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Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE DUAL-USE SOLAR ENERGY)
PILOT PROGRAM)
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DOCKET NO. QO23090679

Parties of Record:

- Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel
- Neil Hlawatsch, Esq.**, Atlantic City Electric Company
- Margaret Comes, Esq.**, Rockland Electric Company
- James Meehan, Esq.**, Jersey Central Power & Light Company
- Matthew M. Weissman, Esq.**, Public Service Electric and Gas Company

BY THE BOARD:¹

By this Order, in conjunction with rulemaking in a related docket, Docket Number QX24080597² –, the New Jersey Board of Public Utilities (“Board” or “BPU”) establishes the Dual-Use Solar Energy Pilot Program (“Dual-Use Pilot Program” or “Pilot Program” or “Program”). The Pilot Program will be open to qualifying Dual-Use Solar Energy Projects with a capacity no greater than ten (10) megawatts (“MW”) and hosted on unpreserved farmland in active agricultural or horticultural use (“Dual-Use Pilot Program Projects”).³

BACKGROUND

On July 9, 2021, the Dual-Use Solar Energy Act of 2021, P.L. 2021, c. 170 (“Dual-Use Act,” “Act,” or “Statute”), was signed into law. The Act directed the Board, in consultation with the New Jersey Secretary of Agriculture, to adopt rules establishing a Dual-Use Pilot Program within 180 days following the enactment of the Dual-Use Act.⁴ The Statute further directed the Board to convert

¹ Commissioner Marian Abdou recused herself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

² In re a Rulemaking Proceeding to Establish the Dual-Use Solar Energy Pilot Program Pursuant to P.L. 2021, c. 170, BPU Docket No. QX24080597.

³ All MW values in this Order are in direct current, or “dc”.

⁴ N.J.S.A. 48:3-87.13(a).

the Pilot Program into a permanent program within thirty-six (36) months, or no later than forty-eight (48) or sixty (60) months, if applicable, after the adoption of rules and regulations.⁵

The Dual-Use Pilot Program is designed to encourage the development of Dual-Use Solar Energy Projects, also known as “agrivoltaics,” and the creation of a new segment of the solar industry in New Jersey that is compatible with the State’s rich agricultural heritage. Specifically, the Pilot Program seeks to demonstrate and study the compatibility of agricultural or horticultural production and solar photovoltaic infrastructure on the same land.

A program for Dual-Use Solar Energy Projects is part of the 2019 Energy Master Plan (“2019 EMP”), specifically Goal 2.1.8, *Coordinate Permitting and Siting Processes for Renewable Energy Development*.⁶ New Jersey’s 2019 EMP, which has the subtitle “Pathway to 2050,” includes an analysis to reach 100% clean energy by 2050, and includes projections of associated costs. The analysis identified a target for thirty-two (32) gigawatts (“GW”) of total solar installed by 2050. Modeling from New Jersey’s Integrated Energy Plan, completed as part of the larger 2019 EMP, suggests that New Jersey should seek to install 5.2 GW of solar by 2025, 12.2 GW by 2030, and 17.2 GW by 2035 to put New Jersey on a least-cost path to 100% clean energy by 2050. In February 2023, Governor Murphy announced an accelerated goal of 100% clean energy by 2035.⁷ The solar development undertaken as the State works to meet these goals provides solar installers and companies more opportunities than ever before.

On May 1, 2023, the Board approved and executed a three (3)-year grant agreement with the Rutgers Agrivoltaics Program (“RAP”) at Rutgers University (“RU”) to facilitate the development and implementation of the Pilot Program. The Pilot Program was designed in consultation with the New Jersey Department of Agriculture (“NJDA”), State Agricultural Development Committee (“SADC”), and the New Jersey Department of Environmental Protection (“NJDEP,” and collectively with the NJDA and SADC, the “State Agencies”), as well as the input of public stakeholders.

⁵ N.J.S.A. 48:3-87.13(g).

⁶ BPU, 2019 New Jersey Energy Master Plan: Pathway to 2050, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf.

⁷ [Exec. Order No. 315](#) (Feb. 15, 2023), 55 N.J.R. 509(a) (Mar. 20, 2023).

Once launched, the Dual-Use Pilot Program will lay the groundwork for a permanent program. Specifically, the Act mandates the Board “convert the Dual-Use Solar Energy Pilot Program to a permanent program as part of the permanent successor to the solar incentive program established pursuant to P.L. 2021, c. 169 (C.48:3-114 et al.).”⁸ The Solar Act of 2021 directed the Board to establish a program to incent the development of 3,750 MW of solar by 2026, by establishing a new program for incentivizing solar development in New Jersey through the mechanism of Solar Renewable Energy Certificates IIs (“SREC-IIs”), representing the value of the environmental attributes produced by the solar electric power generation facility. The Solar Act of 2021 also directed the Board to create a small solar facilities program with administratively set incentive values, and a solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW.⁹

By Order dated July 28, 2021, the Board opened the Successor Solar Incentive (“SuSI”) Program on August 28, 2021.¹⁰ The SuSI Program serves as the Board’s permanent program for providing solar incentives to qualified solar electric generation facilities; it is divided into the Administratively Determined Incentive (“ADI”) and the Competitive Solar Incentive (“CSI”) Programs. The ADI Program, opened to new registrants on August 28, 2021, offers a fixed incentive in the form of New Jersey SREC-IIs for net metered residential projects, net metered non-residential solar projects of five (5) MW or less, and community solar programs.¹¹ Incentive values are set administratively, following comprehensive modeling of costs and multiple rounds of stakeholder involvement. Incentive values vary by market segment, and in some cases, according to project size and siting. Since its opening, the ADI Program has incented the development of 573.6 MW of solar in New Jersey.¹²

By Board order dated December 7, 2022, the Board established the CSI Program.¹³ The CSI Program is open to qualifying grid supply solar installations, to non-residential net-metered solar installations with a capacity greater than five (5) megawatts (“MW”), and to eligible grid supply solar installations in combination with energy storage. The CSI Program awards SREC-IIs through an annual competitive solicitation, with four (4) separate market segments, or tranches: 1) Tranche 1: basic grid supply projects; 2) Tranche 2: grid supply projects sited on the built

⁸ N.J.S.A. 48:3-87.13(g); P.L. 2021, c. 169 (N.J.S.A. 48:3-114 et seq.) (“Solar Act of 2021”).

⁹ “Grid supply solar facility” means “a solar electric power generation facility that sells electricity at wholesale and is connected to the State's electric distribution or transmission systems.” “Grid supply solar facility” does not include: (1) a net metered solar facility; (2) an on-site generation facility; (3) a facility participating in net metering aggregation pursuant to section 38 of P.L.1999, c.23 (C.48:3-87); (4) a facility participating in remote net metering; or (5) a community solar facility. “Net metered solar facility” means “a solar electric power generation facility participating in the net metering program developed by the board pursuant to subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87) or in a substantially similar program operated by a utility owned or operated by a local government unit.” N.J.S.A. 48:3-51; see N.J.S.A. 48:3-116(a); N.J.S.A. 48:3-117(a).

¹⁰ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO20020184, Order dated July 28, 2021 (“SuSI Order”).

¹¹ “Community Solar Energy Program” refers to “the full-scale community solar program for which the Board shall adopt rules no later than January 1, 2022.” N.J.A.C. 14:8-9.2.

¹² Solar Activity reports, June 30, 2024 update, available at <https://njcleanenergy.com/renewableenergy/project-activity-reports/project-activity-reports>

¹³ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022 (“CSI Order”).

environment; 3) Tranche 3: grid supply projects sited on contaminated sites and landfills; and 4) Tranche 4: net metered non-residential projects greater than five (5) MW. A fifth tranche pairs a storage project with a grid supply project eligible for Tranche 1, 2 or 3. Since its opening, the CSI Program has incented the development of 310.21 MW of solar generation and eighty (80) MWh of storage.¹⁴

Pilot Program Stakeholder Proceedings

On November 9, 2023, Board Staff (“Staff”) released a Pilot Program straw proposal to commence the public stakeholder engagement process, with an updated version issued on November 21, 2023 (“November Straw Proposal” or “November Straw”).¹⁵ Written comments were due on December 13, 2023. On November 29, 2023, Staff hosted a virtual stakeholder meeting to discuss the November Straw Proposal. The meeting was well- attended with approximately 129 attendees and fourteen (14) participants who provided public comment during the meeting. Meeting attendees included representation from the agricultural community, solar industry, utilities, trade associations, academia, nonprofits, consultants, environmental organizations, media groups, State and local government, and members of the general public.

On November 14, 2023, Staff, in conjunction with RAP, presented an overview of the November Straw Proposal at the New Jersey Farm Bureau’s annual conference in Princeton, New Jersey.¹⁶ The conference was attended by approximately eighty (80) attendees including stakeholders primarily from the agricultural community, academia, and federal, State, and local government.

On June 10, 2024, Staff released for public comment a preliminary rule draft as an additional component of the Straw Proposal (“June Straw Proposal”).¹⁷ No additional stakeholder meetings were held. Written comments were due on June 24, 2024, a deadline later extended to July 3, 2024.

Comments and Written Responses

With respect to the November Straw Proposal, Staff received sixteen (16) written comments, representing 22 entities from a range of stakeholders, including the New Jersey Division of Rate Counsel (“Rate Counsel”), solar industry representatives, agricultural industry representatives, trade associations, non-profit organizations, and members of the general public.

The BPU received eighteen (18) written comments representing twenty-five (25) entities on the June Straw Proposal from a range of stakeholders, including Rate Counsel, public utilities, solar industry representatives, agricultural industry representatives, trade associations, a non-profit organization, and members of the general public.

¹⁴ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Order on the Outcome of the Second Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated April 17, 2024.

¹⁵ Board of Public Utilities, Notice: In the Matter of the Dual-Use Solar Energy Pilot Program, Dual-Use Solar Energy Pilot Program – Staff Straw Proposal and Stakeholder Meeting Notice, BPU Docket No. QO23090679 (November 21, 2023).

¹⁶ New Jersey Farm Bureau, 105th Annual Meeting Web Page, <https://njfb.org/2023-njfb-annual-meeting/>, November 13-14, 2023.

¹⁷ Board of Public Utilities, Notice: In the Matter of the Dual-Use Solar Energy Pilot Program, Request for Comments – Preliminary Draft Dual-Use Solar Energy Pilot Program Rules, BPU Docket No. QO23090679 (June 10, 2024).

All of the comments with respect to both straw proposals are available through the Board's website, through the Public Access System.¹⁸ Commenters provided thoughtful and comprehensive comments on a wide array of solar program and agricultural matters. Each commenter's suggestions and concerns are part of the record reviewed by the Board.

Staff recognizes and appreciates the many thoughtful comments and suggestions filed by stakeholders in response to the concepts set forth in the Straw Proposal. Comment summaries and their corresponding respective responses appear in Appendix A hereto.

STAFF RECOMMENDATIONS

Staff has formulated its recommendations for the design and implementation of the Dual-Use Pilot Program based on extensive stakeholder feedback on the Straw Proposal, as well as close collaboration and consultation with RAP and the State Agencies.

In addition to the guiding principles provided by the Dual-Use Act, throughout the development of the Pilot Program Staff has drawn on the same general principles indicated in its proposal for the SuSI Program:¹⁹

1. Provide maximum benefit to ratepayers at the lowest cost;
2. Support the continued growth of the solar industry;
3. Meet the Governor's goal of fifty percent (50%) Class I Renewable Energy Certificates ("RECs") by 2030 and 100% clean energy by 2050, which is now advanced to 2035;
4. Provide insight and information to stakeholders through a transparent process; and
5. Comply fully with the Clean Energy Act, including the implications of the cost cap.

Program Size, Term, and Structure

Straw Proposal and Stakeholder Comments

The Straw Proposal outlined the program term and structure as required by the Dual-Use Act, which mandates that the Pilot Program continue for thirty-six (36) months after the adoption of rules.²⁰ The first solicitation round and first application window ("First Solicitation") were envisioned to commence on the date that Pilot Program rules are adopted. This date would also commence the first program year ("Program Year 1"), with other program years to commence on the anniversary date of this date (each such year, a "Program Year"). Staff also proposed that the Pilot Program would be opened via Board Order in conjunction with an accompanying rule proposal. Staff envisioned this process to encompass issuing a Notice of Funding Availability ("NOFA") with pre-qualification criteria as explained under *Application Process and Project Selection – General*. Specifically, Staff recommended that a NOFA be the notice that is provided to the public to communicate a description of the upcoming solicitation round, deadlines for submission, and instructions for completing a pre-qualification proposal. Staff recommended in the Straw Proposal that the initial annual capacity target could be adjusted prior to the start of each Program Year and would be announced in a NOFA issued as part of a pre-qualification

¹⁸ Board of Public Utilities, Public Document Search, Docket No. QO23090679, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112335 (September 18, 2023).

¹⁹ SuSI Order at 11.

²⁰ N.J.S.A. 48:3-87.13(e).

process for a solicitation.

The Straw Proposal outlined potential annual capacity targets for the Pilot Program, not to exceed a total of 200 MW over the first three (3) years of the Program. The Board may expand this initial capacity target by up to fifty (50) MW per year for two (2) additional years.²¹ Staff recommended in the Straw Proposal an initial annual capacity target for Program Year 1 at thirty (30) MW, Program Year 2 at seventy (70_) MW, and Program Year 3 at 100 MW, with the flexibility to adjust capacity targets closer to the beginning of each Program Year.

Some stakeholders expressed their support for the 200 MW capacity cap for the full Pilot Program. However, several organizations were concerned that Staff's proposed initial annual capacity targets would limit the diversity of projects accepted by the Pilot Program. These stakeholders provided various recommendations for allocating capacity targets over the three (3)-year Pilot Program period. Several commenters also recommended allowing Dual-Use Pilot Program Projects into the State's Community Solar Energy Program ("CSEP"), which opened for registration on November 1, 2023, on the premise that doing so would benefit low-and-moderate income ("LMI") residents. Comments from a stakeholder requested that "farms," as the stakeholder defines the term, be added to the State's Remote Net Metering ("RNM") Program and rules due to a concern that net-metering Dual-Use Pilot Program Projects may not be practical or financially viable for farms. The stakeholder argued that flexibility is needed to support the electric demands of farms and that most have multiple electrical service lines to support onsite load. Some stakeholders also recommended reconsidering Staff's proposed definition of "farmer."

Comments from Rate Counsel recommended setting initial capacity targets during the NOFA process to provide time for input from non-bidding stakeholders.

Staff Recommendations

Staff maintains its recommendation in the Straw Proposal that the Board establish the annual capacity target for the three (3)-year Pilot Program at up to 200 MW total, and up to fifty (50) MW per year for two (2) additional years per the Statute in conjunction with the factors discussed in the Straw Proposal. While the process for setting annual capacity targets is not prescribed by the Dual-Use Act, the Act requires that the Board's implementation of the Pilot Program results in a diversity of applications by size and type of agricultural and horticultural production. After considering stakeholder input, and the need to balance a meaningful Pilot Program size with a timely review of the applications submitted, Staff recommends the Board set the initial capacity target for Program Year 1 up to fifty (50) MW. Staff considers this target adequate to meet the objectives of the Statute for the first Program Year. Staff recommends that this initial capacity target be included in the NOFA for the First Solicitation, which is discussed in detail under the section *Application Process and Project Selection – General*. Staff further recommends that the proposed defined term "NOFA" be revised to a Notice of Incentive Availability or "NOIA" to more accurately reflect the fact that an incentive opportunity is being made available. Specifically, Staff recommends "NOIA" to mean a notice issued to the public for the purposes of communicating an opportunity for interested parties to submit an expression of interest for a Dual-Use Solar Energy Project for pre-qualification into the Dual-Use Solar Energy Pilot Program.

Staff recommends defining the following terms:

²¹ Ibid.

- “Farmer” means, consistent with N.J.A.C. 2:76-10.5(c), an owner or operator of a farming operation who, during the calendar year immediately preceding submission of a Dual-Use Solar Energy Pilot Program application or an expression of interest, realized gross sales of at least \$2,500 of agricultural or horticultural products produced from the farming operation exclusive of any income received for rental of lands.
- “Landowner” means the record owner of the land, duly authorized purchaser of the land under a contract for land purchase, or record owner of the development easement acquired pursuant to N.J.S.A. 4:1C-34.
- “Solar operator” means the person or entity that installs, owns, or controls the dual-use solar energy generation facilities, structures, and equipment.

Furthermore, Staff recommends the Board not allow Dual-Use Pilot Program Projects into the CSEP since CSEP does not provide incentives for ground-mounted solar projects, projects located on farmland, open space, or any type of land currently envisioned to be suitable locations for agrivoltaics projects.

Finally, Staff maintains that the Solar Act of 2021 does not provide statutory authority to extend net metering aggregation or remote net metering to projects located on privately owned land. Subsequent legislation significantly modified the statutory requirements for remote net metering.²² The Remote Net Metering Act did not specifically address Dual-Use Pilot Program Projects, but modification of the Board’s existing RNM Program is ongoing and this program could be a potential pathway for Dual-Use Pilot Program Projects.

Application Process and Project Selection - General

Straw Proposal and Stakeholder Comments

The Straw Proposal provided Staff recommendations for defining the criteria (a) through (k) as they are listed in the Act and how applications for Dual-Use Pilot Program Projects would be evaluated considering the statutory directive to achieve diversity of size and types of agricultural and horticultural production. Specifically, the Dual-Use Act, at N.J.S.A. 48:3-87.13(c)(1), requires that the following criteria be considered by the Board and NJDA when selecting projects:

- (a) proposals for monitoring the quality of agricultural or horticultural use of the land;
- (b) the incentive level sought by the applicant;
- (c) geographic location;
- (d) interconnection planning;
- (e) proposals for minimizing negative impacts to farmland;
- (f) proposals to address decommissioning;
- (g) proposals for addressing stormwater runoff and other environmental issues;
- (h) technical feasibility;
- (i) technical innovation;
- (j) the quality of any research committed to during the evaluation period; and
- (k) any other criteria as may be deemed advisable by the board.

To support an effective and successful application process, Staff recommended a two (2)-step process by which potential Dual-Use Pilot Program Projects would be reviewed by the Board in

²² L. 2023, c. 190, N.J.S.A. 48:3-87.12 (“Remote Net Metering Act”).

consultation with the NJDA: 1) a NOFA and pre-qualification or expression of interest (“EOI”); and, if invited through an approval determination, 2) submission of a final application. Staff proposed “EOI” to mean a written response prepared by a potential applicant in the Pilot Program as part of a pre-qualification process indicating the intent to apply for the Pilot Program. Staff proposed that key elements of the application materials submitted for selected projects would form the basis of a Construction, Operations, Monitoring, and Project Research Plan (“COMPR”), which would establish the terms and conditions for maintaining eligibility for an SREC-II adder. Staff proposed defining “COMPR” to mean the document or sets of documents filed with the Board Secretary’s Office describing key elements of a Dual-Use Solar Energy Project selected by the Board to participate in the Dual-Use Solar Energy Pilot Program (“Selected Project”). Staff also proposed an SREC-II adder as the financial incentive to cover project-specific costs pertaining to participating in the Pilot Program, in addition to an SREC-II incentive provided under the SuSI Program. Staff’s recommendations for this approach to providing financial incentives in the Pilot Program are discussed in more detail under the section *Incentives and Project Costs*.

Comments submitted by stakeholders on specific Dual-Use Pilot Program Project selection criteria are addressed separately in their respective categories outlined after this section.

Stakeholders provided both general and specific feedback on the application process. Some of these comments supported the concepts set forth in the Straw Proposal, including allowing the Board the discretion to not select Dual-Use Pilot Program Projects if a solicitation is undersubscribed. Such discretion would be exercised according to a reasonable basis that Staff recommends. With respect to the process in general, stakeholders submitted comments around the importance of having a streamlined process that supports active farmer engagement, in addition to the implementation of a Pilot Program that allows for flexible designs and covers the costs of research. Concurrently, stakeholders suggested specific practices for a Pilot Program such as reviewing applications on a first-come, first served basis in tandem with stringent maturity requirements, allowing for automatic approval on non-farmed land, considering the impact of agrivoltaics on agricultural operations, requiring a deposit with the submission of an application, making a scoring rubric public, and being transparent about the process. Some comments proposed reconsidering aspects of the application process such as not requiring a utility bill, re-evaluating potential impacts of the submission of a lease agreement, including currently unused land, and considering electrical usage on farms.

Staff Recommendations

Staff continues to recommend the approach in the Straw Proposal, with the modification that the term “NOFA” be replaced with “Notice of Incentive Availability” or “NOIA” to avoid confusion with the New Jersey statute making a “Notice of fund availability” a mechanism for grant funding. N.J.S.A. 52:14-34.4. A NOIA and pre-qualification/EOI component of the application process will enable Staff, the State Agencies, and RAP to review the prospective project plans, including their research plans, and provide feedback to prospective applicants prior to the submission of a full application. Project proposals that receive pre-qualification approval for a particular application period will be encouraged to submit the application for that application period to participate in the Pilot Program. Submission of an EOI to Staff would not bind or commit a project to participate in such application period. However, failure to submit an EOI would preclude a project from participating in the application period for which the EOI was required. The selection criteria for applications, including the weighting or scoring scheme, would be approved by the Board in an Order prior to the opening of an application period within the solicitation round. In preparation for initiating the First Solicitation for the Pilot Program, Staff recommends that the Board direct Staff to issue a NOIA per Staff’s recommendations described previously.

Staff recommends that a NOIA include the following elements:

- The total Pilot Program capacity available in a Pilot Program solicitation;
- An optimal allocation of capacity among project sizes and types of agricultural and horticultural uses based on a statistical representation of New Jersey’s farm economy, if necessary;
- The minimum project size by crop type, if necessary;
- The minimum research standards by proposed crop, project size, and location on covered agricultural land or not;
- The method for describing the proposed Dual-Use solar and farm activity including solar design characteristics and research elements;
- The method for prospective applicants to demonstrate the need for a Pilot Program incentive;
- A proposed scoring rubric for a Pilot Program solicitation; and
- A request for prospective applicants to submit sufficient detail on their prospective dual-use project and research plans to enable review and feedback by a team comprising Staff, RAP, DEP, and NJDA representatives.

Staff recommends assigning the following weights to the scoring criteria for evaluating Dual-Use Pilot Program Projects:

Table 1. Weighting of Evaluation Criteria – Summary

Criterion	Weight
Maintaining the Affected Land in Active Agricultural or Horticultural Use	40%
Incentive Level and Project Costs	40%
Technical Feasibility and Technical Innovation	10%
Geographic Location, including Part of an Overburdened Community or in an Underserved Community	10%

Table 2. Weighting of Evaluation Criteria – Detailed

Anticipated Evaluation Criteria	Weight
<p>Maintaining the Affected Land in Active Agricultural or Horticultural Use</p> <ul style="list-style-type: none"> • Proposals for monitoring the quality of agricultural or horticultural use of the land • Minimizing and mitigating negative impacts to farmland • Plan for decommissioning • Plan for stormwater runoff and other environmental issues • Quality of the proposed design of the research plan • Three-year plan for the farming operation <p>Higher preference: Detailed plans and partnered with a NJ research public institution of higher education</p> <p>Bonus points: considerations for crop adaptability, enhanced benefits for mitigation plans, including environmental impacts and pollinator habitats</p>	40%
<p>Incentive Level and Project Costs</p> <p><u>Must include the ADI Program or CSI Program incentive amount, based on New Jersey SREC-II values established by the Board</u></p> <p>Higher preference: Lower cost, no adder requested Lower preference: higher cost with minimal justification</p>	40%
<p>Technical Feasibility and Technical Innovation</p> <ul style="list-style-type: none"> • Interconnection Planning Status <p><u>Meeting the applicable SuSI Program requirements for a Dual-Use Pilot Program Project is a pre-requisite</u></p> <p>Higher preference: <u>Feasibility</u> – consideration of both technical solar feasibility and agricultural/horticultural feasibility, e.g., ability of a project to scale to a commercially viable installation for both agricultural products and solar production.</p> <p>This includes the consideration of project maturity, i.e., projects that have applied, been approved, identified any distribution system interconnection costs and are demonstrated to be close to commencing construction.</p> <p><u>Innovation</u> – design aspects that seek to increase or maintain both solar and agricultural productivity compared to standard designs or practices</p>	10%
<p>Geographic Location, including whether the proposed project is part of an overburdened community or located in an underserved community</p> <p><u>Scoring includes consideration of a project plan for outreach and engagement with the impacted communities</u></p> <p>Higher preference: part of an overburdened community or located in an underserved community; representation within New Jersey Zero points: siting on a prohibited land type without a waiver</p>	10%

Staff recommends the NOIA include the following minimum pre-qualification criteria:

1. Municipal tax map with the block and lot location of the farm parcel clearly identified that shows the delineation of the proposed project site, research control area, and fencing;
2. Solar capacity;
3. Array type including a description of any innovative design or technology proposed;
4. Calculation of the land area covered by the array and control area;
5. A description of the agricultural or horticultural use of the proposed project site over the previous three (3) years;
6. A description of the agricultural or horticultural activities proposed on the areas under and adjacent to the array for the next three years;
7. The most recent twelve (12) months of historic electricity consumption according to a utility bill showing the site host's name, address, and electric tariff, if applicable, if the project is proposed to be net metered;
8. Anticipated means of electricity sale;
9. Current state of project maturity including any design, contracting, legal, permitting or zoning review work performed and status of interconnection to a distribution or transmission system operated by a New Jersey electric public utility or local government unit;
10. Anticipated construction schedule, including anticipated cost milestones and development milestones, if available;
11. Estimated total installed cost including solar equipment, research required pursuant to the Pilot Program rules, monitoring and data collection equipment, labor, and soft costs;
12. Estimated incremental costs, as a subset of total installed costs, to be incurred as a result of participation in the Pilot Program specific to the agricultural or horticultural aspects of the Dual-Use Pilot Program Project;
13. Estimated Dual-Use incentive adder required to cover incremental costs; and
14. Contact information for one representative appointed by the project team to serve as point of contact for Board Staff and to be responsible for submitting documents required throughout the solicitation process.

Staff recommends that the submission of an EOI to Staff not function to bind or commit a Dual-Use Pilot Program Project to participate in such application period. However, failure to submit an EOI would preclude a project from participating in the application period for which the EOI was required. Project proposals that receive pre-qualification approval for a particular application period will be encouraged to submit the application for that application period to participate in the Pilot Program. Staff recommends that a full application include the information required from the prequalification application in addition to an updated municipal tax map and documentation demonstrating how minimum criteria will be met.

Staff recommends that all forms and instructions regarding the Pilot Program solicitation process be located on the Board's website at www.nj.gov/bpu. Staff recommends the creation of a standard form of EOI that encompasses the minimum criteria above for the pre-qualification process. Staff anticipates that guidance will be published that explains the various common finance models and the manner in which different participants in the current SuSI Program incentive registration process can apply to the Pilot Program, which is further described in the response to comments on incentive levels below.

Siting and Permitting

Straw Proposal and Stakeholder Comments

Staff's recommendations in the Straw Proposal were based on the mandatory provisions set forth in the Dual-Use Act and the principle of establishing consistency across the Board's regulations for siting solar projects.

A few commenters made recommendations on the specific siting criteria such as allowing Dual-Use Pilot Program Projects to be sited on historically farmed wetlands, supporting higher standards for projects located in ADAs, and allowing co-location of Dual-Use Pilot Program Projects for comprehensive energy planning. Several stakeholders requested clarification on the statutory language for "permitted use," particularly with respect to a special use or conditional use permit from a municipality. Additional comments included a call for consistency in wetland maps being used by the State, clarifying if tree clearing associated with routine maintenance of land in agricultural use, in accordance with guidelines from the Natural Resources Conservation Service ("NRCS"), is subject to the proposed siting criteria, and recommendations to extend project siting to non-agricultural land such as brownfields and greenfields, parking lots, highways, and rooftops. Another comment requested siting on prime agricultural soils or soils of statewide importance, on a limited basis, since this status does not necessarily determine the productivity of the land.²³

Staff Recommendations

Staff continues to support its recommendations for siting requirements as outlined in the Straw Proposal, which implement the legislative mandates of the Dual-Use Act and the Solar Act of 2021. Dual-Use Pilot Program Projects would be prohibited on wetlands, in the preservation area of the Pinelands, land designated as forest area in the Pinelands, in the Highlands preservation area, on land preserved under the NJDEP's Green Acres Program, or on forested, land and associated transition zones defined under NJDEP's regulations, unless the Board grants a waiver after consultation with NJDEP, the Secretary of Agriculture, and other State agencies as applicable, such as the Pinelands Commission and the Highlands Council. A developer would be required to petition the Board for a waiver for a Dual-Use Pilot Program Project to be sited in a prohibited area, and each such petition would be decided on its own merits. The Board may only allow such a project to be sited on a prohibited land type if it deems the project to be in the public interest. Per the Dual-Use Act, no Dual-Use Pilot Program Projects shall be allowed to be sited on preserved farmland.

With respect to further clarifying the statutory provision for "permitted use," the Act in Section 1.f. references municipal land use law ("MLUL"), N.J.S.A. 40:55D-1 et seq. The referenced provision permits BPU-approved Dual-Use Pilot Program Projects in farmland zones, regardless of the municipal zoning restrictions. Staff anticipates working with RAP to develop educational materials on a variety of topics intended for various audiences with an interest in the Pilot Program, including a model ordinance for municipalities.

Staff recommends that applicable definitions in the CSI Siting Rules be applied to the Pilot

²³ "Brownfield" means "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant." N.J.S.A. 58:10B-23(d). "Greenfield" refers to land which has been undeveloped, see *Dictionary.com*, <https://www.dictionary.com/> (accessed on September 30, 2024).

Program.²⁴ These definitions include: “Agricultural development area” or “ADA,” “covered agricultural land,” “prime agricultural soils,” “soils of Statewide importance,” “wetlands,” “forested land,” and “transition zone.” For brevity, “covered agricultural land,” as defined in N.J.A.C. 14:8-12.2, is used throughout this Order.

Enforcement

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff set forth recommendations to ensure that statutory and regulatory requirements regarding Dual-Use Pilot Program Project design and implementation were met, including mechanisms for auditing such projects and suspending or revoking Pilot Program approvals should projects be out of compliance. Staff discussed its understanding of the cyclical and sometimes unpredictable nature of agricultural and horticultural production, as well as the fact that dual-use facilities are experimental in nature. Staff reiterated that the proposed enforcement provisions were not intended to penalize good faith efforts to install and operate dual-use facilities but were instead aimed at preventing the receipt of Dual-Use Pilot Program revenues from solar on farmland that is no longer in active agricultural or horticultural use. As such, Staff also proposed making exceptions to the enforcement strategy for incidents of “force majeure” and proposed to define “force majeure” to mean an act of God or any other occurrence beyond the control of an applicant, such as crop loss due to drought or severe weather.

A few stakeholders commented that rules should allow for “force majeure,” such as crop loss due to drought or severe weather, to be exceptions to non-compliance provisions. Others supported periodic site visits of the farm to ensure auditing compliance but cautioned against allowing the results to put the farm’s financial incentive at risk. In a similar vein, clarification was requested on the continued agricultural or horticultural use requirement as an enforcement mechanism or the “objective criteria” that determines compliance and delivery of an incentive and to allow for amendments to a farm’s three (3)-year plan. Another commenter asked for clarification on the process for remediation and providing an opportunity to return to compliance within a specified time period. Finally, the same stakeholder cautioned against withholding incentives, stating that such a measure would create more risk than financiers would tolerate; the stakeholder asserted that the threat of losing an incentive is a sufficient penalty to ensure compliance.

Staff Recommendations

Staff maintains its recommendation that Dual-Use Pilot Program Projects be subject to enforcement actions should they fail to meet the Pilot Program’s terms and conditions. Staff believes that the Board has the authority as the regulatory agency to impose penalties that are commensurate with the infraction. Such penalties may include withholding the dual-use incentive, rescission of dual-use incentive already paid, or requiring the project developer to decommission the project and restore the land’s prior agricultural or horticultural usage.

Staff also recommends that the Board work with the NJDA to audit projects for their compliance with terms of the Pilot Program. Projects should be required to comply with requirements of the ADI Program or CSI Program for the project’s lifetime. In addition, Staff recommends that the State Agencies work with Dual-Use Pilot Program Projects to remedy any issues. Staff proposes that NJDA be able to request the Board suspend or revoke a Dual-Use Pilot Program Project’s

²⁴ N.J.A.C. 14:8-12 (“Siting Rules”).

approval, except in the case of force majeure. Staff recommends revising the proposed definition “force majeure” to mean an act of God or any other occurrence beyond the control of an applicant, such as crop loss due to drought or severe weather, but not to include a change in federal or State law.

In the event that a Dual-Use Pilot Program Project is not meeting the Pilot Program’s requirements, Staff recommends that the Board or its designee shall contact the Dual-Use Pilot Program Project and place the project on probation for thirty (30) to 120 days, the length of the probation to depend on the nature and extent of the violation. In evaluating an appropriate timeframe for non-compliance, Staff considered various factors. The most significant is the short duration of the Pilot Program as a reason for expedient action; Staff also took into consideration that the severity of non-compliance may vary and could require more than thirty (30) days to correct. The project shall submit a remedial action plan within thirty (30) days. The remedial action plan contained within the COMPR may be appropriate as initially set out or it may require revision, depending upon the nature of the issue(s).

SREC-II incentives would be suspended during the Dual-Use Pilot Program Project’s probationary period, which will continue until such time as the Dual-Use Pilot Program Project team has successfully resolved the violation. Failure of the project to correct the deficiency and implement the remedial action plan may result in the project’s termination from the Pilot Program and suspension of incentives.

Requirement that Lands Remain in Active Agricultural or Horticultural Use

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended requiring Dual-Use Pilot Program projects to be located only on lands that have had at least the three most recent years of continuous agricultural or horticultural usage as demonstrated by participation in the State’s farmland assessment program pursuant to the New Jersey Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.). Staff also recommended requiring additional evidence of active agricultural or horticultural use through recent pictures, aerial or satellite images of the land that would confirm such land’s recent dedication to crops or livestock, as applicable.

In addition to requiring that lands be used for agricultural or horticultural activities, the Dual-Use Act also requires that they continue to be utilized only for agricultural or horticultural use throughout the duration of the Dual-Use Pilot Program Project. Therefore, Staff recommended continued participation of the farm in the State’s farmland assessment program as a minimum criterion for demonstrating the land usage requirement.

Overall, stakeholders expressed support for establishing a baseline assessment of the land, including using farmland tax assessment as a tool to determine a project’s eligibility for a program incentive, but also offered a multitude of suggestions and concerns. Some organizations expressed concern that past productivity metrics would be used to determine incentive eligibility in the pre-qualification materials. Several other organizations were concerned with the size of a research control area and potential feasibility, viability, and economic challenges, including a potential risk of farms converting to non-agricultural use. Other commenters pointed out the cost of monitoring soil conditions pre- and post-installation of the solar panels for each Dual-Use Pilot Program Project and the potential of these up-front costs to make smaller projects uneconomical; requested additional flexibility for changes in crop production after installation of the solar panels; expressed concern that the three (3)-year active land use requirement would discourage the

participation of first-generation farmers and farms that have not been productive due to poor economic conditions; suggested reconsidering the definition of “farmer”; requested more flexibility in the language for defining the land impacted by the solar panels; and asked that Dual-Use Pilot Program Projects include research goals.

Staff Recommendations

Staff maintains its recommendation in the Straw Proposal that the program participants be required to provide documentation of active agricultural or horticultural use before and after the installation of solar panels. Such documentation should be in the form of the farm’s application for farmland assessment, in combination with other data collection and evaluation components. Staff believes this documentation is needed to ensure that the presence of the solar electric generation equipment does not result in a substantively negative change or reduction in the quality of the land that would impair its agricultural or horticultural usage. Additional details on Staff’s recommendations for the required documentation, such as a map demonstrating the block and lot location of the farm parcel proposed to contain the Dual-Use Pilot Program Project, are described in the section *Application Process and Project Selection – General* of this Order.

Staff also maintains its recommendation in the Straw Proposal that the Board require submission of productivity metrics throughout the duration of the Pilot Program as evidence that a Dual-Use Pilot Program Project is located on land in productive use and such active use of the land is maintained throughout the Pilot Program. The productivity metrics, recommended by Staff, which appear in Appendix B of this Order, would not be used for determining incentive eligibility. Staff also recommends that RAP oversee collecting and managing data from pre- and post-installation of the solar panels for Dual-Use Pilot Program Projects. The recommended process outlined in Appendix B of this Order includes conducting soil evaluations for selected projects. However, the applicant would be responsible for the laboratory costs of the soil samples and the cost of the research equipment, including the equipment needed for collecting data pertaining to environmental metrics. Participants may choose to contract with a non-Board appointed entity to collect the data at their own cost. Applicants will be notified of the data required for submission with the final application following the pre-qualification process.

Incentives and Project Costs

Straw Proposal and Stakeholder Comments

For an incentive in the Pilot Program, the Straw Proposal outlined an approach that relies directly on the existing ADI and CSI Programs that constitute the SuSI Program implementing the Solar Act of 2021. Staff proposed that in addition to an incentive received through the ADI or CSI Programs, an adder be used to account for the incremental, additional costs that may be borne by program participants. These costs were anticipated to be variable between projects and not simply proportional to the solar capacity of the installation. Such an adder would enable compliance with the mandate of the Dual-Use Act to score applications based upon the incentive level sought by the applicant.

In the Straw Proposal, Staff suggested two (2) different possibilities for determining the CSI “base” incentive applicable to CSI-eligible dual-use projects. The first proposed option was that these projects participate directly in the CSI Program and that any CSI award received constitute the “base” incentive for the Dual-Use Pilot Program. The second option allowed for the Board to establish a proxy “base” incentive for these projects. This proxy would be derived from the results of the most recent CSI Program solicitation, and projects would submit a bid for the adder in the

Pilot Program. In both options, each project would propose the dual-use adder as part of its application for the Pilot Program.

Overall, stakeholders submitted a range of comments that illustrated the variation of potential approaches to incentivizing projects participating in the Pilot Program. Several stakeholders supported a simple incentive process, avoiding a more complex approach, and suggested a fixed incentive level for all Dual-Use Pilot Program Projects. Stakeholders raised concerns about the challenges of competing in the CSI Program, namely the PJM queue backlog and the complexity and uncertainty of participating in two (2) separate solicitation processes. Stakeholders also reiterated the request to participate in CSEP with project sizes allowed up to ten (10) MW.

Some stakeholders supported the concept of an adder to cover expenses incurred by participating in the Pilot Program and also supported using competitive market mechanisms to guide financial incentives. In particular, Rate Counsel provided numerous comments on this topic of incentives and project costs overall. Rate Counsel's comments ranged from cautioning against over-incentivizing to proposing a cap on individual incentives. Rate Counsel also proposed requesting stakeholder input on a rate impact analysis and an initial incentive cap; requiring each potential applicant provide an enumerated list of financial sources for the project; and imposing a fifty percent (50%) weight to the incentive criterion for applications with the lowest amount requested being the highest scored.

Staff Recommendations

The rules of the SuSI Program are designed to appropriately incentivize small and large solar facilities, within defined project size categories. Given the division of projects of differing sizes between the ADI and the CSI Programs and the allowance for solar development on farmland in each program, Staff considers it important to test incentivizing Dual-Use Pilot Program Projects in both the ADI and CSI Programs. Staff recommends that all dual-use projects receive the appropriate ADI Program or CSI Program "base" incentive value, to which projects will propose a project-specific dual-use "adder" in addition, so that the full amount of the SREC-II incentive payment will reflect the unique cost of each project. Applicants will receive instruction on how to calculate and report their requested dual-use incentive adder. Proposed adder values may account for the incremental cost of the agrivoltaic investment and dual-use pilot-related operational costs including research, data collection, reporting, reduced solar production per acre due to the lower density of modules and positioning of modules to allow more light to the crop, increased racking costs for raising or customizing arrays, and loss or gain in agricultural productivity. If an otherwise qualified application seeks a dual-use adder that cannot be justified by the application materials submitted, Staff may recommend that an applicant reconfigure the project to enable a competitively priced SREC-II adder.

In the ADI Program, net metered projects are allowed up to five (5) MW in size and must fall within a market segment for either residential, non-residential, or community solar projects. As further discussed in the section *Program Size, Term, and Structure*, Staff is not recommending that Dual-Use Pilot Program Projects be eligible for CSEP. Rather, Staff is recommending that Dual-Use Pilot Program Projects be eligible in the ADI Program within the non-residential market segment, either as a ground mounted array or an array installed as a canopy or floating solar facility; given the nature of the Pilot Program, it appears unlikely that eligible projects would be sited on carports or rooftops. Dual-Use Pilot Program Projects that meet the size and siting criteria of the ADI Program would use the applicable ADI SREC-II value as their "base" incentive value in their application for the Pilot Program. Applicants eligible for the ADI Program will be required to identify which market segment they expect their project to have and determine the associated

base incentive level per the Board's SREC-II values in effect at the time of application.

The Dual-Use Act establishes a maximum capacity limit of ten (10) MW for individual projects. All grid-supply projects and all net metered projects greater than five (5) MW are eligible not for the ADI Program but for the CSI Program. Thus, all Dual-Use Pilot Program Projects that plan to sell power on the wholesale market or that are net metered and greater than five (5) MW are considered CSI-eligible facilities and would use a "base" incentive level derived from the CSI Program. Staff has given careful consideration to stakeholder feedback on the feasibility and challenges of the two (2) options for a CSI program adder set out above. In Staff's opinion, the second option, in which a CSI proxy "base" incentive level is set by the Board, will be the most workable for farmer and solar developers, while remaining cost-effective for ratepayers. Dual-Use Pilot Program Projects that are sited on acreage larger than is needed to support ten (10) MW of solar generation would still be able to participate in a CSI Program solicitation on a portion of the property. Similarly, those CSI projects that already have an award from the Board may submit a portion of the project to the Pilot Program, up to ten (10) MW, if they have not yet received permission to operate ("PTO") from an electric distribution company ("EDC").

Finally, Staff proposes that capacity awarded under the Pilot Program be in addition to capacity block limits under the ADI Program and procurement targets under the CSI Program. In other words, capacity awarded under the Pilot Program would not count toward the ADI Program block limits or the CSI procurement targets.

Interconnection/Distribution System

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended that applicants provide a project's interconnection planning status, including proof of submission of an interconnection application, to be considered by the Board in evaluating and scoring applications. Discussed in more detail under the section *Application Process and Project Selection – General*, Staff proposed a pre-qualification application process, in part to avoid overloading the EDCs with unapproved projects seeking interconnection approvals. Staff also recommended that projects be subject to the requirements the ADI Program or CSI Program, as appropriate, and be required to install a revenue-grade meter to measure electricity produced by the Dual-Use Pilot Program Project.

In addition to the responses to Staff's questions about scoring an application based on its status in the interconnection process versus eligibility to apply to the Pilot Program, stakeholders submitted substantive comments. With respect to scoring projects on interconnection planning, stakeholders made different suggestions. Among the recommendations for what applicants should be required to provide were:

- information about costs and feasibility;
- official confirmation that the interconnection application has been accepted for review an executed interconnection agreement; and
- evidence of having applied for interconnection, without the need for further progress.

The stakeholder recommending confirmation that an interconnection application has been accepted for review believes that this requirement will cause the periodic competitive solicitation process to increase participation, which equates to reduced costs. The stakeholders recommending that only evidence of applying for interconnection be required state that addressing project maturity should wait until after a project has been approved.

Several stakeholders recommended awarding more points or weight to projects that are more mature and commented on the need for more details on interconnection requirements. Feedback submitted suggested that a signed interconnection agreement should receive the most points, with a viable interconnection study receiving the second highest number of points. Some stakeholders suggested that any stage of interconnection applicability be considered in scoring applications.

While one (1) stakeholder commented that hosting utility maps do not provide the full details of interconnection capacity and that ample time should be provided for utilities to process applications and provide studies, another stakeholder commented that hosting capacity maps would likely be adequate for smaller, net-metered projects and expressed concern that traditional solar projects could use a program for agrivoltaics to get around interconnection approval issues.

Regarding eligibility to apply in the Pilot Program, stakeholders provided a wide range of feedback. While some comments demonstrated general support for Staff's recommendations, such as dual-use projects in the Pilot Program being subject to the same program requirements as other projects to qualify for the baseline incentive level in the ADI Program or CSI Program, other comments suggested that interconnection maturity could be considered as part of project evaluation but cautioned that not approving dual-use projects in the Pilot Program would add to the existing queue issues at the EDCs and PJM. Comments included considerations for using any stage of interconnection applicability and establishing some type of minimum requirement such as a form of an executed interconnection agreement.

Several stakeholders commented that the EDCs are not processing interconnection applications for dual-use projects and requested that the Board direct EDCs to do so as soon as possible. Some commenters stated that dual-use projects should be able to interconnect as community solar projects or that there be a tranche in the CSEP for dual-use projects.

Staff Recommendations

Staff proposes the Board adopt the recommendations in the Straw Proposal pertaining to interconnection for the Pilot Program, including the recommendation that Dual-Use Pilot Program Projects not be eligible for in CSEP. Staff reiterates that a project's maturity, including progress toward interconnection approval, should be considered in judging an application's technical feasibility and that Dual-Use Pilot Program Projects would be subject to the interconnection requirements of either the ADI or CSI Program. Generally, the minimum level of interconnection maturity depends on the program and size of the project and Staff recommends adhering to those requirements in the Pilot Program. Staff also reiterates that while competition helps keep costs low, the Board should try to avoid overloading the EDCs with unapproved projects seeking interconnection approvals. To that end, Staff continues to recommend a two (2)-stage approach for reviewing interconnection feasibility for the Pilot Program whereby hosting maps would be reviewed during pre-qualification and interconnection maturity would be evaluated during the full application selection and approval process. Furthermore, Staff recommends that EDCs be required to process interconnection applications for potential Dual-Use Pilot Program Projects in the order in which they are received.

Staff notes that the grid modernization proceedings have proposed expanded rules regarding hosting capacity maps and that there may be additional revisions to the Board's interconnection rules.

Minimizing the Negative Impacts to Farmland

Straw Proposal and Stakeholder Comments

To implement the mandate of the Dual-Use Act to minimize negative impacts to farmland, Staff recommended that applications to the Pilot Program be required to consider conditions such as soil compaction by construction equipment, soil erosion, and potential runoff from rain collection along drip edges, etc. These conditions would then be monitored as part of a project's monitoring and research plan in the COMPR. This recommendation was based on the premise that the main impact to farmland that is expected from construction and decommissioning activities is soil compaction and trenching. In addition, Staff recommended that Dual-Use Pilot Program Projects meet applicable requirements under the Board's SuSI Program, in either the ADI or CSI Programs. In particular, Staff believes that CSI-eligible projects should be required to comply with the requirements under N.J.A.C. 14:8-12.8(g) that pertain to covered agricultural lands.

Some stakeholders stressed the need to provide clear criteria for scoring applications, entailing as much detail as possible, as early in the process as possible and stated that a project's success should be tied to minimizing negative impacts to farmland. One (1) stakeholder suggested establishing objective criteria that gauge the positive effects from a solar system on agriculture. Another stakeholder proposed scoring projects higher for integrating regenerative soil building practices into their plan. Other stakeholders thought that no additional requirements beyond the Dual-Use Act or the Straw Proposal were needed for this criterion.

One (1) commenter requested that the Pilot Program specify that special use or conditional use permits are not needed for Dual-Use Pilot Program Projects and that farmer and municipal input and engagement are crucial in project planning, particularly for projects located in ADAs.

Staff Recommendations

Staff recognizes the need to balance adequate regulation with avoidance of an excessive number of requirements to enable an efficient and effective Pilot Program. Staff continues to recommend the strategy set out in the Straw Proposal: monitoring the quality of the farmland while providing research results to inform a permanent program and including requirements for the project design as follows:

- During the application process, proposals for minimizing and mitigating negative impacts to farmland during construction, operation, and decommissioning would be required. The remediation plans would be part of the COMPR.
- Solar array designs would be required to take into account the requirements for the specific farming practices and the energy collection impacts of particular design features; for example, prohibiting the use of concrete in structural footings unless a written justification is supplied by a licensed professional engineer. The use of concrete would only be acceptable for the purposes of installing a shallow concrete pad for placement of balance of system equipment such as inverters or transformers.
- Array designs should plan for minimizing the impacts on soils and anticipate the need for rotating crops annually and interannually.

- Pursuant to the recommendations in Appendix B for project monitoring and research requirements, projects selected to participate in the Pilot Program would be required to conduct monitoring of the pre-construction and post-construction soil quality and collect data on specific soil parameters as part of a research study.
- Requirements pertaining to protecting the soil during decommissioning, which are discussed in the next section, would be required.

Decommissioning

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended that the evaluation of Dual-Use Pilot Program Project proposals take into account the extent to which applicants plan to follow an established set of guidelines or best practices to facilitate farming following decommissioning. These guidelines or best practices were based largely on the Board's existing regulations for siting projects in the CSI Program. For selected projects into the Pilot Program, Staff recommended a set of guidelines that projects would be required to meet, at a minimum, with the caveat that the Board have the flexibility to require additional procedures needed based on the results of the Pilot Program.

Stakeholders recommended that dual-use projects continue following standard decommissioning and established restoration best practices, that the Pilot Program not require additional information on techniques, and that it allow for flexibility in decommissioning proposals. One (1) commenter emphasized that techniques must protect topsoil to allow continued farming post-decommissioning.

Several stakeholders suggested a requirement to post a performance bond for decommissioning and stated that utilities should be responsible for decommissioning responsibilities associated with equipment they own.

Finally, stakeholders requested clarification on this criterion and asked that the rules provide that Dual-Use Pilot Program Projects do not require a special use or conditional use permit.

Staff Recommendations

Staff continues to recommend establishing minimum requirements for decommissioning procedures in line with the Straw Proposal. Specifically, Staff recommends that applications to participate in the Pilot Program require a decommissioning plan that minimizes negative impacts to farmland, encompassing the following:

1. The sequence for facility infrastructure removal and site restoration to prior agricultural conditions in the event that solar installations are removed;
2. Identifying the party responsible for removal and restoration back to prior agricultural conditions in the event that solar installations are removed;
3. The party responsible for the costs of decommissioning;
4. The prevention of compaction or other comingling of the topsoil within inter-panel row travel lanes by construction traffic; and
5. Any additional procedure(s) deemed necessary to inform a permanent program, as established by Board order preceding each solicitation round or Program Year.

Staff recommends that Dual-Use Pilot Program projects selected by the Board for an award in the Pilot Program be required to comply with these requirements at a minimum, in addition to any

additional protective measures directed by Board order as a result of the evaluation of data obtained throughout the Pilot Program.

Stormwater Runoff and Other Environmental Issues

Straw Proposal and Stakeholder Comments

Proposals for addressing stormwater runoff and other environmental issues will be one of the criteria for evaluating applications to participate in the Pilot Program. Given Staff's recommendations for incentives delivery, which mean that the requirements of the ADI or CSI Program would be applied for a Dual-Use Pilot Program Project, Staff recommended in the Straw Proposal that these proposals would need to meet applicable requirements for stormwater management, soil erosion, and sediment control under the Board's rules for these programs.

Several stakeholders were generally supportive of practices that support the protection of natural resources and future farming. Some stakeholders commented that existing regulations pertaining to stormwater management, soil erosion, or sediment control are sufficient and additional requirements are not necessary. One (1) stakeholder provided best practices for a strategic agrivoltaic project design based on plant selection and biodiversity. Another stakeholder provided a schematic diagram illustrating best practices for rainwater management and passive aeration. In response to Staff's question about applying a standard or best practice for solar panel density for minimizing environmental impacts from a Dual-Use Pilot Program Project, most respondents did not recommend restricting or predetermining panel density. Two (2) organizations provided recommendations to Staff for this topic area that were better suited for discussion under other criteria, namely meeting with Staff and others to describe their techniques in agrivoltaics in more detail and supporting project research on different conservation and irrigation practices.

Staff Recommendations

After reviewing stakeholder input, Staff continues to recommend the approach in the Straw Proposal as Staff agrees that no new requirements pertaining to stormwater management, soil erosion, or sediment control are needed for the Pilot Program. Specifically, Staff recommends that NJDEP's Stormwater Management Rules pursuant to N.J.A.C. 7:8 be part of the requirements for a Pilot Program, but that a project proposal also encompass commitments to meeting various mitigation and/or prevention plans for other environmental issues that may be specific or unique to the project. Compliance with all applicable permits, approvals, and authorizations required under federal, State, or local laws, rules, regulations, or ordinances would still be required.

Technical Feasibility and Technical Innovation

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended that application evaluation and scoring include a review of both technical solar feasibility and agricultural/horticultural feasibility. Staff proposed a criterion for technical innovation and envisioned scoring projects with higher points for design aspects that seek to increase or maintain both solar and agricultural productivity compared to standard designs or practices.

Staff received support for its recommendations that preference be given to a project that would enable access to the site and provide data and documentation about the design and allow farmers

to change their agricultural practices such as, for example, crop rotation. Stakeholders also recommended against requiring additional information on technical feasibility and innovation, suggesting that technical innovation should be a “desired outcome” rather than a criterion for scoring applications. One (1) stakeholder provided an example of project to highlight potential innovative technologies.

Stakeholders identified several concerns with these criteria. Stakeholders commented that scoring technical innovation encompasses the submission of speculative projects with unproven or theoretical designs and false promises from applicants seeking a high score (“bad actors”), calls for expertise outside the scope of the BPU in scoring, and would be a burdensome task in establishing the Pilot Program. General concerns were also expressed about the criteria used to evaluate technical innovation and the clarity needed for the application evaluation criteria and scoring.

Stakeholders specifically discussed costs for these criteria. They cautioned against increasing the cost of Dual-Use Pilot Program Projects by requiring more customized designs and referenced Europe for standardized approaches to racking for cost efficiency. Stakeholders commented that cost estimates are challenging to determine and recommended publishing cost estimates in consultation with the NJDA. Stakeholders also recommended conducting a separate evaluation or study under a Request for Proposal (“RFP”) for the entire program rather than seeking to evaluate individual projects. One (1) stakeholder proposed adding provisions to protect ratepayers from any risk related to unproven technology in agrivoltaics, asserting that associated risks should be the responsibility of the developer.

Staff Recommendations

Staff continues to recommend that the application evaluation process assess the technical feasibility of each project as well as innovative design aspects that may contribute to novel and effective agrivoltaic systems. The evaluation criteria will encompass consideration of both technical solar feasibility and agricultural/horticultural feasibility – for example, whether the project can scale to a commercially viable installation for both agricultural products and solar production. Technical feasibility considerations may also include a description and location of barriers to construction or control area such as tile/drainage fields, irrigation equipment and coverage, and potential conflicts with underground conduit runs. Inclusion of such descriptions would help to demonstrate that the Pilot Program could effectively convert to a large-scale, permanent Dual-Use program. Staff considers that a demonstration of agricultural feasibility may include detail on data collection and documentation about the design as to enable replicability. Rather than locking a project into one (1) design strategy, Staff proposes that projects maintain flexibility to optimize project design, with farmers allowed to change the agricultural or horticultural practices proposed (e.g., incorporate crop rotation or switch production type or system, as from grazing animals to hay production).

Staff also considers the particular importance of innovation in the Pilot Program, which may offer more flexibility to try novel design strategies than will be offered by a standardized permanent program. In the evaluation process, Staff encourages design aspects that seek to increase or maintain both solar and agricultural productivity compared to standard designs or practice.

Research and Monitoring

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended minimum standards for conducting required research studies that would apply to all projects participating in the Pilot Program, regardless of their size and location. To effectively provide meaningful results to inform a permanent program, these minimum standards included the fundamental concept of a research control area. Staff provided two (2) different proposals depending on the location of a Dual-Use Pilot Program Project. The Dual-Use Act requires that a New Jersey public research institution of higher education be included as part of a research study when siting a dual-use project on covered agricultural lands. Staff therefore recommended that the requirements for a Pilot Program distinguish between monitoring and research plans for projects sited on covered agricultural lands compared to those not sited on covered agricultural lands. Those sited on covered agricultural lands would have to meet more stringent requirements.

Stakeholders overwhelmingly provided feedback to change the size of the research control area citing concerns relating to potential project feasibility, viability, and economic/financial challenges. Various options for the size of a research control area were provided in addition to recommendations for how to evaluate the appropriate size. One commenter (1) suggested that Staff's recommendations disproportionately affected smaller projects, while others stated a preference for a smaller control area.

Stakeholders provided suggestions for various research metrics and the structuring of research requirements and studies within the Pilot, including a recommendation that the clock for research should start once a project has achieved substantial completion milestones and another for establishing a working group to determine the most appropriate data collection strategy for a Pilot Program. Additional comments included a request to clarify the requirements in the study and control areas; to require that research include various practices in and around the solar installations; to consider researching greenhouse crop farming projects; to consider additional farmer compensation for potentially burdensome research and reporting requirements; and to mandate a detailed farm production plan.

Some stakeholders supported requiring all projects to have a research component, with each site having an assigned "research and extension partner" and recommended that the Board consider the quality and presence of research commitments in scoring applications, with a specific recommendation for rigorous monitoring and research requirements. Other commenters suggested that the research proposals should be separated from project scoring and awards and that the Board should enroll selected projects in a centralized study and allow for researchers from other states to be involved. Stakeholders suggested increasing the number of participating research institutions to support more diverse projects and results, with a specific allowance for researchers from other states.

Some stakeholders raised concerns about using crop yield comparisons and maintaining the confidentiality of data. Others commented that certain factors could impact timeframes to conduct and complete research; they mentioned interconnection, permitting, construction, crop productivity/yields, and lengthy time periods to establish a new photovoltaic project. Stakeholders recommended that partnerships with the U.S. Department of Energy ("DOE") and other states be established to allow for information sharing and lessons learned.

Comments received on this issue also included recommendations for an annual capacity target, as well as compensation for farmers for supporting monitoring and research equipment needed in the Pilot Program. These issues are more suited for discussion in connection with *Program Size, Term, and Structure* and *Incentives and Project Costs* and will be discussed there.

Staff Recommendations

Staff appreciates the thoughtful feedback from stakeholders. After consideration, Staff recommends the following adjustments to the size of the research control made in the Straw Proposal:

- For solar array projects less than or equal to 3.0 acres, the research control area must be equal in size to the entire area of land containing the solar array, including the areas between the rows of panels.
- For solar array projects greater than 3.0 acres, the required control area size is no less than 3.0 acres.

To clarify the meaning of a “research control area” for the purposes of the Pilot Program, Staff recommends defining it as a designated portion of the project site which does not contain the solar array or balance of system equipment but is equivalent to the array-containing portion with regard to agricultural productivity potential, farming practices, farm management, and any extraneous factors affecting agricultural productivity.

Staff also made minor adjustments to clarify aspects of its recommendations for monitoring and research requirements, most notably, to indicate that a Board-appointed third-party contractor would manage and collect the data for the first three (3) years of a project’s participation in the Pilot Program at no cost to the participant. Appendix B contains the full set of recommendations for monitoring and research requirements.

Staff anticipates issuing guidance on the research and monitoring requirements for prospective applicants as part of the NOIA that will precede each annual solicitation, in addition to other resources to help potential applicants understand the requirements for the Pilot Program and best practices for Dual-Use Pilot Program Projects located in New Jersey. While Staff believes it may be appropriate to establish various working groups under the Pilot Program, there is no data at this time to support discrete recommendations for the opening of the Pilot Program.

Geographic Location, Project Size, and Production Type Diversity

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended that geographic location and diversity of production type would be part of the weighting or scoring scheme, also referred to as a scoring rubric, for evaluating projects. Staff recommended that this criterion would change over time as projects are selected and coverage of the state/sub-geographies is attained. Staff recommended that this information would also be used to inform setting a minimum project size for a solicitation round or application period, if necessary.

Stakeholders submitted comments regarding interconnection challenges, clarifying adjacency provisions, and not being overly restrictive in siting projects where interconnection is available, given the challenges to finding interconnection capacity in New Jersey. Stakeholders also recommended providing clear and transparent scoring criteria.

With respect to project size and obtaining a diversity of sizes, Staff received several comments regarding the need for flexibility in this category. Stakeholders recommended focusing on the utility of agrivoltaics as an agricultural tool such that project selection result in projects with good agrivoltaics and economic feasibility. Several stakeholders voiced concern for establishing a minimum project size, arguing that doing so would be exclusionary to smaller farms, particularly those owned by veterans, women, and members of disadvantaged communities, and would discourage achieving a diverse set of projects. Stakeholders provided recommendations for the Pilot Program to consider projects from a minimum of one (1) MW to a maximum of ten (10) MW in the ADI Program, particularly under CSEP.

Lastly, one (1) commenter suggested the Board evaluate the economic impacts of solar lease revenue on unreserved farms staying in productive use versus farms being lost to other potential development, for example, to warehouses and housing.

Staff Recommendations

Staff continues to recommend that the application evaluation criteria be adjusted in subsequent solicitation rounds to achieve greater diversity in agricultural and horticultural use and project size. Staff also recommends that the Board keep the authority to be flexible in making adjustments to these criteria, based on results from the Pilot Program, to support obtaining sufficient data and information to inform the development of a permanent program. As outlined in Staff's recommendations for a NOIA, a proposed minimum project size would be made available prior to each solicitation round or application period. In anticipation of the First Solicitation, Staff recommends that a minimum project size of 500 kW be announced in the NOIA. As outlined in the Straw Proposal, Staff is not recommending a minimum project size per crop type or crop category for the first solicitation round but recommends the Board retain the ability to authorize such capacity set asides in a future application period, based on the evaluation of EOI submissions.

Other Project Selection Criteria

Straw Proposal and Stakeholder Comments

The Dual-Use Act allows the Board to require additional criteria for an application beyond what is outlined under N.J.S.A. 48:3-87.13(c)(1)(a) through (j). In the Straw Proposal, Staff recommended proposing criteria beyond the Statute to address equity in the Pilot Program in a way that supports a clean energy economy throughout New Jersey and aligns with both the State's environmental justice goals and the federal government's equity initiatives. Specifically, Staff recommended incorporating additional criteria as part of the geographic location criterion that would encompass proximity to overburdened communities and underserved communities in conjunction with a project plan for outreach and engagement with the potentially impacted community(ies).

Stakeholders' suggestions for additional project selection criteria ranged from not adding any additional criteria to a variety of criteria, including supporting Staff's recommendations. Additional criteria suggested by stakeholders included allowing smaller systems to participate to ensure representation from new farmers, including those in disadvantaged and environmental justice areas; considering a subset of research for agrivoltaics in urban agriculture and on green roof projects; consideration of benefits to the farmer and general resiliency of the agricultural use of the affected land; and additional scoring or preference points that demonstrate farmer commitment, land access benefits, and other community engagement. One (1) stakeholder

recommended establishing a limit on the amount of incentives for each applicant (including family members and affiliates), specifically up to thirty (30) MW of selected projects, and suggested public utilities (and associated affiliates and families) be deemed ineligible for participation. The stakeholder also recommended requiring a deposit with application submission, which should include milestone provisions. Consistently voiced throughout the comments submitted to Staff was a request, and the need, for a clear scoring rubric.

One (1) stakeholder made recommendations for setting annual capacity allocation targets and using a waitlist for the Pilot Program. These recommendations are more appropriate in the section *Program Size, Term, and Structure*.

Staff Recommendations

Staff continues to recommend that the Pilot Program encapsulate the State and federal priorities for environmental justice and equity goals. To ensure these priorities are sustained throughout the Pilot Program, Staff recommends that the Board reserve the authority to require additional criteria as appropriate, during a solicitation round but prior to opening an application period.

For implementing these additional criteria, Staff proposes defining these relevant terms as follows:

- “Overburdened community” as defined in the Environmental Justice Rule at N.J.A.C. 7:1C-1.5.²⁵
- “Underserved communities” to mean populations sharing a particular characteristic, as well as geographic communities that are unlikely to have received consistent and systemic fair, just, and impartial treatment, such that the failure to receive this treatment impacted their opportunity to participate equitably in and benefit from various aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “equity.”
- “Equity” to mean the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have historically experienced inequitable treatment, such as Black, Latino, and Indigenous and Native American persons; Asian Americans, Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or adversely impacted by the building or location of their residence.²⁶

²⁵ “Overburdened community” means “any census block group as determined by the Department in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State-recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency. For the purposes of [N.J.A.C. 7:1C], State-designated tribal lands shall be considered overburdened communities. Information regarding overburdened communities can be found on the Department’s internet website at <https://www.nj.gov/dep/ej/communities.html>.” N.J.A.C. 7:1C-1.5.

²⁶ Adapted from federal Executive Order 13985 of Jan. 20, 2021 (On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).

Project Design (excluding Research and Monitoring Requirements)

Straw Proposal and Stakeholder Comments

In the Straw Proposal, Staff recommended several design requirements that all participating projects must meet, requirements intended to satisfy the purpose of the Dual-Use Act to protect unpreserved farmland while simultaneously supporting productive solar generating facilities with the goal of maintaining farmland in active production.

Staff proposed that specific design practices be employed by participants in developing a project for the Pilot Program. Specifically, Staff recommended that solar arrays be designed with farming practices in mind to minimize negative impacts; the arrays should be compatible with long-term use and future diversity of activities, taking into account several factors such as farm yields, electrical production, module configuration, and row alignment. Staff proposed that Dual-Use Pilot Program Projects consider the parcel's layout and the system's edges. Staff also proposed including a research control area to which performance can be compared, which is covered separately under the section *Research and Monitoring*. Additionally, Staff recommended provisions to prohibit concrete footings, with a limited exception for the purposes of installing a shallow concrete pad for placement of balance of system equipment such as inverters or transformers; require deer fencing for all projects at least eight (8) feet tall; ensure animal and public safety; and require that the design minimize soil impacts.

Several commenters opposed the requirement that projects have a research control area equal in size to the land containing the solar array for projects up to 3.0 acres and no less than 3.0 acres for projects larger than 3.0 acres. These comments are discussed in detail under the section *Monitoring and Research Requirements*,

In general, stakeholders requested more clarity around design requirements for Dual-Use Pilot Program Projects. Stakeholders recognized the need for minimum standards but suggested they not be overly prescriptive, allow for trial and error, and consider how the design would support farms and farmers. Some stakeholders particularly focused on the fencing requirement as one that could potentially create unintended consequences.

Some commenters recommended considering other innovative project designs, such as greenhouse farming, a change which would require adjusting the definitions of "non-permanent agriculture structure" and "permanent agriculture structure." A few commenters also supported the need for more flexibility on using concrete.

One (1) stakeholder commented that its research on agrivoltaics supported a strong technical compatibility between high value crops and their technology, such as fruits, berries, nuts, vegetables, nursery stock, hops, and cannabis, but not field crops or livestock. Another stakeholder provided an example of a project design and suggested various configurations that would result in successful projects.

Staff Recommendations

Staff carefully considered stakeholder feedback and continues to recommend maintaining the project design requirements laid out in the Straw Proposal. Staff continues to recognize the need for balance between standards and guidance for project designs on the one hand and flexibility on the other, to allow for innovation and opportunity to learn from research results. At the same time, Staff seeks to ensure that this process is as simple as possible for all parties involved -

applicants, developers, farmers, and the team evaluating applications. This is why Staff recommends that the Board have the flexibility to incorporate metrics that may be needed for a successful Pilot Program but that were not anticipated when project design requirements were being developed.

Staff believes that a large research control area is needed to ensure that an appropriate analysis of the effects of the solar panels can be made - specific details on Staff's recommendations for a research control area are found under the section *Research and Monitoring*.

To provide additional details and clarification around Staff's recommendations, Staff believes that the Board should consider incorporating the following specifications pertaining to the installation, construction, and operation of Dual-Use Pilot Program Projects that are not discussed elsewhere in Staff's recommendations as part of the design for a dual-use facility in the Pilot Program.

- In the case where concrete may need to be used outside of the limited exception for installing equipment such as inverters or transformers, Staff recommends that written justification be submitted by a licensed professional engineer for Staff review and approval.
- Consistent with other solar energy projects in the Board's solar program, require compliance with all applicable federal, State, or local laws, rules, regulations, or ordinances.
- Selected applicants seeking protection for their projects under New Jersey's Right to Farm Act, N.J.S.A. 4:1C-1 et seq., must comply with the relevant provisions of the agricultural management practices at N.J.A.C. 2:76-2A.12 through 2A.13 and not pose a direct threat to public health and safety.
- A Dual-Use Pilot Program Project shall be required to conform to all codes, standards, and licensing requirements that were applicable at the time the project was constructed.
- Dual-use system designs that incorporate permanent agricultural structures are prohibited. This prohibition would include designs with non-permanent agricultural structures that are directly attached to permanent structures. Staff recommends defining "permanent agricultural structure" to mean a structure that has been built with a permanent anchoring system or foundation (typically involving cement or concrete). Examples include farmhouses or residential structures, farm retail stores, barns, packhouses, agricultural equipment and materials storage sheds, greenhouses, grain storage facilities, plant and animal processing facilities, cold storage facilities, and feedlots. Staff also recommends defining the term "non-permanent agricultural structure" to mean a movable structure including high tunnels (a greenhouse-like structure used to protect crops and extend the growing season), center-pivot irrigation systems, post-driven fences, trellises, or structures without permanent anchoring systems or foundations such as animal shelters and some greenhouses.
- Dual-Use Pilot Program Projects must become fully operational, including having monitoring equipment installed for the Selected Project, within the timeframes required under the applicable SuSI Program pursuant to N.J.A.C. 14:8-11 for the ADI Program or the CSI Program as applicable. As a pilot program is intrinsically experimental, Staff recommends that the Board allow Dual-Use Pilot Program Projects in the ADI Program additional time needed to become operational, should they need it, up to a total of two (2) six (6)-month extensions beyond the one (1)-year deadline. Such extensions shall be requested as an update or modification to the COMPR and would be reviewed and approved by Staff or the Board's designee such as the SuSI Program Administrator.

Other (including Reporting and Recordkeeping)

Straw Proposal and Stakeholder Comments

In Staff's Straw Proposal, the overall intent of the Pilot Program per the Statute was explained in that the results of the Pilot Program including any research results on the efficacy of dual-use in New Jersey will be used to set standards for dual-use solar energy projects in a permanent program. Throughout the Straw Proposal, Staff recommendations consistently referred to this principle in establishing a proposed program design that meets the requirements of the Dual-Use Act while simultaneously acknowledging the importance of the farmer and agricultural industry throughout the development and implementation of a Pilot Program. As such, Staff recommended that the COMPR form the basis of the primary reporting and recordkeeping tool documenting the project's participation in the Pilot Program and be used in the evaluation of the individual project and in the evaluation of the Pilot Program to inform the design of a permanent dual-use program.

Additionally, Staff recommended that EDCs would have an important role, as with other solar programs, to support the implementation of solar incentives not only through processing interconnection applications but by keeping the Board updated on the progress of processing applications for the Pilot Program through reporting requirements.

Overall, stakeholders generally provided positive support for the Pilot Program, recognizing the potential benefits of agrivoltaics. Stakeholders repeatedly commented on ensuring that farmers be included throughout the process and emphasized the importance of the farmer on the success of the Pilot Program.

Specifically, stakeholders suggested that New Jersey evaluate lessons learned from other solar energy programs in the United States and other countries. Comments provided suggested that the Pilot Program should consider siting projects in different regions of New Jersey on various soil types that represent farmer interests and agricultural markets and include education and outreach for stakeholders, given that some may not be familiar with the Board's programs and processes. Other commenters suggested to keep costs at the forefront of a pilot program and outlined concerns about implementing another solar incentive program that will be more burdensome to ratepayers, households, and businesses, especially given inflation. This set of comments described concerns over the costs for all of the Board's programs, but highlighted the costs for the Board's solar energy programs.

With respect to reporting requirements, an EDC commented that reporting requirements for the Pilot Program are unnecessary and duplicative given the Board's reporting requirements for EDCs under other regulations and the anticipated regulations for grid modernization that proposed tracking mechanisms and reports for interconnecting. Other stakeholders commented on the need for clarity on reporting beyond the Pilot Program, and reporting changes or updates to the COMPR and when a COMPR is created and submitted. Finally, other commenters submitted reflected concerns with solar energy programs in general and a recommendation for increased stakeholder engagement including an annual stakeholder meeting to share insights on the Pilot Program and listening sessions and/or virtual open houses.

Staff Recommendations

After considering the input from stakeholders, Staff continues to recommend the approach in the Straw Proposal for using the COMPR as the primary reporting and recordkeeping tool, but Staff does not recommend requiring additional reporting requirements for the EDCs. However, Staff

recommends that the Board have the ability to establish reporting requirements for EDCs by Board order during the Pilot Program should such requirements be needed for the successful implementation of the Pilot Program.

Furthermore, Staff supports its recommendations in the Straw Proposal for keeping the COMPR updated over the lifetime of the pilot program award on an annual basis until the expiration of the fifteen (15)-year qualification life while maintaining applicable records of the COMPR, including any supplementary documentation, and any revisions made thereto. As the intent of a COMPR is to also provide a way in which information from the Pilot Program can be evaluated to inform a permanent program, Staff recommends that a participant provide those records upon request from the Board or Staff within fourteen (14) days of a request. To further support a successful pilot program, Staff recommends that a milestone reporting form be required for all Dual-Use Pilot Program Projects for which such a form is not already required for the pilot project pursuant to the SuSI Program rules at N.J.A.C. 14:8-11.5. In addition, notifications to the Board should be required for any modifications to the COMPR. For modifications made to the COMPR regarding a request to change a provision for a pilot project, Staff recommends that such modifications must be submitted in writing to the Board Secretary and approved by Staff in consultation with NJDA. Staff recommends that a determination be made on these proposed modifications within thirty (30) days of receipt by the Board Secretary. For revisions to the COMPR regarding changes in the ownership of the land or change of farmer or solar operator, Staff recommends that the landowner listed in the COMPR be the responsible entity for notifying the Board of those changes. Finally, for revisions needed to the COMPR in case of sale, transfer, contract modification, or other material change to the pilot project team, Staff recommends the Board be notified in writing within thirty (30) days.

DISCUSSION AND FINDINGS

New Jersey's solar programs have created a thriving industry, and the Board has strongly supported the development of innovative technical advances for clean energy and renewable energy projects throughout the State. In compliance with the Dual-Use Act, the Board commits to establishing our State's position as a marketplace leader in agrivoltaics, while at the same time controlling ratepayer costs and working with our State agency partners to protect our farmland and natural resources.

The Board also recognizes the significant benefits associated with the expansion of local, distributed, renewable, non-polluting sources of energy. In addition to the reduction of emissions that contribute to climate change, there is the reduction of air pollutants and the associated health benefits, increased resilience in the form of distributed generation, and the economic growth fueled by local job creation. Dual-Use solar energy provides a further benefit – it ensures that the agricultural community can play, not only a larger part, but a more sustainable part in the clean energy transition and can receive the economic benefits of doing so. Dual-Use solar can provide farmers with an additional stream of revenue, assisting with farm financial viability and enabling continued agricultural or horticultural production, while also increasing the statewide production of clean energy.

The Board has carefully reviewed the extensive record created through the stakeholder proceedings. The various stakeholders who participated in this proceeding have brought considerable dedication and passion to the process of expanding this solar market. That dedication is reflected in the extensive record that forms the basis for the actions taken today. The Board commends and thanks all stakeholders for their active participation in this proceeding. Public participation is invaluable to the Board's decision-making process, and each contribution

made in a public meeting or in written comments has helped inform the Board's conclusions.

After a review of the record and Staff's recommendations, the Board **HEREBY ORDERS** the establishment of a Dual-Use Pilot Program pursuant to the Dual-Use Act. The Board **ORDERS** that solar incentives, in the form of NJ SREC-IIs, be provided to eligible projects upon selection through a competitive procurement, and that the value of each SREC-II be established through the solicitation as recommended by Staff in the body of this Order.

The Board **HEREBY ORDERS** that the Pilot Program be open to qualifying grid supply projects; net metered non-residential projects with a capacity greater than five (5) MW; qualifying grid supply projects paired with a storage facility; and net metered non-residential solar projects of five (5) MW or less. The Board **ORDERS** that a Dual-Use Pilot Program Project must be sized at no less than 500 kW and, in compliance with the Dual-Use Act, at no more than ten (10) MW. The Board **APPROVES** a capacity target of up to 200 MW total for the duration of thirty-six (36) months for the Pilot Program and an annual capacity target for Program Year 1 of fifty (50) MW. The Board **ORDERS** that the capacity awarded under the Pilot Program shall be in addition to the capacity otherwise awarded under the SuSI programs.

For those facilities that are CSI-eligible, the Board concurs with Staff that a proxy "base" incentive set by the Board is more feasible than requiring all such facilities to compete in a CSI solicitation. The Board seeks to minimize the administrative burden of applying to the Pilot Program. The Board **FINDS** that requiring CSI-eligible facilities to participate in two (2) separate solicitations under the Board's rules would be onerous. The Board **HEREBY WAIVES** its rules at N.J.A.C. 14:8-11.10 for CSI-eligible facilities seeking to participate in the Pilot Program and **ORDERS** such projects to submit an incentive value for the CSI component of the project using the Board's highest awarded bid approved for the Basic Grid Supply Tranche (Tranche 1) from the most recent CSI Program solicitation for each application period.

The siting criteria of the Dual-Use Act closely track those under the Solar Act of 2021, and a process for reviewing siting solar projects on these prohibited land types is established under the CSI Program's siting rules at N.J.A.C. 14:8-12. The Board **ORDERS** that the applicable definitions in the CSI Siting Rules shall be incorporated in the Dual-Use Pilot Program and **HEREBY ORDERS** that all Dual-Use Pilot Program Projects comply with the siting criteria as recommended by Staff in the body of this Order. The Board **ORDERS** that all waivers from these siting criteria be sought in accordance with N.J.A.C. 14:1-1.2(b).

The Board **FURTHER FINDS** that projects to be located on preserved farmland are prohibited by the Statute from obtaining a waiver and **HEREBY GRANTS** Staff authority to administratively deny request for a waiver for such projects.

The Board **ORDERS** Dual-Use Pilot Program Projects to maintain the affected land in active agricultural or horticultural use and minimize negative impacts to farmland and the environment. The Board **HEREBY ORDERS** Dual-Use Pilot Program Projects to monitor and conduct research for the duration of the Board's Pilot Program, pursuant to the requirements contained within Appendix B of this Order. The Board **ORDERS** that projects requesting to locate a Dual-Use Pilot Program Project on covered agricultural lands be required to conduct a research study in coordination with a New Jersey public research institution of higher education and request approval from the Board, in consultation with NJDA, for approval to participate in the Pilot Program.

The Board **HEREBY ORDERS** the EDCs to process interconnection applications for potential dual-use projects in the order in which they are received, including those received prior to the effective date of this Order.

As Dual-Use Pilot Program Projects will fall within either the ADI or the CSI programs, the Board **FINDS** that basing the compensation of these projects on the applicable SuSI program incentive aligns with the legislative intent behind the Dual-Use Act and the Solar Act of 2021. The Board **FINDS** that an adder that covers the incremental costs incurred as a result of participation in the Pilot Program, specific to the agricultural or horticultural aspects of a dual-use project, is an appropriate mechanism to fully compensate the Dual-Use Pilot Program Projects for those costs that are specific to their participation in this program. The Board **ORDERS** that NJ SREC-IIs awarded in the Dual-Use Pilot Program consist of a baseline incentive from the SuSI Program and an adder tailored to any additional costs as a result of participating in the Dual-Use Pilot Program. Dual-Use Solar Energy Projects selected to participate in the Pilot Program that receive a NJ SREC-II Certification Number shall be eligible to create NJ SREC-IIs for fifteen (15) years following the date of commencement of commercial operations.

The Board **ORDERS** that for each Dual-Use Pilot Program Project a COMPR establish the terms and conditions for maintaining eligibility for the SREC-II adder. The Board **ORDERS** that the COMPR shall be kept updated throughout the term of a Dual-Use Solar Energy Pilot Program award, until the expiration of the fifteen (15)-year qualification life. For the duration of the Pilot Program, the Board **ORDERS** the COMPR to be updated by the project team annually. The annual update shall be performed by the anniversary of the date the Selected Project receives PTO.

The Board **FINDS** that the Dual-Use Act allows for the Secretary of Agriculture to make a request to the Board to suspend or revoke an award from the Board for a Dual-Use Pilot Program Project in the Pilot Program. The Board **FINDS** that establishing requirements for the enforcement of the terms and conditions of an award in the Pilot Program is in the best interest of protecting unpreserved farmland, the agricultural community, and ratepayers. The Board **ORDERS** that Dual-Use Pilot Program Projects shall comply with requirements of the ADI Program or CSI Program for the lifetime of the project. The Board **DIRECTS** Staff to work with the NJDA to audit projects for their compliance with the terms of the Pilot Program.

If Staff determines that a Dual-Use Pilot Program Project is not meeting the Program's requirements, the Board **ORDERS** that project shall be placed on probation for a period of thirty (30) to 120 days. Failure to correct the deficiency and implement the remedial action plan may result in the project's termination from the Pilot Program and suspension of incentives. The Board may impose additional penalties commensurate with the gravity of the infraction, including but not limited to rescission of dual-use incentive already paid or requiring the project developer to decommission the project and restore the land's prior agricultural or horticultural usage.

If an incident of force majeure as defined in in this Order is identified for such a project, the above enforcement provisions may be modified.

The Board **ORDERS** all Dual-Use Solar Energy Project facilities to comply with the pre-qualification application and application criteria set forth in this Order. The Board **APPROVES** the pre-qualification application attached to this Order.

The Board **HEREBY DIRECTS** Staff and the Board's designee, in consultation with NJDA, to develop all program documents and resources that shall be necessary for the operation of the

Pilot Program solicitation, including but not limited to: modification of the existing registration portals for the Pilot Program procurement, updates to the NJCEP website, and development of procurement forms and checklists. The Board **DIRECTS** Staff to issue a NOIA with an initial annual capacity target up to fifty (50) MW. The Board also **DIRECTS** Staff to open the Pilot Program to accept EOIs for Dual-Use Pilot Program Projects sized at a minimum of 500 kW DC through a prequalification application process on January 6, 2025. The Board **DIRECTS** Staff to include the proposed scoring rubric as recommended by Staff in this Order for this first NOIA. The Board **FURTHER DIRECTS** Staff and the Board's designee to implement a deadline of February 14, 2025 at 11:59:59 PM for EOI submissions.

The Board **HEREBY DIRECTS** Staff to evaluate the EOI submissions, in consultation with NJDA, and make recommendations to the Board for establishing or adjusting, as needed, a capacity target for the first solicitation, any capacity set asides, any application fees, and any minimum criteria in addition to those contained in this Order for participation in the related solicitation round.

The Board **FINDS** that CSEP does not provide incentives for ground-mounted solar projects, projects located on farmland or open space, or any type of land currently envisioned as suitable locations for agrivoltaic projects. The Board **FINDS** that allowing for Dual-Use Pilot Program Projects to receive additional incentives provided by CSEP through subscriptions is not in the best interest of the ratepayers. Thus, the Board **FINDS** that allowing Dual-Use Pilot Program Projects into the Board's CSEP would be inconsistent with the requirements of the CSEP and **ORDERS** that Dual-Use Pilot Program Projects shall not participate in CSEP.

Modifications to the existing RNM Program were signed into law on December 21, 2023, directing the Board to establish an application, an incentive, and an approval process that incorporates modified sizing and siting requirements for RNM solar facilities that serve public entities located within the same EDC service territory as the solar facility. The Board notes that Staff is working to prepare recommendations for the Board on these modifications as of the date of this Order. At this time, therefore, the Board will not rule upon the eligibility of Dual-Use Pilot Program Projects for the RNM Program.

The Board **HEREBY DIRECTS** Staff, the Board's designee(s), and the SuSI Program Registration Manager to develop all program documents and resources that are necessary for the registration of qualified projects in the Pilot Program, including, but not limited to the modification of the CSI and ADI registration portals for the Pilot Program, updating the NJCEP website, and development of forms and checklists.

The Board **FINDS** additional reporting requirements for the EDCs in the Pilot Program would be duplicative to existing regulations and proceedings underway. However, the Board **FINDS** that the nature of a pilot program is inherently experimental and **DETERMINES** that future directives for the EDCs may be necessary given the results of the Pilot Program.

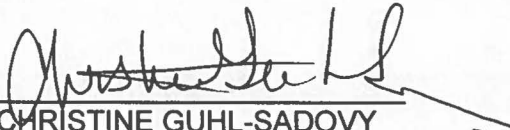
The Board **FURTHER DIRECTS** Staff, the Board's designee(s), and the SuSI Program Registration Manager to communicate the establishment of the Pilot Program to the public. Communication shall include listserv messages, website notices, informational webinars, and such other methods as shall be appropriate.

Finally, unless expressly stated otherwise, the Board **HEREBY APPROVES** all recommendations made by Staff above and **HEREBY DENIES** any conflicting stakeholder comments.

The effective date of this Order is October 30, 2024.

DATED: October 23, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRI L. GOLDEN
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 DUAL-USE SOLAR ENERGY PILOT PROGRAM

DOCKET NO. QO23090679

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