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NEW JERSEY BOARD OF PUBLIC UTILITIES

Proposed Amendments to the Renewable Portfolio Standards

N.J.A.C. 14:8-2.7 and 2.9

BPU Docket Number: EX08050346

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Renewable Portfolio Standards

Proposed Amendments: N.J.A.C. 14:8-2.7, 2.9

Authorized By: Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Joseph L. Fiordaliso, Nicholas Asselta, and Elizabeth Randall, Commissioners.

Authority: N.J.S.A. 48:2-13 and N.J.S.A. 48:3-49 et seq.

Calendar Reference: See Summary below for an explanation of exception to calendar requirement.

BPU Docket Number: EX08050346

Proposal Number: PRN 2008-

Comments may be submitted through January 30, 2009, through either of the following methods:

- Electronically, in Microsoft WORD format, or in a format that can be easily converted to WORD, by e-mailing them to the following e-mail address: rule.comments@bpu.state.nj.us; or
- On paper to:
New Jersey Board of Public Utilities
Kristi Izzo, Secretary
ATTN: BPU Docket Number: EX08050346

Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities (“BPU”) has provided a 60-day comment period on this notice of proposal. Accordingly, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The BPU is proposing amendments to the rules governing New Jersey’s renewable energy portfolio standards (“RPS”) at N.J.A.C. 14:8-2. The New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (“EDECA”) provides the foundation for these standards, authorizing the BPU to adopt, readopt, and amend them.

The proposed amendments concern “class I” and “class II” renewable energy. Under N.J.A.C. 14:8-2.5(b), the following types of electricity can qualify (subject to other provisions of N.J.A.C. 14:8-2) as class I renewable energy:

- Solar electric generation;
- Electricity derived from wind energy;
- Electricity derived from wave or tidal action;
- Electricity that is geothermal energy;
- Electricity generated by the combustion of methane gas captured from a landfill;
- Electricity generated by a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel;
- Electricity generated by the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; and
- Electricity produced through combustion of specified types of biomass.

The following types of electricity can qualify as class II renewable energy (subject to other provisions of N.J.A.C. 14:8-2) under N.J.A.C. 14:8-2.6(b):

- Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined;
- Electricity generated by a resource recovery facility located in New Jersey, covered by all required NJDEP approvals, and operating in compliance with all applicable New Jersey environmental laws; and
- Electricity generated by a resource recovery facility located outside New Jersey, which meets requirements specified in N.J.A.C. 14:8-2.6(c).

New Jersey is one of 13 states plus the District of Columbia served by a transmission grid planned and operated by PJM Interconnection, L.L.C. (“PJM”). The PJM region currently stretches from New Jersey west to Illinois and south to North Carolina. N.J.A.C. 14:8-2.7 provides for energy generated within this 13-state area, or “delivered into” this area, to qualify as class I or class II renewable energy.

N.J.A.C. 14:8-2.7 also specifies that energy is considered to be “delivered into the PJM region” if it “complies with the energy delivery rules established by PJM Interconnection.” The Board has determined that this provision needs to be clarified, to emphasize the requirement for the measurement of a renewable generator’s output to be verified in accordance with N.J.A.C. 14:8-2.9(b).

N.J.A.C. 14:8-2.9(b)1 provides for the Board to accept, as measurement of class I renewable electric generation, periodic readings of a meter that records megawatt-hour production of electricity. The readings must be verified by the Board or its designee. The need for clarification arises because renewable energy can be considered to have been “delivered into the PJM region” under N.J.A.C. 14:8-2.7, but nonetheless could not be the basis for renewable energy certificates usable for compliance with New Jersey’s RPS (“New Jersey RECs”) unless it was verified by the Board or its designee.

For renewable generators connected to an electric distribution system serving New Jersey customers, NJBPU staff and contractors perform some aspects of the necessary verification. The verification can include a review of production data and further investigation of anomalous data. In addition, the meter used to record the generator’s production data, and the installation of that meter, are overseen and approved by electric distribution companies regulated by the BPU.

Outside of New Jersey, PJM Environmental Information Systems, Inc. (“PJM-EIS”) performs the necessary verification. Generators in the PJM region whose transactions are settling in the PJM system are required to provide actual production data in real time (with the exception of some small generators, who must submit production data to the PJM settlement system by noon the next business day) to PJM, as part of PJM’s constantly ongoing real-time security analysis. The renewable energy in question normally will have been sold in the PJM wholesale market and paid for through the PJM market settlement process. PJM-EIS can compare the data entered into the PJM settlement system against the generation data submitted in real time, and identify discrepancies. PJM-EIS also relies in part on PJM member electric distribution companies to ensure that the meters meet PJM requirements that support verification.

“Scheduling” is the process pursuant to which PJM determines, based on changing forecasts of conditions and actions by market participants and system constraints, a plan to serve the hourly energy and reserve needs of buyers within PJM, and purchase requests by buyers outside of PJM, in the least costly manner, subject to maintaining the reliability of the electricity supply within the PJM Region. (See Section 1.10.1 of Schedule 1 of PJM’s Amended and Restated Operating Agreement, available at <http://www.pjm.com/documents/agreements.html>).

“Dynamic scheduling” is one of two types of scheduling recognized in PJM’s Operating Agreement for generation outside the PJM region; “block loading” is the other. With respect to dynamic scheduling, Section 1.12(b) of Schedule 1 of the Operating Agreement provides in part as follows:

An entity that owns or controls a generating resource outside of the PJM Region may request that the Transmission Provider electrically add all or part of the generating resource's output to the PJM Region through dynamic scheduling of the output to load inside the PJM Region.

Dynamic scheduling of the output of renewable generation from outside of the PJM region to load inside the region depends on matching, in real time, the generation of energy outside the PJM region with the delivery of energy from the generator to the PJM region. With dynamic scheduling, the operator of each control area along the route from the generator to the PJM region specifically includes the generator's real-time output in the constant matching of load within the control area with generation from within and outside the control area.

The proposed amendments clarify N.J.A.C. 14:8-2.7(b) and harmonize it with the verification requirement in N.J.A.C. 14:8-2.9. The proposed amendments state that energy generated outside the PJM region will be considered to have been "delivered into the PJM region" only if it has been added to the PJM region through dynamic scheduling of the output to load inside the PJM region, in accordance with the PJM Operating Agreement. Requiring dynamic scheduling ensures that generators inside and outside the PJM region cannot earn renewable energy certificates usable for compliance with New Jersey's RPS ("New Jersey RECs") without complying with the same requirements to submit actual production data to the PJM settlement system.

If the Board did not subject generation inside and outside the PJM region to these same requirements, it would not only undermine the ability to verify energy generated outside PJM; it would also undermine efforts to encourage the development of renewable sources of electricity and new, cleaner generation technology. Basing New Jersey RECs on energy that fails to meet the data requirements would depress the value of RECs held by generators who are actually located in the PJM region, and by generators outside the PJM region who take the steps needed to schedule and deliver the energy to the PJM region at the time it is generated so that the sale of the energy can be settled in PJM.

The proposed amendments also make the verification requirement in N.J.A.C. 14:8-2.9 more specific, so that it conforms to direction that the Board has previously set and reaffirmed. The Board does not currently accept a class I REC for compliance with the New Jersey RPS if the REC is based on energy that is not connected to a New Jersey electric distribution system, unless that energy has "settled" in the PJM wholesale financial market. In other words, the energy must have been sold in the PJM wholesale market and paid for through the PJM market settlement process. See *In the Matter of the Renewable Portfolio Standards – Request for Board Action Regarding Renewable Energy Certificates*, Docket No. E007110886, Order dated January 31, 2008 (January 31 Order). The proposed amendments retain the provision in the existing rules for the Board's ability to waive this requirement by Board order if the Board determines that such waiver would facilitate participation in the system. The existing rules also

condition such a waiver on the Board adopting a joint or regional REC tracking system; since that condition was satisfied when New Jersey began participating in the Generation Attribute Tracking System operated by PJM-EIS, the proposed amendments delete that condition from the waiver provision. The Board provided such a waiver for the limited circumstances outlined in the January 31 Order, and directed Staff to initiate a stakeholder and rulemaking process. That process has not been completed.

In the January 31 Order, the Board explained the importance of the settlement requirement:

Settlement in the PJM financial market . . . requires measurement and reporting in ways that also ensure great accuracy. . . . Energy that is generated at a generating unit in PJM that is not connected to the New Jersey distribution system and does not settle in this market is self-reported by the operator of the generating unit. We have received no assurances that other PJM states inspect or verify these systems. Without the record established by settlement in the PJM market, [the BPU's Office of Clean Energy] does not have the tools to verify that out-of-state generation actually occurred in the amounts reported.

The proposed amendments incorporate the settlement requirement into N.J.A.C. 14:8-2.9. For generators connected to an electric distribution that serves New Jersey, the verification requirements in the current rules and the verification measures described above provide sufficient certainty about the accuracy of production information submitted by those facilities. For other generators, the Board continues to believe that the verification provided by PJM-EIS provides sufficient assurance of accuracy and will continue to rely on that verification for sales of energy that settle in the PJM system.

Social Impact

The proposed amendments will have a positive social impact, by preserving New Jersey's ability to attain the goals of the renewable portfolio standards with respect to the development of renewable sources of energy and cleaner electric generation technology, minimizing the environmental impact on New Jersey from electric generation, and supporting the reliability of New Jersey's electricity supply. The proposed amendments will accomplish this by continuing to stimulate investment in renewable energy that has a reasonable connection to New Jersey, without dissipating that investment by spreading it among generators whose energy output cannot be matched in real time to energy received in New Jersey or in the interdependent 13-state electric grid that includes New Jersey.

Economic Impact

The central purpose of the proposed amendments is to avoid confusion that could undermine New Jersey's ability to attain the goals of the renewable portfolio standards. Renewable generation that is outside the 13-state PJM region, that does not arrange for the real-time matching of generation and delivery, and that cannot be verified in the

same manner as generation inside PJM, does not support the attainment of those goals. Accordingly, the proposed amendments will ensure that money spent by New Jersey electricity customers in support of efforts to comply with the renewable portfolio standards will not flow to renewable electricity generation that does not serve those goals. Under the proposed amendments, the renewable portfolio standards will continue to ease New Jersey's dependence on electricity generated from fossil fuels that have been dramatically increasing in price. As a result, the proposed amendments will tend to have a positive economic impact on New Jersey electricity customers.

Beyond that overall positive economic impact, the precise economic impact of the proposed amendments will be possible lost revenues from the sale of RECs by generators that are not able to earn New Jersey RECs; for generators that comply with the proposed amendments and earn New Jersey RECs, the avoidance of lower prices for the New Jersey RECs that they earn; and for New Jersey electricity customers, the possibility of a higher cost of meeting the class I and class II renewable portfolio standards, although that cost would have to be weighed against the other economic benefits of the renewable portfolio standards that would be preserved under the proposed amendments. The change in REC revenues and the potential change in the cost of meeting the renewable portfolio standards will vary year by year depending on the following factors:

- How much generation outside the PJM region that does not use dynamic scheduling would have sought to create New Jersey RECs in the absence of the proposed amendments;
- The price of such New Jersey RECs compared to the price of RECs that can be used to meet other states' renewable portfolio standards; and
- The extent to which, in the absence of the proposed amendments, the increased number of New Jersey RECs for class I or class II renewable energy would have affected the price of those RECs.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The RPS has no Federal analogue, and is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for the proposed amendments.

Jobs Impact

The proposed amendments will preserve the effectiveness of the renewable portfolio standards as a tool to encourage the development of renewable sources of electricity and new, cleaner generation technology. Preserving that effectiveness will tend to have

a positive impact on jobs in the development, construction, and operation of renewable energy facilities. However, the precise impact depends largely on the variables summarized in the Economic Impact statement above.

Agriculture Industry Impact

The Board does not expect the proposed amendments to have a direct material effect on the agriculture industry in New Jersey. To the extent that the proposed amendments make it more feasible to achieve the class I and class II renewable portfolio standards, that achievement will benefit the agriculture industry, if increased renewable electric generation displaces fossil-fueled generation that is linked to acid rain, global warming, and other air pollution that can harm agricultural crops. To the extent that the proposed amendments, based on the factors listed in the economic impact statement above, make it more economically feasible for New Jersey farmers to develop renewable electric generation on their farms, that would provide a positive impact on the agriculture industry.

Regulatory Flexibility Statement

A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. The proposed amendments do not impose additional reporting, recordkeeping, or other compliance requirements on small businesses operating renewable electric generation facilities in New Jersey or in the rest of the PJM region. Accordingly, no Regulatory Flexibility Analysis is required.

Smart Growth Impact

The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of "focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing."

The proposed amendments are not expected to have any impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The effect of the proposed amendments is not expected to vary by location within the State. Accordingly, the Board does not expect that the proposed amendments will affect the location of future development.

Housing Affordability Impact

The proposed amendments will have an insignificant impact, if any, on affordable housing in New Jersey because the scope of the proposal is limited solely to the Board's standards for accepting electricity generated outside of New Jersey for RPS compliance. In addition, there is an extreme unlikelihood that the proposed rule

amendments would evoke a change in the average costs associated with housing, because the cost of RPS compliance is not a factor that affects housing prices or the housing market.

Smart Growth Development Impact

The amendments proposed herein are expected to have no impact on smart growth in New Jersey because the scope of the proposal is limited solely to the Board's standards for accepting electricity generated outside of New Jersey for RPS compliance. In addition, there is an extreme unlikelihood that the proposed rule amendments would evoke a change in housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the effect of the proposed amendments is not expected to vary by location within the State. The RPS rules, and these proposed amendments, apply uniformly Statewide and do not affect housing construction or the housing market.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

TITLE 14. BOARD OF PUBLIC UTILITIES

CHAPTER 8. RENEWABLE ENERGY AND ENERGY EFFICIENCY

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.7 Requirements that apply to both class I and class II renewable energy

(a) (No change)

(b) To qualify as class I or class II renewable energy for the purposes of this subchapter, energy shall be generated within or delivered into the PJM region, as defined in N.J.A.C. 14:4-1.2. Energy **generated outside the PJM** region shall be considered delivered into the PJM region if it [complies with the energy delivery rules established by PJM Interconnection] **has been added to the PJM region through dynamic scheduling of the output to load inside the PJM region, pursuant to section 1.12(b) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., including future supplements and amendments. The Amended and Restated Operating Agreement is available at <http://www.pjm.com/documents/agreements.html>.**

(c) (No change)

14:8-2.9. Board issuance of RECs

(a) – (c) (No change)

(d) To qualify for issuance of a REC, electric generation shall be produced by a generating facility that is interconnected with an electric distribution system, as

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defined at N.J.A.C. 14:8-2.2, that supplies New Jersey; **or, for class I renewable energy other than solar electric generation, the electric generation need not be interconnected with an electric distribution system that supplies New Jersey if its sale is settled in the PJM wholesale market.**

The Board may waive this requirement by Board order if the Board [adopts a joint or regional REC tracking system, and] determines that such waiver would facilitate participation in the **regional REC tracking** system **adopted by the Board.**

(e) – (m) (No change)