



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

IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD BEGINNING JUNE 1, 2019	)	DECISION AND ORDER
	)	
	)	DOCKET NO. ER18040356
	)	
AND	)	AND
	)	
IN THE MATTER OF THE ALLOCATION OF RENEWABLE PORTFOLIO STANDARDS FOR BASIC GENERATION SERVICE (BGS) FOR THE PERIOD BEGINNING JUNE 1, 2019	)	
	)	
	)	DOCKET NO. EO18111250

**Parties of Record**

**Gregory Eisenstark, Esq.**, Windels Marx Lane & Mittendorf, LLP, on behalf of Jersey Central Power & Light Company  
**Joseph A. Shea, Jr., Esq.**, Attorney for Public Service Electric and Gas Company  
**Philip J. Passanante, Esq.**, Associate General Counsel for Atlantic City Electric Company  
**Margaret Comes, Esq.**, Senior Attorney for Rockland Electric Company  
**Chantale LaCasse**, BGS Auction Manager, NERA Economic Consulting  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:<sup>1</sup>

This Order memorializes actions taken by the New Jersey Board of Public Utilities (“Board” or “BPU”) at its December 18, 2018 agenda meeting pertaining to the allocation of Renewable Portfolio Standards (“RPS”) obligations as they relate to the provision of Basic Generation Service (“BGS”) for retail customers who continue to purchase their electric supply from their electric utility company for the period beginning June 1, 2019.

By Order dated April 25, 2018, in this matter, the Board directed the electric distribution companies (“EDCs”) consisting of Atlantic City Electric Company (“ACE”), Jersey Central Power & Light Company (“JCP&L”), Public Service Electric and Gas Company (“PSE&G”), and Rockland Electric Company (“RECO”), and invited all other interested parties, to file proposals by July 2, 2018 to

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<sup>1</sup> Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

determine how to procure the remaining one-third of the State's BGS requirements for residential and small commercial customers ("RSCP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2019. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On June 29, 2018, the EDCs filed a Joint Proposal for BGS procurement ("Joint EDC Proposal"), and each EDC also filed a company-specific addendum to the Joint EDC Proposal. A discovery period followed. Initial Comments on the BGS proposals were filed on September 5, 2018. Final Comments were filed on October 12, 2018.

The Board also held a legislative-type hearing on September 28, 2018 at its office in Trenton, NJ, chaired by President Fiordaliso. The purpose of the hearing was to take additional comments on the pending proposals.

Parties that filed either a proposal, comments, or appeared at the legislative hearing include the EDCs,(filed jointly), National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), Exelon Generation LLC ("ExGen"), Hartree Partners, LP ("Hartree"), Direct Energy Business, L.L.C, Direct Energy Business Marketing, L.L.C, Direct Energy Services, L.L.C., Gateway Energy Services Corporation and NJR Retail Services Company (collectively, "Direct Energy"), the Retail Energy Supply Association ("RESA") the Independent Energy Producers of New Jersey ("IEPNJ"), and the New Jersey Business & Industry Association.

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. RECO's public hearing was held on September 12, 2018; PSE&G's public hearing was held on September 13, 2018, ACE's public hearing was held on September 18, 2018, and JCP&L's public hearing was held on September 25, 2018.

## **CLEAN ENERGY ACT**

On May 23, 2018, Governor Murphy signed the Clean Energy Act into law P.L. 2018, c. 17, codified at N.J.S.A. 48:3-51-87 ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development; among these were an increase in the solar portion of the RPS, beginning in Energy Year 2019 ("EY19").<sup>2</sup> Specifically, the CEA provides:

"[T]he board shall . . . adopt . . . renewable energy standards that shall require . . . (3) that the board establish a multi-year schedule, applicable to each electric power supplier or basic generation service provider in this State . . . 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:

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<sup>2</sup> An Energy Year ("EY") is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

EY 2014	2.050%
EY 2015	2.450%
EY 2016	2.750%
EY 2017	3.000%
EY 2018	3.200%
EY 2019	4.300%
EY 2020	4.900%
EY 2021	5.100%
EY 2022	5.100%
EY 2023	5.100%
EY 2024	4.900%
EY 2025	4.800%
EY 2026	4.500%
EY 2027	4.350%
EY 2028	3.740%
EY2029	3.070%
EY2030	2.210%
EY2031	1.580%
EY2032	1.400%
EY2033	1.100%

[N.J.S.A. 48:3-87(d)(3)]

The statute further provides that:

(c) The solar renewable portfolio standards requirements in this paragraph shall exempt those existing supply contracts which are effective prior to the date of enactment of [the CEA] from any increase beyond the number of Solar Renewable Energy Certificates (“SRECs”) mandated by the solar renewable portfolio standards requirements that were in effect on the date that the providers executed their existing supply contracts. This limited exemption for providers’ existing supply contracts shall not be construed to lower the statewide solar sourcing requirements set forth in this paragraph. Such incremental requirements that would have otherwise been imposed on exempt providers shall be distributed over the providers not subject to the existing supply contract exemption until such time as existing supply contracts expire and all providers are subject to the new requirement in a manner that is competitively neutral among all providers and suppliers.”

[N.J.S.A. 48:87(d)(3)(c)]

The CEA exempts BGS providers’ electricity supply from the new, higher solar requirements if the supply is covered by a BGS contract that was executed prior to enactment of the CEA. The solar obligation for this exempt electricity is determined under the rules in place when the BGS contract was executed. Thus, exempt electricity carries a lower solar obligation than non-exempt electricity. However, the CEA requires that the State-wide solar target for each year must still be met. Therefore, during EY19, EY20, and EY21, when some electricity supply will be exempt, the incremental solar obligation that is not met because of the exemption must be distributed among the non-exempt electricity supplied by BGS providers in each energy year until the prior BGS contracts with exempt suppliers expire. This Order includes provisions for calculating the obligation

of the BGS providers' solar obligation under the new requirements as a function of whether the electricity supplied is exempt or not. The solar obligations of the TPSs are addressed as well.

### **COMMENTS ON IMPACTS OF THE CEA MADE IN 2019 BGS PROCEEDING**

In its comments submitted at the BGS Legislative Hearing, IEPNJ requested clarification and guidance, with specific percentages identified, to BGS suppliers regarding SREC and Class I renewable responsibilities for the three EYs of the upcoming BGS-RSCP supply period (June 1, 2019 to May 31, 2022). IEPNJ stated the CEA, wherein the solar RPS requirement that was raised for EY 2020, as well as the following two years, includes language that exempts BGS supply contracts entered into prior to enactment, so that current BGS supply contracts are not impacted. IEPNJ stated that as a result, the application of the solar RPS percentage to the BGS suppliers is not a direct application of the RPS percentages in the CEA. (IEPNJ Legislative Hearing Comments at 2). IEPNJ stressed that the additional allocation of the solar RPS to non-exempt suppliers will introduce uncertainty regarding the specific solar RPS obligation assumed by bidders in the upcoming BGS Auction. IEPNJ sought a Board Order that directs the Auction Administrator and the EDCs to provide clear guidance with specific percentages to BGS suppliers regarding SREC and Class I responsibilities. (Id. at 3).

RESA also requested that the Board to issue guidance to retail suppliers and BGS providers so that all participants in the electric market understand their obligations under the CEA. (RESA Final Comments at 3).

In its Final Comments, Rate Counsel agreed with IEPNJ that bidders should be advised of their RPS obligations prior to the start of the BGS Auction. Rate Counsel noted that the Board, in the past, has recognized that a successful BGS procurement requires that the "rules and details are specified and implemented correctly." (Rate Counsel Final Comments at 4). Rate Counsel further agreed with IEPNJ that providing BGS Suppliers specific information regarding their RPS compliance obligations is necessary and that the Board should provide the information so as to allow a competitive procurement producing the lowest BGS prices. (Ibid.)

In their Final Comments, the EDCs supported the request for clarification as any information to BGS suppliers will reduce any risk premium in the bids; however, the EDCs disagreed that the BGS Auction Manager and the EDCs have the authority to provide this guidance on the proper rate of escalation, and argued the Board alone has the authority. (EDC Final Comments at 7). The EDCs requested the Board specify in its Order: 1) a confirmation of the minimum percentage of Class I renewable energy of 21% from January 1, 2020 to May 31, 2020; 2) a determination of the minimum percentages for Class I renewable energy in effect for EY 2021 from June 1, 2020 to May 31, 2021; and 3) a determination of the minimum percentage for Class I renewable energy in effect for EY 2022 from June 1, 2021 to May 31, 2022. The EDCs also noted that BGS suppliers with existing contracts (from the 2017 and 2018 BGS-RSCP Auctions) are also subject to the Class I requirements. (Ibid.).

The EDCs agreed with IEPNJ that the results of the exemption of the minimum percentage obligations applicable to 2019 and 2020 BGS suppliers are unclear from the language of the CEA. The EDCs stated that in order to meet the CEA's minimum solar percentage, BGS suppliers will also be required to provide SRECs to satisfy the requirements that would have otherwise been imposed on exempt providers. (Id. at 7 to 8). For example, in EY 2020, the 2019 BGS suppliers (both RSCP and CIEP) will be responsible for the shortfall in solar requirements created by the exemption given to the 2018 and 2017 BGS-RSCP suppliers. For EY 2021, the 2019 BGS-RSCP suppliers, the 2020 BGS-RSCP suppliers, and the 2020 BGS-CIEP suppliers will be responsible

for the shortfall from the 2018 BGS-RSCP suppliers. The EDCs submitted that providing specific percentages is not only beyond the scope of administering the BGS Auctions, but is simply impossible. The EDCs, however, provided a formula to calculate the required percentage:

$$\begin{aligned} &\text{Percent non-exempt providers} \\ &= (\% \text{ in the CEA}) + (\text{increase in } \%) \times (\text{exempt load} / \text{non-exempt load}) \end{aligned}$$

The EDCs stated that under this formula, BGS suppliers will provide SRECs for the percentage as required in the CEA and non-exempt BGS suppliers will provide SRECs to satisfy the increase in percentage. The EDCs explained that while this is an easy formula to provide, the percentage can only be approximated. The EDCs stated rather than determine and provide specific percentages up front, the EDCs and the Auction Manager can provide a methodology to calculate percentages and each bidder will be responsible for estimating percentages using the methodology based on its own forecast of BGS load. Lastly, the EDCs requested the Board confirm that the correct interpretation of the CEA is that no BGS supplier will face increased solar requirements for EY 2019. (Id. at 8 to 9).

By Order dated November 19, 2018 in Docket No. ER18040356 (“November 2018 Order”), the Board approved the Joint EDC Proposal. Among other things, the November 2018 Order directed Staff to conduct a stakeholder meeting on issues raised regarding impacts of the CEA and provide recommendations to the Board at the December 2018 Board Agenda Meeting.

In a notice issued for a public meeting to be held on December 7, 2018 (“Notice”), Board Staff requested interested parties and members of the public discuss the CEA’s impacts and subsequent issues. Attached to the Notice were: A) Staff’s proposed methodology for calculating the solar RPS obligation for exempt and non-exempt suppliers; and B) Staff’s proposed schedule to increase the existing Class I RPS such that it will be 50% in EY30. Specifically, the Notice sought comment on the following three issues:

1. How to allocate the solar RPS obligations of the exempt entities amongst the non-exempt entities [referencing Attachment A].
2. What the RPS requirements should be for Energy Year (EY) 2019, EY 2020, EY 2021, and EY 2022 [referencing Attachment B].
3. Whether to consider solar obligations to be included within the overall Class I obligation as a carve-out, such that SRECs submitted to satisfy the solar RPS will also be counted toward the satisfaction of the total Class I RPS rather than being considered additive to the Class I RPS

This proposal sets forth what Staff believed provided the most accurate method for exempt providers, non-exempt providers and TPSs to determine their solar obligation for EY19, EY20, and EY21. The calculation methodology proposed by Staff in Attachment A to the Notice is set forth below.

PROPOSAL TO CALCULATE EXEMPT & NON-EXEMPT SOLAR RPS OBLIGATION PURSUANT TO C. 24 (C.48:3-87) 38 D. (3)(C)

For any non-exempt electricity supplied by a BGS provider or by a TPS, such provider or supplier shall calculate its solar obligation as follows:

1. Determine the supplier/provider’s market share of the non-exempt electricity supplied Statewide during the applicable energy year, as follows:

- i. Consult the Board’s NJCEP website to determine the number of MWhs of non-exempt electricity supplied Statewide during the energy year by all TPS/BGS Provider subject to this subchapter;
  - ii. Determine the number of MWhs of non-exempt electricity the TPS/BGS Provider supplied during the energy year; and
  - iii. Divide 1ii above by 1i above to obtain a fraction representing the supplier/provider’s non-exempt electricity market share for the applicable energy year;
2. Determine the total Statewide solar obligation for non-exempt electricity supply during the applicable energy year as follows:
- i. Consult Table B below to determine the total Statewide solar obligation for all electricity supplied during the energy year;
  - ii. Consult the Board’s NJCEP website to obtain the cumulative solar obligation for the exempt electricity that was supplied during the energy year;
  - iii. Subtract 2ii above from 2i above. The result is the total Statewide solar obligation for non-exempt electricity supplied during the energy year; and
3. Multiply the TPS/BGS Provider’s non-exempt market share from 1 above by the Statewide non-exempt solar obligation from 2 above. The result is the supplier/provider’s solar obligation for the non-exempt electricity that it supplied during the energy year.

For any electricity supplied by an exempt BGS provider, such BGS provider shall calculate its solar obligation by multiplying its total retail sales by the applicable percentage requirement N.J.S.A. 48:87(d)(3).

The proposed schedule for increasing the existing Class I RPS through EY21, provided to the public as Attachment B to the Notice, appears below.

Proposed Schedule to Increase the Existing Class I RPS

Energy Year	Solar	Class I	Class II	Total
June 1, 2018 - May 31, 2019	4.30% 3.29%*	14.175% 14.175%*	2.50% 2.50%*	20.98% 19.97%*
June 1, 2019 - Dec 31, 2019	4.90% 3.38%*	16.029% 16.029%*	2.50% 2.50%*	18.53% 21.92%*
January 1, 2020 - May 31, 2020	4.90% 3.38%*	21.0% 21.0%*	2.50% 2.50%*	23.50% 26.88%*
June 1, 2020 - May 31, 2021	5.10% 3.47%*	21.0% 21.0%*	2.50% 2.50%*	23.50% 26.97%*
June 1, 2021 - May 31, 2022	5.10%	24.5%	2.50%	27.00%

\*BGS Providers with exempt contracts

## **COMMENTS ON STAFF'S PROPOSAL**

Comments were accepted through December 10, 2018.

Oral comments were received from Rate Counsel, RESA, Mid-Atlantic Renewable Energy Coalition ("MAREC"), IEPNJ, Carbon Solutions Group, and Concord Energy Services ("Concord").<sup>3</sup>

Written comments on Staff's proposal were received from the EDCs, PSEG Services Corporation ("PSEG") on behalf of PSEG Power LLC and PSEG Energy Resources and Trade, LLC, Rate Counsel, RESA, MAREC, the New Jersey School Board Association ("NJSBA") on behalf of the Alliance for Competitive Energy Services ("ACES"), the Carbon Solutions Group, the New Jersey Solar Energy Coalition ("NJSEC"), Mr. Kenneth Jones, and Ms. Pamela Barroway.

*1. How to allocate the solar RPS obligations of the exempt entities amongst the non-exempt entities [referencing Attachment A]:*

IEPNJ: IEPNJ represented that its first priority was getting clarity on the allocation of the solar RPS obligation of the exempt BGS providers. Without such clarity, it stated, the independent power producers would have to include a risk premium that would drive up the rates they offered. Noting that the TPS are already bearing the cost of the increase in the EY19 solar RPS, the commenter recommended that the Board attempt to achieve the statutory directive of competitive neutrality between BGS and third party supply by spreading the EY19 solar obligation over the next two BGS auctions rather than require that this obligation be entirely accounted for in the next auction. IEPNJ also suggested that the increased Class I obligation for EY20 and EY21, which had not been reflected in the February 2018 BGS Auction, should be picked up in the "overweight" in the next Auction.

Concord: Concord asked "[F]or EX18111250 [Order on BGS Auction], number one, is this applicable to the exempt providers only, or is it application to all . . . third party suppliers?"<sup>4</sup> The commenter also concurred with IEPNJ's recommendation that the increased EY19 obligation be recovered over the following two energy years.

RESA and NJSEC: RESA maintained that while the CEA exempts certain BGS contracts from complying with the increased solar RPS obligation during the current and two succeeding energy years, the CEA place the responsibility for providing those exempt entities' portion of the solar RPS obligation solely upon the non-exempt BGS providers and not upon the TPS. In support of this contention, RESA quoted the statutory language: "[s]uch incremental new requirements that would otherwise have been imposed on exempt providers shall be distributed over the providers not subject to the existing supply contract exemption[.]" N.J.S.A. 48:3-87(d)(3) (emphasis added). RESA also stated that since the CEA: 1) exempts all existing BGS contracts, each of which was entered into prior to the date of the CEA, and 2) places the burden of supplying the exempted solar RPS obligation on BGS providers, that exempted obligation must be accounted for, by the providers, in the next BGS auction.<sup>5</sup> In addition, RESA pointed to language in the concluding sentence of the statutory section which directs the Board to "implement the provisions of this

<sup>3</sup> The comments of RESA and CE addressed the Rule Proposal only.

<sup>4</sup> While it is not completely clear to what Concord question refers, from the context it appears to be the exemption from the increased solar RPS obligations.

<sup>5</sup> Scheduled for February 2019 and covering portions of the electric load for EY20, EY21, and EY22.

subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.” (*Ibid.*) (emphasis added). In the context of this argument, RESA critiqued Attachment A to the Notice, set forth above, for assigning all responsibility for the exempt BGS load to TPS in EY19 and a portion to the TPS in EY20 and EY21. Finally, RESA noted that New Jersey’s TPS customers/ratepayers, unlike the BGS ratepayers, are already bearing the cost of the increased solar RPS and the CEA directs the Board to recognize the increase as a change required by operation of law, which increases the TPS contract charge to with their customers but not the BGS providers’ charge to the EDCs. NJSEC supported RESA’s position that the non-exempt BGS contracts in the coming year should be responsible for the EY19 solar obligation of the exempt BGS suppliers.

**Rate Counsel:** Rate Counsel concurred with RESA that the solar obligations of the exempt providers should not be allocated to the TPS and that these obligations should be re-allocated to a later energy year. Rate Counsel suggested that the obligations be spread over two energy years, EY20 and EY21.

**PSEG:** PSEG stated its belief that the Board should allocate the new RPS requirements in a manner that grandfathers existing BGS supply contracts while remaining competitively neutral to BGS suppliers and retail energy providers. The commenter concurred with the proposed calculation which allocates RPS requirements across exempt and non-exempt BGS tranches, but recommended that the Board verify retail loads submitted by retail providers to ensure accuracy. Verifying the loads submitted by retail providers, in PSEG’s opinion, will help ensure that all providers are subject to the new requirement in a manner that is competitively neutral among all providers and suppliers, as required by the CEA. In addition, PSEG asked the Board to clarify that the EDCs should assess the BGS supplier RPS compliance requirements based on retail load served. Finally, the commenter asked that the Board to “clarify” that the new, additional EY 19 solar RPS compliance obligations are to be incurred in the BGS supply contracts awarded in the 2019 and 2020 BGS Auctions and to be due with the compliance obligations for EY20 through EY23.

**EDCs:** The EDCs asked the Board to confirm that no BGS supplier will face an increased solar requirement for EY19 and that the percentage attributable to the exempt providers is the percentage marked with an asterisk in the second row. The EDCs also stated their understanding of Attachment A to the Notice as distributing the solar RPS attributable to the exempt BGS providers over the non-exempt BGS providers and the TPS. In addition, the EDCs asked for confirmation of their understanding of the calculations provided in Attachment A, noting that they and the Auction Manager would respond to questions from bidders in the upcoming BGS Auctions.

**Mr. Kenneth Jones:** Mr. Jones represented that his community, the Borough of Glen Rock, has been pursuing an attempt to adopt a Renewable Government Energy Aggregation program but has been frustrated by the increase in the competitive suppliers’ prices brought about, as he understands matters, largely by the mandated increase in the solar RPS for EY19. He stated that if these suppliers are also required to make up the portion of the solar RPS from which existing BGS contracts are exempted their process will become even higher relative to those of the utilities and as a result, his town will be unable to procure for its residents an electricity supply with a higher renewable energy content than the State minimums. Mr. Jones urged the Board not to make the competitive suppliers responsible for the exempt BGS providers’ share of the increased solar RPS.

NJSBA: NJSBA submitted that it would be unfair to ACES members and the taxpayers in their communities that no utility suppliers be responsible to make up the shortfall for the current energy year. If no utility supplier is required to pay for the exempt share of the increased solar requirement for the current energy year, NJSBA believed that ACES' suppliers and other retail suppliers will, by default, bear the burden of this and what NJSBA characterizes as distortions in the competitive marketplace will continue. The commenter asked the Board to provide certainty and guidance on the issue of where the utilities supply contracts resulting from the February 2019 auction will have to pick up the prospective share of the CEA's increased solar requirements. To "permanently" exempt utilities from paying their share of the costs of the increased solar RPS, contended NJSBA, would harm NJ's public schools and the local taxpayers forced to pay for "someone else's share" of the increase in the solar requirements.

Response: The CEA mandated that the increased solar RPS be met notwithstanding the exemption of BGS supply already under contract at the time the CEA was signed into law. All electricity to be supplied by BGS providers for EY19 was already under contract at that time. The CEA also mandates that non-exempt BGS providers only, not the TPS, make up the solar RPS obligation of the exempt BGS providers. Since all BGS supply for EY19 is exempt, there are no non-exempt BGS providers to make up the solar obligation of the exempt BGS providers at this time. Therefore, the solar RPS obligation of the exempt BGS providers for EY19 shall be provided by the non-exempt BGS providers in EY20 and EY21. The exempt BGS' solar RPS obligation for EY20 will be distributed over EY21 and EY22, while the exempt obligation for EY 21 will be distributed over EY22 and EY23. Contrary to the EDCs' understanding of Attachment A to the Notice, but consistent with the plain language of the CEA, the exempt BGS providers' solar obligation will be distributed among the non-exempt BGS providers, but not over the TPS. The Board believes that this implementation of the CEA's requirements is most consistent with its requirement that "[A]ll providers are subject to the new requirement in a manner that is competitively neutral among all providers and suppliers." N.J.S.A. 48:3-87(d)(3)(c). Insofar as the EDCs seek confirmation of their understanding of the steps in Attachment A, the Board refers them to the Staff Recommendation below.

*2. What the RPS requirements should be for Energy Year (EY) 19, EY 20, EY 21, and EY 22 [referencing Attachment B]:*

IEPNJ: IEPNJ suggested that the increased Class I obligation for EY20 and EY21, which had not been reflected in the February 2018 BGS Auction, should be picked up in the "overweight" in the next Auction.

Concord: Concord concurred with IEPNJ's recommendation that the increased EY19 obligation be recovered over the following two energy years.

RESA: RESA urged the Board to carefully review Attachment B to the Notice, asserting that the total for the row showing June 1, 2019 to December 31, 2019 should be 23.429%, not 18.53%. Similarly, RESA stated that the total for the next row, showing the RPS percentages from January 1, 2020 to May 31, 2020, should be 28.4% and not 23.5%.

Response: The intended meaning of the table provided in Attachment B and questioned by RESA is that beginning on June 1, 2019, the solar RPS shall be deemed to be a subset of the Class I RPS rather than additive to the Class I RPS. Thus, from the second row in the table set out in Staff's recommendation below, the percentage shown in the first column, "Solar Renewable Energy," is subsumed within the percentage shown in the second column, "Class I Renewable Energy." As a result, the last column or "Total" reflects the addition of the figures in the second and

third columns only. The Board does not believe it would be beneficial to reduce the solar RPS along the lines suggested by Mr. Pfeiffer at this time.

Rate Counsel: Rate Counsel stated that it has no objection to the timetable shown in Attachment B, regarding it as a reasonable schedule for implementing the statutorily mandated increase in the Class I RPS.

Response: Staff appreciates the commenter's support for the proposed timetable.

EDCs: The EDCs asked the Board to specify the Class I percentage that would be in effect from January 1, 2020 through May 31, 2020 and also for each energy year thereafter.

Response: The revised table that appears below provides the requested information through May 31, 2022. The Class I RPS percentage proposed to be in effect in subsequent energy years may be found in the rule proposal being presented in a separate docket.

3. *Whether to consider solar obligation to be included within the overall Class I obligation as a carve-out, such that SRECs submitted to satisfy the solar RPS will also be counted toward the satisfaction of the total Class I RPS rather than being considered additive to the Class I RPS.*

Concord: Ms. Malloy asked if the Board decided to treat the solar RPS as a "carve out" of the Class I RPS, would the Board permit customers that have contracts which are already bid out, such as local governments which have aggregated, to also bring the "wind down" starting in January 2019.

Response: Staff is not familiar with the phrase "wind down" and is thus hampered in responding to this question; the following clarifications, however, may answer what is believed to be the question. TPS customers will not be relieved of the higher charges associated with the increased EY 2019 RPS obligations after January 2, 2019. Additionally, Solar will not be treated as a carve-out beginning January 1, 2019, but solar will be treated as a carve out beginning on June 1, 2019, when EY20 begins.

RESA: RESA maintained that the solar RPS should be considered a "carve-out" of the Class I RPS, rather than being additive to the Class I RPS. RESA pointed to the definition of Class I at N.J.S.A. 48:3-51, mirrored in N.J.A.C. 14:8-1.2, which includes solar energy as one type of Class I renewable energy. Responding to MAREC's comments at the December 7, 2018 public meeting that unlike offshore wind, solar energy is not an explicit "carve out" of the Class I RPS obligation, RESA submitted that the inclusion of solar energy within the statutory definition of Class I renewable energy renders an express inclusion within the Class I RPS unnecessary. In addition, RESA noted that N.J.A.C. 14:8-2.3(f)(1) allows the use of SRECs to satisfy the Class I RPS obligation and states that this provision supports its position.

Rate Counsel: Rate Counsel concurred with RESA that the definitions in N.J.S.A. 48:3-51 and N.J.A.C. 14:8-1.2 include 'solar energy' as a type of Class I renewable energy. In addition, Rate Counsel posits that treating the solar RPS obligation as additive would, in effect, increase the Class I RPS above the CEA's requirements; moreover, the commenter believed that such treatment would risk running afoul of the CEA's caps on the rate increases that can be implemented to meet the CEA's Class I goals.

NJSEC: NJSEC concurred with the Board's recommendations to include New Jersey solar generation into the overall Class I compliance obligations as set forth in "Attachment C" in the Notice. The commenter noted that more than 90% of the monies collected from New Jersey ratepayers for the current Class I program flows to out of state projects which create no clean energy jobs in New Jersey. With the Class I compliance percentages increasing dramatically over the next decade, NJSEC applauded the incorporation into that standard of New Jersey SRECs.

MAREC: MAREC, a non-profit organization formed to help advance opportunities for renewable energy development primarily in PJM territory, opposed the treatment of the solar obligation as a subset or "carve out" of the Class I obligation. MAREC noted that the table at N.J.A.C. 14:8-2.3(a) lists the solar RPS requirements separately from those of the Class I RPS and that N.J.A.C. 14:8-2.3(k) treats the solar RPS as additive. In addition, MAREC highlighted that the CEA does not speak to treating the solar RPS as a carve-out within the Class I RPS, whereas the earlier enactment creating the offshore wind obligation specified that this obligation would reduce the corresponding Class I energy requirement. MAREC also relied on the Board's statement when promulgating an offshore wind rule, N.J.A.C. 14:8-7.2(c), that [Offshore wind Renewable Energy Certificates] would be a component of the Class I renewable energy requirements and that satisfaction of OREC obligations would be counted toward satisfaction of the Class I obligation. By contrast, stated MAREC, the Board has always treated the solar RPS as additive to the Class I RPS. If the Board wishes to change to this treatment, argued the commenter, the Board must do so in a rulemaking proceeding pursuant to the Administrative Procedure Act; this BGS proceeding is not in MAREC's opinion a proper venue to make such a change. MAREC noted that this treatment results in a total Class I RPS requirement less than it would have been under the previous standard; not until 2021, alleges the commenter, would the total RPS demand exceed 2018 levels. Treating solar as a subset of Class I would lower demand and have a disruptive effect on the renewable energy market, in MAREC's opinion. Disruption in the market, MAREC opined, could in turn negatively impact renewable energy developers' ability to obtain financing for new projects. Finally, MAREC argued that treating the solar RPS as a subset of Class I raises policy concerns, being antithetical to both legislative and gubernatorial intent. MAREC contended that if the Board "reverses course" by making the solar obligation count toward the Class I obligation it will be contravening the Legislature's intent in increasing the Class I standard and the Governor's intent in beginning an Energy Master Plan ("EMP") process aimed at moving New Jersey away from fossil fuels and toward clean energy.

Carbon Solutions Group: The commenter stated that including the solar RPS as a carve out or subset of the Class I RPS is inconsistent with current state policy. According to the Carbon Solutions Group, CEA contains no language evidencing a change to current policy or suggesting that solar obligations should now be considered a "carve-out" from Class I tier. In the commenter's opinion, the Board should reject the "inclusive" approach and should continue to treat the solar RPS obligation as additive.

Response: The Board concurs with Rate Counsel that treating the solar RPS obligation as additive to the Class I RPS would risk increasing the cost of Class I compliance above the cost caps set by CEA of 9% (for EY19, 20, and 21) and 7% (beginning in EY22) of statewide retail electricity costs. Rather than running that risk, which the Board deems to be significant, the Board elects to avoid that risk by considering the solar RPS obligation, going forward, to be a carve out, or subset, of the overall Class I RPS obligation. The Board notes that the statute provides that "[t]he 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." The disruption to the market with reaching those price caps, should the Board be forced to reverse the recent increase

in the Class I RPS, would likely be significantly greater than that which MAREC considers possible if the Board pursues its chosen course of treating the solar RPS as a carve out from the outset.

MAREC pointed to the creation of the offshore wind RPS, and its identification as an offset, or carve out, to the Class I RPS, as evidence that the Legislature only intends to create a carve out when it uses express language to that effect. Similarly, MAREC noted that the Board, in the rulemaking proceeding which produced the OREC, also expressly identified satisfaction of the OREC obligation as counting toward the satisfaction of the Class I obligation. These comparisons, however, are not apropos. When the Legislature created the offshore wind renewable energy RPS, it did not simultaneously increase the Class I RPS and also create caps on the cost of complying with that increase. When it passed CEA the Legislature did include such caps and, by doing so, made it necessary for the Board to control the cost of compliance proactively. Similarly, when the Board noted that satisfying the OREC obligation would also be counted toward the satisfaction of the Class I obligation, it only stated what was already statutorily required. The Board made no such statement when it codified the solar RPS requirement because the legislation contained no such provision. The Board thus had nothing to mirror with respect to the Class I obligation. By contrast, CEA requires the Board to simultaneously increase the Class I RPS; increase the solar RPS; and do both without triggering the cost caps. The Board's decision to deem the solar RPS obligation as a subset of the Class I obligation beginning in EY20 constitutes an effort to comply with each of the new statutory directives.

With respect to MAREC's comment on the necessity for a rulemaking proceeding, the Board refers the commenter to Docket. No. EX18111244, also considered on the December 18, 2018 Board Agenda.

Ms. Barroway: The commenter states that she wholeheartedly supports accelerating the transition to renewable energy in the State and would like to see investment in infrastructure for solar and wind, as well as initiatives such as community solar.

Response: The Board appreciates the commenter's support for renewable energy and for the initiatives mandated by CEA and being implemented by the Board.

### **STAFF RECOMMENDATION**

Staff has reviewed the comments above and considered the clarifications suggested. Staff has identified first, several clarifications to the proposed solar obligation calculation that it has recommended the Board propose, as rule amendments, to the RPS rules. Additionally, Staff proposes to add clarifications to its annual communication of compliance instructions sent to regulated entities and published on the New Jersey Clean Energy Program website. Second, Staff has identified improvements to the proposed schedule for increasing the Class I RPS obligation over the next several energy years.

The most important clarification deals with the allocation of the increased solar RPS obligation that is not being provided by the exempt BGS providers in EY19, EY20, and EY21. The calculation provided for comment as Attachment A to the Notice appears to place the responsibility for the solar RPS obligation of the exempt BGS providers upon the TPS in EY19. The revised calculation that appears in this Order clarifies that this obligation will be the responsibility of the non-exempt BGS providers in EY20

Staff recommends that the calculation and the schedule of Class I RPS increases, as modified by the clarifications discussed above and set out below, be approved by the Board. In addition, Staff seeks to clarify its proposal to make solar RPS compliance obligation a true carve out of the New Jersey Class I requirement. Since solar was first identified as a distinct component of the New Jersey Class I obligation in 2003, the solar compliance obligations have been additive to the obligation to comply with NJ Class I and NJ Class II requirements. Beginning in EY20, compliance with the solar RPS obligation for retail electric sales that are not exempt from the increased solar RPS percentage obligation shall be counted towards the New Jersey Class I requirement on a megawatt hour for megawatt hour basis. In other words, from EY20 forward, the solar RPS for non-exempt BGS supply shall be a “carve out.” BGS supply with pre-existing contracts must comply with the RPS requirements in effect at the time of contract execution and those RPS requirements shall remain additive and are not eligible to count toward the New Jersey Class I REC requirement of the exempt BGS providers.

Revised Proposed Schedule to Increase the Existing Class I RPS (TABLE A)

Energy Year	Solar	Class I	Class II	Total
June 1, 2018 - May 31, 2019	4.30%	14.175%	2.50%	20.975%
	3.29%*	14.175%*	2.50%*	19.965%*
June 1, 2019 - Dec. 31, 2019	4.90%	16.029%	2.50%	18.529%
	3.38%*	16.029%*	2.50%*	21.909%*
January 1, 2020 - May 31, 2020	4.90%	21.0%	2.50%	26.88%
	3.38%*	21.0%*	2.50%*	23.50%*
June 1, 2020 - May 31, 2021	5.10%	21.0%	2.50%	23.50%
	3.47%*	21.0%*	2.5%*	26.97%*
June 1, 2021 - May 31, 2022	5.10%	21.0%	2.50%	23.50%

\*BGS Providers with existing contracts

When similar calculations have been made necessary by prior laws increasing the solar RPS and exempting certain BGS providers and/or suppliers, the Board has received petitions for an extension in time to file the solar portion of the RPS Annual Report. The Board has granted these petitions in the past, and accordingly, Staff now recommends that the Board approve an extension in the time for filing of the solar portion of the RPS compliance Annual Report to December 1, 2019 for the compliance period ending May 31, 2019.

Calculate Exempt & Non-Exempt Solar RPS Obligation Pursuant to c. 24 (C.48:3-87) 38 d. (3) (c)

All BGS supply contracts subject to exemption will expire on or before May 31, 2021. For EY 2019, 2020, or 2021, if a BGS Provider’s energy portfolio includes both exempt and non-exempt electricity supply, the solar obligation for each shall be calculated separately and summed to determine that BGS Provider’s total solar obligation for the energy year.

For any exempt electricity supplied, a provider shall calculate its solar obligation as follows:

1. Determine the MWhs of exempt electricity the provider supplied during the energy year;
2. Determine the solar electric generation percentage requirement in effect when the BGS contract subject to exemption was executed; and
3. Multiply 1 and 2 above.

For any non-exempt electricity supplied during EY 2020, 2021, or 2022 a BGS Provider shall calculate its solar obligation as follows:

1. Determine the provider's contemporaneous solar obligation for non-exempt electricity by multiplying their total non-exempt retail electricity sales in MWh during the energy year by the applicable percentage requirement in Table A.

2. Determine the provider's share of the banked obligations from the increased solar requirements avoided by exempt retail electricity in the previous energy year or the previous two energy years, as follows;

i. determine the market share of the non-exempt electricity supplied Statewide during the applicable energy year, as follows:

ii. Consult the Board's NJCEP website to determine the number of MWhs of non-exempt electricity supplied Statewide during the energy year by all BGS Providers subject to this subchapter;

iii. Determine the number of MWhs of non-exempt electricity the BGS Provider supplied during the energy year; and

iv. Divide 2iii above by 2ii above to obtain a fraction representing the provider's non-exempt electricity market share for the applicable energy year;

3. Determine the total deferred solar obligation incurred from exempt electricity supply during the previous energy year(s) as follows:

i. Consult Table A above to determine the total Statewide solar obligation for all electricity supplied during the energy year and the percentage requirement for exempt supply;

ii. Consult the Board's NJCEP website to obtain the deferred solar obligation for the exempt electricity that was supplied during the previous energy year or previous two energy years as applicable;

iii. The total amount of increased solar obligation avoided by exempt electricity supply in an energy year shall be allocated to the following two energy years in equal proportions.

4. Multiply the BGS Provider's non-exempt market share from (2)(iv) above by the total deferred solar obligation from (3)(iii) above. The result is the provider's solar obligation for the deferred exempt electricity based on the share of non-exempt electricity that it supplied during the energy year.

5. Add the BGS provider's contemporaneous solar obligations in MWh resulting from (1). above to the banked share resulting from calculated (4) in MWh above to arrive at the total RPS solar obligation.

For electricity supplied during EY 2023 or later, a BGS Provider shall calculate its solar obligation multiplying its total retail sales by the applicable percentage required in Table A above.

### **DISCUSSIONS AND FINDINGS**

As previously noted, the CEA raises the solar RPS obligation for EY19, which began six (6) days after the CEA was signed into law and is currently ongoing. As a result, there was no opportunity for the Board to conduct a stakeholder process and devise an implementation strategy prior to the commencement of the current energy year. The Board's determinations on the implementation of the CEA, as it relates to the RPS, will have an immediate impact on the participants in the SREC market, the retail electricity market and, consequently, on New Jersey ratepayers.

The Board **FINDS** that the CEA mandates that the aggregate solar requirements of New Jersey's RPS be increased and that the extent of each BGS provider's obligation under the law be determined based upon the date of execution of the BGS providers' supply contracts. The Board **FINDS** that certain providers who entered into three-year contracts prior to the effective date of the CEA are exempt from the increased solar requirement, but the statewide solar requirement has not been reduced because of this exemption. The Board **FINDS** that the non-exempt BGS providers must provide the portion of the solar obligation that would have otherwise been provided by the exempt providers.

The Board **FINDS** that Staff's calculation methodology was designed to be transparent, logical, and equitable. Nonetheless, the Board **FINDS** that the proposed calculation will be improved by incorporating of some of the clarifications suggested by the commenters on the changes to the solar and the Class I RPS compliance requirements made by the CEA.

Consistent with the Board's direction, Staff engaged in a stakeholder process regarding Staff's proposal to receive comment and input. Staff discussed the proposal at a public hearing and solicited written comments from stakeholders and the public. Therefore, the Board **HEREBY FINDS** that the process utilized in developing Staff's proposed calculation methodology and RPS requirements was appropriate and provided stakeholders and interested members of the public adequate notice and opportunity to comment on it.

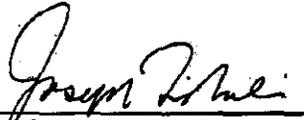
Accordingly, The Board **HEREBY APPROVES** Staff's proposed calculation methodology and RPS requirements as recommended in this Order.

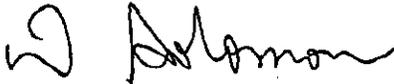
The Board **FURTHER APPROVES** Staff's recommendation to extend the deadline for the filing of the solar portion of the Annual RPS Compliance Report for the period ending May 31, 2019 to December 1, 2019, given the complexities of the required calculations.

The effective date of this Board Order is December 28, 2018.

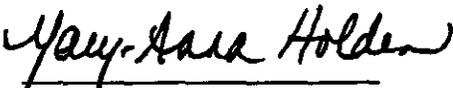
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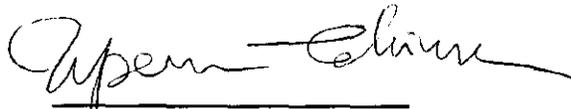
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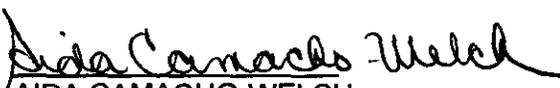
  
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I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities

Docket No. ER18040356 – In the Matter of the Provision of Basic Generation Service (“BGS”) for the Period Beginning June 1, 2019; and

Docket No. EO18111250 – In the Matter of the Provision of Basic Generation Service (“BGS”) – Renewable Portfolio (“RPS”) Allocation.

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