

## PUBLIC UTILITIES

### (a)

#### BOARD OF PUBLIC UTILITIES

#### Renewable Energy and Energy Efficiency

#### Adopted Amendments: N.J.A.C. 14:8-2.3 and 2.6

Proposed: February 19, 2019, at 51 N.J.R. 209(a).

Adopted: August 7, 2019, by the Board of Public Utilities, Joseph L. Fiordaliso, President; Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: August 12, 2019, as R.2019 d.100, **with non-substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13, 48:3-51, and 48:3-87, and P.L. 2018, c. 17.

BPU Docket Number: EX18111244.

Effective Date: September 16, 2019.

Expiration Date: May 20, 2026.

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

Timely comments were submitted by: Atlantic City Electric Company (ACE), Jersey Central Power & Light Company (JCP&L), Public Service Electric and Gas Company (PSE&G), and Rockland Electric Company (RECO) (collectively, the "EDCs"); Mid-Atlantic Renewable Energy Coalition (MAREC); and Calpine Energy Solutions (Calpine):

#### N.J.A.C. 14:8-2.3(d)

1. COMMENT: MAREC objects to the proposed change "subsuming the solar obligation into the consideration of the overall compliance requirement of Class I beginning in 2020, whereas, in the past, the solar obligation was distinctly treated as a separate requirement." MAREC finds this approach is contrary to the intent of the legislation, and would dramatically reduce the demand for, and value of, Class I Renewable Energy Certificates (RECs) in the PJM region. The proposed replacement Table A, at N.J.A.C. 14:8-2.3(a), would not achieve the effect of conforming to the legislative increase to Class I Renewable Portfolio Standards (RPS) obligations through 2033. In fact, it would have the opposite effect of decreasing the effective Class I RPS obligation by reducing it commensurate to the addition of eligible solar RECs. MAREC suggests the Board focus on the Solar Renewable Energy Certificate (SREC) program as that is creating the excessive costs for ratepayers.

RESPONSE: The Clean Energy Act (CEA) requires revision of the schedule of RPS percentage obligations for both solar and New Jersey Class I Renewable Energy. The solar requirements actually increases in

the near term before it is reduced and then extended to 2033. Additionally, the New Jersey Class I requirement increases to 21 percent by January 1, 2020, 35 percent by January 1, 2025, and 50 percent by January 1, 2030. The law also established cost caps for solar and New Jersey Class I resources other than offshore wind at nine percent in Energy Year (EY) 19, 20, and 21 and seven percent thereafter. The CEA directed the Board to take any steps necessary to prevent the exceedance of the cost caps including, but not limited to, adjusting the Class I renewable energy requirement. The Board has proposed making the solar obligation a carve out from the RPS New Jersey Class I requirements to reduce the risk of exceeding the cost caps and believes that its decision is balanced and consistent with CEA's requirements as outlined in the December 18, 2018 Order. MAREC is correct in identifying the cost of compliance with the solar provisions of the RPS as a greater burden on ratepayers than New Jersey Class I REC compliance costs. However, the benefits of solar RPS compliance, namely solar investments in New Jersey, which result in nearly 100 percent of the electricity consumed within the State, are undeniably greater than the benefits resulting from annual expenditures on Class I RECs, which are sourced throughout PJM and provide relatively little electricity within the State. The New Jersey Board of Public Utilities (Board) has undertaken a stakeholder process designed to replace or modify the solar incentive delivery system in the State to ensure that ratepayer investments are as cost effective as possible.

#### N.J.A.C. 14:8-2.3(f) and (g)

2. COMMENT: Calpine, a third-party supplier of electricity within New Jersey, objects to the new prohibition against the use of New Jersey Class I RECs toward compliance with the New Jersey Class II RPS compliance obligation. While acknowledging the statutory basis for the change in practice, Calpine notes that Class II REC supply is volatile and recommends that the RPS include Class II banking provisions enabling a Class II REC to be useful for five years similar to the provisions made available for SRECs.

RESPONSE: As Calpine correctly states, the Clean Energy Act mandated the change to the RPS, which removes the provision in the law that allowed third-party Supplier/Basic Generation Service (TPS/BGS) providers to submit Class I RECs, as well as Class II RECs, to satisfy their Class II RPS obligations. EY 2019 has ended and the true-up period has begun with the TPS/BGS providers understanding this new Class II RPS requirement. The useful life for an SREC was increased to five years by legislation enacted in 2012 in response to the potential for market price volatility stemming from high Solar Alternative Compliance Payment levels and changes in the RPS percentage requirements. New Jersey Class II RECs have not exhibited price variability that suggest a need for similar extension of REC life. Therefore, the suggested change has not been made.

**N.J.A.C. 14:8-2.3(i)**

3. COMMENT: The EDCs direct the Board’s attention to a typographical error in the last sentence of the paragraph which states, “All [TPS/BGS] BGS provider solar obligations, taken together, must equal the Statewide solar obligation set forth in Table [B below] A above for Energy Year [2015] 2019, 2020, or 2020.” The EDCs suggest instead the last sentence of the paragraph should refer to EYs 2019, 2020, and 2021.

RESPONSE: The Board thanks the EDCs for identifying this technical error in the notice of proposal. The date has been corrected in the rule text upon adoption.

**N.J.A.C. 14:8-2.3(p)**

4. COMMENT: The EDCs identify that the provision proposed to calculate the RPS obligation for BGS providers with non-exempt electricity supplied does not sufficiently address all applicable years. The first sentence of the subsection states: “For any nonexempt electricity supplied during EY 2020, 2021, or 2022, a BGS provider shall calculate its solar obligation as: ...” The EDCs suggest instead the first sentence should also include EY 2023. The EDCs assert that the reason for this change is the last energy year with exempt electricity is 2021. Per N.J.A.C. 14:8-2.3(p)3iii, the increased solar obligation avoided by exempt electricity supply in an energy year is allocated to the following two energy years—that is, 2022 and 2023. Therefore, the calculation that follows in N.J.A.C. 14:8-2.3(p) also applies to EY 2023.

RESPONSE: The Board thanks the EDCs for identifying this technical error in the notice of proposal. The sentence has been corrected upon adoption.

**N.J.A.C. 14:8-2.3(p)2i(3)**

5. COMMENT: The EDCs point out that within the section designed to calculate a BGS provider’s RPS obligation for non-exempt electricity supplied, the numerator and denominator are transposed in the determination of market share. The sentence states, “Divide (p)2i(1) above by (p)2i(2) above to obtain a fraction, representing the provider’s non-exempt electricity market share for the applicable energy year.” The EDCs suggest, instead, that this sentence should indicate the need to divide “(p)2i(2) above by (p)2i(1) above.”

RESPONSE: The Board thanks the EDCs for identifying this technical error in the notice of proposal. The sentence has been corrected upon adoption.

**N.J.A.C. 14:8-2.3(p)4**

6. COMMENT: The EDCs identify an error in the proposed method to calculate a BGS provider’s obligation from deferred exempt electricity. The first sentence states, “Multiply the BGS provider’s non-exempt market share from (p)1 above by the total deferred solar obligation from (p)3iii above.” The EDCs suggest instead that this sentence should

indicate to multiply subparagraph (p)2i by paragraph (p)3. The total deferred obligation is calculated in accordance with all steps referred to in paragraph (p)3.

RESPONSE: The Board thanks the EDCs for identifying this technical error in the notice of proposal. The sentence has been corrected upon adoption.

**N.J.A.C. 14:8-2.3(q)**

7. COMMENT: The EDCs identify an error in the language addressing the RPS compliance process after cessation of the allocation of avoided increase over the two energy years following the last energy year of avoided increase. Since there is an obligation for avoided increase from exempt supply in EY 2021, the last year of allocation is EY 2023. The proposed rule references EY 2023 or later and the commenters recommend instead the reference should be to EY 2024 or later.

RESPONSE: The Board thanks the EDCs for identifying this technical error in the notice of proposal. The sentence has been corrected upon adoption.

**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 rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The class I and class II rules have no Federal analogue and are 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 incorporates 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 adopted amendments.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.3 Amount of renewable energy required

(a) Each supplier/provider, as defined at N.J.A.C. 14:8-1.2 that sells electricity to retail customers in New Jersey, shall ensure that the electricity it sells each energy year in New Jersey includes at least the minimum amount of qualified renewable energy, as defined at N.J.A.C. 14:8-2.2, required for that energy year, as specified in this section. Requirements for class I, class II, and solar renewable energy are set forth in Table A below:

Table A  
What Percentage of Energy Supplied Must Be Solar, Class I,  
or Class II Renewable

Energy Year	Solar	Class I	Class II	Total
June 1, 2018 - May 31, 2019	4.30%	14.175%	2.50%	20.975%
June 1, 2018 - May 31, 2019*	3.29%*	14.175%*	2.50%*	19.965%*
June 1, 2019 - Dec. 31, 2019	4.90%	16.029%	2.50%	18.529%
June 1, 2019 - Dec. 31, 2019*	3.38%*	16.029%*	2.50%*	21.909%*
January 1, 2020 - May 31, 2020	4.90%	21.0%	2.50%	23.50%
January 1, 2020 - May 31, 2020*	3.38%*	21.0%*	2.50%*	26.88%*
June 1, 2020 - May 31, 2021	5.10%	21.0%	2.50%	23.50%
June 1, 2020 - May 31, 2021*	3.47%*	21.0%*	2.50%*	26.97%*
June 1, 2021 - May 31, 2022	5.10%	21.0%	2.50%	23.50%
June 1, 2022 - May 31, 2023	5.10%	22.0%	2.50%	24.50%
June 1, 2023 - May 31, 2024	4.90%	27.0%	2.50%	29.50%
June 1, 2024 - May 31, 2025	4.80%	35.0%	2.50%	37.50%
June 1, 2025 - May 31, 2026	4.50%	38.0%	2.50%	40.50%
June 1, 2026 - May 31, 2027	4.35%	41.0%	2.50%	43.50%
June 1, 2027 - May 31, 2028	3.74%	44.0%	2.50%	46.50%
June 1, 2028 - May 31, 2029	3.07%	47.0%	2.50%	49.50%

Energy Year	Solar	Class I	Class II	Total
June 1, 2029 - May 31, 2030	2.21%	50.0%	2.50%	52.50%
June 1, 2030 - May 31, 2031	1.58%	50.0%	2.50%	52.50%
June 1, 2031 - May 31, 2032	1.40%	50.0%	2.50%	52.50%
June 1, 2032 - May 31, 2033	1.10%	50.0%	2.50%	52.50%

(\*BGS Providers with existing contracts)

(b) Each supplier/provider that sells electricity to retail customers in New Jersey shall ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of solar energy required for that energy year as set by the Board. The Board, in consultation with the NJDEP, EDCs, Rate Counsel, the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in this chapter, taking into account the cost impacts and public benefits of such increases including, but not limited to:

1.-4. (No change.)

(c) (No change.)

(d) Beginning in EY20, SREC obligations are a component of class I renewable energy requirements, and satisfaction of SREC obligations shall be counted toward class I renewable energy requirements.

(e) (No change in text.)

(f) Only RECs based upon class II renewable energy, as defined at N.J.A.C. 14:8-1.2, shall be used to meet the class II renewable energy requirements.

(g) The following shall apply to the type of energy, and type of documentation, used for compliance with each of the requirements in this subchapter:

1. SRECs may be used to meet any requirement for solar electric generation or class I renewable energy;

2. Class I RECs may be used to meet class I renewable energy requirements, but shall not be used to meet solar electric generation requirements or class II renewable energy requirements; and

3. Class II RECs shall be used only to meet class II renewable energy requirements and shall not be used to meet solar electric generation requirements or class I renewable energy requirements.

Recodify existing (g)-(i) as (h)-(j) (No change in text.)

(k) (Reserved)

(l) Each megawatt-hour (MWh) of retail electricity supplied in New Jersey by a TPS/BGS provider subject to this subchapter carries with it an accompanying solar obligation. For any electricity supplied by a TPS, such TPS shall calculate its solar obligation by multiplying its total retail sales by the applicable percentage requirement in Table A. For Energy Year 2019, 2020, or 2021, each BGS provider shall calculate its solar obligation as set forth in (m) or (n) below. Subsection (m) allocates the solar obligation of BGS providers with electricity supply contracts **\*[which]\* \*that\*** were effective prior to date of enactment of P.L. 2018, c. 17. Subsection (n) below allocates the Table A Statewide solar obligation among all BGS providers that are subject to this subchapter. All BGS provider solar obligations, taken together, must equal the Statewide solar obligation set forth in Table A above for Energy Year 2019, 2020, or **\*[2020]\* \*2021\***.

(m) Notwithstanding any other provision of this section, if a BGS provider has, prior to May 23, 2018, executed a BGS contract to provide retail electricity, the solar obligation resulting from the electricity supplied under that contract shall be determined using the provisions of this subchapter that were in effect at the time the contract was executed. For the purpose of this section, the electricity supply covered by these contracts shall be called "exempt electricity," and electricity supply not covered by such a contract shall be called "non-exempt electricity."

(n) All contracts subject to exemption under (m) above will expire on or before May 31, 2021. Therefore, for EY 2019, 2020, or 2021, the solar obligation that attaches to exempt electricity supply must be calculated separately from the solar obligation for non-exempt electricity supply, in accordance with the applicable provisions of (o) and (p) below. If a BGS provider's energy portfolio includes both exempt and non-exempt electricity supply, the solar obligation for each shall be calculated

separately and summed to determine that BGS provider's total solar obligation for the energy year.

(o) For any exempt electricity supplied, a provider shall calculate its solar obligation as follows:

1. Determine the MWhs of exempt electricity the provider supplied during the energy year;

2. Determine the solar electric generation percentage requirement in effect when the BGS contract subject to (m) above was executed; and

3. Multiply (o)1 by (o)2 above.

(p) For any non-exempt electricity supplied during EY 2020, 2021, **\*[or]\* 2022, \*or 2023\***, a BGS provider shall calculate its solar obligation as follows:

1. Determine the provider's contemporaneous solar obligation for non-exempt electricity by multiplying their total non-exempt retail electricity sales in MWh during the energy year by the applicable percentage requirement in Table A above.

2. Determine the provider's share of the banked obligations from the increased solar requirements avoided by exempt retail electricity in the previous energy year or previous two energy years, as follows:

i. Determine the market share of the non-exempt electricity supplied Statewide during the applicable energy year, as follows:

(1) Consult the Board's NJCEP website to determine the number of MWhs of non-exempt electricity supplied Statewide during the energy year by all BGS providers subject to this subchapter;

(2) Determine the number of MWhs of non-exempt electricity the BGS provider supplied during the energy year; and

(3) Divide **\*[(p)2i(1) above by]\* (p)2i(2) above \*by (p)2i(1) above\*** to obtain a fraction, representing the provider's non-exempt electricity market share for the applicable energy year.

3. Determine the total deferred solar obligation incurred from exempt electricity supply during the previous energy year(s) as follows:

i. Consult Table A above to determine the total Statewide solar obligation for all electricity supplied during the energy year and the percentage requirement for exempt supply.

ii. Consult the Board's NJCEP website to obtain the deferred solar obligation for the exempt electricity that was supplied during the previous energy year or previous two energy years, as applicable.

iii. The total amount of increased solar obligation avoided by exempt electricity supply in an energy year shall be allocated to the following two energy years.

4. Multiply the BGS provider's non-exempt market share from **\*[(p)1]\* \*(p)2i\*** above by the total deferred solar obligation from **\*[(p)3iii]\* \*(p)3\*** above. The result is the provider's solar obligation for the deferred exempt electricity based on the share of non-exempt electricity that it supplied during the energy year.

5. Add the BGS provider's contemporaneous solar obligations in MWh resulting from (p)1 above to the banked share resulting from calculated (p)4 above in MWh above to arrive at the total RPS solar obligation.

(q) For electricity supplied during EY **\*[2023]\* \*2024\*** or later, a BGS provider shall calculate its solar obligation by multiplying its total retail sales by the applicable percentage required in Table A above.

14:8-2.6 Energy that qualifies for a class II REC

(a)-(h) (No change.)

(i) Beginning on June 1, 2019, only the other types of energy that qualify as class II renewable energy under this section may be used to satisfy the requirements for class II renewable energy.