



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY PROGRAMS)
AND BUDGET FOR FISCAL YEAR 2017:) ORDER
CONTRACTOR REMEDIATION PROCEDURES)
) DOCKET NO. QO16040353

Parties of Record:

- Janja Lupse**, CLEAResult Consulting Inc.
- Diane Zukas**, TRC Energy Services
- Matt Dugan**, ICF Resources, LLC
- Michael Ambrosio**, Applied Energy Group
- Mark Mader**, Jersey Central Power & Light
- Timothy White**, Atlantic City Electric
- Sandra Eason-Perez**, Orange & Rockland Utilities
- Bruce Grossman**, South Jersey Gas Company
- Susan Ringhof**, Public Service Electric & Gas Company
- Andrew Dembia**, New Jersey Natural Gas
- Mary Patricia Keefe**, Elizabethtown Gas Company
- Stefanie A. Brand**, Division of Rate Counsel

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities ("Board" or "BPU") at its January 25, 2017 public meeting, where the Board considered revisions to New Jersey's Clean Energy Program's ("NJCEP") Contractor Remediation Procedures ("CRP").

BACKGROUND

The Board administers the NJCEP Programs pursuant to its authority under the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 to 109. NJCEP includes several programs that offer incentives to residential, commercial and industrial customers of electric and natural gas utilities to invest in energy efficiency ("EE") and renewable energy ("RE") measures. The Board has further assigned program coordination and management of the NJCEP to a Program Administrator ("PA"), with the exception of the Comfort Partners Program, which is managed by the utilities.

The NJCEP has experienced situations where Contractors have violated program procedures, including cases where a Contractor may repeatedly or consistently violate program procedures. On October 5, 2010, the Board approved the initial CRP to grant Program Managers the ability to address Contractor violations of program procedures.¹ All Contractors who participate in the NJCEP are subject to the CRP. The October 5, 2010 Order outlined four different types of violations and identified the recommended actions for each infraction, ranging from Level 1, guidance, to Level 4, suspension from participation in NJCEP.

PROPOSED REVISIONS TO THE CONTRACTOR REMEDIATION PROCEDURES

The Board has issued numerous Orders that approved NJCEP programs and budgets administered by the PA for the residential EE, RE, and commercial and industrial ("C&I") EE programs. Several of the programs, including, among others, the Home Performance with Energy Star, Residential HVAC, C&I New Construction, C&I Retrofit, and Solar Renewable Energy Certificate ("SREC") Registration Programs, can involve participation by third party Contractors. Previously, these Contractors were held to the CRP as outlined in the October 5, 2010 Order.

In an effort to strengthen and streamline the CRP, Staff and the PA undertook a review of the CRP. Staff concluded its review with a proposal dated October 5, 2016. The proposed modifications are attached at the end of this Order. These procedures will apply to Contractors participating in any NJCEP, including third party owners of solar.²

The revised CRP includes four levels of remediation describing various types of Contractor issues, the recommended actions to remedy the problem, and the process for implementing corrective action at each level. The areas of non-performance will affect the level at which Contractors enter the matrix. Changes to the CRP also include identifying solar installers as contractors subject to these remediation procedures; labeling each Level of remedial action, such as Coaching, Probation, Suspension, and Debarment; defining timelines with respect to periods of remedial actions, (i.e. coaching for 30-60 days, probation for 60-90 days, suspension from 90-180 days, or debarment for a minimum of 2 years); providing contractors the opportunity to request a stay in the procedure prior to suspension; and providing notice to customers and the public when a contractor is suspended or debarred.

SUMMARY OF COMMENTS & OCE STAFF RESPONSES THERETO:

A request for comments notice was served to the EE, RE, and CHP listservs on October 5, 2016. In addition, the request was posted on NJCEP's website. Comments were due by October 19, 2016. Written comments were submitted by MaGrann Associates. The following summarizes the comments and also provides Staff's responses to them:

Comment: The CRPs should define the specific "standards" Contractors are expected to meet, and the "established guidelines and procedures" Contractors are expected to follow should be in writing and available to the Contractors.

¹ I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the Years 2009-2012: Contractor Remediation Procedures, BPU Docket No. EO07030203 (October 5, 2010).

² If a Contractor provides goods or services to the BPU, the NJCEP, or any single program pursuant to a state contract or a utility-managed contract, the terms, conditions, and remedies of the contract shall be applied before the CRP. If the BPU deems the contracted remedies insufficient, it may apply the CRP or take any other action allowable by law.

Response: Staff generally agrees that a Contractor should be subject to Remedial Action for failing to properly apply a “technical” standard (e.g., Manual J) only if applicable Program documents identify the technical standard. Staff respectfully submits it would be unduly restrictive to limit the enforcement of the CRPs to only violations of specific written standards, and it notes the CRPs have never done so. Instead, Staff submits that the CRPs appropriately apply to broadly described categories of unacceptable performance (e.g., “misleading sales or commercial practices”) so as to provide Staff and those administering NJCEP with the flexibility necessary for responding to the wide variety of issues that arise, all subject to Board oversight and review.

Comment: The CRPs could be clearer in stating that a Contractor can be placed in a higher Level without having to first progress through each of the lower Levels.

Response: Staff agrees with MaGrann’s interpretation, and respectfully submits the CRPs are sufficiently clear on this point.

Comment: The CRPs should identify when the Contractor’s customers and the public are informed about the status of a CRP action, especially about a Debarment.

Response: Staff agrees with this comment and has added the following to #2 under “Processes that Apply to all Levels Unless the Table Specifically Provides Otherwise”:

OCE Staff and/or the PA shall make available to the public a list of all Suspended or Debarred Contractors by posting same on the NJCEP and/or BPU website and by such other means they may deem appropriate. A Contractor shall be placed on such list as soon as practicable after its Suspension or Debarment becomes effective, and its name shall be removed from the list as soon as practicable after the Suspension expires or is terminated or after the Contractor is reinstated following a Debarment. The list shall include the Contractor’s name, address, whether it has been Suspended or Debarred, the date of Suspension or Debarment, the time period covered by any Suspension or for which the Contractor must wait before applying for reinstatement following a Debarment, and any such other information OCE Staff and/or the PA may deem relevant. For the avoidance of doubt, the foregoing is not intended to limit the applicability of the Open Public Records Act to any information related to the CRPs or their implementation nor to limit OCE Staff’s or the Board’s discretion to respond to requests for information related to same.

Additional Staff Note: Upon further reflection, Staff also made a minor revision to the Remedial Actions to clarify that the PM may inspect a reasonable sample of projects for a Contractor on Probation in a high-volume program.

DISCUSSION AND FINDINGS

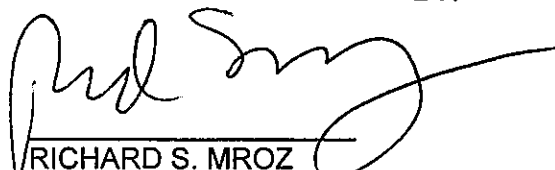
The Board has reviewed the proposed revised Contractor Remediation Procedures set out below. The Board believes that the programs require a proper enforcement such that the integrity of the NJCEP is maintained. Further, the Board believes that the programs require enhanced procedures for the Program Administrator and its subcontractors to address issues related to Contractor non-performance or wrongfulness. In addition, Staff has suggested a minor revision to the Remedial Actions to clarify that the PM has discretion to inspect a reasonable sample of projects for a Contractor on Probation in a high volume program. The Board agrees, and such suggestion is reflected in the Contractor Remediation Procedures set out below. The revised Contractor Remediation Procedures will be put in effect to assist in addressing these issues.

The proposed procedures set out below distinguish between different levels of infractions and the recommended actions are appropriately related to the level of the infraction. Based on the above, the Board **HEREBY APPROVES** the Contractor Remediation Procedures set out below and **AUTHORIZES** the Program Administrator to implement them as of the effective date of this Order.


This Order shall be effective on February 4, 2017.

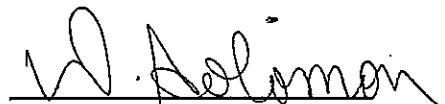
DATED: 1/25/17

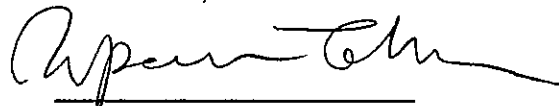
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

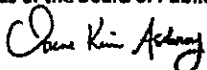

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



IN THE MATTER OF THE CLEAN ENERGY PROGRAMS AND BUDGET FOR FISCAL YEAR
2017 (FY17): CONTRACTOR REMEDIATION PROCEDURES
DOCKET NO. QO16040353

SERVICE LIST

Thomas A. Kowalczyk
Manager- Regulatory Review
Applied Energy Group
317 George Street, Suite 305
New Brunswick, NJ 08901
tkowalczyk@appliedenergygroup.com

Diane M. Zukas
TRC Energy Solutions
900 Route 9 North, Suite 404
Woodbridge, NJ 07095
DZukas@TRCsolutions.com

Michael Ambrosio
Applied Energy Group
317 George Street, Suite 305
New Brunswick, NJ 08901
mambrosio@appliedenergygroup.com

Bruce Grossman
Program Manager, Residential EE
South Jersey Gas Company
1 South Jersey Plaza
Folsom, NJ 08037
bgrossman@siindustries.com

Samuel Valora
Program Manager, C&I Energy Efficiency
South Jersey Gas Company
1 South Jersey Plaza
Folsom, NJ 08037
svalora@sjindustries.com

Ken Maloney
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922
kmaloney@aglresources.com

Anthony Pugliese
Elizabethtown Gas
148 Edison Road
Stewartsville, NJ 08886
apugliese@aglresources.com

Mary Patricia Keefe
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922
mkeefe@aglresources.com

Thomas Kaufmann
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922
tkaufmann@aglresources.com

Steve Swetz
Director, Corporate Rates & Revenue
Requirements
Public Service Electric and Gas Company
T5, PO Box 570
Newark, NJ 07101
Steve.swetz@pseg.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625
sbrand@rpa.state.nj.us

Debbie Franco
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922
dfranco@aglresources.com

Alexander Stern
Assistant General Reg. Counsel
Public Service Electric and Gas Company
T5, PO Box 570
Newark, NJ 07101
Alex.stern@pseg.com

Scott Carter
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309
scarter@aglresources.com

Wayne Barndt
Manager Regulatory Strategy & Policy
Pepco Holdings, New Castle Regional Office
Mailstop 79NC59, PO Box 9239
Newark, DE 19714
Wayne.barndt@pepcoholdings.com

Timothy White
Manager Policy Coordination
Pepco Holdings, New Castle Regional Office
Mailstop 79NC59 , PO Box 9239
Newark, DE 19714
Timothy.white@pepcoholdings.com

Andrew Dembia
Regulatory Affairs Counsel
New Jersey Natural Gas Company
1415 Wyckoff Road
PO Box 1464
Wall, NJ 07719
adembia@njng.com

Sandra Easton-Perez
Administrator
Orange & Rockland Utilities, Inc.
Customer Energy Services
390 West Route 59
Spring Valley, NY 10977

Anne Marie Peracchio
Director, Conservation & Clean Energy Policy
New Jersey Natural Gas Company
1415 Wyckoff Road
PO Box 1464
Wall, NJ 07719
aperacchio@njng.com

Marisa Slaten, Esq.
Assistant Director, Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Marisa.slaten@bpu.nj.gov

Seçil Onat
Executive Director, Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Secil.onat@bpu.nj.gov

Holly Thompson
Orange & Rockland Utilities, Inc.
Customer Energy Services
390 West Route 59
Spring Valley, NY 10977

Rachel Boylan, Esq.
Legal Specialist
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Rachel.boylan@bpu.nj.gov

Irene Kim Asbury, Esq.
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
irene.asburv@bpu.nj.gov

William Agee, Esq.
Legal Specialist
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
William.Agee@bpu.nj.gov

Allison E. Mitchell
Administrative Analyst, Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Allison.mitchell@bpu.nj.gov

Sherri Jones, Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Sherri.jones@bpu.nj.gov

Maureen Wagner, Esq.
Legal Specialist
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Maureen.Wagner@bpu.nj.gov

Mark Mader
Rates and Regulatory Affairs
Jersey Central Power & Light Company
300 Madison Avenue, PO Box 1911
Morristown, NJ 07962-1911

Susan Ringhof
Public Service Electric and Gas Company
T5, PO Box 570
Newark, NJ 07101
Susan.ringhof@pseg.com

Matt Dugan
ICF Resources LLC
9300 Lee Highway
Fairfax, NJ 22031
Matt.Dugan@icfi.com

Andrew Kuntz
Deputy Attorney General
Division of Law
Department of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
andrew.kuntz@dol.lps.state.nj.us

Christopher M. Psihoules
Deputy Attorney General
Division of Law
Department of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
christopher.psihoules@dol.lps.state.nj.us

Elizabeth Teng, Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Elizabeth.teng@bpu.nj.gov

Benjamin S. Hunter
Renewable Energy Program Administrator
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Benjamin.hunter@bpu.nj.gov

Janja Lupse
CLEAResult
75 Lincoln Highway, Suite 100
Iselin, NJ 08830
Janja.lupse@clearesult.com

Caroline Vachier
Deputy Attorney General
Division of Law
Department of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
caroline.vachier@dol.lps.state.nj.us

CONTRACTOR REMEDIATION PROCEDURES TABLE

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>1 Coaching</p>	<p>The Contractor's work is failing to meet standards, but the problem is not significant and does not rise to Levels 2-4. Examples of Level 1 Issues / Problems include, without limit:</p> <ol style="list-style-type: none"> 1. Unintentionally incorrect or incomplete data submittals; or 2. Unintentionally incorrect or incomplete SEER / EER / HSPF data; or 3. Evidence, including legitimate customer complaints, of: <ol style="list-style-type: none"> a. Deficient service and/or equipment, or b. Misleading sales or commercial practices, c. Extreme, repetitive verbal abuse of customers or OCE, PA, or PM staff. <p>in each case, that is related to NJCEP, is not malicious or fraudulent, and does not pose a significant risk to human health or safety.</p>	<p>The PM shall coach and more closely supervise the Contractor for between 30 and 60 days, with the specific actions and number of days to be determined by the PM. Examples of appropriate Remedial Actions for this Issue / Problem include:</p> <ol style="list-style-type: none"> 1. Oral and/or written guidance; and 2. More frequent Quality Assurance / Quality Control (QA/QC) of Contractor's applications to the program and/or inspections of the Contractor's fieldwork; and 3. Additional training or re-training; and 4. Such other coaching or supervisory Remedial Actions as the PM may impose, <i>provided however</i>, that if the Contractor is only at Level 1 such Remedial Actions shall not include those provided for Levels 2 – 4 below. 	<ol style="list-style-type: none"> 1. Prior to imposing Remedial Action, the PM shall Notify the Contractor that the Contractor will be subject to Remedial Actions, with a brief description of the Issue(s) / Problem(s) that led to the imposition of Remedial Action and a brief description of the type(s) of Remedial Action being imposed. 2. The Notice shall also identify, among other things, the time period for the Remedial Action, which the PM may choose to identify as a specific time (e.g., "until _____, 20__") or as a range (e.g., "until a date between _____, 20__ and _____, 20__", as determined by the PM during the course of the Remedial Action."). 3. If the PM determines to impose Remedial Actions in addition or instead of those set forth in a Notice previously provided to the Contractor, it must first send another Notice to the Contractor providing the above-described information as to the new Remedial Actions.

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>2 Probation</p>	<p>The Contractor's work is failing to meet standards to a degree or at a frequency higher than Level 1, but the problem does not rise to Levels 3-4. Examples of Level 2 Issues / Problems include, without limit:</p> <ol style="list-style-type: none"> 1. At the conclusion of Level 1 Remedial Action, the Contractor has failed to demonstrate that its Issue / Problem has been satisfactorily resolved; or 2. The PM determines that the type and/or frequency of the Contractor's deficiencies is too great for Level 1 but not yet deserving of Level 3 or 4. 	<p>In addition to Level 1 Remedial Actions,³ the PM shall also perform the following, for between 60 and 90 days (Probationary Period), with the number of days to be determined by the PM:</p> <ol style="list-style-type: none"> 1. For each project pending at any time during the Probationary Period, inspect the Contractor's work before issuing payment from the Program; and 2. Closely monitor all of the Contractor's applications pending at any time during the Probationary Period and approve such applications only with the written approval of PM staff at the "Manager" level or higher. 3. Notwithstanding the foregoing, if the Contractor is an SRP Contractor or otherwise has a such a high volume of projects that it would be impracticable and/or harmful to the Program or the public to inspect all of them, the PM shall have the discretion to inspect a reasonable sample of the Contractor's projects. 	<p>Same as for Level 1.</p>

³ For the avoidance of doubt, if the Remedial Actions applicable to more than one Level overlap or are substantially similar, the PM shall apply the more severe Remedial Action.

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>3 Suspension</p>	<p>The Contractor's work is failing to meet standards to a degree or at a frequency greater than Level 1 and 2, but the Issue / Problem does not rise to Level 4. Examples of Level 3 Issues / Problems include, without limit:</p> <ol style="list-style-type: none"> 1. At the conclusion of Level 2, the Contractor has failed to demonstrate that its Issue / Problem has been satisfactorily resolved; or 2. At the conclusion of Level 1, the Contractor has failed to demonstrate that its Issue / Problem has been satisfactorily resolved and the PM has determined that Level 2 is unlikely to resolve the Contractor's Issue / Problem; or 3. Deficient service or equipment that poses a risk to human health or safety that does not rise to Level 4. 	<p>In addition to Level 1 and 2 Remedial Actions,⁴ the PM shall also take one or more of the following Remedial Actions for between 90 and 180 days (Suspension Period), with the actions and number of days to be determined by the PM:</p> <ol style="list-style-type: none"> 1. Prohibit the Contractor from submitting any new applications to any NJCEP program or participating in any new customer applications to NJCEP or projects covered by any such applications. If an application involving the Contractor is nonetheless submitted, Notify the customer and Contractor that the Contractor is suspended and that the application will not be further reviewed unless and until the Contractor is allowed to re-enter the Program (or the application is re-submitted identifying a Contractor other than the one suspended). 2. Other than as necessary for the processing of applications that were deemed complete prior to the beginning of the Suspension Period, preclude the Contractor from using NJCEP forms, receiving NJCEP funding of co-op advertisement 	<p>In addition to the Process for Level 1:</p> <ol style="list-style-type: none"> 1. The PM shall Notify the Contractor at least 10 Business Days prior to the commencement of the Suspension Period. 2. The PM shall provide in the Notice that the Contractor may in a writing delivered to the PA request a meeting with the PA to dispute or otherwise discuss the imposition of the Suspension ("Request"). The Request must identify the relief sought and the reasons for granting it. 3. If there is a Request, the PA shall use reasonable efforts to schedule the Requested meeting for a date within 10 Business Days of the PA's receipt of the Request for same, and Notify the Contractor of the time and place of the meeting at least 3 Business Days prior to the meeting. 4. Following the meeting described above, the PA shall either (a) rescind the Suspension, (b) modify the Suspension's length or Remedial Actions, or (c) affirm the Suspension. 5. The PA shall Notify the Contractor of its determination, using its reasonable efforts to do so within 10 Business Days of the meeting described above. This Notice will delineate the start date of the Suspension (unless rescinded). 6. The party filing or serving any notice, request, determination, or other document related to this Level 3 shall simultaneously serve a copy of the document upon OCE Staff, the PA, and the PM (recognizing the party need not send a copy to itself). 7. If the Contractor desires to challenge a final determination, issued pursuant to the above Processes, the Contractor may, pursuant to <u>N.J.A.C. 14:1-1.1</u> et seq. and <u>N.J.A.C. 1:1-1.1</u>

⁴ For the avoidance of doubt, if the Remedial Actions applicable to more than one Level overlap or are substantially similar, the PM shall apply the more severe Remedial Action.

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>3 Suspension (cont'd)</p>		<p>incentives, and/or using NJCEP logos, online applications, online forms, and/or software.</p>	<p>et seq. (including <u>N.J.A.C. 1:14-1.1 et seq.</u>) (collectively, Formal Hearing Rules), file a request for a formal hearing with the BPU.</p> <p>8. Request to Stay a Suspension:</p> <p>a. The Contractor may at any time request in writing that the PA stay all or part of the Suspension. A stay request shall be granted or denied within 10 Business Days of its submission.</p> <p>b. The Contractor may seek further review of a determination regarding a stay request pursuant to the Formal Hearing Rules, including without limit <u>N.J.A.C. 1:1-12.6 and 14:1-8.7(d)</u>.</p>

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>4 Debarment</p>	<p>The Contractor:</p> <ol style="list-style-type: none"> 1. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense; or 2. Has engaged in gross negligence that posed a significant risk to human health or safety; or 3. Has engaged in repeated acts of negligence, submissions of incorrect or incomplete data, significantly deficient service, unethical misleading, or illegal sales or commercial practices, or other failures to meet standards, in each case on projects related to NJCEP and which either have not been satisfactorily resolved in Levels 1-3 or are too serious to be assigned to one of those levels; or 4. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the Contractor's business. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction; or 5. Is presently engaged in drug or alcohol use that is likely to impair the Contractor's ability to conduct its business with reasonable skill and safety. 	<p>The BPU may Debar the Contractor from the Program.</p>	<p>The PM and/or the PA may recommend to OCE Staff that a Contractor be Debarred. If OCE Staff determines to seek Debarment:</p> <ol style="list-style-type: none"> 1. OCE Staff shall Notify the Contractor that the Contractor will be Debarred effective 45 days after the Notification unless the Contractor within 10 Business Days submits a written Answer to OCE Staff disputing the grounds for the Debarment. The Notice identified in this #1 shall include a summary of the Issue / Problem justifying the Debarment and shall also Notify the Contractor that any Answer it files must include a summary of the reason(s) the Contractor challenges the proposed Debarment. 2. The Contractor shall be the subject of Level 3 Remedial Actions (i.e., shall be suspended) from the 10th Business Day following its receipt of the Notice described in #1 above. A Contractor wishing to challenge such imposition of Level 3 Remedial Actions shall follow the procedures set forth at #8, Process, Level 3. 3. If the Contractor submits an Answer, OCE Staff may in its discretion: (a) meet with the Contractor in an attempt to settle the matter in manner acceptable to both parties; or (b) deem the matter to be a contested to be handled in accordance with the Formal Hearing Rules. OCE Staff shall use reasonable efforts to Notify the Contractor of its determination in this regard within 15 Business Days from the submission of the Answer. <p>A Debarred Contractor may apply to the Board for reinstatement of its eligibility to participate in NJCEP. The Notice, order, or other document imposing the Debarment (each, a Debarment Order) may set forth the amount of time that must pass, which amount of time shall be no less than 2 years and shall be</p>

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
4 Debarment (cont'd)	For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days.		deemed to be 2 years if the Debarment Order does not set forth the amount of time that must pass. The Board may grant such an application if (a) the Contractor has demonstrated its rehabilitation, and (b) the Board finds good cause for the reinstatement.

Legend / Definitions:

Board, BPU, or State	= The State of New Jersey, acting through its Board of Public Utilities.
Business Day	= Any day that is not a Saturday, Sunday or other day on which the State Offices are officially closed.
Contractor	= The contractor or vendor providing goods and/or services directly to NJCEP or to a customer or another contractor for a project or other item directly or indirectly related to NJCEP (for the avoidance of doubt, including, without limit, its SREC Registration Program). For the avoidance of doubt, third party owners, developers, and installers of solar power installations are all deemed Contractors if they provide goods and/or services directly or indirectly related to NJCEP.
Debar / Debarment	= The Contractor is prohibited from directly or indirectly participating in NJCEP, including (1) involvement in any applications to NJCEP, (2) receipt of any funds from NJCEP, (3) use of NJCEP forms, NJCEP logos and/or NJCEP-authorized software. If there are NJCEP applications pending at the time of Debarment, the BPU through its staff shall inform the relevant applicants/customers that the Contractor has been Debarred and that therefore their applications will not be further reviewed or approved unless and until they are resubmitted in a way that no longer involves the Contractor.
EER	= Energy Efficiency Ratio.
HSPF	= Heating Seasonal Performance Factor.
NJCEP	= New Jersey's Clean Energy Program.
Notify	= To inform the recipient in writing (via email, regular mail, delivery service, or personal delivery, in each case with a receipt or certificate documenting receipt by the recipient). A Notice is the writing(s) by which the recipient is Notified.
OCE	= BPU's Office of Clean Energy.
PA	= The Program Administrator of NJCEP.
PM	= The subcontractors managing the various NJCEP programs.
SEER	= Seasonal Energy Efficiency Ratio.
Table	= The table immediately above this Legend.

Note: All capitalized terms not otherwise defined in this document shall be deemed to have the meaning given to them in the Table.

Processes that Apply to all Levels Unless the Table Specifically Provides Otherwise:

1. All actual and/or alleged Issues / Problems shall be tracked by the relevant PM. The tracking shall include at least:
 - a. Copies of all documents related to the Issue / Problem and its remediation.
 - b. The date the Issue / Problem is first brought to the attention of the PM, PA, or OCE Staff.
 - c. The relevant application number(s) and PM.
 - d. The date upon which the PM deems the matter closed and a brief description of the resolution of the matter.

2. The PM, PA, or OCE Staff, as applicable, shall use reasonable efforts to Notify the Contractor of the ultimate resolution of any Issue / Problem within fifteen (15) Business Days after such ultimate resolution. If a customer of the Contractor presents a complaint that could reasonably be determined to be an Issue / Problem, the PM shall also promptly inform the customer of the ultimate resolution of the matter. The PM or other tribunal, as applicable, may in its discretion also choose to inform the customer of any significant developments in the matter.

OCE Staff and/or the PA shall make available to the public a list of all Suspended or Debarred Contractors by posting same on the NJCEP and/or BPU website and by such other means they may deem appropriate. A Contractor shall be placed on such list as soon as practicable after its Suspension or Debarment becomes effective, and its name shall be removed from the list as soon as practicable after the Suspension expires or is terminated or after the Contractor is reinstated following a Debarment. The list shall include the Contractor's name, address, whether it has been Suspended or Debarred, the date of Suspension or Debarment, the time period covered by any Suspension or for which the Contractor must wait before applying for reinstatement following a Debarment, and any such other information OCE Staff and/or the PA may deem relevant. For the avoidance of doubt, the foregoing is not intended to limit the applicability of the Open Public Records Act to any information related to the CRPs or their implementation nor to limit OCE Staff's or the Board's discretion to respond to requests for information related to same.

3. If OCE Staff, the PA, or another PM becomes aware of an issue / problem / complaint that could reasonably be determined to be an Issue / Problem described in the Table, that party shall promptly provide all relevant information to the relevant PM.
4. OCE Staff and/or the BPU may seek the assistance of the PA in connection with any Issue / Problem.
5. The PM, PA, and/or OCE Staff, may conduct any reasonable, formal or informal, investigations they choose to conduct, including communicating with any of the Contractor's customers who may be affected by the Issue / Problem, *provided, however*, that they may not conduct any investigation prohibited by applicable law. Such permitted investigations may include, without limit, OCE Staff obtaining the information being tracked by the PM according to #1 above and/or other information the PM or PA may have that is reasonably related to a matter arising out of these Contractor Remediation Procedures, all subject to #4 above.
6. A Notice is deemed to have been given on the date the related receipt or certificate indicates it was received by the recipient.
7. The PM, PA, or OCE Staff, as applicable, may, for good cause and by way of Notice to the Contractor, extend the time during which a Contractor remains in Level 1 or Level 2 and

subject to the Level's Remedial Actions one time by up to the maximum number of days the CRP provide for the relevant Level's Remedial Actions. By way of example only, a PM may impose Coaching upon a Contractor for 60 days and then, prior to the expiration of the original 60 days, extend the Coaching for a second 60 days by providing Notice of that extension to the Contractor and the other parties mentioned in this #7.

8. For the avoidance of doubt, if the Remedial Actions applicable to more than one Level overlap or are substantially similar, the PM shall apply the more severe Remedial Action.
9. The BPU may in its discretion proceed to seek emergent relief by way of Order to Show Cause or other process in accordance with N.J.A.C. 14:1-1.1 et seq. and/or N.J.A.C. 1:1-1.1 et seq. instead of or in addition to the Processes set forth in the Table.
10. In the event any party desires to challenge the resolution of any dispute arising out of or related to Levels 1 or 2 of these CRPs, the party may avail itself of the dispute resolution procedures (DRP) set forth at NJCEP web site at www.NJCleanEnergy.com/disputeresolution, *provided, however*, that the foregoing reference to the DRP shall not in and of itself be deemed to provide a party with a right to request a formal hearing with the BPU.
11. Within 10 Business Days after the end of each fiscal quarter, each PM shall provide the PA, and within 20 Business Days after the end of each fiscal quarter, the PA shall provide OCE Staff, with a report as to the status of all CRPs within its scope (as to the PA, including those within the PMs' scopes) that were pending during the fiscal quarter, including the identification of each case in each Level and a description of the Remedial Actions that applied to each case during the fiscal quarter.