



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR A FORMAL) ORDER
HEARING REGARDING THE ENERGY YEAR 2016)
RETAIL SALES FOR NJ RPS COMPLIANCE – PUBLIC)
POWER & UTILITY OF NEW JERSEY, LLC; TRIEAGLE)
ENERGY, LP; AND VIRIDIAN ENERGY- MOTION FOR)
RECONSIDERATION) DOCKET NO. QO17030252

Parties of Record:

Murray Bevan, Esq., Bevan, Mosca, & Giuditta for Crius Energy, Public Power & Utility of New Jersey, LLC, TriEagle Energy, LP, and Viridian Energy
Stephanie A. Brand, Director, New Jersey Division of Rate counsel

BY THE BOARD:

BACKGROUND

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to -109 (“EDECA”) was signed into law. EDECA requires compliance with New Jersey’s Renewable Portfolio Standards (“RPS”) by electric power suppliers, commonly referred to as third party suppliers (“TPS” or “suppliers”), and basic generation service (“BGS”) providers (“BGS providers”), taken together referred to as “TPS/BGS Providers.” N.J.S.A. 48:3-87(d). Specific reporting requirements are set out at N.J.A.C. 14:8-2.11. The compliance true-up period commences immediately after the end of the energy year (May 31), and ends on October 1.¹ N.J.A.C. 14:8-2.2. Each TPS/BGS Provider with retail sales in New Jersey during the energy year (“EY”) must submit an annual compliance report (“Annual Report”) to the Board by October 1 of each calendar year, demonstrating that it has complied with the RPS for Class I, Class II, and solar renewable energy. The Annual Reports for Energy Year 2016 (“EY16”) were therefore due, under the Rules, on October 1, 2016.

The Annual Reports must demonstrate how compliance with the RPS was achieved by including the total number of megawatt-hours (“MWh”) of electricity sold to retail customers and the amount of Solar Renewable Energy Certificates (“SREC”) and Renewable Energy Certificates (“REC”) retired (collectively, “S/REC”). In the event that TPS/BGS Providers were

¹ An Energy Year is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

unable to procure sufficient S/RECs, the Board in implementing the statute provided a second method of satisfying the compliance requirements, Alternative Compliance Payments ("ACP") and Solar Alternative Compliance Payments ("SACP") (collectively, "S/ACP").

The Board has authorized the use of PJM-Environmental Information Services Generator Attribute Tracking System ("PJM-EIS GATS" or "GATS") to facilitate the creation, retirement, and tracking of RECs and SRECs for NJ RPS compliance purposes. BGS Providers comply with the regulatory requirements with the assistance of the respective electric distribution companies ("EDCs") for which they serve load. They provide each EDC they serve with compliance documentation specific to the load served in that EDC's service territory. Each EDC then aggregates, compiles, and summarizes the reports provided by the BGS providers and submits this information to the Office of Clean Energy ("OCE") as the Annual Report. TPSs submit their own Annual Reports.

On January 18, 2010, the Solar Energy Advancement and Fair Competition Act, P.L. 2009, c. 289 ("SEAFCA") was signed into law. SEAFCA amended several provisions of EDECA, among them the manner in which suppliers/providers were to comply with the solar portion of the RPS. Beginning in Energy Year 2011 ("EY11"), SEAFCA set out a specific requirement for solar energy generation. This requirement was expressed as an absolute number of gigawatt-hours instead of as a percentage of kilowatt hours sold, and included a directive for dividing this requirement among the State's TPS/BGS Providers.

On July 23, 2012, the Solar Act of 2012, P.L. 2012, c. 24 ("Solar Act"), made many new changes to the legal and regulatory framework for solar development. Among these changes was an increase in the solar portion of the RPS and a return to the calculation of the RPS requirements to a percentage of kilowatt hours sold. N.J.S.A. 48:3-87(d)(3). Both changes took effect in EY14. At the same time, the law exempted certain BGS Providers load from the new, higher RPS requirement if that load had been procured via a BGS contract that was executed prior to enactment of the Solar Act.²

Since SEAFCA took effect in 2011 and made the first change to the calculation of compliance obligation, Staff has provided guidance to TPS/BGS Providers on how to comply with the solar RPS obligation. Staff did so again for compliance with the obligation for EY15. On September 3, 2015, approximately three months after the close of EY15, Staff issued a document titled Solar Compliance Instructions & Preliminary Retail Sales Figures ("Compliance Instructions") and posted it on the New Jersey Clean Energy Program's website (www.njcleanenergy.com). This document included instructions on how to comply with the solar obligation under the Solar Act. Nonetheless, after reviewing the EY15 RPS Compliance Reports, Staff found that the total retail sales reported by certain TPS were less than the load served data listed in the GATS "My RPS Compliance Report."³ Staff worked with the affected TPSs to resolve the reporting discrepancies, which caused a delay in issuing the EY15 RPS compliance results.

² The Solar Act also directs the Board to determine an appropriate period of no less than 120 days following the end of the energy year for a provider or supplier to demonstrate compliance for that energy year with the annual RPS requirements. The Board has adopted amendments to the current rules to implement this directive for future Energy Years.

³ The main difference between the retail sales data in GATS and the data supplied by the TPS in their final compliance reports is due to the impact of distribution losses. The GATS sales figures do not include distribution losses because GATS has no way of knowing this information.

Since the retail sales reconciliation deadline for EY16 ended on September 30, 2016, the Board recognized that it would be unreasonable to expect that the RPS compliance reports could be submitted by the October 1, 2016 due date stated in the Rules. Therefore, by Order dated August 24, 2016 ("August 24 Order"), the Board extended the compliance deadline and the reporting deadline for EY16 by thirty days, to November 1, 2016.⁴ In light of the discrepancies found between the GATS numbers and the sales numbers of the TPSs in EY15, the August 24 Order required that, beginning in EY16, the compliance process include a period of time for TPS/BGS providers to review their PJM-EIS GATS "My RPS Compliance Report," compare it to their EY16 retail sales amount, and work with Staff to reconcile any discrepancies. In addition, the Board directed the TPS/BGS Providers to work with Staff to make the reporting process faster and more efficient with the aim of avoiding requests for extension in future energy years.⁵

As noted above, the true-up period begins upon the close of the Energy Year on May 31st. PJM-EIS GATS receives PJM Market Settlement unreconciled load data in early June. In early August, PJM-EIS GATS provides Staff with a PJM Market Settlement reconciled load data for the previous Energy Year for the TPS/BGS Providers.

TPS/BGS Providers are then given approximately two weeks to review their GATS "My RPS Compliance Report" load data and submit retail sales adjustment requests. They must also submit an explanation why they are requesting this adjustment and any supporting documentation. If no retail sales adjustment request is received by the deadline, the GATS load number will be considered their final retail sales number. Staff then reports final total retail sales based on GATS load numbers and approved retail sales adjustment requests. These final retail sales numbers must be used by the TPS/BGS Providers to complete their RPS compliance reports.

For EY16, on August 25, 2016, Staff sent the August 24 Order to PJM-EIS GATS and the next day PJM-EIS GATS sent the August 24 Order to its "supplier's data base"⁶ via email. AEG (the NJCEP Program Administrator at the time) also posted the Order on the New Jersey Clean Energy Program website (NJCleanenergy.com). On August 31, 2016, in accordance with the Board's directives, Staff sent the "NJ RPS EY16 Retail Sales Reconciliation Procedure" memo ("Reconciliation Memo") to all providers/suppliers in the PJM-EIS supplier data base via email and AEG posted the Reconciliation Memo on the NJCleanenergy.com website. The EY16 NJ RPS Compliance documents were also part of the email and posting. The Reconciliation Memo and the other compliance documents described the process to be followed to produce the Annual Reports, including the deadline of September 30, 2016, for the TPS/BGS Providers to review the GATS retail load served data and work with Staff, if necessary, to reconcile those numbers with their retail sales reports. In addition, Staff discussed the Reconciliation Memo at the September 20, 2016 Renewable Energy stakeholder meeting and resent the Reconciliation Memo on September 26, 2016.⁷

⁴ The Board also extended these dates for Class I and Class II RPS requirements in the interest of administrative efficiency.

⁵ I/M/O the New Jersey Renewable Portfolio Standard - (NJ RPS) Request for Board Action Extending NJ RPS Compliance Deadline for Energy Year 2016, BPU Dkt. No. QO16080701 (August 24, 2016).

⁶ The PJM-EIS GATS "supplier's database" includes the TPS/BGS Providers as well as the EDCs.

⁷ During the pendency of this proceeding, the signed into law P.L. 2018, c. 17, which makes additional changes to the RPS, but that legislation does not affect this matter as the relevant actions took place prior to its enactment.

FACTUAL AND PROCEDURAL HISTORY

On October 31, 2016, Crius Energy (“Crius”) submitted NJ RPS compliance reports for its three subsidiary companies Public Power & Utility of New Jersey, LLC (“Public Power”), TriEagle Energy, LP (“TriEagle”), and Viridian Energy (“Viridian”) (collectively, the “Companies” and collectively with Crius, “Petitioners”). However, the compliance obligation numbers submitted by Crius did not match the numbers contained in GATS and no justification for the difference was supplied to Staff, despite the explanations of the process that had been provided, as detailed above. On November 4, 2016, following an email from Staff, the Companies submitted revised reports using the numbers recorded in GATS, but did not retire the additional S/RECs nor pay the S/ACPs required as a result of the higher retail sales amounts. Staff advised a representative of parent company Crius that, since the Companies had not met the Board-ordered deadline of September 30, 2016 to reconcile their retail sales numbers with those of GATS, the Companies must satisfy their RPS obligation by paying the S/ACP or retiring additional S/RECs based on the higher numbers appearing in GATS and now reported by the Companies. On the same day, November 4, 2016, a representative from Crius requested and received the procedures for filing a petition, but he did not respond to a November 22, 2016 follow-up email from Staff requesting that the Companies complete their EY16 RPS Compliance Reports.

On February 2, 2017, having received neither a petition nor a response to its November 22, 2016 email, Staff sent a letter (“Letter”) to the Crius representative, copying the Companies, reiterating that the Companies must use the GATS numbers to calculate their compliance requirements and also stating that these requirements must be satisfied by paying the S/ACPs. Specifically, the Letter identified the compliance figures for Public Power, Tri-Eagle, and Viridian as \$48,970, \$803,794, and \$620,593, respectively:

TPS	Rejected Load	GATS Load	SREC Short Fall	Class I REC Short Fall	Class II REC Short Fall	SACP \$ (\$323 per)	ACP \$ (\$50 per)	Total
Public Power	34,757	38,037	90	316	82	\$29,070	\$19,900	\$48,970
Tri-Eagle	509,181	562,916	1,478	5,185	1,343	\$477,394	\$326,400	\$803,794
Viridian	452,381	493,870	1,141	4,004	1,037	\$368,543	\$252,050	\$620,593
Total	996,319	1,094,823	2,709	9,505	2,462	\$875,007	\$598,350	\$1,473,357

The Letter directed the Companies to make the S/ACP payments within 5 business days of receipt of the Letter. In addition, the Letter expressly noted that should the Companies fail to pay the required S/ACP, Staff would recommend enforcement actions to the Board for failure to fully comply with these RPS compliance reporting rules, in accordance with N.J.A.C. 14:8-1.3.

The Companies did not submit the S/ACPs. Instead, on February 24, 2017, the Petitioners filed a petition (“Petition”) requesting the Board to accept their lower, unreconciled retail sales calculations for the Companies as the basis for calculating their EY16 RPS compliance. Letter

at 2.⁸ By Order dated April 21, 2017, the Board denied the Petition and directed Petitioners to satisfy its full RPS obligation as recorded in GATS and to satisfy it by paying the S/ACP rather than by retiring S/RECs.⁹

On May 4, 2017, Petitioners filed for reconsideration of the April 21 Order, seeking reconsideration only of the Board's directive that Petitioners satisfy their RPS obligation exclusively through payment of the S/ACP rather than providing them the option of retiring S/RECs. Though no longer disputing their obligation to satisfy the RPS as reflected in GATS, Petitioners allege that they should be allowed to satisfy this obligation through retiring S/RECs rather than by paying S/ACPs. According to Petitioners, the difference between the statutory S/ACP for EY16 and the spot market price at which SRECs were selling on the day the compliance period closed is approximately \$108, which when multiplied by the number of MWh still outstanding produces a cost differential in the area of \$292,760. (Motion at 11-12.¹⁰)

Subsequently, Petitioners and the Division of Law on behalf of Staff (collectively, "Parties") entered into negotiations, and on September 21, 2018, entered into the attached settlement agreement ("Settlement"). In relevant part, the Settlement provides that:

1. The Parties agree that Public Power, TriEagle, and Viridian's failure to comply with the Board's RPS obligations for EY16 was a serious error, and Public Power, TriEagle, and Viridian further agree to comply with all future RPS reporting deadlines and requirements as set out by the Board in its regulations and Orders. Failure to comply with future RPS reporting deadlines will result in stronger action by the Board against Public Power, TriEagle, and Viridian.
2. The Parties agree that timely filing of their RPS reports is important to the continued function and maturation of New Jersey's renewable energy markets and a failure to timely file RPS reports interferes with the development of those markets.
3. The Parties agree that Public Power, TriEagle, and Viridian will retire the appropriate number of S/RECs and that Public Power, TriEagle, and Viridian will provide Board Staff with proof of retirement.
4. The Parties request that the Board approve the proposal for Public Power, TriEagle, and Viridian to retire outstanding S/RECs within 10 days of the effective date of this Board Order in order to fulfil their compliance obligations for EY16, as follows:
 - a. Public Power will retire 90 SRECs, 316 Class I RECs, and 82 Class II RECs
 - b. Tri-Eagle will retire 1,478 SRECs, 5,185 Class I RECs, and 1,343 Class II RECs.
 - c. Viridian will retire 1,141 SRECs, 4,004 Class I RECs, and 1,037 Class II RECs.
5. The Parties agree that the Companies shall file an amended report, reflecting the satisfaction of the EY16 RPS, with supporting documents.
6. The Parties agree that a monetary penalty of \$25,000 against Public Power, \$25,000 against TriEagle, and \$25,000 against Viridian is appropriate under the circumstances, and will be made within 10 days of the effective date of the Board Order adopting the terms of this Settlement.
7. The Parties request that the Board approve the monetary penalty of \$25,000 against Public Power, \$25,000 against TriEagle, and \$25,000 against Viridian.

⁸ The Petition acknowledges receipt of the Letter.

⁹ I/M/O Petition for a Formal Hearing Regarding the Energy Year 2016 Retail Sales for NJ RPS Compliance – Public Power & Utility of New Jersey, LLC; TriEagle Energy, LP; and Viridian, Dkt. No. QO17030252 (April 21, 2017) ("April 21 Order") at 6.

¹⁰ Petitioners cite to the SACP schedule found in N.J.A.C. 14:8-2.10 and to <http://markets.flettexchange.com/new-jersey-srec/> (last accessed by Petitioners on May 2, 2017).

8. The Parties request that the Board accept this settlement as a resolution of the April 21 Order to the extent that it requires SACP and ACP payments.
9. The Parties request that the Board consider the May 4, 2017 Motion for Reconsideration withdrawn upon the adoption of this Settlement in its entirety.

DISCUSSION AND FINDING

The Board is mindful of the State's public policy favoring reasonable and appropriate settlements. See Herrera v. Twp. of S. Orange Vill., 270 N.J. Super. 417, 424 (App. Div. 1993). As recently summarized by the New Jersey Supreme Court, public policy favors the settlement of disputes because, among other things, settlement spares the parties the risk of an adverse outcome and the time and expense of protracted litigation, and also preserves overstretched judicial resources. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 253-254 (2013).

After review, the Board **FINDS** that the terms of the settlement are fair and reasonable. With the agreed upon terms, the Companies will satisfy their outstanding EY16 RPS obligations and accept a penalty for failure to do so promptly. In addition, and most importantly, the Companies acknowledge the importance of and agree to comply with all future RPS reporting deadlines and requirements.

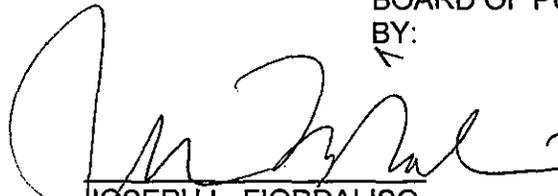
Accordingly, the Board **HEREBY ADOPTS** the Settlement in its entirety, incorporating the terms thereof into this Order as if fully set forth herein, and **HEREBY DIRECTS** the Companies to comply with the terms of the Settlement.

The effective date of this order is November 8, 2018.

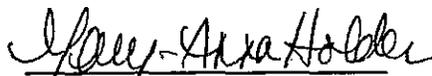
DATED: 10/29/18

BOARD OF PUBLIC UTILITIES

BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



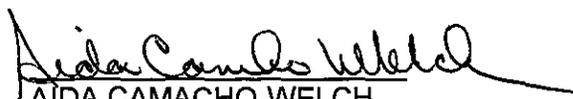
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SECRETARY

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