



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

IN THE MATTER OF THE NEW JERSEY RENEWABLE ) ORDER  
PORTFOLIO STANDARD ("NJ RPS") – REQUEST FOR )  
BOARD ACTION EXTENDING NJ RPS COMPLIANCE )  
DEADLINE FOR ENERGY YEAR 2017 ("EY17") ) DOCKET QO16080781

**Parties of Record:**

**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**  
**Margaret Comes, Esq., Rockland Electric Company, on behalf of the Electric Distribution Companies**  
**Murray E. Bevan, Esq., Retail Electric Supply Association, on behalf of third party suppliers**

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"), and basic generation service providers ("BGS Providers") (together "TPS/BGS Providers"), by requiring that a certain percentage of kilowatt hours sold be from renewable sources. N.J.S.A. 48:3-87(d). On January 18, 2010, the Solar Energy Advancement and Fair Competition Act, L. 2009, c. 289 ("SEAFCA") was signed into law. SEAFCA amended several provisions of EDECA, among them the manner in which TPS/BGS Providers were to comply with the solar portion of the RPS. Beginning with Energy Year 2011 ("EY11"),<sup>1</sup> SEAFCA set out a specific annual requirement for solar energy generation. This requirement is 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.<sup>2</sup> The Solar Act of 2012, L. 2012, c. 24 ("Solar Act"), returned the calculation to a

<sup>1</sup> An Energy Year or EY 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 (definition of "Energy Year").

<sup>2</sup> These requirements were in force for EY11, EY12, and EY13, but were superseded by the provisions of the Solar Act.

percentage of kilowatt hours sold for EY14 and beyond. The Solar Act also directed the Board to determine an appropriate period of no less than 120 days following the end of the energy year for TPS/BGS Providers to demonstrate compliance for that Energy Year with the annual RPS requirements. N.J.S.A. 48:3-87(d)(3)(a).

The Board adopted rules implementing the RPS requirements at N.J.A.C. 14:8-2.1 et seq. ("Rules"). 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. N.J.A.C. 14:8-2.2. Since March 16, 2009, TPS/BGS Providers with retail sales in New Jersey during the EY must submit an annual compliance report ("Annual Report") to the Board by October 1<sup>3</sup> of each year, demonstrating that they have complied with the RPS for Class I, Class II, and solar renewable energy. N.J.A.C. 14:8-2.11; 41 N.J.R. 1261(a). 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, Solar Renewable Energy Certificates ("SREC") and Renewable Energy Certificates ("REC") (together, "S/RECs") retired, and Solar Alternative Compliance Payments ("SACP") and Alternative Compliance Payments ("ACP") (together, "S/ACP") paid. N.J.A.C. 14:8-2.11.

BGS Providers comply with the regulatory requirements with the assistance of the respective electric distribution companies ("EDCs")<sup>4</sup> 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. TPS submit their own Annual Reports.

The Solar Act, codified at N.J.S.A. 48:3-51 through -87, made many changes to the legal and regulatory framework for solar development. Among these was an increase in the solar portion of the RPS and a change in the way each TPS/BGS Provider was to calculate its obligations under the solar portion of the RPS. Both changes took effect in EY14. Specifically, the Solar Act accelerated the RPS obligation in the near term, beginning in 2014. In addition, the Solar Act defined the RPS obligation as a percentage of total sales rather than as an absolute number of gigawatt-hours ("GWh"). N.J.S.A. 48:3-87(d)(3). At the same time, it exempted certain BGS Provider load from the new, higher RPS requirement, as follows:

(c) The solar renewable portfolio standards requirements in this paragraph shall exempt those existing supply contracts which are effective prior to the date of enactment of [the Solar Act] from any increase beyond the number of SRECs mandated by the solar renewable portfolio standards requirements that were in effect on the date that the BGS Providers executed their existing supply contracts. This limited exemption for BGS Providers' existing supply contracts shall not be construed to lower the Statewide solar sourcing requirements set forth in this paragraph. Such incremental requirements that would have otherwise been imposed on exempt BGS Providers shall be distributed over the

<sup>3</sup> The October 1 deadline is consistent with the 120 day period referenced in N.J.S.A. 48:3-87(d)(3)(a).

<sup>4</sup> The EDCs are Rockland Electric Company ("RECO"), Public Service Electric & Gas Company ("PSE&G"), Atlantic City Electric Company ("ACE") and Jersey Central Power & Light Company ("JCP&L").

BGS Providers not subject to the existing supply contract exemption[.]

[N.J.S.A. 48:87(d)(3)(c).]

Thus, the Solar Act exempted BGS Providers' electricity supply from the new higher solar requirements if the supply was covered by a BGS Provider contract that was executed prior to enactment of the Solar Act. The solar obligation for this exempt electricity was to be determined under the lower RPS obligation in place when the BGS Provider contract was executed. However, the Solar Act requires that the Statewide solar target for each year must still be met. Therefore, during EY15, when some electricity supply was still exempt, the incremental solar obligation that was not met because of the exemption was distributed among the non-exempt electricity supplied by BGS Providers in the energy year.<sup>5</sup>

Since SEAFCA took effect in 2011, Staff has been providing guidance to TPS/BGS Providers on how to comply with the solar RPS obligation. Staff did so again for compliance with the RPS obligation for EY15. On September 3, 2015, Staff issued a document titled Solar Compliance Instructions & Preliminary Retail Sales Figures ("Compliance Instructions") and posted it on the clean energy website. This document included instructions on how to comply with the solar obligation under the Solar Act. Staff found after reviewing the EY15 RPS Compliance Reports that the total retail sales reported by certain TPS were less than the retail sales numbers listed in the PJM-Environmental Information Services ("PJM-EIS") Generation Attributes Tracking System ("GATS") "My RPS Compliance Report." In May 2016, Staff attempted to resolve the reporting discrepancies with the relevant TPS and that caused a delay in issuing the EY15 RPS compliance results.

On July 27, 2016, Staff held a stakeholder meeting with TPS, EDCs, BGS Providers, and PJM-EIS to discuss compliance issues and a process to improve the consistency of reporting. Also, in 2016, the EDCs and the Retail Energy Supply Association ("RESA") requested extensions of the compliance and reporting deadlines for EY16 by 60 days and 30 days, respectively.

At its August 24, 2016 Agenda meeting, the Board considered the EDCs and RESA's requests and the discrepancies found by Staff between the GATS numbers and the sales numbers of the TPS/BGS Providers in EY15.<sup>6</sup> Rejecting the EDCs' request for a 60 day extension to file the Annual Reports, the Board noted that because the solar requirement is a percentage of retail sales calculation for all TPS/BGS Providers, the regulated entities should no longer require an additional 60 days to complete the Annual Reports. The necessary calculation of retail sales and RPS compliance obligations were found to be simpler than the market share allocation process required under SEAFCA and the load exemption process required by the Solar Act. Indeed, in RESA's request for a 30 day extension to file the Annual Reports, RESA said it would not need 60 days (only 30 days) because the process was so much easier. After considering the extension requests, the interest of the market in knowing the number and price S/RECs retired as close to the end of the true-up period as possible, and the need to ensure RPS compliance shortly after the completion of EY16 transactions, the Board approved a 30 day extension for the submission of the Annual Reports establishing RPS compliance from October

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<sup>5</sup> EY15 was the final year in which that exemption applied.

<sup>6</sup> I/M/O the New Jersey Renewable Portfolio Standard – (NJRPS) Request for Board Action Extending NJRPS Compliance Deadline for Energy Year 2016, BPU Dkt No. QO16080781, Order dated August 24, 2016 ("August 2016 Order").

1 to November 1 and thus all Annual Reports were due on November 1, 2016 for EY16. August 2016 Order at p. 5.

The Board also approved a process for TPS/BGS Providers to make adjustments to their retail sales numbers within GATS. When PJM-EIS posts the "My RPS Compliance Report" (typically on September 1 each year), the TPS/BGS Providers were provided the month of September to work with Staff to reconcile the retail sales data, if necessary. The TPS/BGS Providers were able to submit the adjusted final sales figure in their "My RPS Compliance Report" and report their final retail sales amount to OCE along with a written explanation for the difference. If verification documentation is needed to support the number and/or the explanation, the TPS/BGS Providers supply that to Staff as well. The TPS/BGS Providers enter the adjusted retail sales number on the GATS "My RPS Compliance Report" in the column entitled "RPS Load" no later than October 1. As of October 1, the RPS load numbers are considered final and no other adjustments are allowed. All S/REC obligation calculations are based on the final sales numbers in the "My RPS Compliance Report" as of October 1. Ibid.

Furthermore, the Board directed Staff, the TPS, EDCs, and their BGS Providers to work together to develop a more efficient and timely process to transfer, verify, and retire S/RECs by the October 1 date as mandated in the Rules, with the aim of avoiding requests for extensions in future energy years. Ibid.

In EY16, of the 83 TPS reporting results, Staff received 45 retail sales adjustment requests. The new reconciliation procedure proved to be successful, as demonstrated by the following results:

- 39 TPSs (87%) submitted retail sales adjustment requests by the September 30<sup>th</sup> deadline;
- Three TPSs (6.5%) who missed the September 30<sup>th</sup> deadline quickly submitted corrected reports retiring the additional S/RECs and/or paying the required S/ACPs; and
- Three other TPSs (6.5%) who missed the September 30<sup>th</sup> deadline chose to petition the Board and that matter is currently pending.

On June 16, 2017 ("June 2017 Meeting"), Staff again met with RPS stakeholders and PJM-EIS and reviewed the RPS compliance process for EY17.<sup>7</sup> At this meeting, PJM-EIS described the PJM processes for supplying load served data to PJM-EIS including the 60 days reconciliation procedures that occur on a monthly basis. PJM-EIS also reported that they have made improvements to the GATS system (i.e., increased computer server capacity for the REC tracking system); however, PJM-EIS cautioned that if everyone were to wait until the last minute to retire their full REC requirements issues were more likely to arise. Staff reiterated that the due date for the completed report is October 1 in accordance with N.J.A.C. 14:8-2.11. By that

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<sup>7</sup> The notice for the June 2017 Meeting was circulated through the GATS supplier list serve and was posted on the NJCleanenergy.com website (as in the past). After the meeting, representatives from RECO and PSE&G contacted Staff, with the former advising that she was just informed of the meeting. On Monday 6/19/2017, Staff contacted the RECO representative and reviewed the meeting details including the time line and Staff's plans not to recommend an extension. In addition, Staff sent the EDCs, a copy of the two meeting presentations and offered to meet with them. To date, they have not asked for a meeting.

date, the TPS/BGS Providers must have confirmed all S/REC retirements, paid the S/ACP, and submitted the reporting required by the Rules. Staff clarified for all meeting participants that the RPS Rules do not provide a date by which S/RECs must be "procured," only a date by which they must be retired.<sup>8</sup> Staff suggested that TPS/BGS Providers could avoid difficulties by procuring S/RECs throughout the year in amounts proportionate to their retail sales rather than attempting to satisfy the entire annual obligation at the last minute.

At the June 2017 Meeting, Staff presented a time line, developed in conjunction with the staff of PJM-EIS, to assist the EDCs and the TPS/BGS Providers in submitting the reports by the October 1, 2017 deadline. The time line, set out below, encourages an early start to the process:

- June 16, 2017 – EDC, BGS, TPS, PJM-EIS EY17 Compliance Reporting Coordination Meeting.
- June 30, 2017 – PJM unreconciled load figures available to BGS/TPS in GATS.
- July 1, 2017 – BGS Providers can begin transferring S/RECs to EDC GATS Account.
- August 1 to 11, 2017 – EDCs to complete EY17 Retail Sales Spreadsheet and return to OCE.
- August 15, 2017 – OCE to email RPS Reconciliation Procedure Memo to EDC, BGS, TPS and post on the NJ Clean Energy Website.
- August 15 to 29, 2017 – EDC, BGS, TPS complete and submit RPS retail sales adjustment requests to OCE.
- September 1 to 7, 2017 – OCE post final retail sales number based on GATS numbers and RPS adjustment requests. Compliance instructions also to be emailed and posted.
- October 1, 2017 – EY17 RPS Compliance Reports due.

## PETITIONS

On May 9, 2017, the EDCs requested an extension of the deadline for filing their EY17 Annual Reports from October 1, 2017 to November 1, 2017.<sup>9</sup> The EDCs relied primarily on their assertion that ending the true-up period on October 1, 2017, the same day that the Annual Reports are due, deprives the EDCs of the time they need to perform the necessary calculations as well as verify and retire S/RECs. (Petition at p. 2. The EDCs maintain that BGS Providers will not be able to determine their final solar generation obligations for EY17 in the time allowed by the Rules and that they will not be able to verify individual BGS Provider retail electricity

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<sup>8</sup> In past petitions, including the present petition, the EDCs appear to have believed that the Rules also specify a deadline for TPS/BGS Providers to procure S/RECs, which is not the case.

<sup>9</sup> The EDCs reiterated the arguments that they had made previously when they sought an extension for filing their EY15 and EY16 Annual Reports from October 1, 2015 to December 1, 2015 and from October 1, 2016 to December 1, 2016, respectively.

supply numbers for OCE in the short time that will be available. This in turn, they assert, will delay the submission of the Annual Reports to the Board.

In addition, the EDCs state that “[i]t is reasonable to assume” that some BGS Providers and TPSs will continue to secure S/RECs through the end of the true-up period. (Petition at p. 2.) In the past, EDCs report that there have been difficulties in completing S/REC transfers during the development of Annual Reports. (Id. at p. 3.) In addition, the EDCs say that they must sometimes remove or “scrub” significant numbers of reported S/RECs if they find that these S/RECs are not New Jersey certified or are otherwise defective. (Ibid.) The EDCs claim that they will likely be unable to complete this data scrubbing, particularly for data reported on or near October 1, 2017, and submit a final report on that same date. (Ibid.) These assertions form the basis of the EDCs' request for an extension of the due date for the Annual Reports to November 1, 2017. The EDCs also ask that the Board continue to require only one Annual Report . . . [for] both their REC and SREC requirements.

On June 2, 2017, on behalf of the TPSs, RESA also requested a one-month extension of the deadline from October 1, 2017 to November 1, 2017, giving similar reasons.<sup>10</sup>

### **STAFF RECOMMENDATION**

Staff evaluates the EDCs and RESA's requests in the context of the Rules, the State's objectives, and the many efforts made to improve the RPS process, including the reconciliation process described above. Reconciliation of the retail electricity sales data begins with the PJM financial settlement markets where the data originates. Typically, PJM provides this data to the EDCs and PJM-EIS GATS no later than sixty days from the end of the Energy Year.<sup>11</sup> PJM-EIS uses this basic data on load served to populate the GATS account of each BGS Provider and TPS with a preliminary number for load served. The EDCs then reconcile the data on load served for each of the BGS Providers in their respective territories.

The establishment of fixed compliance and true-up periods and a deadline for submission of a report demonstrating how compliance was achieved by regulated entities is critical to the success of an RPS in developing markets for renewable energy. The annual deadline for REC and SREC procurement provides transparency and surety to market participants, which bolsters the value of the REC or SREC for brokers, aggregators, facility owners, and investors. The compliance true-up period of approximately 120 days balances the needs of the suppliers of RECs and SRECs with the time required by electricity supplier/providers to ascertain their obligation and secure compliance, and the 120 day period is consistent with N.J.S.A. 48:3-87(d)(3)(a).

Staff seeks to receive timely and accurate compliance reports in furtherance of the State's policy objective of advancing the development of renewable energy markets. The actions of the EDCs and TPS/BGS Providers indicate that these entities seek to submit timely and accurate annual reports demonstrating their compliance with State law. The regulated entities have cooperated with Staff in working through the issues that have arisen as changes in law have required varying procedures to comply with the Board's rules. SEAFCA necessitated additional

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<sup>10</sup> RESA likewise reiterated the arguments that they had made to extend the deadline for their EY16 Annual Reports.

<sup>11</sup> Sixty days elapse because PJM performs its own reconciliation process before releasing its data.

data and many complex calculations, as did the Solar Act of 2012. In recognition of the statutory changes, Staff recommended that the Board extend the October 1 deadline in EY15 and EY16. However, the calculation of the solar obligation reverted to a simple percentage of retail sales in EY16, and Staff sees no reason for the EDCs to need additional time to retire S/RECs or to submit the Annual Reports. Staff also notes that in granting the last extension for EY16, it would have been unreasonable to expect the EDCs, TPS/BGS Providers to follow the new retail sales adjustment process, procure, retire S/RECs and report results by the October 1<sup>st</sup> deadline since the RPS coordination meeting was held in late July 2016. Staffs also emphasized at this meeting that the Board hoped to avoid receiving requests for extension in future energy years.

However, for EY17, the RPS coordination meeting was held in June. In addition, the EDCs and TPS/BGS Providers will have enough time to complete the RPS Reporting Compliance process if they follow the steps outlined in the above time line. Therefore, Staff recommends that the Board deny the request to extend the EY17 RPS reporting deadline to November 1, 2017 and require that all associated RECs or SRECs be retired before the October 1, 2017 reporting due date. This recommendation also applies to the extension request made by RESA. Staff further recommends the Board approve the method described in the time line for EDCs and TPS/BGS Providers to record adjustments to retail sales for EY17.

#### **DISCUSSION AND FINDING**

The Board notes that the October 1 deadline has been in effect since March 16, 2009. N.J.A.C. 14:8-2.11; 41 N.J.R. 1261(a). The Board acknowledges the increased complexity of compliance with the solar portion of the RPS during the last several years, beginning in the energy years covered by SEAFCA and continuing through EY15 as a result of the exemptions provided through the Solar Act. As noted above, both laws changed the solar generation requirements of the RPS and the way in which the obligation was determined. And, as noted above, Staff has provided guidance to the TPS/BGS Providers throughout these statutory changes.

The Board also acknowledges that beginning in EY16, the calculation of the solar portion of the RPS returned to a percentage to total retail sales. Staff reiterated this fact in the June 2017 Meeting with stakeholders. Staff also reminded the participants that the due date for the completed report is October 1, 2017, including confirmation of all S/REC retirements and reporting required by the Rules. To address the misconception of the EDCs stated in each of their previous annual petitions for an extension, Staff clarified for all meeting participants that the RPS Rules do not provide a date by which S/RECs must be "procured," only when they must be retired. Staff also discussed the proposed time line at the June 2017 Meeting and emphasized that since the Annual Reports due October 1, 2017 must include the S/RECs retired based on the percentage of retail sales, TPS/BGS Providers would be wise to procure S/RECs throughout the year in amounts proportionate to their retail sales and not wait to procure and retire them at the last minute.

The Board is also mindful of the need for transparency in the RPS marketplace and of the important public policy goals served by timely and certain closure to the previous energy year's transactions. Based on the success we saw with the retail sales adjustment process used in EY16 and with the recent improvements to the GATS system, if the EDCs and the TPS/BGS Providers follow the EY17 time line developed by Staff and PJM-EIS, and start their compliance process prior to September, they should have more than enough time to retire all S/RECs, or

pay the S/ACP, and to file the Annual Reports by the October 1, 2017 deadline, as set forth in N.J.A.C. 14:8-2.11(a).

The Board **FINDS** that under these circumstances requiring TPS/BGS Providers to comply with N.J.A.C. 14:8-2.11(a) and retire EY17 S/RECs by October 1, 2017 is reasonable. The Board **FINDS** that if the EDCs and the TPS follow the process as outlined above in the time line, they will have sufficient time to comply with each portion of the RPS. Under these circumstances, the Board **FINDS** that it is not necessary to extend the time for retirement of S/RECs and/or payment of the S/ACP. The Board **ORDERS** the EDCs and TPS/BGS Providers to retire the S/RECs and to pay the S/ACP, if necessary, by October 1, 2017. In addition, the Board **FINDS** that it is not necessary to extend the reporting deadline and **ORDERS** the EDCs and the TPS/BGS Providers to submit their Annual Reports by the October 1, 2017 deadline set out in the Rules. The Board **CONFIRMS** that a failure to comply with the deadlines noted herein and in N.J.A.C. 14:8-2.11 may result in enforcement actions as allowed by the Rules, up to and including alternative compliance requirements, financial penalties, and/or suspension.

Concerning the process for TPS/BGS Providers to make retail sales adjustments with GATS, the Board **FINDS** that it is prudent to implement a process that will ensure consistent reporting. The Board therefore **FINDS** that the thirty day period recommended by Staff for the TPS/BGS Providers to review the numbers in the GATS "My RPS Compliance Report" is reasonable. As necessary, TPS/BGS Providers must enter the adjusted retail sales number on the GATS "My RPS Compliance Report" in the column entitled "RPS Load" no later than September 1. If the TPS/BGS Provider enters an adjustment in the "My RPS Compliance Report", the TPS/BGS Provider must also report its final retail sales amount to OCE along with a written explanation for the difference and supporting documentation.

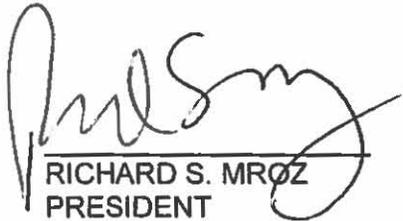
The Board **HEREBY FINDS** Staff's recommended time line for compiling and submitting the Annual Reports for EY17 to be reasonable. Finally, with respect to the EDCs' request that the Board continue to allow the submittal of a single report for both RECs and SRECs, the Board states that the reference to the Annual Report at N.J.A.C. 14:8-2.11(a) and (b) is intended to require only one report for both types of RECs.

The Board **DENIES** the petitions. The EY17 RPS Compliance Reports will be due on October 1, 2017. Finally, the Board believes that Staff's continued dialogue with the TPS/BGS Providers to ensure timely compliance with the statutory and regulatory schemes has been effective to clear up misconceptions and to advise interested stakeholders of improvements to the GATS systems; therefore, the Board **HEREBY DIRECTS** the EDCs, TPS/BGS Providers to continue to work with Staff to make the reporting process faster and more efficient.

The effective date of this Order shall be August 5, 2017.

DATED: 7/26/17

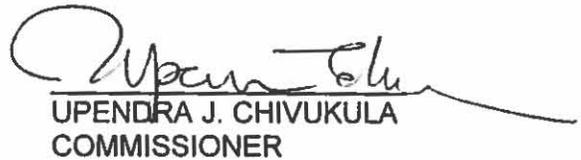
BOARD OF PUBLIC UTILITIES  
BY:

  
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PRESIDENT

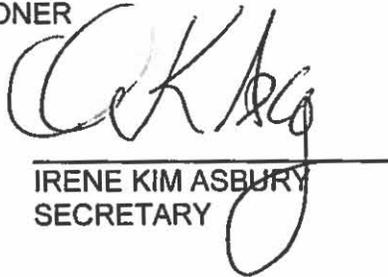
  
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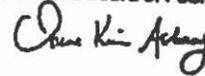
  
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ATTEST:

  
IRENE KIM ASBURY  
SECRETARY

I HEREBY CERTIFY that the within  
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IN THE MATTER OF THE NEW JERSEY RENEWABLE PORTFOLIO STANDARD ("NJ RPS")  
– REQUEST FOR BOARD ACTION EXTENDING NJ RPS COMPLIANCE DEADLINE FOR  
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DOCKET NO. EO QO16080781

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