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ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY, AND SUSTAINABILITY

Global Warming Solutions Fund

Adopted New Rules: N.J.A.C. 7:27D

Proposed: December 17, 2018, at 50 N.J.R. 2537(a).

Adopted: April 12, 2019, by Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Filed: May 20, 2019, as R.2019 d.064, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2C-37 et seq. and 26:2C-45 et seq., specifically, 26:2C-50 to 53; and Executive Order No. 7 (2018).

DEP Docket Number: 04-18-10.

Effective Date: June 17, 2019.

Operative Date: June 11, 2019, in accordance with N.J.S.A. 26:2C-8.a.

Expiration Date: June 17, 2026.

Summary

The Department is adopting new rules to implement the relevant provisions of N.J.S.A. 26:2C-45 et seq., and Governor Murphy's Executive Order No. 7 (2018) (EO No. 7). The executive order directs the Commissioner of the Department of Environmental Protection (Department) and the President of the New Jersey Board of Public Utilities (BPU) to take all

necessary measures to return the State to full participation in the Regional Greenhouse Gas Initiative (RGGI). Accordingly, the Department is adopting two sets of rules. In a separate adoption published elsewhere in this issue of the New Jersey Register, the Department will codify the mechanics of New Jersey's participation in RGGI's carbon dioxide (CO_2) allowance auctions (mechanics rules). The Department adopts these funding rules to establish the framework, including the guidelines and the priority ranking system required by N.J.S.A. 26:2C-52, that the Economic Development Authority (EDA), the BPU, and the Department will use to select eligible programs and projects to receive funding from the proceeds of the auctions. Further, this chapter specifies the criteria for new, efficient electric generation facilities to be considered state-of-the-art in accordance with N.J.S.A. 26:2C-51.b(1).

Summary of Hearing Officer's Recommendation and Agency's Response:

The Department held a public hearing on this rulemaking on January 25, 2019, at 1:00 P.M., in the Department's Public Hearing Room, 1st Floor, 401 East State Street, Trenton, New Jersey. Paul Baldauf, Assistant Commissioner for Air Quality, Energy and Sustainability, served as hearing officer. Nine people provided oral comments. After reviewing all of the comments received during the public comment period, which ended February 15, 2019, the hearing officer recommended that the Department adopt the proposed rules with no modifications. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 04-18-10

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

This notice of adoption document can also be viewed or downloaded from the Department's website at http://www.nj.gov/dep/rules/adoptions.html and https://www.nj.gov/dep/aqes/rggi.html.

***Summary of Public Comments and Agency Responses*:**

The Department accepted comments on the notice of proposal through February 15, 2019. The following individuals provided timely written and/or oral comments:

1. Ana Isabel Baptista, Nicky Sheats, and Laureen Boles, on behalf of New Jersey Environmental Justice Alliance

2. Ray Cantor, on behalf of the New Jersey Business and Industry Association

3. Debra Coyle, on behalf of the New Jersey Work Environment Council

4. Joseph Della Fave, on behalf of the Ironbound Community Corporation

5. Henry Gajda, on behalf of the New Jersey League of Conservation Voters

6. Bruce Ho, on behalf of the Natural Resources Defense Council

7. Bruce Ho, Natural Resources Defense Council, on behalf of Acadia Center, Appalachian Mountain Club, Energy Efficiency Alliance of New Jersey, Environment America, Environment New Jersey, Environmental Entrepreneurs (E2), Natural Resources Defense Council, New Jersey Sustainable Business Council, and Union of Concerned Scientists

8. Pari Kasotia, Vote Solar, on behalf of Vote Solar, Solar United Neighbors of New Jersey, and GRID Alternatives

9. Paul Kaufman, on behalf of Green Faith

10. Dan Kennedy, on behalf of the Utility and Transportation Contractors of New Jersey

11. Andrew Kricun, Camden County Municipal Utilities Authority

12. Norah Langweiler, on behalf of Jersey Renews, comments supported by Clean Water Action

13. Mary McCormick

14. Laura Merz

15. Franklin Neubauer, Core Metrics

16. Doug O'Malley, Director, Environment New Jersey (supported by Clean Water Action)

17. David Pringle, on behalf of Clean Water Action

18. Thomas Schuster, Jeff Tittel, and Alejandra Nunez, on behalf of Sierra Club (endorsed by Environment New Jersey, Environment America, GreenFaith, and New Jersey Work Environment Council)

19. Rebecca Sheer, SOMA Action

20. Thomas Summers

21. Jeff Tittel, on behalf of Sierra Club, (supported by Clean Water Action)

22. Gary Van Wyk, Essex Rising

23. Daniel Walton

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

General Support

1. COMMENT: The decision to pull New Jersey out of the Regional Greenhouse Gas Initiative (RGGI) cost the State nearly $300 million in lost revenue, jobs, investment in clean energy technologies, and eight years of working in a meaningful way to mitigate climate change. Rejoining RGGI is an opportunity for the State to get it right. (3)

2. COMMENT: New Jersey's re-entry into RGGI is supported. (14 and 19)

3. COMMENT: By rejoining this regional program, New Jersey sets the precedent for continued and further action to address climate change. (5)

4. COMMENT: Rejoining RGGI is a great step for New Jersey, and it is laudable that the State's plan for spending the revenues from the CO_2 allowance auctions includes a social justice component. (22)

5. COMMENT: New Jersey's plan that involves spending 60 percent of the money credited to the Global Warming Solutions Fund (Fund) on offshore wind projects and energy efficiency, and

40 percent on helping low income customers, restoring State forest and marshlands, and helping local governments with their energy policies is a good plan. The states that have stayed in RGGI have decreased the carbon footprint of their power plants by 45 percent and have received billions of dollars to put towards green energy technology. (23)

RESPONSE TO COMMENTS 1 THROUGH 5: Pursuant to N.J.S.A. 26:2C-50, the revenues from the CO_2 allowance auctions received by New Jersey, as a result of the State's participation in RGGI, are to be credited to the Global Warming Solutions Fund (Fund). Accordingly, the Department acknowledges the commenters' support for the State's re-entry into RGGI and the use of the proceeds from the CO_2 allowance auctions for the purposes identified in the Global Warming Solutions Fund Act and rules.

Definitions

6. COMMENT: The definition proposed for the term "institutional" in relation to the eligible uses for the EDA allocation from the Fund is unnecessarily constraining to implement the requirements at N.J.S.A. 26:2C-51.b. The proposed definition appears to exclude utilities other than "municipal utilities" as a potential applicant for these funds. This definition should be broadened to include the full range of utilities authorized by law, not just "municipal utilities." There is no language in Governor Murphy's EO No. 7 or in N.J.S.A. 26:2C-45 et seq., that requires this narrowing of the scope of utility participation. (10)

RESPONSE: The definition of the term "institutional" in the Global Warming Solutions Fund rules (GWSF rules) does not include an exhaustive list of potential institutions. As explained in the notice of proposal Summary, 50 N.J.R. at 2539, there is often confusion about what constitutes “institutional” for purposes of funding. To mitigate the potential for confusion, the Department included a few examples of institutions in the definition. The examples were intended for illustrative purposes, only.

Increased Cost of Electricity

7. COMMENT: The Department should not adopt the proposed rules. New Jersey residents already endure one of the very highest costs of living and do not need any more reasons to leave the State. (20)

8. COMMENT: For the last 31 years Americans have been listening to fake news about global warming. State government is eager to dictate that their citizens accept renewable energy sources. Wind, solar, and other forms of energy are more expensive than traditional energy sources, such as natural gas, coal, and oil. Evidently Trenton does not concern itself with the consumer's expenses. As a result, businesses and citizens will flee the State of New Jersey to more affordable areas of the United States. (13)

9. COMMENT: Though people are concerned about added costs, the actual cost is pennies per day. Those that are more fortunate can certainly handle the added cost, especially when you factor in the climate and healthcare costs in the long run. If these resources are targeted appropriately, energy efficiency is a good strong bang for the buck. Most people will be saving money, even in low-income communities. (17)

RESPONSE TO COMMENTS 7, 8, AND 9: As set forth in the notice of proposal Summary, 50 N.J.R. at 2537, the adopted rules (GWSF rules) establish the framework, including the guidelines and the priority ranking system, that the EDA, the BPU, and the Department will use to select eligible programs and projects to receive funding from the proceeds of the CO_2 allowance auctions. As noted in the notice of proposal Economic Impact statement, 50 N.J.R. at 2541, the costs of the adopted rules are expected to consist primarily of staff time spent on the development of the strategic funding plan and the award of economic aid. The Department does not anticipate that the projected increase in staff time at the EDA, the BPU, or the Department will result in an increase in the cost of electricity in New Jersey.

The CO_2 Budget Trading Program rules (mechanics rules), which were separately proposed rules published at 50 N.J.R. 2482(a) on the same date as this rulemaking, codify New Jersey's commitment to participate in RGGI. The State's participation in RGGI, which is a market-based cap-and-trade program requiring CO_2 budget sources to hold allowances equal to their emissions, will likely increase the cost of wholesale power in the near term. As explained in the Economic Impact statement of the notice of proposal of the mechanics rules, 50 N.J.R. at 2501, the Department estimates that a New Jersey residential household with average annual electricity usage will see an increase in the cost of electricity of about $9.00 per year. To the extent the commenters are referencing the estimated increase in the cost of electricity that was discussed in the notice of proposal of the mechanics rules, that is beyond the scope of this rulemaking. Accordingly, the Department refers the commenters to the Department's response to similar comments set forth in the notice of adoption of the mechanics rules, which is published elsewhere in this issue of the New Jersey Register.

The Carbon Allowance Cap

10. COMMENT: The foundation of the spending plan depends on how the State cap is set. National Resources Defense Council's analysis of the modeling done by RGGI states during their most recent update of the program showed that if the carbon pollution limit is set too high, then the amount of revenues that will be generated under RGGI will be much lower. In contrast, if the cap is more ambitious, the amount of revenues that are generated will be higher. It is critical that New Jersey adopt an ambitious carbon cap as a foundation for its spending plans, so that there is a healthy amount of revenue being generated. (3, 6, and 9)

11. COMMENT: The amount of the revenues from the CO_2 allowance auctions is dependent upon the strength of the carbon emissions cap. New Jersey should have a lower cap to get to the CO_2 reductions that the State needs. The lower the cap is, the greater the carbon reductions, and the greater the funding for programs to reduce greenhouse gases. A lower cap is good for the environment and good for these investments, which creates a virtuous cycle that will reduce carbon emissions. (16 and 21)

12. COMMENT: The Department should release the scientific assumptions on which it based its 18 million metric ton proposal, as the other RGGI states have done, so there can be an informed debate on a cap that will enable New Jersey to meet its climate commitments. (9)

13. COMMENT: The proposed reductions in carbon emissions need to be greater, sooner, and more targeted. The carbon emissions cap does not include the several proposed gas plants, in

places like the Pinelands, the Highlands, and the Meadowlands. Those plants will result in an increase in greenhouse gas emissions of approximately 76 percent, which is in direct conflict with the Global Warming Response Act, the 2018 Clean Energy Act, the commitments the Murphy Administration has made under the Paris Climate Accords, and the U.S. Climate Alliance, and the Governor's own EO No. 28 (2018). In short, the State cannot achieve the 100 percent clean energy mandate or the 50 percent renewable energy mandate if the State is increasing greenhouse gas emissions. (17)

14. COMMENT: The Department should set a stringent carbon cap to meet the goal of reducing emissions and mitigating the impacts of climate change, not just total emissions reductions in the State but significant reductions from environmental justice communities. Without a stringent cap that actually reduces carbon emissions in environmental justice communities, the proposed cap-and-trade system will only shift pollution from one locality to another. (8)

RESPONSE TO COMMENTS 10, 11, 12, 13, AND 14: As set forth in the notice of proposal Summary, 50 N.J.R. at 2537, the GWSF rules establish the framework, including the guidelines and the priority ranking system, that the EDA, the BPU, and the Department will use to select eligible programs and projects to receive funding from the proceeds of the CO_2 allowance auctions. The GWSF rules do not establish the carbon emissions cap for New Jersey's participation in RGGI. The mechanics rules, which were separately proposed rules published at 50 N.J.R. 2482(a) on the same date as this rulemaking pertaining to the GWSF rules, codify New Jersey's commitment to participate in RGGI, the market-based cap-and-trade program, designed to reduce CO_2 emissions from power plants in the participating states. As a group, the states that participate in RGGI establish a regional CO_2 budget allowance cap, which represents the sum of the CO_2 base budgets emissions caps of each participating state. New Jersey's participation in RGGI required a recalculation of the RGGI regional CO_2 budget allowance cap, as well as a calculation of the annual base budgets for New Jersey for calendar year 2020.

In sum, New Jersey's CO_2 budget emissions cap is established as a result of the State's participation in RGGI. Thus, the comment that a stronger cap (lower cap) would result in more revenue is beyond the scope of this rulemaking. The GWSF rules pertain only to the guidelines and priority ranking to be used by the agencies after the revenues from the CO_2 allowance auctions have been credited to the Fund. To the extent the commenters have expressed dissatisfaction with the CO_2 budget emissions cap that was proposed in the mechanics rules, the Department refers the commenters to the response to similar comments set forth in the adoption document of the mechanics rules, which is published elsewhere in this issue of the New Jersey Register.

The Efficacy of Projects and Programs to Lower Carbon Emissions

15. COMMENT: The Department should not adopt the proposed rules. These rulemakings will do little to positively affect the region's carbon foot print. (20)

16. COMMENT: RGGI is a multistate program that establishes a regional cap on carbon dioxide emissions and requires fossil fuel power plants to obtain an allowance (that is, tax) for each ton of carbon dioxide emitted annually. New Jersey can presumably use these tax revenues to invest in programs that will reduce greenhouse gas emissions. To the extent these past tax

revenues have been used in New Jersey for their intended purposes, they have had a negligible impact on carbon emissions, if any. Moreover, these tax revenues are in addition to the many clean energy taxes and mandates that were adopted subsequent to the State's initial entry into RGGI. (2)

RESPONSE TO COMMENTS 15 AND 16: As noted in the notice of proposal Environmental Impact statement, 50 N.J.R. at 2542, the GWSF rules require the money in the Fund to be used to support programs and projects that reduce greenhouse gas emissions and energy use, as well as increase the sequestration of carbon. The Department cannot predict the total amount of CO_2 emissions reductions or carbon sequestration that may be achieved in New Jersey, because that will depend on the initiatives, projects, and programs selected for funding. To ensure that the programs and projects predicted to achieve CO_2 emissions reductions achieve those CO_2 emissions reductions, the rules provide multiple levels of accountability and transparency. For instance, every strategic funding plan published subsequent to the first strategic funding plan must report on the measurable benefits of the programs and projects that received funding during previous strategic funding periods. Moreover, the strategic funding plan process ensures that the funding of programs and projects will not remain static. The initiatives are intended to be reevaluated and shifted at regular intervals based on the agencies' evaluation of changing factors, such as the effectiveness of the programs and/or projects, funding levels, and advances in technology. If a program or project fails to reduce greenhouse gas emissions as predicted, it will not continue to receive funding in subsequent strategic funding plans. For these reasons, the Department expects that the programs and projects funded will have a positive impact on the State's goal of lowering CO_2 emissions in New Jersey.

The mechanics rules, which codified New Jersey's commitment to participate in RGGI, were proposed separately and published in the New Jersey Register on the same date as the notice of proposal for the instant rulemaking. See 50 N.J.R. 2482(a). RGGI is a market-based cap-and-trade program, designed to reduce CO_2 emissions from power plants in the participating States. It is New Jersey's participation in RGGI, via the process set forth in the mechanics rules, that is anticipated to have a regional impact on CO_2 emissions. To the extent the commenters are asserting that New Jersey's participation in RGGI will have a negligible effect on the region's carbon footprint, that topic was discussed in the notice of proposal Summary of the mechanics rule and is beyond the scope of this rulemaking.

Diversion of the Revenues Intended to be Credited to the Global Warming Solutions Fund

17. COMMENT: During New Jersey's prior participation in RGGI, a near majority of the revenues from the CO_2 allowance auctions were diverted out of the Fund, hobbling the effectiveness of the program and reducing its benefits to New Jersey residents. The revenues from the CO_2 allowance auctions should be invested in projects and programs that will further reduce climate pollution, and should not be transferred for an unrelated purpose. While the Department, the BPU, and the EDA do not control legislative appropriations, the agencies should commit to spending money in the Fund only in accordance with the strategic funding

plan. And the agencies should create a report that clearly outlines the benefits generated by the Fund and the continued need for the revenues to be used as intended. (7 and 8)

18. COMMENT: When New Jersey previously participated in RGGI, the Fund was raided. The revenues from the CO_2 allowance auctions should be focused on clean, renewable energy projects, not as a way for the Legislature to balance a budget. (3 and 16)

19. COMMENT: Though New Jersey can presumably use the revenues from the CO_2 allowance auctions (that is, taxes) to invest in programs that will reduce greenhouse gas emissions, historically the State has diverted these funds for other purposes, as well as other clean energy funds. Merely dedicating these funds in regulations to various purposes cannot and does not guarantee they will not be diverted in the budget process. (2)

RESPONSE TO COMMENTS 17, 18, AND 19: The Department acknowledges the commenters' concern that, historically, revenue from the CO_2 allowance auctions has been redirected for other purposes. The Department agrees that the agencies' ability to reduce greenhouse gas emissions will be diminished if only a portion of the revenue is credited to the Fund. The agencies are committed to using all of the money that is credited to the Fund in accordance with these rules and the resulting strategic funding plans. As set forth in the notice of proposal Summary, 50 N.J.R. at 2538, every strategic funding plan published subsequent to the first strategic funding plan must report on the measurable benefits of the programs and projects that received funding during previous strategic funding periods. Thus, there will be reports detailing the value received based upon the investments made.

Statutory Mandates

20. COMMENT: While the Global Warming Solutions Fund Act expressly provides the purposes that must direct how the revenues from the CO_2 allowance auctions that are credited to the Fund shall be invested, the statute itself grants the Department (in consultation with the EDA and the BPU) significant discretion in setting investment priorities, so long as those investments result in greenhouse gas emission reductions and energy conservation. For each of these agencies, the statute provides a list of projects that are eligible to receive funding, but there is nothing in the statute that requires the agency to fund all types of eligible projects. (21)

RESPONSE: The Department acknowledges that N.J.S.A. 26:2C-51.b provides specific criteria that each agency must use to determine whether projects and/or programs are eligible to receive support from the Global Warming Solutions Fund. Further, as the commenter notes, the statute provides some discretion to the agencies. For example, the Department is to be allocated 10 percent of the Fund to promote local government efforts to plan, develop, and implement measures to reduce greenhouse gas emissions, to award grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs, and/or land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. The statute does not, however, dictate the level of funding the Department must devote to the promotion of planning to reduce greenhouse gas emissions versus land use planning that would result in a measurable reduction in energy demand. The discretion afforded by the statute is beneficial because it will enable the agencies to select initiatives based on the State's needs and funding levels, as well as advances in technology.

21. COMMENT: The GWSF rules define "new, efficient electric generation facility that is state of the art (SOTA)" to include combined cycle natural gas generators. It would in fact be absurd to fund such a facility from the revenues of the CO_2 allowance auctions. Such a facility, if it is 25MW or larger, would be required to purchase a carbon allowance for each ton of CO_2 it emits, and would in effect be paying for its own subsidy. Under no circumstances should the revenues from the CO_2 allowance auctions be used for combined cycle gas-fired generators. N.J.A.C. 7:27D-2.3, Eligible projects and programs, should be revised to exclude any allocation of the CO_2 allowance auction proceeds to projects that directly emit CO_2 or other greenhouse gases. N.J.A.C. 7:27D-3, the portion of the rules that define SOTA, should be replaced with a statement that in order for an electric generating facility to be considered state-of-the-art, it must not consume fuel or produce any combustion-related emissions. (18)

RESPONSE: As explained in the notice of proposal Summary, 50 N.J.R. at 2539, N.J.A.C. 7:27D-2.3 restates the eligibility requirements set forth in the statute. The GWSF rules are modeled on statutory language. Thus, to the extent the statute creates a category of eligibility for fossil-fuel-fired electric generation units, the Department has included the category of eligibility in its rules. However, as noted in the notice of proposal Summary, while offshore wind and other renewable energy projects are eligible for funding, fossil-fuel-fired electric generating units would only be eligible if they also met the SOTA requirements set forth in N.J.A.C. 7:27D-3. See

50 N.J.R. 2539. As discussed more thoroughly in the Response to Comments 37, 38, and 39, the development of the strategic funding plan will be an important step in the funding process because the ranking of the importance of the objectives to a sponsored initiative will limit the projects and/or programs that receive funding to those that advance the critical objectives. To the extent that the commenter has raised a concern about the use the revenues of the CO_2 allowance auctions to fund combined cycle natural gas generators, the Department encourages the commenter's participation in the public meetings the agencies will hold, pursuant to N.J.A.C. 7:27D-2.1 to ensure that this concern may be examined during the development of the strategic funding plan.

22. COMMENT: The statute establishing the Global Warming Solutions Fund is outdated and needs to be modernized. In particular, the statute fails to account for advancements in renewable energy technologies that have decreased their costs to a point where they are competitive with electric generation from natural gas. The statute also fails to recognize that upstream methane leakage renders gas-fired electricity no less disruptive to the climate than coal-fired electricity. The Legislature should expressly prohibit expenditures on gas- and coal-fired electricity. (18)

23. COMMENT: The 20 percent of the Fund allocated to the BPU that is to be used for the reduction of electricity demand and/or costs to electricity customers in the low- and moderate-income residential sector should be much higher. Moreover, the low- and moderate-income

residential sector electricity customers should split this benefit 50-50, so that it doesn't all go to moderate-income customers. (21)

24. COMMENT: The BPU's current allocation of RGGI funds at 20 percent is insufficient to meet the growing clean energy needs of low- and moderate-income residential sector electricity customers. The agencies should increase the allocation to the range of 25 percent to 50 percent. (8)

25. COMMENT: The allocation of the revenues from the CO_2 allowance auctions among the three agencies must change. The statute specifies the following breakdown of allowance revenues: 60 percent to the EDA; 20 percent to the BPU; and 20 percent to the Department. There is too much focus on commercial and industrial investments, and not enough emphasis on ensuring that low- and moderate-income households and environmental justice communities have adequate resources to reduce their energy burdens and adapt to the impacts from climate change and pollution. The funds should not be used for planting grass and trees, when that money could be more cost-effectively used to invest in clean energy and efficiency that reduces pollution at its source and decreases the cost of compliance with RGGI's carbon pollution reduction directives. (21)

RESPONSE TO COMMENTS 22, 23, 24, AND 25: The commenters seek amendments to the agency-specific eligibility criteria for the uses of the Fund and the amount of the Fund that is to be allocated to each agency for those purposes. However, the eligibility criteria and percentage allocations for each agency are established by the Global Warming Solutions Fund Act. Changes in legislation are outside the scope of this rulemaking.

26. COMMENT: The rules do not focus the resources appropriately. The rules do not focus on low-income and minority communities. Senator Singleton's legislation, Senate bill 1700, does a good job of defining low-income communities. Likewise, a majority/minority census tract is a good way to go. The resources need to be focused in environmental justice communities and investing in new technologies, which create new jobs for the 21st Century. The agencies should not try to retrofit failed technologies from the 19th Century. There should be no funding for things like sequestration and saltwater marsh restoration. (17)

27. COMMENT: Ten percent of the GWSF is allocated by statute to the Department to enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases. Historically, this has gone toward the planting of beach grass and trees, and although this may have some carbon sequestration benefit in the long-term, it does not help buy down the cost of compliance with RGGI in the way that efficiency and clean energy investments do. To the extent that the regulation prioritizes this type of expenditure to implement the directives of the statute, those monies should be directed to projects that provide direct climate adaption benefits to environmental justice communities. (18)

RESPONSE TO COMMENTS 26 AND 27: To the extent that the commenters are advocating for a change in legislation, the recommendation is outside the scope of this rulemaking. As the commenters noted, N.J.S.A. 26:2C-51.b(4) mandates 10 percent of the Fund for the stewardship and restoration of the State's forests and tidal marshes. The statute also recognizes that forests and tidal marshes provide important opportunities to sequester and reduce greenhouse gases.

To the extent that the commenters are questioning the utility of using forests and tidal marshes as a mechanism to reduce greenhouse gas emissions, the Department notes that natural-based solutions, such as the planting and maintaining of trees, are proven cost-effective ways to, among other things, sequester carbon and reduce urban heat island effect while providing significant additional societal and environmental benefits. Likewise, tidal marshes not only provide carbon sinks, but the benefits may also include flood protection and improved water quality. In other words, programs and projects that enhance and restore the State's forests and tidal marshes are valuable to environmental justice communities. Thus, the Department encourages the commenters to attend one or more of the public meetings the agencies will hold, pursuant to N.J.A.C. 7:27D-2.1, in order to continue the dialogue concerning the value of natural-based solutions to climate change in all communities in the State.

The Strategic Funding Plan

General Support for the Strategic Funding Plan

28. COMMENT: The strategic funding plan will be updated at least once every three years. The three-year interval makes sense since it is the same length as the RGGI control periods and the length of time between updates to the Energy Master Plan. It is also frequent enough to ensure that the public can monitor progress towards program objectives. (15)

29. COMMENT: The agencies' use of the strategic funding plan and commitment to evaluate and update this strategic funding plan at least once every three years in order to guide the allocation of New Jersey's revenues from the CO_2 allowance auctions is supported. (7)

30. COMMENT: The proposed framework that requires a strategic funding plan to be developed jointly by the funding agencies is appropriate. The proposed provisions add transparency into the development of the Plan, including requiring a public meeting. The public meetings being required as a part of this process present an opportunity for the three funding agencies to outline draft program details and receive feedback from the public/interested parties without the constraints associated with formal public hearings. (10)

RESPONSE TO COMMENTS 28, 29, AND 30: The Department acknowledges the comments in support of the strategic funding plan.

Material Recommended for the Agencies' Consideration

31. COMMENT: The State's re-entry into RGGI should be structured in a manner that is consistent with Governor Murphy's executive order directing the development of an updated energy master plan for the State to achieve 100 percent clean energy by 2050. (9)

32. COMMENT: New Jersey can learn lessons from California's experience. In 2013, the Energy Foundation commissioned an economic study of California's options for investing auction proceeds, which was done by ICF, the consultant New Jersey hired to study RGGI. ICF modeled the California state economy looking at economic impacts over a seven-year period. Without reciting all of the details of the study, the two best performing strategies were: (1) a blend of investment in transportation, energy efficiency, and consumer assistance complementary

policies; and (2) an investment in energy efficiency. Other research reports on energy efficiency have documented a wide range of benefits, including economic benefits that ICF's study did not reflect. (15)

33. COMMENT: The agencies should learn from the experiences of the current RGGI states, which have been investing RGGI revenues over the last decade. Environment America Research & Policy Center's December 2018 report, From Pollution To Solutions: Maximizing Clean Energy Progress from State Carbon-Pricing Investments, highlights some of the most effective investment strategies by current RGGI states to drive clean energy progress in the region. Key lessons for maximizing the benefits of investing RGGI revenues include: (1) focusing on energy efficiency (example from Massachusetts); (2) help unlocking private investments in clean energy (example from Connecticut); (3) extending the benefits of clean energy to low- and middle-income households (example from Maryland); (4) providing incentives to local governments to adopt clean energy (example from Massachusetts); (5) reducing pollution from sources other than electricity generation (example from Maine); and (6) advancing the next generation of clean energy technologies (example from New York). (8)

34. COMMENT: The Department should review the outcomes of RGGI-fund investments by other states. Environment New Jersey outlined some of the strategies in a recent report released in December. Massachusetts is one of the best examples in the country for energy efficiency because it has dedicated all of the state's RGGI revenue for energy efficiency projects. Maryland has focused on the low- and moderate-income community for energy efficiency improvements, which provides a very good example of how this revenue can be allocated

pursuant to EO No. 7. Connecticut used RGGI funds for the green bank. New York State used RGGI funds for investment in research and development technology. (16)

RESPONSE TO COMMENTS 31, 32, 33, AND 34: Pursuant to N.J.A.C. 7:27D-2.2(e), the agencies are not limited to the materials listed in the GWSF rules to inform their selection of the initiatives and ranking of the objectives in the strategic funding plan. Lessons learned from other states, as well as the updates to the New Jersey Energy Master Plan will be taken into consideration during the development of the strategic funding plan. Moreover, the agencies frequently participate in forums that facilitate information-sharing among agencies from multiple states, such as the National Association of State Energy Officials, the U.S. Climate Alliance, and the Society of American Foresters.

The Development of the Strategic Funding Plan

35. COMMENT: The EDA, the BPU, and the Department will be working together to develop a strategic funding plan to "capitalize on ventures that receive funding from other State agencies, as well as non-State-funded sources, and avoid unintentional duplication." When New Jersey identifies non-State-funded sources, the plan should recognize that some projects can fund themselves. If a project eligible for other funding used money from the Fund, that would reduce the money available for other critical projects that have no self-funding mechanism. The overall level of clean energy funding in New Jersey would be reduced unnecessarily, which is contrary to the purpose of a strategic funding plan. The proposed rules could be clearer about this. (15)

36. COMMENT: The agencies should partner with other governmental entities (for example, the New Jersey Infrastructure Bank) that have existing, well run programs that fully or partially fund projects that meet one or more of the five purposes allowed by statute. New programs should only be created by the agencies if an existing program cannot be adapted to include the funds generated by N.J.S.A. 26:2C-45 et seq. (10)

RESPONSE TO COMMENTS 35 AND 36: As noted in the notice of proposal Summary, 50 N.J.R. at 2538, the purpose of the strategic funding plan is to coordinate the uses of the Fund by the agencies, so that the ultimate selection of programs and projects will complement one another, capitalize on ventures that receive funding from other State agencies, as well as non-State funded sources, and avoid unintentional duplication. Both new and existing programs and projects have the potential to receive support from one of the agencies, so long as those projects and/or programs are consistent with the agency’s eligibility criteria and sponsored initiatives. The commenters are encouraged to attend one or more of the public meetings that will be held pursuant to N.J.A.C. 7:27D-2.1 in order to assist the agencies in their assessment of existing funding and programming.

37. COMMENT: The notice of proposal seeks to accomplish the required tri-agency consultation through the development of a strategic funding plan, in which initiatives are identified and scored based on their contribution to each of those six criteria or “objectives” set forth in the rules. The rulemaking states that each initiative is to be rated as “critical” or “beneficial” with respect to each of the six objectives. However, there are certain categories of

eligible projects that would be either irrelevant or actually detrimental to the fulfilment of one or more of the six statutory objectives. For example, the EDA's allocation could only be spent on certain types of projects. However, some of the types of projects listed do not contribute to net greenhouse gas reductions, as the statute requires. Moreover, projects that burn fossil fuel add to localized pollution problems and, therefore, may not comply with EO No. 7, wherein the Governor directed the agencies to prioritize environmental justice through investments of the revenues. Thus, the agencies should exercise their discretion in this regulation and prevent the funding of any project that emits combustion-related carbon dioxide emissions. (18)

38. COMMENT: Under the statute, 60 percent of the Fund will go to EDA to invest in projects or programs targeted to commercial, institutional, and industrial entities. Of the five potential project criteria in the statute, the EDA should prioritize investments in end-use energy efficiency projects and the development of qualified offshore wind projects, which support the State's climate goals and are likely to provide the greatest benefits. The EDA should deemphasize funding for "state-of-the-art efficient electric generation facilities." Using the revenues from the CO_2 allowance auctions to support construction of new carbon-polluting gas generation is antithetical to the need to cut carbon pollution in the State and the region. Moreover, New Jersey has built significant new gas generation over the last decade without assistance from the Fund, and there is no indication that such funding is needed or warranted now. (7)

39. COMMENT: The commercial, institutional, and industrial category of funding through the EDA is the most significant, because it will receive 60 percent of the revenues credited to the

Fund. The use of the money in the Fund should be prioritized for clean renewable energy technologies that can provide the greatest carbon reduction benefit in the short and long term. (16)

RESPONSE TO COMMENTS 37, 38, AND 39: As described in the notice of proposal Summary, 50 N.J.R. at 2538, the purpose of the ranking of the importance of each objective to each initiative is to provide guidance as each agency individually selects projects and/or programs that are to be funded pursuant to a sponsored initiative during the corresponding strategic funding period. Specifically, if an objective is ranked as critically important to an initiative, the programs and/or projects an agency selects to fund pursuant to that initiative must be predicted to advance that objective.

As indicated by the commenters, the EDA will receive 60 percent of the money credited to the Fund. The EDA's use of the 60 percent is governed, in part, by the eligibility criteria set forth in N.J.S.A. 26:2C-51.b(1). However, the prioritization of the eligible uses of those funds is governed by the ranking of the importance of the objectives to the EDA's sponsored initiatives. For example, the EDA may choose to sponsor an initiative in a strategic funding plan that is intended to reduce carbon emissions from freight facilities in environmental justice communities. The agencies may rank objectives 1, 2, 3, and 4 as critically important to that initiative in the strategic funding plan. Those objectives include, but are not limited to, the program's or project's ability to result in a net reduction in greenhouse gases from electricity and be directly responsive to the negative effects on human health and the environment in communities that are disproportionately impacted. Once the strategic funding plan is finalized, the EDA could not support a program and/or a project pursuant to that initiative unless the program or project complied with the eligibility requirements in the statute and was predicted to advance all of the objectives identified as critical to that initiative.

In the hypothetical scenario described above, even if a combustion-fired energy source were able to meet the eligibility criteria for EDA funding pursuant to N.J.S.A. 26:2C-51.b(a), the EDA could not fund such a program or project pursuant to that initiative unless the program or project was also predicted to advance the objectives ranked as critical to the sponsored initiative. In short, the development of the strategic funding plan will be an important step in the funding process. Accordingly, the commenters are encouraged to attend one or more of the public meetings that will be held pursuant to N.J.A.C. 7:27D-2.1 in order to be part of the dialogue that will determine the funding initiatives and the ranking of the importance of the objectives to those initiatives identified in the strategic funding plan.

40. COMMENT: Using money from the Fund to support any fossil-fuel-fired facility, including combined heat and power facilities, would either fail to satisfy or be in direct conflict with objectives 1, 2, 3, and 4 set forth in the statute. The rating system employed by the strategic funding plan must address the reality that not all legislatively authorized expenditures will be either “critical” or “beneficial” with respect to the six objectives that are to be met. This can be done by adding “neutral” and “detrimental” classifications to the rating system. Any gas-burning generator project would be “detrimental” to objectives one and two given today’s

technology and economics. Any project that emits co-pollutants would be "detrimental" to objective four. (18)

RESPONSE: As stated in the notice of proposal Summary, 50 N.J.R. at 2538, the ranking of the importance of the objectives to each initiative ensures that the programs and/or projects funded during the strategic funding period will be predicted to collectively advance all of the objectives. That is why each objective must be ranked as critical to at least one initiative. The GWSF rules recognize that it is unrealistic to require every individual program and/or project funded to be predicted to advance all six objectives.

If an objective is ranked as critical to an initiative, the programs and/or projects an agency selects to fund pursuant to that sponsored initiative must be predicted to advance that objective. If an objective is ranked as "beneficial" to an initiative, the programs and/or projects an agency selects to fund pursuant to that initiative do not need to be predicted to advance that objective, but the ability to do so may be helpful in the agency's selection process. As explained in the notice of proposal Summary, 50 N.J.R. at 2538, if the programs and/or projects under consideration advance all of the critical objectives equally, an agency must prioritize its selection based on the ability of the programs and/or projects to advance the objectives ranked as "beneficial." Thus, the current selection process provides a mechanism by which programs or projects that fail to advance a beneficial objective(s) could be ranked below programs or projects that do advance a beneficial objective(s). Accordingly, the additional classifications suggested by the commenter are unnecessary to the agencies' selection process.

41. COMMENT: The priority ranking criteria describing co-benefits should explicitly outline the air pollution reductions and job opportunities that would most benefit environmental justice communities. The priority ranking criteria linked to EO No. 7 should apply to all projects across all three agencies and should count separately from the co-benefits ranking criteria. Further, the rules should prioritize the reduction of particulate matter emissions in particular as this pollutant has a direct and detrimental impact on local public health. Job opportunities should be defined further in the ranking system to prioritize those jobs that provide fair wages and that offer residents who are in underserved communities priority consideration. Projects that improve local reliability in the form of distributed generation from renewable energy sources owned by local residents is also a key priority that should be included under this section explicitly. (1 and 4)

RESPONSE: As required by statute, the Department has proposed rules that provide guidelines and a priority ranking system to be used in the selection of programs and/or projects that are to receive support from the Fund. Because the rules are designed to apply a single set of guidelines and a single priority ranking system to three agencies with very different funding eligibility criteria, the rules intentionally include minimal criteria. The strategic funding plan, which is a product of the rules, is intended to provide the agencies with the flexibility to adapt to changing factors. As explained in the notice of proposal Summary, 50 N.J.R. at 2538, each time the agencies develop a new strategic funding plan, they will have the ability to fund new initiatives based on changes in the State's needs and funding levels, as well as advances in technology. Likewise, the rules provide flexibility when each agency conducts its independent analysis of qualified applicants for economic aid. Pursuant to N.J.A.C. 7:27-2.5, when making an individual award of economic aid pursuant to a program or project, an agency is not limited to an analysis of the objectives included in the rules, but may consider other factors. For instance, the ability of a qualified applicant to address specific pollutants causing public health issues for an identified community could be a consideration in an award. In short, the rules are written broadly, so that the decision-making process of each agency can accommodate the differences in eligibility criteria, as well as the ranking of the importance of the objectives to an individual initiative. For these reasons, the addition of more detailed ranking criteria in the rules would not assist the agencies, but would instead stifle the ability of the agencies to make funding decisions based on the most current data.

With respect to the commenter's concern that the EO No. 7 ranking criteria should count separately from the co-benefits ranking criteria, the GWSF rules incorporate EO No. 7 as an independent objective that is separate from the co-benefits objective set forth in the statute. See N.J.A.C. 7:27D-2.2(a). Collectively, the initiatives will be designed to advance all of the objectives. Moreover, nothing in the rules would prohibit an objective from being ranked as critical to more than one initiative.

During the strategic funding plan process, which will take place at least every three years, the agencies will be able to learn and adapt their funding strategies to address a multitude of variables, including the lessons learned from prior funding initiatives. The commenters are encouraged to attend one or more of the public meetings that will be held pursuant to N.J.A.C. 7:27D-2.1 in order to share their experience and expertise with the agencies during the development of the strategic funding plan. These meetings are an opportunity for the public to assist the agencies as they rank objectives as critical or beneficial and to share additional criteria they feel would be beneficial in the selection of projects and/or programs pursuant to an initiative.

42. COMMENT: The notice of proposal requires the agencies to “develop the first strategic funding plan and publish it on their websites no later than 30 days after the certification of the results of the first CO_2 allowance auction” in which New Jersey is a participant. It further requires that each agency host a public input meeting and that the agencies host one joint meeting. Other than requiring they take place “before publication” of the plan, the rulemaking is silent on the timing of the meetings. If those meetings are held after the certification of auction results but before publication of the strategic funding plan, it will be too late for public input to influence the outcome of the plan. The individual agencies should conduct meetings well in advance of the auction, during a time when the plan is in active development, so that public input can receive serious consideration. (18)

RESPONSE: The Department acknowledges the commenter’s concern. The agencies anticipate that some, if not all, of the required meetings will be scheduled prior to the first auction in which New Jersey is a participant.

43. COMMENT: Proposed N.J.A.C. 7:27D-2.1(c) includes reporting requirements for funded initiatives in strategic funding plans published subsequent to the first plan. To promote

transparency and accountability for expenditures from the Fund, the rules should require that these results be collected and reported to the public by the agencies on an annual basis, rather than limiting the dissemination of this information to updates of the strategic funding plan, which could be as infrequently as every three years. This would allow agencies and the public to compare the performance of various initiatives and identify earlier whether changes to the strategic funding plan would be beneficial. (18)

RESPONSE: The rules mandate that the agencies publish a strategic funding plan at least every three years that includes basic information about the programs and projects that received funding during prior strategic funding periods. The agencies chose the three-year period after determining that more frequent, collective reporting by the three agencies would not be feasible. One year is a relatively short period of time to develop a program and/or project, make individual awards, and obtain data from award recipients that could be assimilated in a report. Accordingly, the agencies determined that a three-year period would provide a more comprehensive report.

44. COMMENT: These investments should not be used for projects that will exacerbate gentrification or displacement pressures in environmental justice communities and whenever possible funds should go directly to impacted residents and community-based organizations who can best identify projects and investments that will avoid further harming local communities. (1 and 4)

RESPONSE: The Department interprets this comment as guidance the commenter would like the agencies to consider during the development of the strategic funding plan. Accordingly, the Department encourages the commenter to attend one or more of the public meetings the agencies will hold, pursuant to N.J.A.C. 7:27D-2.1. The public meetings are an opportunity for dialogue concerning the best uses of the Fund. As set forth in the notice of proposal Summary, 50 N.J.R. at 2539, once the strategic funding plan is finalized, programs and projects will be selected at the agency level. An agency may choose to fund projects and/or programs that are run or proposed by residents or community-based organizations, so long as those projects and/or programs are consistent with the agency's eligibility criteria and sponsored initiatives.

45. COMMENT: The guiding light for the investment of RGGI funds needs to be the reduction of carbon, the investment in clean and renewable energy technologies, and creating equity especially in an environmental justice community. (16)

RESPONSE: Though the phrasing may not be precisely the same, each of the priorities for the investment of the funds identified by the commenter is included in, or could be furthered by, the list of objectives in N.J.A.C. 7:27D-2.2(a). The adopted rules require that, collectively, the initiatives identified in a strategic funding plan be predicted to advance these objectives.

The Inclusion of EO No. 7 in the Strategic Funding Plan

46. COMMENT: The objectives listed in proposed N.J.A.C. 7:27D-2.2 are appropriate. However, the objectives related to a net reduction in greenhouse gas emissions, as well as the provisions of co-benefits, should be expanded. Specifically, the Department should add the

following provision of EO No. 7 as an additional objective: "… factors that will ensure that funds are allocated to projects that will serve communities that are disproportionately impacted by the effects of environmental degradation and climate change and which will alleviate the negative effects on human health and the environment resulting therefrom." (8)

RESPONSE: As discussed in the notice of proposal Summary, 50 N.J.R. at 2539, the purpose of EO No. 7 was included as an independent objective in N.J.A.C. 7:27D-2.2(a)4. The objective is written as follows: "Be directly responsive to the negative effects on human health and the environment in communities that are disproportionately impacted by the effects of environmental degradation and climate change." This language captures the principles of EO No. 7. The adopted rules require that, collectively, the initiatives identified in a strategic funding plan must be predicted to advance the objectives in N.J.A.C. 7:27D-2.2(a).

47. COMMENT: Governor Murphy's commitment to rejoin RGGI, including his commitment to ensure that the State's use of the revenues from the CO_2 allowance auctions benefits communities disproportionality impacted by the effects of environmental degradation and climate change, is supported. The inclusion of EO No. 7 as an objective within the strategic funding plan is supported. (7)

RESPONSE TO COMMENT: The Department acknowledges the commenters' support of the inclusion of EO No. 7 as an objective.

Defining Environmental Justice Communities

48. COMMENT: The Department has indicated that it is looking to the outcome of the EO No. 23 process to develop a definition of environmental justice communities that will be used in the context of the proposed rules. The Department and all of the other agencies should recognize that the criteria used to define environmental justice communities should include a relative measure of socio-demographic information (percentages relative to State averages), as well as the use of environmental justice screening tools already developed within the State, by other states, and Federal entities, to ensure that this funding consideration is carried out fully. (1 and 4)

RESPONSE: To the extent that the comment may be interpreted as a recommendation for tools that should be included in the EO No. 23 Guidance Document, the comment is beyond the scope of this rulemaking. To the extent that this comment may be interpreted as a recommendation of material that may be used to implement the EO No. 23 Guidance Document when decisions about funding are made pursuant to the GWSF rules, the Department acknowledges receipt of this suggestion and encourages the commenters to participate in the public meetings that will be held pursuant to N.J.A.C. 7:27D-2.1 for further discussion.

Mandatory Emissions Reductions in Environmental Justice and/or Low-income Communities

49. COMMENT: It should be a priority for New Jersey to achieve mandatory direct emissions reductions through RGGI from plants located in environmental justice communities, or plants that significantly impact environmental justice communities through their emissions. (1 and 4)

50. COMMENT: Emissions reductions in environmental justice communities should be mandated. Environmental justice communities and communities of color have borne the brunt of fossil fuel pollution, so it is imperative that any cap-and-trade system lend meaningful outcomes for these communities. As seen in California, without mandating emissions reductions from environmental justice communities, the cap-and-trade system worsens the health and well-being of the residents in environmental justice communities. Absent thoughtful implementation with a requirement for mandatory emissions reductions in environmental justice communities, RGGI could result in the continuation of harmful power plant pollution in these communities. (8)

RESPONSE TO COMMENTS 49 and 50: The Department interprets these comments as a request to incorporate mandatory emissions reductions in environmental justice communities as a requirement of the State's participation in RGGI. As set forth in the Response to Comments 10 through 14 above, the GWSF rules pertain only to the guidelines and priority ranking to be used by the agencies after the CO_2 allowance auction revenues have been credited to the Fund. The commenters' request for mandatory emissions reductions in environmental justice communities as part of the State's participation in RGGI is beyond the scope of the GWSF rules. Accordingly, the Department refers the commenters to the response to similar comments set forth in the adoption document of the mechanics rules, which is published elsewhere in this issue of the New Jersey Register.

51. COMMENT: The rules should have, as an explicit goal, the reduction of CO_2 emissions that will provide additional benefits for air quality in environmental justice communities that are overburdened by multiple emissions sources. (1 and 4)

52. COMMENT: Because reducing greenhouse gas emissions will result in less particulate matter in the State's environmental justice communities, the Department should work with the administration to develop a plan for mandatory reduction of air pollution in environmental justice communities. The GWSF rules should be rewritten accordingly. (9)

53. COMMENT: It is essential that revenues from the CO_2 allowance auctions are used for mandatory emission reductions in environmental justice communities that have been directly impacted by emissions for years and are most vulnerable to pollution and climate change. Funding should focus on pollution-affected, low-income communities at risk of severe climate impacts, many of which have long held the burden of pollution. Reducing greenhouse gas emissions will also reduce co-pollutants in the same communities, compounding the impact of investments. (12)

54. COMMENT: Environmental justice communities are not getting enough of a focus. The lack of mandatory emissions reductions in the rules is a huge concern. (16)

RESPONSE TO COMMENTS 51, 52, 53, AND 54: N.J.S.A. 26:2C-45 et seq., sometimes referred to as the Global Warming Solutions Fund Act, does not give the agencies the authority to compel emissions reductions from existing sources. The statute does not provide a mechanism for the agencies to penalize the failure to reduce emissions in the State, or in a particular area in the State. Nevertheless, the statute does authorize the agencies to offer funding to programs and projects that are predicted to advance specific objectives. The rules include the principle of EO No. 7 as an objective by authorizing the agencies to offer funding to programs and projects that are predicted to be directly responsive to the negative effects on human health and the environment in communities that are disproportionately impacted by the effects of environmental degradation and climate change. While the rules do not mandate a specific level of emissions reductions in communities that have been disproportionately impacted by the effects of environmental degradation and climate change, the addition of EO No. 7 as an objective ensures that the agencies will fund programs and projects that are predicted to reduce emissions in these communities.

Mandatory/Priority Spending on Environmental Justice and/or Low-income Communities

55. COMMENT: The rules should prioritize the selection of projects across all three agencies that will promise the greatest investments and co-benefits to communities that are most impacted by climate change. While it is anticipated that investments of the Fund will spur positive economic gains for the State, it is critical that these economic gains be realized in a form that the most underserved and impacted communities also share in those gains. Market-based policies like RGGI are not the most effective mechanisms for ensuring that environmental justice communities benefit from climate change mitigation policy. Nevertheless, the proceeds from RGGI should be directed at mitigating impacts in those communities that are already suffering from the devastating impacts of climate change and the legacy of environmental injustice in New Jersey. (1 and 4)

56. COMMENT: Only 20 percent of all RGGI proceeds are to be allocated through the BPU and dedicated to reduce the electricity demand and costs to customers in the low- and moderate-income residential sector. This funding should be targeted to ensure that low income residents and renters in urban areas are prioritized for funding under the BPU's strategic funding plan. (1 and 4)

57. COMMENT: The revenue generated by the CO_2 allowance auctions should be used in significant part to address the climate vulnerability and related needs of the State's poorest and most climate vulnerable communities. The State should integrate into its plans a clear commitment to reduce climate change threats to environmental justice neighborhoods. Funding should be available at robust levels. Forty percent of the Fund should be used to support climate resilience measures in poor communities, including green infrastructure to offer increased protection from severe storm activity and cooling centers to provide relief from extreme heat during excessive heat waves for vulnerable populations (9).

58. COMMENT: Please ensure that communities of color, who have been vastly disproportionately affected by pollution and are most at risk for climate change are given a fair share of the investment funds. (14)

59. COMMENT: Environmental justice communities should receive a significant proportion of this funding. RGGI offers a unique opportunity to directly invest in the economic, environmental, and public well-being of the State's most underserved, underinvested, and burdened communities, and the State should take advantage of the opportunity. (6)

60. COMMENT: The Fund should be used to reduce greenhouse gas emissions in low-income, disadvantaged, and environmental justice communities. At least 25 to 50 percent of these funds should be used to support New Jersey residents who have traditionally been left out of the clean energy economy and are disproportionally impacted by fossil fuel emissions. (8)

61. COMMENT: The agencies should be clearer about the allocation of the revenues that will go to environmental justice communities. The language of EO No. 7 is not clear enough. The 20 percent allocation for the BPU has the most promise for actually meeting the goals of EO No. 7. (16)

62. COMMENT: EO No. 7 directs the Department to include, as a primary consideration in the distribution of funds from the Global Warming Solutions Fund, "factors that will ensure that funds are allocated to projects that will serve communities that are disproportionately impacted by the effects of environmental degradation and climate change and which will alleviate the negative effects on human health and the environment resulting therefrom." All three agencies must prioritize using revenues to expand clean energy, energy efficiency, climate adaptation, and clean energy-related economic development in environmental justice communities. The specific percentage of revenues and types of investment should be determined through a stakeholder process that includes meaningful participation from communities affected by the pollution from dirty power plants. (18)

63. COMMENT: The strategic funding plan should include clear metrics for the inclusion of environmental justice criteria as outlined in Governor Murphy's EO No. 7 and built into the framework of funding priorities outlined in N.J.A.C. 7:27D-2.2, to ensure both priorities are met.

Many RGGI states have provided specific set-asides of RGGI revenues to invest in programs to deploy energy efficiency and renewable energy projects that benefit low-income or pollution-impacted communities, and New Jersey's agencies should do the same. (7)

RESPONSE TO COMMENTS 55 THROUGH 63: EO No. 7 does not identify a specific percentage of the Fund to be allocated to communities that are disproportionately impacted by the effects of environmental degradation and climate change. Rather, EO No. 7 requires that the agencies make the allocation of funds to these communities a primary consideration. As required by statute, the Department has adopted rules that establish the guidelines and a priority ranking system to assist the agencies in the selection of programs and/or projects that are to receive support from the Fund. The statute lists five objectives that must be evaluated by the agencies as part of the guidelines and priority ranking system, but also indicates that the agencies may consider additional objectives. Accordingly, to implement EO No. 7, the Department included the principle of EO No. 7 in the rules as an additional objective that must be evaluated by the agencies as part of the guidelines and priority ranking system.

In order to ensure that all objectives are advanced, the GWSF rules require the agencies to periodically develop a strategic funding plan that identifies the initiatives each agency will sponsor during a strategic funding period. Collectively, the initiatives sponsored in a strategic funding plan must advance all six objectives during the corresponding strategic funding period. See N.J.A.C. 7:27D-2.2(a). EO No. 7 is a primary consideration of the agencies because it is an additional objective on par with the statutorily required objectives.

For every initiative chosen in a strategic funding plan, the agencies will have to evaluate whether the objective furthering EO No. 7 should be ranked as critical or beneficial. In order to make that assessment, the rules require the agencies to review and evaluate relevant materials including, but not limited to, the level of greenhouse gas emissions by sector, the level of anticipated funding from the CO_2 allowance auctions, existing technology, resilience planning and management, input from public meetings, State plans, and action plans. Accordingly, the commenters are encouraged to attend one or more of the public meetings that will be held pursuant to N.J.A.C. 7:27D-2.1 in order to be part of the dialogue that will assist the agencies' selection of appropriate initiatives and the ranking of the importance of the objectives.

Participation by Environmental Justice and/or Low-income Communities in the Planning Process

64. COMMENT: The agencies should be required to host more than one public meeting with all the agencies and with each individual agency to allow for more opportunities for the public and, in particular, impacted communities to participate in offering input and feedback on the strategic funding plans. (1 and 4)

65. COMMENT: In addition to the agencies' plans to hold at least one independent public meeting and at least one public meeting hosted by the three agencies, the following language should be included in the rules: "The agencies will establish a separate mechanism to gather feedback from environmental justice communities to assess what is not working and modify programs to meet new needs that may emerge." (8)

RESPONSE TO COMMENTS 64 AND 65: The number of meetings required by the rules are the minimum requirements. An agency may choose to host more than one meeting. Likewise, an agency may choose to host separate meetings with specific stakeholders. While the agencies agree that only one meeting with representatives from all of the agencies and one individual agency meeting should be required by the rules, the adopted rules do not foreclose the agencies from determining that more meetings hosted by an individual agency or by multiple agencies may be beneficial. The decision to host additional meetings is best left to the discretion of the agencies.

66. COMMENT: The rules should include best practices for ensuring the meaningful involvement of environmental justice communities by making explicit that the public meetings will be held in the evenings, in locations that include the most impacted communities, and in places that are accessible to the general public. Agencies should offer translation services for residents wishing to participate and alternative meeting times and locations upon request with agency representatives. Finally, the conditions for the initiation of the process to develop and publish a new strategic funding plan should also include the investigation of environmental justice impacts that potentially harm or disadvantage environmental justice communities. (1, 4, and 8)

67. COMMENT: The agencies should provide technical assistance and training to community organizations and individuals. The technical assistance and training should cater to the unique customer needs in New Jersey. For example, multilingual training, both verbal and written, as

well as training sessions in environmental justice communities and during times that work for environmental justice communities will ensure all potential customers are informed of the programs and its requirements. The agencies should consider holding regional meetings that are designed not only to gain ideas and input but also to disseminate information on New Jersey's clean energy vision, as well as energy efficiency, renewables, and other programs and services offered by the agencies. These meetings should use communication mediums that work best for environmental justice communities. (8)

68. COMMENT: The agencies should establish a long-term process to seek input from underserved and environmental justice communities and work towards undertaking comprehensive clean energy planning for their communities. The agencies should establish recurring low-income/ environmental justice stakeholder meetings to make it simpler to receive input from groups representing low-income communities, communities of color, and environmental justice communities regarding their needs and requirements relating to clean energy solutions. These stakeholder meetings can be further organized in working groups that periodically review the targets for clean energy, energy efficiency, and clean transportation. (8)

69. COMMENT: The agencies should work directly with disproportionately impacted communities to address their concerns and identify investment priorities and needs. In carrying out this effort, it is critical that the agencies conduct a decision-making process that is open, transparent, accessible, and inclusive to a broad range of stakeholders. (7)

70. COMMENT: Participation by residents of low-income communities and communities of color in the decision of which activities to fund is essential. (18)

71. COMMENT: The Fund can be an important tool to alleviate pollution concerns in environmental justice neighborhoods. The Department should engage with environmental justice stakeholders during this process and funding should be focused on pollution-affected, low-income, and climate-at-risk-communities that have carried the largest pollution burden historically to identify other policies and programs. (3)

72. COMMENT: The Department does not know how to do outreach to environmental justice communities. The January 25, 2019, public hearing is a good example since it was scheduled in the middle of the day in Trenton. The Department should have hearings in Newark and other communities that are the most burdened. The Department should hold hearings at times and locations when the environmental justice community can actually be involved. The rules should be withdrawn so that the Department can include appropriate environmental justice outreach in the rules. (17)

RESPONSE TO COMMENTS 66 THROUGH 72: One of the main objectives of the GWSF rules is to ensure that the allocation of funds is directly responsive to the negative effects on human health and the environment in communities that are disproportionately impacted by the effects of environmental degradation and climate change. See N.J.A.C. 7:27D-2.2(a)4. The Department's withdrawal of the proposed rules will not further this objective. As stated in the notice of proposal Summary, 50 N.J.R. at 2539, the GWSF rules do not contain a definition or method of identifying the communities referenced in EO No. 7. Instead, the notice of proposal Summary clarified the agencies' intent to rely on the recommendations in the EO No. 23 Guidance Document to implement this rulemaking. *Id*. EO No. 23 directs the Department, in consultation with the New Jersey Department of Law and Public Safety, to develop guidance on environmental justice issues for all Executive branch departments and agencies to consider and follow when implementing their rules. The agencies will rely on the collaborative work being done pursuant to EO No. 23 to inform best practices in the implementation of these rules. The Department, in conjunction with support from other State agencies, hosted multiple listening sessions in three different locations in the State prior to releasing the EO No. 23 Draft Guidance Document. Upon release, members of the public were invited to view the EO No. 23 Draft Guidance Document on the Department's website, at https://www.nj.gov/dep/ej/eo23/index.html, and to submit comments through March 22, 2019.

73. COMMENT: The proposed rules should strengthen efforts to include impacted communities in the decision-making processes for how funds are prioritized and ultimately implemented. For example, the rules should include an explicit mechanism by which projects claiming benefits to environmental justice communities are vetted and reviewed by a working group with representatives from environmental justice communities to review potential co-benefits claims. This working group would be established within each agency to assist in the review of priority ranking criteria and in the development of the strategic funding plan. (1 and 4)

RESPONSE: The adopted rules are intended to establish the guidelines and priority ranking system required by statute, and to address the coordination among the agencies for uses of the

Fund. During the coordination among the agencies (the development of a strategic funding plan), the rules require public meetings to receive input. But, as set forth in the notice of proposal Summary, 50 N.J.R. at 2539, programs and projects will be selected at the agency level after a strategic funding plan is finalized. An agency may choose to implement additional mechanisms for added vetting and review by the environmental justice community at that time. Indeed, such a mechanism may be determined to be part of the agencies' best practices, as informed by the EO No. 23 Guidance Document once it is finalized. As stated in the notice of proposal Summary, 50 N.J.R. at 2539, the agencies intend to rely on the recommendations in the EO No. 23 Guidance Document to implement this rulemaking. Accordingly, the agencies will rely on the outcome of the collaborative work being done pursuant to EO No. 23.

74. COMMENT: RGGI is an important part of the picture, but it is not going to solve all of New Jersey's problems. The Department should keep working with environmental justice communities and leaders and others to find ways to continue to reduce pollution burdens in these communities that have historically and currently suffered so much from higher pollution burdens so that the State can find additional complementary programs that will add to the RGGI benefits, but that could achieve much more. (6)

RESPONSE: The adopted rules are intended to establish the framework, including the guidelines and the priority ranking system required by N.J.S.A. 26:2C-52, that the EDA, the BPU, and the Department will use to select eligible programs and projects to receive funding from the proceeds of the CO_2 allowance auctions. To the extent the commenter is suggesting that the Department should engage with environmental justice communities to learn more about existing programs in order to identify complementary programs that may be awarded economic aid from the Fund, that is one of the purposes of a strategic funding plan. See 50 N.J.R. at 2538. For instance, during the development of the strategic funding plan the BPU will work to ensure that the Fund is not used by the other two agencies to duplicate an existing BPU program, such as Comfort Partners, the Universal Service Fund, the Lifeline program, or the Community Solar program, all of which serve low- and moderate-income households and small businesses in low- and moderate-income communities. On the other hand, the BPU may be able to identify gaps in funding and or service to low-income households that could be filled by a complementary program sponsored by one of the other agencies. The development of the strategic funding plan provides an opportunity for the three agencies to engage with one another, other State agencies, local governments, and members of the public, including environmental justice communities, to inform their selection of initiatives and ranking of the objectives. The purpose of a strategic funding plan is to avoid duplication of programs and projects, and to identify areas of opportunity for new or complementary programs and projects. Accordingly, the commenters are encouraged to attend one or more of the public meetings that will be held pursuant to N.J.A.C. 7:27D-2.1. As discussed in the Responses to Comments 66 through 72 and 73, the agencies will rely on the collaborative work being done pursuant to EO No. 23 to determine the best methods for engaging with and evaluating the needs of environmental justice communities during and after the development of the strategic funding plan.

To the extent that the commenter is suggesting that the Department should identify programs in addition to those that will receive economic aid from the Fund, the comment is beyond the scope of this rulemaking.

Specific Program and Project Recommendations

75. COMMENT: Please consider including wastewater treatment plants for eligibility for this Fund, as these plants are large users of electricity. Funding green energy options for wastewater treatment plants will reduce the carbon footprint significantly. In addition, green energy options are more resilient against power outages and, thereby, reduce the potential for sewage overflows into the State's rivers and/or backups into homes, streets, etc. Examples of green energy options for treatment plants include solar panels, combined heat and power facilities, and wind turbines. (11)

76. COMMENT: A great use of the Fund would be Deep Home Retrofits, which helps low-income communities with their quality of life. (16)

77. COMMENT: Revenues from the CO_2 allowance auctions should be used to increase access to energy efficiency and renewable energy solutions for members of the State’s most heavily impacted communities. (9)

78. COMMENT: Ideally, funds for electrification efforts should come from a transportation sector cap and invest program, such as that being designed under the Transportation Climate Initiative. However, such a program may be several years away, and limited electrification investments in the near term could help catalyze accelerated adoption of electric vehicles that begin to decarbonize the transportation sector. These investments should be targeted to areas

where the pollution reduction would be of the greatest benefit to public health, where communities are already overburdened with air pollution, such as converting diesel transit buses and other urban heavy-duty vehicles to electric power. (18)

79. COMMENT: The Department should fund community solar and weatherization programs, along with job training for people from environmental justice communities. (18).

80. COMMENT: Funds should be invested in programs, such as workforce development and preparedness for the renewable energy economy, for low- and moderate-income and communities of color, community solar programs, energy efficiency and weatherization programs, as well as, practices that upgrade, modernize, and electrify the State's public transportation systems, including, specifically, electric school buses for children within these communities, as well as investments in rail and walkable/bikeable communities. (5)

81. COMMENT: Funding should be made available to community-based organizations and non-profits located in and focused on impacted communities. (1 and 4)

82. COMMENT: Funding should be prioritized in environmental justice communities for the following purposes: (1) direct access to energy efficiency retrofits and whole home audits for low-income renters in environmental justice communities; (2) community-owned solar and other renewable energy investments that provide local, good paying jobs in environmental justice communities; (3) EDA projects that provide a net reduction of both greenhouse gases and co-pollutants in environmental justice communities; (4) EDA projects that demonstrate commercial, industrial, and institutional users will provide direct co-benefits to local communities; (5) renewable energy-based battery storage to replace peaker plants in

environmental justice communities; (6) net reduction of GHG and co-pollutants of greatest concern related to public health such as particulate matter emissions; and (7) enhance the stewardship and restoration of the State's forests and tidal marshes in environmental justice communities, such as Newark and Camden and other urban centers where impacted communities would receive multiple benefits from the restoration and stewardship efforts. (1 and 4)

83. COMMENT: The agencies should develop incentives and financing mechanisms for low-income customers, disadvantaged communities, communities of color, and environmental justice communities to not only be participants in solar projects but also own projects, so that their communities benefit from the entire realm of economic and social benefits that are created. Similarly, affordable housing facilities, low-income service organizations, and Disadvantaged Business Enterprise, environmental justice community or community of color-controlled projects should be offered incentives to assume ownership of clean energy assets. (8)

84. COMMENT: In addition to solar ownership, creating opportunities to enable solar access options will ensure that low-income, disadvantaged, and environmental justice communities are part of the clean energy economy and the transition to clean energy future is swift. The BPU should provide financial incentives for projects serving low-income and environmental justice communities. The BPU should follow the lead of states such as Massachusetts and Illinois, which provide financial support for low- and moderate-income solar projects and customers that go beyond incentives available for solar projects in communities that are other

than low- and moderate-income. Other forms of financial incentives may include rebates, grants, and forgivable loans. (8)

85. COMMENT: Twenty percent of the Fund will go to the BPU to support programs that reduce electricity demand and reduce costs in the low- and moderate-income residential sector. These funds have the potential to act as a force multiplier for investments in the low- and moderate-income and environmental justice communities. For example, the BPU should explore using RGGI funds to support weatherization programs that provide benefits to impacted families, as well as workforce development benefits, such as weatherization job training and placement programs. In particular, the BPU should examine successful programs, such as those run by Isles Inc. in Trenton and La Casa de Don Pedro in Newark, and to consider investing RGGI revenues in local non-profits to enable existing successful programs to expand. (7)

86. COMMENT: The BPU and the EDA should work with solar developers to explore public-private-non-profit partnerships to increase ownership options. Community institutions, such as local economic and community development organizations, churches, colleges and schools, and other local institutions can serve as host sites for community solar projects. This will ensure that local investments are made and local jobs are created. (8)

87. COMMENT: The BPU and the EDA should work with the Department of Community Affairs, and other relevant agencies and organizations to develop workforce training opportunities for low-income customers, environmental justice communities, communities of color, and other underserved communities that are linked to the rollout of solar in the State.

Benefits to consumers should not be limited to project participation and ownership, but should also include job creation, workforce development opportunities, and other direct connection to economic opportunities associated with New Jersey's solar and clean energy program investments. Offering of actual training programs and subsidizing the cost of the training program can go a long way in diversifying the clean energy workforce. Careful consideration should also be given to explore ways to transition former or current fossil fuel workers to clean energy career tracks. (8)

88. COMMENT: The EDA should work with solar and clean energy stakeholders in the development of a "Green Bank" financing institution, which will support financing for low- and moderate-income community solar projects through loan loss reserve or other affordable financial products, while ensuring strong consumer protection measures for participating low-income customers. Connecticut has created a framework to work with other state agencies to facilitate this conversation. (8)

89. COMMENT: The EDA should consider support for programs and activities, whether through employers or unions, that involve workers at industrial facilities in efforts to maximize energy savings opportunities. Such programs could begin as pilot projects and include, but not be limited to, training of frontline workers in the identification, control, and elimination of energy waste. (18)

90. COMMENT: With respect to land use planning, the Department should prioritize funding of transit-oriented development initiatives that will reduce vehicles miles traveled and provide alternatives to car-dependent transportation for single- and multi-family housing. (7)

91. COMMENT: The statute requires that 20 percent of the revenues be used to support programs designed to reduce electricity demand or electricity costs for low- and moderate-income customers. Low-income customers who participate in efficiency programs will likely more than offset the cost of allowance purchases by generators. However, it is not clear that the allocation of 20 percent of revenues will be enough to make such efficiency programs universally accessible to low-income customers. The agencies should identify ways to increase the amount of revenues utilized for this purpose given the statutory constraints. For example, the Department could also allocate its 10 percent earmarked for local government programs heavily, if not exclusively, to programs that reduce energy costs for low- and moderate-income ratepayers. (18)

RESPONSE TO COMMENTS 75 THROUGH 91: As explained in the notice of proposal Summary, N.J.S.A. 26:2C-51.b requires each agency to restrict the use of the money it receives from the Fund to those programs and/or projects that meet the eligibility requirements prescribed for that agency in the statute. The language in the rules is modeled on the statutory language. The rules neither expand nor curtail the eligibility criteria set forth in the statute.

Since each agency is bound by agency-specific eligibility criteria in the statute, an agency's ability to use money from the Fund for a specific program or project will depend on an analysis of whether the program or project fits within the eligibility criteria of that agency and furthers a sponsored initiative. To the extent that the commenters would like one or more of the agencies to consider sponsoring an initiative that could include a specific program or project, the Department encourages the commenters to attend one or more of the public meetings the agencies will hold, pursuant to N.J.A.C. 7:27D-2.1. As explained in the notice of proposal Summary, 50 N.J.R. at 2538, the public meetings are intended to provide an opportunity for public input as the agencies develop the initiatives for a strategic funding period. Not only will these meetings provide an opportunity for the agencies to learn, but participants may gain important information and materials about existing programs and projects with separate funding streams. For example, the BPU's Community Solar program works with the New Jersey Department of Labor and Workforce Development on issues concerning training and workforce development. The public meetings will be an opportunity for all parties to evaluate any gaps in funding and determine whether an agency's allocation from the Fund could help to fill an existing need.

Measurable Benefits

Comments in Support of the Approach

92. COMMENT: The proposed rules require that programs or projects have measurable benefits and identify how much uncertainty is associated with the estimated benefits. Since Governor Murphy has established goals for 2050, and most initiatives have significant uncertainty about long-term effects, this requirement will enable staff to sort through all the possible initiatives that the EDA, the BPU, and the Department want to consider. With such a wide variety of initiatives, the rules need to be prescriptive but not unrealistic about measuring benefits. It would be unrealistic to try to measure all the benefits and costs in a uniform way. This rulemaking finds the right balance. (15)

RESPONSE: The Department acknowledges the commenter's support for the approach taken in the adopted rules to measure the benefits of the projects and programs.

Recommendations for Projecting Job Impacts

93. COMMENT: Among the benefits that these initiatives will provide are local jobs. The U.S. Energy and Employment Report (known as USEER), which has only been available since 2016, made a huge improvement in accurately counting clean energy jobs. The old job categories identified by the Bureau of Labor and Statistics are out-of-date. Thus, the agencies should use the USEER data for job impact projections. (15)

RESPONSE: The Department acknowledges the commenter's recommendation concerning a new data tool.

Recommendations for Evaluating Benefits

94. COMMENT: The agencies should include evaluation criteria and processes that can be used to measure the success of funded projects. The strategic funding plan should also encourage and enable real-time evaluation of funded projects between formal three-year updates to ensure that anticipated benefits are being achieved. This is especially critical for ensuring that projects that receive multiyear funding produce clear carbon benefits relative to potential competing projects or other uses of revenues from the CO_2 allowance auctions. These anticipated carbon benefits should be reflected in ranking criteria and confirmed by evaluations. (7)

95. COMMENT: The strategic funding plan developed by each agency should include information about how the selected programs and projects have impacted environmental

justice communities as described in EO No. 7. This should include how much direct and indirect funding has been allocated to projects in these designated communities, as well as the benefits in the form of emissions reductions (both CO_2 and co-pollutants), energy efficiency and renewable energy investments, and economic development in the form of jobs. Moreover, the agencies should be required to track the benefits of projects according to the impact on local pollution, public health, and direct access of environmental justice communities to the benefits of the funds. (1 and 4)

RESPONSE TO COMMENTS 94 AND 95: As set forth in the notice of proposal Summary, 50 N.J.R. at 2538, in every strategic funding plan after the first, the rules require the agencies to report on basic information about the programs and projects that received funding during the prior strategic funding periods. The report must include, among other items, an account of the measurable benefits of the program or project relative to the critical objective(s) it was predicted to advance. As mentioned in the Response to Comment 40, the rules recognize that not all projects and programs will be expected to advance all of the objectives. Therefore, the agencies will report on the measurable benefits of EO No. 7, when that objective has been ranked as critical to the program or project. As discussed in the Response to Comment 43, real-time reporting by three agencies is not realistic. Accordingly, the agencies determined that a three-year time period would allow for a comprehensive report and would correspond with the next strategic planning period.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JUNE 17, 2019 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Department is adopting new rules for which there are no comparable rules or Federal standards. Thus, the rules do not contain any standards or requirements which exceed the standards or requirements imposed by Federal law. Accordingly, a Federal standards analysis is not required.

Full text of the adopted new rules follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

7:27D-*[1.4]****1.3*** (No change in text from proposal.)