363 feet.

2. The presence of unimproved roads and trails, streams, or clearings in forested land shall not act to change the character of forested land, unless such roads, trails, streams, or clearings are more than 120 feet wide or larger than one acre in size.

14:8-12.4 Siting limitations for covered agricultural lands

(a) A CSI-eligible facility may not be located on covered agricultural lands when the *[aggregate]* ***cumulative*** solar development located on such lands will exceed the Statewide threshold.

(b) A CSI-eligible facility may not be located on covered agricultural lands in any county when the *[aggregate]* ***cumulative*** solar development will exceed the county concentration limit.

(c) In determining the acreage for *[aggregate]* ***cumulative*** solar development, the size of a CSI-eligible facility shall equal the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include any areas of land no longer available for, or in, agricultural or horticultural production due to the presence of the solar energy facilities, including all areas of land that are devoted to, or supporting, the solar energy facilities; nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface; and areas consisting of other related facilities, structures, and equipment, including any other buildings or site amenities, deemed necessary for the production of solar energy.

(d) A CSI-eligible facility shall count towards *[aggregate]* ***cumulative*** solar development for both the Statewide threshold and the county concentration limit upon registration with the Board for conditional certification, pursuant to N.J.A.C. 14:8-11.5. The total acreage identified in the application shall be counted toward *[aggregate]* ***cumulative*** solar development. If the project’s registration lapses without the project reaching commercial operation, then the project shall no longer be included in the calculations for *[aggregate]* ***cumulative*** solar development. Facilities approved by the Board as dual-use solar facilities*, **in accordance with the provisions at N.J.S.A. 48:3-87.13,*** will not be counted towards *[aggregate]* ***cumulative*** solar development.

(e) If the acreage required for a proposed CSI-eligible facility causes *[aggregate]* ***cumulative*** solar development to exceed the Statewide threshold set forth at (a) above, a waiver pursuant to N.J.A.C. 14:8-12.6

must be obtained from the Board before the proposed CSI-eligible facility will be allowed to register with the Board.

(f) A CSI-eligible facility is not permitted to exceed the acreage of solar development on covered agricultural lands submitted as part of the registration pursuant to N.J.A.C. 14:8-11.5.

(g) Upon completion of construction, and prior to commencing commercial operations, the facility's acreage will be updated to reflect the actual acreage used and provided to the Board, or its designee.

(h) Nothing in this subchapter shall be construed to permit siting of solar on preserved farmland, unless affirmatively allowed pursuant to N.J.S.A. 4:1C-32.4 et seq.

14:8-12.5 Calculating the Statewide limit and county thresholds for solar development on prime agricultural soils and soils of Statewide importance located within agricultural development areas in New Jersey

(a) The Board will utilize the United States Department of Agriculture Natural Resource Conservation Service data, as reflected in the Soil Survey Geographic Database/SSURGO, to perform the calculations set forth in this section.

(b) The Committee shall provide the aggregated GIS data layer identifying ADAs, as delineated by the county agriculture development boards and certified by the Committee.

(c) The Board will perform a spatial analysis using GIS to determine:

1. The total acreage of land within ADAs at both the State and county level;

2. The total acreage of land containing prime agricultural soils or soils of Statewide importance, as identified by the United States Department of Agriculture's Natural Resources Conservation Service; and

3. Land classified as "agriculture" in Level 1 of the Modified Anderson classification system within the most recent Land Use/Land Cover GIS data layer produced by the NJDEP.

(d) To calculate the two and one-half percent Statewide threshold, the Board will:

1. Determine the spatial distribution and acreage values for prime soils and soils of Statewide importance within each ADA that are assigned as "agriculture" in Level 1 of the Modified Anderson classification system within the most recent land use/land cover GIS data layer produced by the NJDEP;

2. Aggregate these values Statewide; and

3. Multiply the sum of these values by 0.025. The resulting number shall represent the maximum acreage of covered agricultural lands that can be used to host solar Statewide in the absence of an approved waiver.

(e) To calculate the county-by-county five percent county development limit, the Board will:

1. Determine the prime soils and soils of Statewide importance within each ADA that are assigned an "agricultural" designation in Level 1 of the Modified Anderson classification system within the most recent Land Use and Land Cover Classification System maps produced by the NJDEP;

2. Exclude areas designated as preserved farmland, Highlands, Pinelands, Green Acres, and State, Local, and Nonprofit Open Space;

3. Aggregate these designated land areas by county; and

4. Multiply each county value by 0.05. The resulting number shall represent the maximum acreage of covered agricultural lands located upon which CSI-eligible facilities may be sited in that county.

(f) The Board, in consultation with the Secretary of Agriculture, shall track and record the calculations set forth in this section and the calculations for *[aggregate]* ***cumulative*** solar development, pursuant to N.J.A.C. 14:8-12.4 and shall update the figures at least annually, which calculations shall be made available to the public by posting them to the Board's website.

14:8-12.6 Waiver provisions for siting on prohibited land uses

(a) Any entity seeking to locate a CSI-eligible facility on non-agricultural prohibited land uses or seeking a waiver of N.J.A.C. 14:8-12.4(a) may file a petition with the Board seeking to waive the prohibition for good cause shown. The Board, or its designee, shall make a positive finding with regard to any such petition only upon:

1. Consulting with other State agencies, as appropriate;

2. Determining that the petitioner has documented sufficient facts and circumstances establishing the public's specific interest in siting the CSI-eligible facility on or within a specific prohibited land use; and

3. Finding that the waiver is in the public interest.

(b) Notwithstanding the requirements at (a) above, CSI-eligible facilities proposed to be located on prohibited land uses are presumptively deemed to be in the public interest if the CSI-eligible facility will be located exclusively on the built environment, provided that the structure or surface has existed for at least three years prior to the date the waiver application is filed.

1. The Board designates approval of such waiver applications to Board staff or a program administrator duly retained by the Board.

2. Any CSI-eligible facility that is denied a waiver pursuant to (b)1 above may, instead, file a petition with the Board pursuant to (a) above explaining the specific facts and circumstances of its waiver request.

(c) The Board, or its designee, may request additional evidence prior to approving or denying a request for any waiver requested, pursuant to this section.

(d) Projects proposed to be located on preserved farmland, or that would exceed the county concentration limit within a given county, are not eligible for a waiver and the Board authorizes Board staff, or its designee, to administratively deny such requests.

14:8-12.7 Permission to operate a competitive solar incentive-eligible (CSI-eligible) facility

(a) All CSI-eligible facilities shall register their proposed solar projects with the Board and be subject to the milestone and project maturity requirements of the CSI Program pursuant to N.J.A.C. 14:8-11.5. Registration shall be required whether the owner or operator of a proposed solar project chooses to seek an incentive in the Competitive Solar Incentive Program, in any incentive program, or whether the CSI-eligible facility foregoes a solar program incentive.

(b) All CSI-eligible facilities will be subject to project maturity requirements and milestone reporting, pursuant to N.J.A.C. 14:8-11.5. Projects not seeking an incentive through the CSI Program shall be subject to the same milestone and project maturity requirements as projects participating in the CSI Program. Conditional registrations of CSI-participating projects and projects not seeking an incentive shall be treated equally.

(c) Prior to providing permission to operate to a CSI-eligible facility, an electric distribution company shall verify that the project has *[registered]* ***received a notice of conditional registration*** with the Board.

14:8-12.8 Construction requirements for competitive solar incentive-eligible (CSI-eligible) facilities

(a) All CSI-eligible facilities, other than those located on the built environment, shall comply with the requirements for soil erosion and sediment control in accordance with the New Jersey Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) and the implementing rules at N.J.A.C. 2:90.

(b) All CSI-eligible facilities, other than those located on the built environment, shall, as part of the development of a comprehensive siting plan, assess existing drainage conditions, and identify any areas where surface runoff currently exists or where proposed grades will create surface runoff concentration. All such areas shall be designed to prevent onsite erosion, as well as protect offsite areas from erosion and flooding.

(c) All CSI-eligible facilities shall comply with the NJDEP's Stormwater Management Rules, N.J.A.C. 7:8.

(d) All CSI-eligible facility panel drip lines shall be protected against scour.

(e) CSI-eligible facilities proposed to be located on land in agricultural use, other than those proposed to be located on the built environment, shall be submitted to the Soil Conservation District for compliance with requirements in this section and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control.

(f) CSI-eligible facilities, other than those mounted on the built environment, shall comply with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities." CSI-eligible facilities that meet the requirements for qualification in the Contaminated Sites and Landfills

tranche of the Competitive Solar Incentive Program, pursuant to N.J.A.C. 14:8-11.10(b)3 are exempted from mandatory compliance with the pollinator standards.

1. Entities proposing CSI-eligible facilities that require compliance with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities" (Standards) shall demonstrate said compliance by submitting to the Board or program administrator duly retained by the Board, a vegetation management plan consistent with the requirements outlined in the referenced standards as part of the post-construction certification package.

i. CSI-eligible facilities shall successfully implement and maintain the site in accordance with the vegetative management plan. Successful implementation is determined by a minimum 80 percent survival rate of vegetation planted.

ii. CSI-eligible facilities shall comply with monitoring requirements.

(1) The Board may audit CSI-eligible facilities for compliance with the vegetative management plan. The Board, or its designee shall, within 60 days of the audit:

(A) Certify that the facility is in compliance with its vegetation management plan, with no additional actions required; or

(B) Notify the facility that it is in noncompliance with the required vegetation management plan.

(2) If the Board finds that the facility is in noncompliance with the required vegetation management plan, the Board, or its designee, shall:

(A) Specify the areas of noncompliance;

(B) Identify corrective actions required; and

(C) Identify the timeframe within which noncompliance must be addressed to avoid suspension of incentives pursuant to the CSI Program.

iii. Approved CSI facilities that are found to be in non-compliance with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities," and that have failed to take the corrective actions identified at (f)1ii(2) above within the timeframes specified, shall be notified by the Board or a program administrator duly retained by the Board of their suspension of incentives pursuant to the CSI Program, and conditions for restoration of the incentive.

(g) All CSI-eligible facilities located on covered agricultural lands, other than those mounted on the built environment, shall:

1. Prepare a plan identifying the following:

i. The location of proposed above- and below-ground facility infrastructure;

ii. The sequence for facility infrastructure removal and site restoration to prior agricultural conditions in the event that solar installations will be removed; and

iii. Pre-construction soil quality characteristics across the site on a 100-foot by 100-foot grid by a qualified soil scientist or geotechnical engineer, including:

(1) Soil map unit;

(2) Soil textural classification;

(3) Hydrologic soil group;

(4) Organic matter content;

(5) Salinity; and

(6) Macro nutrient content (N, P, K);

iv. Tabulate and correlate to the grid, mapped characteristics to enable potential future restoration of pre-grid installation conditions;

2. Indicate what party is responsible for removal and restoration back to prior agricultural conditions in the event that solar installations will be removed;

3. Have an assigned "environmental inspector," with experience in solar construction methods on land in agricultural use and agricultural production methods common to the area, who shall be responsible for ensuring compliance with all applicable mitigation, construction, and restoration procedures identified in Federal, State, and county permits, State rules, and the project plan;

4. Be installed by a screw, piling, or similar system that does not require a concrete footing or other permanent mounting. In the event these methods of mounting are not practicable, written justification shall be required by a licensed professional engineer responsible for designing the installation, that permanent ground mounting is necessary to conform with

Federal or State laws, rules, or regulations and that the permanent mounting requires footings, concrete, or other permanent methods;

5. Retain stripped topsoil onsite for potential future return to agricultural use. All retained topsoil shall be permanently stabilized in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, N.J.A.C. 2:90-1.3; and

6. Prevent topsoil within inter-panel row travel lanes from becoming compacted or otherwise co-mingled with subsoil layers by construction traffic.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION Super Conciliation—Health Benefits Plan Design and Pension Committees

Adopted New Rules: N.J.A.C. 19:12A

Proposed: April 17, 2023, at 55 N.J.R. 657(a).

Adopted: August 24, 2023, by the Public Employment Relations Commission, Joel M. Weisblatt, Chair.

Filed: August 24, 2023, as R.2023 d.111, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 43:3C-17 and 52:14-17.27b.

Effective Date: September 18, 2023.

Expiration Date: September 18, 2030.

Take notice that the Public Employment Relations Commission (Commission) proposed new rules at N.J.A.C. 19:12A on April 17, 2023, at 55 N.J.R. 657(a) to implement Sections 33 and 55 of P.L. 2011, c. 78 (Chapter 78). These rules provide the procedures for resolving, through super conciliation, impasses resulting from the failure of a health benefits plan design or pension committee's failure to render a decision on a matter before it.

Summary of Public Comments and Agency Responses:

Comments on the notice of proposal were received from Craig S. Gumpel, Esq., on behalf of the New Jersey State Firefighters' Mutual Benevolent Association (FMBA).

N.J.A.C. 19:12A-1.3(a)

COMMENT: Referring to proposed N.J.A.C. 19:12A-1.3(a), which notes that the executive secretary of a health benefits plan design or pension committee may file a petition for appointment of a super conciliator, the FMBA suggests that where the executive secretary fails, refuses, or is unable to act, any member of the committee may initiate a petition. Further, the FMBA suggests that the committee member who files a petition shall then be responsible for signing, dating, and certifying the petition, in accordance with N.J.A.C. 19:12A-1.3(d)6.

RESPONSE: Although the Commission has not previously had any issues with the requirement that the executive secretary of a committee files a petition for appointment of a super conciliator, the Commission finds that it is reasonable to add language to N.J.A.C. 19:12A-1.3(a) and (d)6 to provide that a designee on the committee may act to file a petition and perform other requirements pursuant to the rules in the absence of the executive secretary.

N.J.A.C. 19:12A-1.5

COMMENT: Referring to proposed N.J.A.C. 19:12A-1.5, which provides that the super conciliator shall be paid at their grievance arbitration/mediation rate for each eight-hour session, the FMBA suggests that the super conciliator's fee be based on a flat per diem rate, including administrative costs and the cost associated with the preparation of a final report, rather than their rate for each eight-hour session. The FMBA is also concerned that there is no standard arbitration/mediation rate and that it may vary.