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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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CASE MANAGEMENT

JAN 14 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Please reply to Trenton

January 14, 2019

Via Hand Delivery

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor
P.O. Box 350
Trenton, NJ 08625-0350

RE: I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2019; Docket No. ER18040356
I/M/O the Allocation of Renewable Portfolio Standards for Basic Generation Service Beginning June 1, 2019; Docket No. EO18111250

Dear Secretary Camacho-Welch:

This firm represents the Mid-Atlantic Renewable Energy Coalition ("MAREC"). Please find enclosed an original and ten copies of a Motion for Reconsideration and Clarification filed with the Board on behalf of MAREC. The statutory filing fee of \$15.00 is enclosed. A certificate of service is attached.

We thank the Board of its consideration. Please call if there are any questions.

Very truly yours,



Bradford M. Stern

enclosure

cc: Attached Service List
Honorable Board President and Commissioners (via Hand Delivery)
Stephanie Brand, Esq., Division of Rate Counsel (2 copies via Hand Delivery)

Case mgmt

RECEIVED
CASE MANAGEMENT

JAN 14 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

BEFORE THE
BOARD OF PUBLIC UTILITIES

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JAN 14 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

I/M/O THE PROVISION OF BASIC
GENERATION SERVICE (BGS) FOR
THE PERIOD BEGINNING JUNE 1, 2019

AND

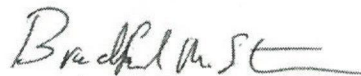
I/M/O THE ALLOCATION OF
RENEWABLE PORTFOLIO STANDARDS
FOR BASIC GENERATION SERVICE
BEGINNING JUNE 1, 2019

DOCKET NO. ER18040356

DOCKET NO. EO18111250

CERTIFICATE OF SERVICE

I, Bradford M Stern, upon my oath, duly state that I have sent or caused to be sent the attached Motion for Reconsideration and Clarification by the Mid-Atlantic Renewable Energy Coalition by hand delivery (two copies) to Stephanie A. Brand, Esq., Director, Division of Rate Counsel, and by electronic mail, to the parties on the attached service list.



Dated: January 14, 2019

Docket No. ER18040356 – In the Matter of the Provision of Basic Generation Service (“BGS”) for the
Period Beginning June 1, 2019; and
Docket No. EO18111250 – In the Matter of the Provision of Basic Generation Service (“BGS”) –
Renewable Portfolio (“RPS”) Allocation.

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**BEFORE THE
BOARD OF PUBLIC UTILITIES**

I/M/O THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD BEGINNING JUNE 1, 2019))))	DOCKET NO. ER18040356
AND		
I/M/O THE ALLOCATION OF RENEWABLE PORTFOLIO STANDARDS FOR BASIC GENERATION SERVICE BEGINNING JUNE 1, 2019))))))	DOCKET NO. EO18111250

**MOTION FOR RECONSIDERATION AND CLARIFICATION
BY THE
MID-ATLANTIC RENEWABLE ENERGY COALITION**

TO THE HONORABLE BOARD:

The Mid-Atlantic Renewable Energy Coalition ("MAREC") files this motion for reconsideration and clarification, pursuant to N.J.A.C. 14:1-8.6, of the Board's Decision and Order in these dockets dated December 18, 2018 and effective December 28, 2018 (the "December 28 Order"). MAREC requests that the Board reconsider its decision to change its policy by permitting non-exempt Basic Generation Service ("BGS") contract providers awarded in the 2019 BGS auction to count all solar renewable energy renewable supplied toward satisfying the Class I renewable portfolio standards ("RPS") in Energy Years 2020, 2021 and 2022 (the so-called "carve out" rule). MAREC also requests that the Board confirm that it is limiting such carve out treatment of solar renewable energy supplied to the 2019 BGS auction. Consistent therewith, the Board should allow a full record to be developed in the Board's

upcoming rulemaking ordered in Docket No. EX18111244, and/or in future BGS auction proceedings, on whether to require BGS providers to satisfy the solar RPS separate from the Class I RPS (the so-called "additive" requirement) or to adopt a carve out rule for the 2020 and 2021 BGS auctions and beyond.

In support of this motion, MAREC states the following:

1. MAREC is a nonprofit organization that was formed to help advance the opportunities for renewable energy development primarily in the region where the Regional Transmission Organization, PJM Interconnection operates. MAREC's footprint includes New Jersey and eight other jurisdictions in the region. MAREC members include utility scale wind and solar developers, including offshore wind developers, wind turbine manufacturers and non-profit organizations dedicated to the growth of renewable energy technologies. MAREC members have developed, own, and operate thousands of megawatts of renewable energy serving the PJM territory, including projects serving customers in New Jersey.

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2. Correspondence regarding this motion should be addressed to:

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THE BOARD'S STANDARD OF REVIEW

3. N.J.A.C. 14:1-8.6 proscribes the Board's standard of review for a reconsideration

motion:

(a) A motion for rehearing, reargument, or reconsideration of a proceeding may be filed by any party within 15 days after the effective date of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

4. The Board has had occasion to expound on the rule:

"The Board 'will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board failed to take note of a significant element of fact or law.' In the Matter of the Implementation of L. 2012, c.24, the Solar Act of 2012, Docket No. E012090832 (July 19, 2013) at 5; In the Matter of Michael Manis and Manis Lighting, LLC - New Jersey Clean Energy Program Renewable Energy Incentive Program, Docket No. QS14040316 (April 15, 2015) Additionally, N.J.S.A. 48:2-40 expressly provides that the Board at any time may revoke or modify an order made by it. Twp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 428 (1969); see also, N.J.A.C. 14:1-8.6(b).

An applicant's dissatisfaction with a decision does not provide justification for the Board to modify its order. D'Atria v. D'Atrla, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Instead, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent 'evidence.' Ibid. See, e.g., M. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (motion for reconsideration rejected when Plaintiff merely proposed a new legal theory based on facts known at time Plaintiff responded to motion for summary judgment); In the Matter of the Implementation of L.2012, c.24, The Solar Act of 2012, Docket Nos. E012090832V, E012090862V, E013050387V, E013050429V (May 21, 2014) (The Board rejected Movants' motions for reconsideration where no relevant new facts were alleged). The moving party must demonstrate that the action was arbitrary, capricious, or unreasonable. D'Atria, supra, 242 N.J. Super. at 401. Simple disagreement, even if based

on opposing expert opinions, is not enough to overcome the presumption of reasonableness ascribed to an agency's findings. Animal Prot. League of N.J. v. N.J. Dept. of Env'tl. Prot., 423 N.J. Super. 549, 562 (App. Div. 2011) (citations omitted)."

I/M/O the Clean Energy Programs and Budget for Fiscal Year 2017: Bloom Energy Corporation, Order Denying Motion for Reconsideration, Docket No. QO16040353, 2016 N.J. PUC LEXIS 237, September 23, 2016, at 7-9.

5. MAREC alleges in this motion errors of fact or law relied upon by the Board. Specifically, MAREC argues that its decision to adopt a solar RPS carve out rule in the 2019 BGS auction is not supported by substantial, credible record evidence. MAREC also takes the opportunity to briefly introduce additional evidence in support of its position and requested relief herein.

SUMMARY OF PROCEEDINGS

6. On April 25, 2018, the Board initiated a proceeding in Docket No. ER18040356 to establish the terms and schedule for the 2019 BGS auction to procure approximately one-third of the EDCs' BGS requirements beginning June 1, 2019 for EY 2020, EY 2021 and EY 2022. The Board established a preliminary schedule for the EDCs to submit BGS procurement proposals, for legislative-type hearings and public hearings, and for issuing its decisions approving BGS procurement plans for a BGS auction scheduled to commence in February 2019. See, April 25, 2018 Decision and Order, Attachment A. By Decision and Order dated November 19, 2018 ("November 19 Order"), the Board approved the EDCs' joint proposal for the 2019 BGS auction for the BGS-RSCP and BGS-CIEP procurements, as modified by the Decision and Order. Preparation for the BGS auction is currently underway, with both BGS auctions scheduled to start February 4, 2019. See, <http://www.bgs-auction.com/bgs.calendar.asp>.

7. During the pendency of the BGS proceeding, the Legislature enacted P.L. 2018, c. 17 (the "Community Energy Act, or "CEA"), and codified in relevant part at N.J.S.A. 48:3-87.

Among other provisions, the CEA substantially modifies New Jersey's solar RPS program, including

- requiring the Board to adopt rules and regulations no later than 180 days after the effective date of the bill to close the SREC program by no later than June 1, 2021 to new applications upon the attainment of 5.1 percent of the kilowatt-hours sold in the State by each TPS and each BGS provider from solar electric power generators connected to the distribution system (N.J.S.A. 48:3-87(d)(3));
- requiring the Board to complete a study to evaluate how to modify or replace the SREC program and provide for an orderly transition from the current program (*Id.*);
- accelerating the schedule to require third party suppliers ("TPS") and BGS providers to provide a greater percentage of solar energy each year, culminating in 5.1 percent by energy year 2021 and then gradually reducing the schedule thereafter until energy year 2033 (*Id.*); and
- reducing the solar alternative compliance payments ("SACP") beginning in energy year 2019 until energy year 2033 (N.J.S.A. 48:3-87(j)).

8. The CEA also provides that existing BGS contracts (as of the date of enactment of the CEA) are exempt from the obligations to achieve the increased solar energy percentage requirements, with the shortfall against the increased requirements to be made up by non-exempt BGS contracts until all exempt contracts have expired. N.J.S.A. 48:3-87(d)(3)(c).

9. The CEA requires that 21 percent of kilowatt-hours ("kWh") sold in the State by each TPS and BGS provider be from Class I renewable energy sources by January 1, 2020 and requires the Board to initiate a proceeding to establish Class I RPS of 35 percent by EY 2025 and 50 percent by EY 2030. N.J.S.A. 48:3(d)(2). The CEA ends the ability to use Class I renewable energy certificates to satisfy Class II RPS obligations, which the CEA established at 2.5 percent of kWh sold in the State by each TPS and BGS provider. N.J.S.A. 48:3-87(d)(1).

10. The CEA also imposes a cap, excluding the costs of the offshore wind renewable energy certificate program, on the cost to customers for renewable energy supply requirements for EY 2019 through EY 2021 years beginning in energy year 2019, of nine percent of the cost to customers of the total number of kilowatt hours sold in the State, and a cap of seven percent of

the cost to customers of the total number of kilowatt hours sold in the State in any energy year thereafter. N.J.S.A. 48:3-87(d)(2).

11. As a result of the CEA's enactment, parties to BGS Docket No. ER18040356 submitted comments requesting that the Board provide clarity with respect to certain issues impacted by the CEA. The issues included establishing specific SREC percentage obligations for BGS suppliers to eliminate bidding uncertainty and determining minimum Class I renewable energy requirements for EY 2021 and EY 2022. In response to these concerns, the Board directed Staff to "conduct a stakeholder meeting on both questions raised . . . and provide recommendations to the Board at the December 18 Board Agenda Meeting." November 19 Order, at 15, 16.

12. On November 28, 2018, the Board opened Docket No. EO18111250 and issued a Notice in Docket No. EO18111250 and Docket No. EX18111244 – I/M/O of Rulemaking Proceeding to Amend the Renewable Portfolio Standard Pursuant to P.L. 2018, c.17.¹ The Board set a public meeting for December 7, 2018 to take oral comments and set December 10, 2018 as the date for parties to submit written comments. In inviting interested parties to comment, Board Staff enumerated specific issues for comment in the Notice, as follows, with Staff's straw proposals provided in Attachments A, B, and C thereto:

- In Docket No. EO18111250:

1. How to allocate the solar RPS obligations of the exempt entities amongst the non-exempt entities. [Staff's straw proposal in Attachment A]
2. What the RPS requirements should be for Energy Year (EY) 2019, EY 2020, EY 2021, and EY 2022. [Staff's straw proposal in Attachment B]

¹ The Board opened Docket No. EX18111244 on November 23, 2018. At its December 18, 2018 Public Meeting, the Board unanimously approved Staff's recommendation and request to submit a rule proposal to Office of Administrative Law for February 4, 2019 publication in the New Jersey Register and to establish a 60-day comment period. Tr. Public Meeting, December 18, 2018, Item 8L.

3. Whether to consider solar obligations to be included within the overall Class I obligations as a carve-out, such that SRECs submitted to satisfy the solar RPS will also be counted toward the satisfaction of the total Class I RPS rather than being considered additive to the Class I RPS. [Staff's straw proposal in Attachment B]

- In Docket No. EX18111244:

1. Whether to consider solar obligations to be included within the overall Class I obligations as a carve-out, such that SRECs submitted to satisfy the solar RPS will also be counted toward the satisfaction of the total Class I RPS rather than being considered additive to the Class I RPS. [Staff's straw proposal in Attachment C]
2. Whether the treatment of the increased Class I RPS obligations and the treatment of solar RPS are appropriately set forth in [Staff's straw proposal in Attachment C.

13. Staff's straw proposal in Attachment B to the Notice

- would retain for EY 2019 the Board's current rule establishing a solar renewable energy supply percentage requirement separate from Class I renewable energy requirement (the "additive" rule) for TPS and for both exempt and non-exempt BGS contracts;²
- would retain for EY 2020 and EY 2021 the additive rule for exempt BGS contracts, but include the solar renewable energy supply percentage requirements within the Class I renewable energy percentage requirements for non-exempt BGS contracts (the "carve out" rule);
- would subject non-exempt BGS contract providers to greater solar renewable energy supply percentage requirements than exempt BGS contract providers, but the same Class I and Class II renewable energy supply percentage requirements, for EY 2019, EY 2020 and EY 2021; and
- would apply the carve out rule and subject all BGS providers to the same solar, Class I and Class II renewable energy supply percentage requirements for EY 2022.

² It is not clear whether Staff intended to subject TPS to the requirements imposed on non-exempt BGS contract providers in Attachment B. Attachment A to the Notice proposes a methodology to calculate non-exempt electricity supply requirements for EY 2019, EY 2020 or EY 2021, which distribute the exempt BGS contract providers' shortfall against the CEA's minimum solar RPS among non-exempt suppliers, referencing a "TPS/BGS Provider" as a non-exempt supplier.

14. Staff's straw proposal provided in Attachment C would apply the carve out rule for EY 2023 through EY 2030 and would subject all "energy supplies" to the same solar, Class I and Class II renewable energy supply percentage requirements. Staff's straw proposal would increase the Class I renewable energy percentage requirement to 50 percent, consistent with the CEA's directive.

15. In response to the Notice, Board Staff received oral comments at the December 7, 2018 stakeholder meeting and received written comments on or before December 10, 2018 from several parties. In the December 28 Order, the Board responded to several comments with clarification that only non-exempt BGS contract providers, and not TPS, are subject to making up the shortfall from the exempt BGS contract providers to meet the CEA's solar RPS requirements, which the Board indicated is "consistent with the plain language of the CEA." December 28 Order, at 9. The Board also stated that the intended meaning of Attachment B to the Notice is that "the solar RPS shall be deemed to be a subset of the Class I RPS rather than additive to the Class I RPS." *Id.*

16. MAREC submitted written comments on December 10, 2018 focused on the third issue set forth in the Notice to be addressed in Docket No. EO18111250 and the first issue to be addressed in Docket No. EX18111244. MAREC took exception to Staff's proposal to a carve out of the solar RPS obligations rather than treating them as additive, consistent with the current rule at N.J.A.C. 14:8-2.3(k). MAREC Comments, at 2. MAREC provided a quantitative analysis demonstrating that, from a policy perspective, the carve out "clearly contradicts the intent of the legislation by reducing the Class I RPS requirements to a point below where they would have been under [the current, additive rule], whereas it would take until [EY] 2021 for total RPS demand to eventually exceed 2018 levels." *Id.*, at 2,3. MAREC opined that the change to a carve

out would be “disruptive to REC market prices by reducing demand,” which “could have an impact on the ability of renewable energy developers to finance projects.” *Id.*, at 3. MAREC believed that changing the solar RPS obligation from additive to the Class I RPS requirement to a carve out of the Class I RPS requirement must be effectuated in a rulemaking pursuant to the Administrative Procedures Act. *Id.*, at 2. MAREC commented that the carve out would be “antithetical to the Governor’s and Legislature’s wishes . . . in immediately taking steps to combat greenhouse gas emissions, rely more on renewable energy and grow the economy.” *Id.*, at 3.³

17. With respect to Docket No. EX18111244, MAREC reiterated that the solar RPS obligations should be additive to the Class I RPS rather than a carve out of the Class I RPS. *Id.*, at 4. MAREC also commented that the Board should permit out-of-state solar projects to be used for purposes of satisfying Class I RPS, which MAREC indicated is supported by definitions contained in N.J.S.A. 48:3-51 and which, if permitted, would “lower the cost for ratepayers” and would provide the “benefits of a lower carbon future . . . achieved either by using emission free wind or solar resources.” *Id.*, at 4,5.

18. In responding to MAREC’s comments, the Board concurred with written comments submitted by Rate Counsel

“that treating the solar RPS obligation as additive to the Class I RPS would risk increasing the cost of Class I compliance above the cost caps set by the CEA of 9% (for EY19, 20 and 21) and 7% beginning in EY 22) of statewide retail costs. Rather than running that risk, which the Board deems to be significant, the Board elects to avoid that

³ Another commenter, Carbon Solutions Group (CSG), submitted written comments on December 10 echoing MAREC’s comments in Docket No. EO18111250, stating that carve out is contrary to the Board’s current rules, that “overall RPS demand in the region would plummet, and past gains in the renewable marketplace would diminish” and, as a result “prices and costs associated with renewable energy would increase, defeating the entire purpose of the [CEA].” CSG Comments, at 4.

risk by considering the solar RPS obligation, going forward, to be a carve out, or subset, of the over Class I obligation.”

December 28 Order, at 11. The Board’s Order contained no findings or analysis with any quantification, or cost data or cost projections supporting its conclusion regarding “the risk [of] exceeding the cost caps.” The Board responded to MAREC’s comment on the necessity for a rulemaking proceeding by referring MAREC to Docket No. EX1811244. *Id.*, at 12.

19. Rate Counsel’s written comments supported treating the solar RPS obligation as a carve out of the Class I RPS obligations. Rate Counsel Comments, at 3. Rate Counsel found support for the carve out in the Board’s rules at N.J.A.C. 14:8-1.2 and N.J.A.C. 14:8-2.5. *Id.* Rate Counsel referred to the CEA’s costs caps as “effectively creating a limited budget for incentives for Class I renewable energy resources,” and “[I]n view of the limited resources available under the cost cap, the Board’s RPS should not exceed statutory limits.” *Id.* Rate Counsel provided no analysis of any kind, quantitative or otherwise, to support a finding that adding the solar RPS to the Class I RPS would “risk increasing the cost of Class I compliance above the cost caps set by the CEA.”⁴

20. To MAREC’s knowledge, no party provided any substantive analysis, quantification, or cost projections supporting the concept that retaining the additive rule for the solar RPS obligation in the 2019 BGS auction would risk increasing retail electricity above the statutory cost caps imposed by the CEA.

⁴ Rate Counsel also appears to take the position that the CEA and the Board’s rules do not provide for adding solar RPS obligations to the Class I obligations. This position ignores the express solar RPS obligations under N.J.A.C. 14:8-2.3(k), which Rate Counsel does not reference. Moreover, nothing in the December 28 Order supports this legal conclusion. To the contrary, the Board states that it “elects, going forward,” to consider the solar RPS obligation “to be a carve out of the overall Class I obligation.” Moreover, Attachment B to the November 28 Notice clearly shows that Staff considers the current Board rules to treat the solar RPS obligation as additive rather than a carve out; the exempt BGS providers are obligated to comply with the solar RPS obligation separate and distinct from the Class I RPS obligation. See also, Table A to the December 28 Order, at 13 (for example, the Total RPS obligation for exempt BGS contracts for EY 2019 are the sum of Solar, Class I and Class II RPS obligations).

ARGUMENT

I. The Board's Decision to Implement a Carve Out for the 2019 BGS Auction is Not Supported by Substantial, Credible Record Evidence.

21. While the Board is afforded substantial deference in its decision-making, its decision must not be arbitrary or capricious, and must be supported by substantial credible evidence. *Mejia v. New Jersey Dep't of Corr.*, 446 N.J. Super. 369, 376 ("Ordinarily, an appellate court will reverse the decision of the administrative agency only if it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole," quoting *Henry v. Rahway State Prison*, 81 N.J. 571, 579-80, 410 A.2d 686 (1980)).

22. Here, there is simply no credible evidence in Docket No. EO18111250, substantial or otherwise, for the Board to change its current additive rule under N.J.A.C. 14:8-.2.3(k) and treat the solar RPS obligation as a carve out (i.e., subset) of the Class I RPS obligation for the 2019 BGS auction, applicable to non-exempt BGS contract providers, based on a risk of "increasing the cost Class I compliance above the cost caps set by the CEA." The Board relied in its December 28 Order merely upon the unsubstantiated opinion of Rate Counsel to find that the risk of exceeding the cost caps by continuing to treat the solar RPS obligation as additive to the Class I RPS obligation is "significant." There are no findings of fact quantifying the benefits of adopting a carve out rule; indeed, there are no facts presented in these proceedings to adduce what retail electricity price point would exceed the applicable statutory cost cap for each of EY 2020 through EY 2022 (for which one-third of the required BGS supply is procured in the 2019 BGS auction).

23. It is instructive that the Board set for public comment in the rulemaking pursuant to Docket EX18111244 the issue of whether to treat the solar RPS obligation as a carve out of the Class I RPS obligation beginning in EY 2023. The Board has no more substantive

information for deciding, “going forward,” whether to change its current additive rule for the solar RPS obligation to a carve out rule for EY 2020 through EY 2022 (which are impacted by the 2019 BGS auction) than it does deciding on the proper course beginning in EY 2023.

Moreover, the Board will need to make its findings and issue its rule regarding the proper course in time for the 2020 BGS auction, no later than one year from now, as that auction will impact electricity prices in EY 2023.

24. In sum, the Board’s finding of a significant risk of exceeding the statutory price caps resulting from the 2019 BGS auction if the current additive rule for the solar RPS obligation for the 2019 BGS auction is retained has no basis in any facts whatsoever and is purely speculative. For these reasons, the Board’s action in Docket No. EO18111250 effectively changing the additive rule promulgated rule at N.J.A.C. 14:8-2.3(k) to a carve out rule for purposes of the 2019 BGS auction is an error of fact or law. It is appropriate to address this decision by the Board through a reconsideration motion process as MAREC and other parties had no way of anticipating that the Board would support its decision on a finding related to costs without any data or analysis as a basis for change in policy.

II. The Board Should Consider Additional Evidence on the Forgone Reduction in Carbon Emissions Resulting from Its Decision in Docket No. EO111250.

25. The Board’s rules permit brief additional evidence to be presented in a reconsideration motion for good cause shown. N.J.A.C. 14:1-8.6(a)(2). MAREC presents in Attachment A an analysis of how the carve out rule, if generally applied, would impact demand for Class I renewable energy credits (“RECs”) and level of the State’s carbon emissions. Due to the short period of less than two weeks under the November 28, 2018 Notice to submit written comments, MAREC had insufficient time in preparing its comments to present a fuller analysis of the forgone reduction in carbon emissions resulting from Staff’s straw proposal (see paragraph

12 above). Thus, MAREC respectfully requests leave to present additional evidence for the Board's consideration.

26. MAREC estimates the forgone carbon emissions resulting from the carve out rule applied in the 2019 BGS auction in EY 2020 through EY 2022 to be 497,700 tons in the aggregate. Although substantial but relatively modest, these forgone carbon emissions are nevertheless antithetical to New Jersey's objectives to reduce carbon emissions, as expressed by Governor Murphy in Executive Order 28 authorizing the development of the State's 2019 Energy Master Plan.⁵ By this motion, MAREC requests that the Board take into account evidence of the detrimental environmental impact that will be caused by reducing the level of clean energy resources to be sourced by non-exempt BGS providers in the 2019 BGS auction resulting from its adoption of a carve out rule for the solar RPS obligation.

III. The Board Should Confirm the Carve Out Rule Applies Only to the 2019 BGS Auction.

27. If the Board retains the carve out rule for the 2019 BGS auction, it should also clarify its order by confirming that the rule applies only to that BGS auction, and does not as a result of the December 28 Order apply, absent further Board action, apply to any future BGS auctions, the pending rulemaking in Docket No. EX18111244, or any other proceedings the Board convenes to address the requirements of the CEA. This approach will have the advantage of the Board and interested parties being able to review the results of the 2019 BGS auction and to evaluate the impact on retail electricity pricing, the economic health of the solar industry, and the environmental impact of forgone carbon emission reductions. The ability to make this

⁵ E.O. 28 clearly expresses the need to reduce New Jersey's greenhouse gas emissions:

WHEREAS, traditional methods of energy production that rely on the burning of fossil fuels release harmful emissions of carbon dioxide and other greenhouse gases, which in turn contribute to global climate change; and WHEREAS, in order to curtail the serious impacts of global climate change caused by greenhouse gas emissions, New Jersey must shift away from its reliance on fossil fuels as a primary energy source and turn to clean energy sources. E.O. 28, at 1.

ATTACHMENT A

Renewable energy providers rely on revenue from renewable energy credits (“RECs”) for projects to achieve revenue adequacy. In general, Class I renewable energy providers do not have access to long-term contracts which provide assured long-term revenue for RECs (or in some cases energy too).⁶ The lack of access to long-term contracts exposes renewable energy providers to short-term market prices for RECs.

Changes in public policy can meaningfully impact REC prices, thereby impacting the revenue adequacy prospects of renewable energy providers. For example, policies which unexpectedly reduce REC prices can impair renewable energy provider revenue adequacy. As a result, in order to ensure confidence that New Jersey’s renewable energy and carbon dioxide reductions goals will be met, it is paramount that electricity sector regulators take supreme care to ensure that their decisions do not negatively impact REC markets such that future renewable energy provider confidence is impacted. The Board’s carve out rule will likely have a chilling impact on renewable energy providers’ confidence in New Jersey’s Class I REC market because, if applied to the state’s entire Class I Renewable Portfolio Standard (“RPS”), it will reduce substantially near-term Class I REC demand compared to what the market anticipated when Assembly Bill 3723 passed.

The following chart demonstrates the annual reduction in Class I REC market demand from 2020 through 2030 if the Board’s action is applied to the entire Class I RPS.

EY Year	Retail Sales*	Solar Requirement %	Forgone Class I REC Demand
2020	73,382,940	4.90%	3,595,764
2021	73,382,940	5.10%	3,742,530
2022	73,382,940	5.10%	3,742,530
2023	73,382,940	4.90%	3,595,764
2024	73,382,940	4.80%	3,522,381
2025	73,382,940	4.50%	3,302,232
2026	73,382,940	4.35%	3,192,158
2027	73,382,940	4.35%	3,192,158
2028	73,382,940	4.35%	3,192,158
2029	73,382,940	4.35%	3,192,158
2030	73,382,940	2.21%	1,621,763

*Retail sales are from EIA 2017 State Data Tables -
Retail Sales of Electricity by State by Sector by Provider (EIA-861);
<https://www.eia.gov/electricity/data/state/>

⁶ Restructured markets in Illinois, New York, Massachusetts, Connecticut, and Rhode Island do provide opportunities for renewable energy providers to obtain long-term contracts for RECs and, in some cases, energy.

The Board's action implementing the carve out rule could foreshadow a potential significant reduction in Class I REC demand that will compromise renewable energy provider confidence in New Jersey's Class I REC market and may impair revenue adequacy for some renewable energy providers offering RECs to meet New Jersey's Class I RPS.

The carve out rule, if applied to New Jersey's entire Class I RPS, will substantially reduce demand for renewable energy in the years to 2030. Reduced renewable energy demand will lead to a reduction in carbon dioxide emissions in the intervening years. Carbon dioxide emissions forgone as a result of the carve out rule will peak in 2022 at 986,157 tons or approximately 5% of New Jersey's electricity sector carbon dioxide emissions based on 2017 load and average carbon dioxide emissions rate per megawatt-hour (527 lbs/MWh).

The solar requirement declines from 2022 through 2030 reducing the amount of forgone carbon reduction emissions to less than 1% of 2016 levels. However, the carve out rule if applied to the entire Class I RPS would substantially and negatively impact the State's carbon reduction efforts.

The following chart demonstrates the carve out rule's impact on carbon dioxide reductions if applied to the entire Class I RPS.

EY Year	Retail Sales*	Solar Requirement %	Solar MWh	Forgone CO2 Reductions (Tons)**
2020	73,382,940	4.90%	3,595,764	947,484
2021	73,382,940	5.10%	3,742,530	986,157
2022	73,382,940	5.10%	3,742,530	986,157
2023	73,382,940	4.90%	3,595,764	947,484
2024	73,382,940	4.80%	3,522,381	928,147
2025	73,382,940	4.50%	3,302,232	870,138
2026	73,382,940	4.35%	3,192,158	841,134
2027	73,382,940	4.35%	3,192,158	841,134
2028	73,382,940	4.35%	3,192,158	841,134
2029	73,382,940	4.35%	3,192,158	841,134
2030	73,382,940	2.21%	1,621,763	427,335

*Retail sales are from EIA State Data Tables -
Retail Sales of Electricity by State by Sector by Provider (EIA-861);
<https://www.eia.gov/electricity/data/state/>

**Forgone carbon dioxide reductions based on EIA 2017 New Jersey average emission rate/MWh (527 lbs.);
New Jersey Electricity Profile 2017; <https://www.eia.gov/electricity/state/NewJersey/>