



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

CLEAN ENERGY

IN THE MATTER OF THE RENEWABLE)	
PORTFOLIO STANDARDS—REQUEST FOR)	ORDER
BOARD ACTION REGARDING)	
RENEWABLE ENERGY CERTIFICATES)	EO07110886

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Renewable Portfolio Standard (RPS) rules at N.J.A.C. 14:8-2 implement provisions of the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49, et seq. (EDECA). The RPS are designed to “encourage the development of renewable sources of electricity and new, cleaner generation technology”. The RPS rules require the state’s retail electric suppliers to provide renewable energy as a percentage of their total electric energy portfolio. This percentage requirement increases annually through 2021. The rules provide two primary means of compliance by electric suppliers: through the purchase and retirement of Renewable Energy Certificates (RECs), which represent the environmental attributes of one megawatt hour of renewable energy, to meet the percentage requirements; or through the provision of an Alternative Compliance Payment (ACP).

New Jersey’s RPS compliance period operates on an Energy Year basis, from June 1 through May 31 of the following calendar year. Consistent with the convention used by PJM, compliance periods are referred to by the year in which the period ends. Suppliers are given three months following the end of a compliance period in which to “true up” their purchases of RECs with their retail sales obligation. By September 1st following the close of each Energy Year, each supplier must file a report that demonstrates how the supplier met the requirements of the RPS.

The Board voted, at its August 22, 2007 Agenda Meeting, to affirm its existing requirements and procedures for the procurement and reporting of Renewable Energy Certificates by load-serving entities. At that meeting, the Board also ordered all load-serving entities and third party

suppliers to file their Renewable Portfolio Standard (RPS) reports for Energy Year 2007, including reporting of any Alternate Compliance Payments that may be necessary to meet the RPS requirements, and deferred any ACP payments until December 1, 2007. Finally, the Board directed Board staff (Staff) to work with load-serving entities, third party suppliers, and PJM GATS to investigate and evaluate potential causes of any REC shortfall, as well as to identify possible solutions. Among the possible solutions identified by the Board were payment of the ACP when the extended time period ended; initiation of an RPS rulemaking proceeding; and continued deferral of 2007 ACP payments.

In accordance with the Board's directive, Office of Clean Energy (OCE) staff gathered information from various sources and held a stakeholder meeting to obtain input from interested parties regarding the reasons for the reports of a class I REC shortfall, and possible solutions. The staff has identified several possible reasons for a shortage of class I RECs for use in complying with the 2007 RPS requirements. Among them are:

1. The increase in the percentage of renewable energy required under the Board's RPS rules, which grew from 0.983% of each entity's electricity portfolio for the 2006 requirements to 2.037% for the 2007 requirements;
2. The establishment of new RPS requirements in several other states, many of which accept New Jersey RECs for compliance ;
3. The option provided by other states to "bank" RECs for two and sometimes three years. New Jersey does not allow this, but requires that a REC be used within the Energy Year in which it is created;
4. The choice of several small or behind-the-meter facilities not to have their generation metered for purposes of the PJM Financial Settlement Market when the New Jersey RPS program transitioned from reliance on contractual documentation of compliance to reliance on RECs through PJM-EIS GATS and the consequent disallowance of those facilities' energy for providing RPS-compliant RECs;
5. Unresolved disputes and confusion over the ownership of a number of RECs that would otherwise be usable for RPS compliance;
6. Growth in the use of RECs for the voluntary market, created by programs such as New Jersey's Clean Power Choice program and other state programs that provide incentives for voluntary purchase of RECs; and
7. Insufficient growth in new construction of class I renewable energy generation facilities.

While each of the issues above was discussed in detail with the stakeholders, the detailed data necessary to quantify the impact of each of the factors listed above on the available supply of RECs for compliance with the New Jersey RPS requirements is not available. Staff advises that further analysis in conjunction with PJM-EIS GATS will be necessary to provide this data. One factor which was discussed at the stakeholder meeting does require further discussion here: the exclusion of previously eligible class I energy generated at a generating unit that is not connected to the New Jersey distribution system (non-Jersey-connected class I energy) from use in providing class I RECs. One of the stakeholder concerns raised involved the manner in which the Board treats this energy.¹ Looking to the provisions of N.J.A.C. 14:8-2.7 (b) (energy delivered into the PJM region must comply with the energy delivery rules established by PJM Interconnection) and N.J.A.C. 14:8-2.9 (b) (meter readings shall be verified by the Board or its designee), the Board does not presently accept a class I REC for compliance with the RPS if the REC is based on non-Jersey-connected class I energy unless that energy has "settled" in

¹ This concern was first raised in petitions to the Board by an energy supplier, Energy America, LLC, and a REC trader, Old Mill Power Company. Old Mill Power Company was misidentified as a REC broker in the Board's August 23, 2007 order.

the PJM wholesale financial market. In the context of this market, energy has “settled” if it has been sold in this market and thus paid for through the PJM Market Settlement process.

The Office of Clean Energy (OCE) Staff has taken the position, based on the provisions cited above and its August 31, 2005 Order authorizing use of PJM-GATS for issuance of class I RECs, that non-Jersey-connected facilities must settle in the PJM market to produce RPS-compliant RECs. I/M/O Authorization to Use Class I and Class II Renewable Energy Certificates issued by PJM-EIS for Compliance with New Jersey’s RPS Standards, Non-Docketed Matter (August 31, 2005).

OCE Staff has taken this position because it is important to ensure that accurate data stands behind the RECs purchased for compliance purposes. The verification requirements already established for class I facilities within New Jersey provide for the accuracy of the information submitted by those facilities and thus their verification, as provided for by rule. N.J.A.C. 14:8-2.9(b). It is not possible to provide this level of inspection and verification to Class I or Class II facilities outside of New Jersey because of the high cost involved. Settlement in the PJM financial market, however, 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, OCE does not have the tools to verify that out-of-state generation actually occurred in the amounts reported. As a result, some non-Jersey class I energy generating units that produced energy eligible for New Jersey RPS compliance prior to the August 31, 2005 Order were not eligible for RPS-compliance after that Order because their energy does not settle in the PJM wholesale market and therefore could not produce verifiable RECs.

Staff’s requirement that non-Jersey-connected facilities comply with PJM Financial Settlement system requirements to be eligible to produce Class I RECs has the effect of disallowing for RPS compliance purposes some non-Jersey-connected Class I energy. Some small generators, such as landfills, sell their output directly to the local utility and get paid by the utility outside of the PJM Settlement process. If these facilities choose to engage in these “behind-the-meter” transactions rather than settling in the PJM financial market, PJM does not see the generation and it appears to PJM that the utility load is less than it would have been otherwise. Since this segment of non-New Jersey class I energy will never go through a formal PJM transaction, it does not meet the requirement that the energy settle in the PJM financial market. The Board notes that these facilities do have the opportunity to install an e-meter and/or have their transactions settle with PJM.

Several stakeholders suggested that the Board increase available class I RECs by allowing the energy generated by these non-Jersey class I facilities to form the basis for a REC that could be used for RPS compliance, even if the energy did not settle in the PJM market. Based on staff’s investigation and stakeholder input, Staff recommends that for Energy Year 2007, the Board authorizes the use of Class I RECs based on such facilities for compliance with the RPS for Energy Year 2007, provided the generator signs a form of sworn affidavit, to be developed by Staff, of the accuracy of the RECs, the generation data underlying them, and a commitment to implement e-metering at the facility in question. Staff, however, remains concerned over a lack of certainty that the RECs in question would be based upon megawatt hours generated by an eligible facility. For RPS compliance in future years, staff recommends developing amendments to the RPS that would set REC-issuance requirements for measurement and reporting of energy

from a generation unit that is located within PJM but not connected to the New Jersey distribution system. Staff proposes a rule-making schedule under which these rules would become effective in calendar year 2009.

Any decision affecting the use of RECs based on non-Jersey class I energy for compliance with the RPS has implications for the use of these RECs in the voluntary market. Under the Clean Power Choice (CPC) program, a customer may enroll with a Clean Power Marketer, who will purchase renewable energy certificates (RECs) on the customer's behalf. The Board order establishing the CPC program stated that RECs used for that program must meet all requirements in the RPS rules for RECs used to comply with the RPS program. I/M/O Voluntary Green Power Choice Program, Dkt. No. EO05010001 (April 13, 2005).² Staff recommends that this policy be continued for the present. Staff has recommended that the Board continue the policy of applying the same requirements to RECs used in the CPC program as apply to RECs used for RPS compliance.

In consideration of the concerns raised by the parties, as well as the ongoing efforts of Staff to take into consideration these concerns as it continues to work toward a self-sustaining market in Renewable Energy Certificates, and upon reviewing the record developed in this matter, the Board FINDS that permitting the use of non-Jersey-connected Class I energy to create RECs for purposes of RPS compliance in Energy Year 2007 and Energy Year 2008 will provide a measure of relief to parties who assert that they are having difficulty obtaining sufficient RECs to meet their 2007 RPS obligations. The Board FINDS that a sworn affidavit by an appropriate official, with personal knowledge, at a non-Jersey-connected generator will furnish sufficient verification, for this limited purpose, of the RECs submitted. The Board also FINDS that permitting such use will aid non-Jersey-connected Class I energy generators whose energy does not settle in the PJM market and whose facilities were deemed eligible to produce energy for NJ RPS compliance prior to the issuance of the Board's 2005 GATS order enabling the use of RECs. The Board FINDS that the permitted use and attendant requirements for Energy Year 2007 should also apply to Energy Year 2008 given that more than half the 2008 Energy Year has passed.

The Board DIRECTS Staff to develop a form of sworn affidavit to be signed by the appropriate official, with personal knowledge, at a non-Jersey-connected generator seeking to provide RPS-eligible RECs. The Board further DIRECTS Staff to initiate a stakeholder input and rulemaking process that will result in improved verification, measurement, and reporting of class I energy generation that is not metered into the PJM Settlement market. The Board ORDERS that these metering standards be required for all class I generating units that are not connected to the New Jersey distribution system, whether the unit is located in New Jersey or outside of New Jersey but within the PJM system. The Board further DIRECTS Staff to work with PJM - EIS GATS and the stakeholder to develop the detailed data that may be necessary to further analyze the markets.

In order to allow time for registration of the non-Jersey class I facilities in GATS and verification of their data by Staff, the Board, at its November 28, 2007 Agenda Meeting extended the date by which RECs must be submitted or ACP payments made to January 31, 2008. At its January 16, 2008 Agenda Meeting, the Board voted to further extend the date to February 29, 2008. Accordingly, the Board HEREBY EXTENDS the date by which RECs must be submitted or ACP payments made to February 29, 2008.

The program's name was subsequently changed to Clean Power Choice.

The Board further FINDS that continuing to require that RECs used in the CPC program meet all requirements of RECs used for compliance with the RPS maintains the clarity and predictability of REC requirements for the CPC program. The Board ORDERS that these requirements continue to be applied to the CPC program until further notice.

The effective date of this Order is as set forth below.

DATED: 1/31/08

BOARD OF PUBLIC UTILITIES
BY:

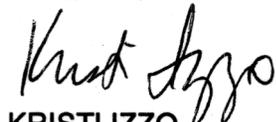

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

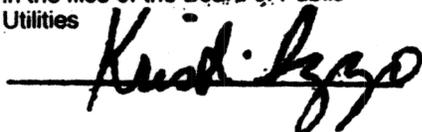

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE RENEWABLE
PORTFOLIO STANDARDS—REQUEST FOR
BOARD ACTION REGARDING
RENEWABLE ENERGY CERTIFICATES
Docket No. EO07110886

SERVICE LIST

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I/M/O REQUEST BY _____)
_____))
FOR RENEWABLE ENERGY CREDITS,)
CLASS I RENEWABLE ENERGY)
OUT-OF-STATE FACILITIES)

AFFIDAVIT IN SUPPORT
OF REQUEST FOR
RENEWABLE ENERGY CREDITS

STATE OF _____)
COUNTY OF _____)

SS.

I, _____ (print name), being first duly sworn, depose and say:

1. I hold the position of _____ (position held) at the generation facility referenced below.

Name of Facility: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Telephone Number: _____
E-Mail Address: _____

2. I am authorized by _____ to make and submit this affidavit in support of the request for Renewable Energy Credits.

3. An alternative, authorized contact person at that facility is _____

Telephone Number: _____
E-Mail Address: _____

4. The information within this affidavit relates to the Energy Year:
From _____ to _____

5. I have personally examined and I am familiar with the information submitted in this affidavit and all attached documents.

6. The New Jersey Class I Renewable Energy Credits ("RECs") described below meet the mandates covering New Jersey Class I RECs in the New Jersey Board of Public Utilities Renewable Portfolio Standards, N.J.A.C. 14:8-2 et seq. ("RPS").

7. RECs, from the above described facility, offered for NJ RPS compliance were created based upon megawatt-hours ("MWh") produced from a NJ Class I eligible facility and will be tracked toward retirement via the PJM Generator Attribute Tracking System ("PJM-EIS GATS") at www.pjm-eis.com.

8. These RECs have never been sold for any other purpose or use.
9. The energy underlying the RECs was generated within or delivered into the "PJM region," as that term is defined in N.J.A.C. 14:4-1.2, and it complies with energy delivery rules established by PJM Interconnection.
10. _____ MWh were generated during the Energy Year referenced above and _____ RECs will be requested to be created with PJM—EIS GATS.
11. The energy output of the facility was measured and verified by _____
(Insert Name of Entity).
12. Attachment A of this affidavit is a true and correct copy of the billing statements produced as part of the transaction reflecting the MWh generated by the Facility during the eligible Energy Year.
13. By no later than the commencement of Energy Year 2009, this facility shall install an e-metering system compatible with the requirements and protocols established by PJM-EIS GATS for the metering of generation, creation, and verification of NJ Class I eligible RECs.

The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Name Date: _____

Sworn and subscribed to before me on this _____ day of _____, 20____
in accord with N.J.S.A. 41:2-17.

Name Dated: _____