



Agenda Date: 05/14/09

Agenda Item: 8B

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

CLEAN ENERGY

IN THE MATTER OF THE RENEWABLE)
PORTFOLIO STANDARDS—REQUEST FOR)
BOARD ACTION REGARDING)
RENEWABLE ENERGY CERTIFICATES -)
EXTENSION OF TIME PERIOD FOR)
SATISFYING RPS REQUIREMENTS)
THROUGH SUBMITTING AFFIDAVIT) Docket No. 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). RECs may be based upon Class I, Class II, or Solar renewable energy, as those classes of energy are defined in the RPS.

The Affidavit System

At its January 16, 2008 Agenda Meeting, the Board of Public Utilities (Board) authorized the use of Class I Renewable Energy Certificates (RECs) based on energy generated by “previously eligible” Class I energy generated at generating units located within the PJM region but not connected to the New Jersey distribution system (non-Jersey-connected Class I energy) for compliance with the RPS for Reporting Years 2007 and 2008.¹ The Board made this

¹ In August 2005, the Board authorized the use of PJM-EIS GATS for issuance of Class I 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). 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.

authorization available to generators who did not settle in the PJM market but made it contingent upon the generator providing a signed affidavit attesting to the accuracy of RECs, the generation data underlying them, and a commitment to implement e-metering by the start of Reporting Year 2009 ²(“the affidavit system”). I/M/O Renewable Portfolio Standards – Request for Board Action Regarding Renewable Energy Certificates, Docket No. EO07110886 (January 31, 2008) (January 31 Order). The Board provided this authorization for the limited circumstances outlined in the January 31 Order and the Reporting Years 2007 and 2008 noted only; the factual and analytical basis for that action is set out in full therein.

Other than RECs submitted pursuant to the affidavit process described above, a Class I REC is not eligible for use for compliance with the New Jersey RPS if the REC is based on energy generated at a facility that is not connected to a New Jersey electric distribution system, unless that energy has “settled” in the wholesale financial market administered by PJM. To settle in that market means that the energy has been sold in the PJM wholesale market and paid for through the PJM market settlement process. As noted in the January 31 Order, the requirements for settling in that market provide sufficient assurances of accuracy to act as verification upon which the Board can rely for purposes of RPS compliance.

The Board further directed Staff to initiate a stakeholder and rulemaking process that would set requirements for improved measurement and verification of non-Jersey-connected Class I energy for REC-issuance purposes. Staff has proposed amendments which make the verification requirement in N.J.A.C. 14:8-2.9 more specific, so that it incorporates the settlement requirement. Comments have been received upon the proposed amendments and Staff anticipates bringing them to the Board for consideration at a future agenda.

The text of the proposed amendments is set out here (additions indicated by underline, deletions by brackets):

(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 defined in 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 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.

The rule proposal was published in the New Jersey Register on December 1, 2008. Members of the public had 60 days to submit comments on the proposed requirement for settlement in the PJM market. Staff is responding to these comments and the Board will be considering the comments and Staff’s response at a future Agenda.

² “Reporting Year” means the 12-month period from June 1st through May 31st. A reporting year shall be numbered accordingly to the calendar year in which it ends, so that reporting year 2005 runs from June 1, 2004 through May 31, 2005. N.J.A.C. 14:8-2.2.

While the rulemaking process has been pursued, Reporting Year 2008 has ended. Reporting Year 2009 will end in a few weeks. Concerns have arisen regarding the eligibility of the energy generated by the non-Jersey-connected Class I facilities which used the affidavit system for compliance with the RPS in Reporting Years 2007 and 2008. Based on concerns raised and the adoption of the rule amendment at the close of Reporting Year 2009, Staff recommends that for Reporting Year 2009, the Board authorize the use of Class I RECs based on energy from such facilities for compliance with the RPS for Reporting Year 2009, provided the generator signs the affidavit developed by Staff in connection with the January 31 Order, attesting to the accuracy of the RECs and the generation data underlying them.

E-metering

The affidavits previously signed by responsible individuals at non-Jersey-connected Class I facilities attest to their commitment to install an e-meter if they chose to continue not to settle their transactions with PJM. However, the communications pursued by Staff, PJM-EIS, and the stakeholders have not resulted in the development of e-metering standards to date. Therefore, Staff will recommend that the Board approve for filing in the New Jersey Register a rule proposal for an amendment to the RPS that would provide for the use of an e-meter as an alternative to settlement in the PJM wholesale market. Staff intends to suggest a rule-making schedule under which these rules would become effective in calendar year 2009.

The rulemaking process will transpire in whole or in part in Reporting Year 2010. The non-Jersey-connected Class I generators who signed affidavits for Reporting Years 2007 and/or 2008 may be expected to continue to generate energy during that period. Therefore, Staff recommends that these generators be permitted to continue using the affidavit system to verify their energy generation for REC issuance purposes for Reporting Years 2009 and 2010. Extending the affidavit system until the close of Reporting Year 2010 provides a date certain for its end and enables Staff, PJM-EIS, and the affected generators to plan accordingly. In addition, linking the end of the affidavit system to the end of the reporting year facilitates the ability to verify, for RPS compliance purposes, the RECs reported. Staff also recommends that, as of the end of Reporting Year 2010, the Board direct Staff to notify PJM-EIS that Staff will no longer accept energy from these facilities for REC-issuance purposes unless a facility settles its energy sale in the PJM wholesale market or e-meters its generation in accordance with any e-metering rules which have become operative. Staff recommends that at that time, for any facility which does not settle or e-meter in accordance with the rules, the Board direct Staff to end the certification to PJM-EIS that the facility is in compliance with the Board's rules.³

As was noted in the January 31 Order, any decision affecting the use of RECs based on non-Jersey-connected Class I energy for compliance with the RPS has implications for the use of these RECs in the voluntary market, including the Board's Clean Power Choice (CPC) program. The amendments to the RPS adopted May 14, 2009, and any subsequent amendment adopted relative to e-metering, will be binding upon participants in the CPC program. I/M/O Voluntary Green Power Choice Program, Dkt. No. EO05010001 (April 13, 2005).⁴ Staff recommends that the Board continue to apply the same requirements to RECs used in the CPC program as apply to RECs used for RPS compliance.

³ Certification by Staff is required as part of the process of generating RECs eligible for RPS compliance.

⁴ The program's name was subsequently changed to Clean Power Choice.

The Board FINDS that the proposed amendments to N.J.A.C. 14:8-2.7 and 14:8-2.9 concerning the use of renewable energy from non-Jersey connected generators for REC issuance purposes are the subject of the rulemaking process established by statute and by the rules of the Office of Administrative Law. N.J.S.A. 52:14B-1 et seq.; N.J.A.C. 1:30-1. The Board FINDS that this process has provided ample opportunity for comment by the public, including all affected parties. The Board FINDS that the rulemaking process afforded all affected parties notice that the RPS will be amended to make settling in the PJM financial markets a requirement for REC eligibility for all non-Jersey-connected Class I facilities. In addition, the Board FINDS that the January 31, 2008 Order, by its terms, limited the use of an affidavit to verify generation data from these facilities to Reporting Years 2007 and 2008. Thus, the Board FINDS that the January 31, 2008 Order placed parties on notice that the ability to satisfy the requirements of N.J.A.C. 14:8-2.9 by signing an affidavit would end on June 1, 2008.

The Board also FINDS that, although an e-metering rule amendment will be proposed in Reporting Year 2010, non-Jersey-connected Class I generators will require a means of verifying their generation until the operative date of this rule amendment, should it be adopted. The Board FINDS that adoption of these rules would not occur until after the start of Reporting Year 2010 on June 1, 2009. The Board FINDS that extending the affidavit system until the close of Reporting Year 2010 provides a date certain for its end and facilitates the ability to verify, for RPS compliance purposes, the RECs reported. The Board FINDS that the affected generators should be permitted to sign affidavits in verification of their generation until Reporting Year 2010 concludes, on May 31, 2010. The Board FINDS that beginning on June 1, 2010, no energy generated at a non-Jersey-connected Class I facility will be eligible to form the basis of a REC if the facility does not settle in the PJM wholesale market or, if the proposed rules are adopted, e-meter its generation in accordance with such rules. The Board FINDS that facilities which do not settle or e-meter in accordance with the Board's rules as of June 1, 2010 will no longer be eligible for certification by Staff to PJM.

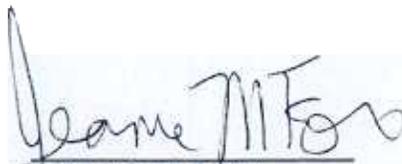
The Board ORDERS that all non-Jersey-connected Class I facilities which do not settle in the PJM wholesale market or e-meter in accordance with any rules adopted shall be out of compliance with Board rules as of June 1, 2010. The Board hereby EXTENDS through May 31, 2010 the affidavit system allowing for the use of non-Jersey-connected Class I energy for REC issuance purposes. The Board DIRECTS Staff to so notify PJM-EIS and to end on June 1, 2010 the certification of any non-Jersey-connected Class I facility which does not settle in the PJM wholesale market or e-meter in accordance with the Board's rules. The Board hereby APPROVES the attached form of affidavit for use with non-Jersey-connected Class I energy generators for RY2009 and 2010.

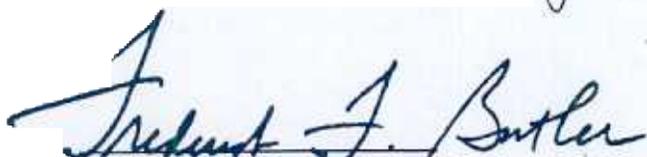
The Board further FINDS that continuing to require that RECs used in the CPC program meet all requirements of RECs used for compliance with the RPS maintains the clarity and predictability of REC requirements for the CPC program. The Board ORDERS that these requirements continue to be applied to the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

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

DATED: 5/15/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

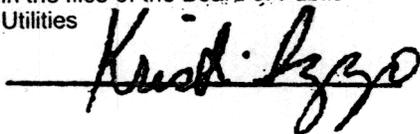

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
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



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:

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 reporting 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-Environmental System 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 reporting 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 reporting year.
13. This facility shall comply with any e-metering rules adopted by the Board on the operative date of such rules.

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 this _____ day of _____, 20____
in accord with N.J.S.A. 41:2-17.

Name Dated: