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**NEW JERSEY BOARD OF PUBLIC UTILITIES**

**Courtesy Copy of Proposed Amendments to N.J.A.C. 14:4-8**

**RENEWABLE ENERGY PORTFOLIO STANDARDS**

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## **BOARD OF PUBLIC UTILITIES**

### **Proposed Amendments: N.J.A.C. 14:4-8 (Renewable Energy Portfolio Standards)**

Authorized By: Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Carol J. Murphy, Connie O. Hughes, and Jack Alter, Commissioners.

Authority: N.J.S.A. 48:2-13 and 48:3-49 et seq., in particular 48:3-51 and 48:3-87

Calendar Reference: Exempt pursuant to N.J.A.C. 1:30-3.3(a)5, by virtue of 60-day comment period.

BPU Docket Number: EX 04020093 (companion to BPU docket number EX 03080616)

Proposal Number: PRN 2004-

Submit comments by June 4, 2004 to:  
Board of Public Utilities  
Kristi Izzo, Secretary  
ATTN: BPU Docket Number: EX 04020093  
Two Gateway Center  
Newark, New Jersey 07102

The agency proposal follows:

### **Summary**

The New Jersey Board of Public Utilities (Board or BPU) is proposing amendments to its renewable portfolio standards (RPS) rules at N.J.A.C. 14:4-8. These rules implement provisions of the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (EDECA). N.J.A.C. 14:4-8 (Subchapter 8), requires each electric power supplier or basic generation service provider that sells electricity to retail customers in New Jersey to include in its electric energy portfolio a stated percentage of electricity generated from renewable energy sources. A company's energy portfolio is the combined energy generated or supplied by that company.

The rules are intended to encourage the development of renewable sources of electricity and cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce the possible transport of air pollutant emissions; and minimize any adverse environmental impact from the deregulation of energy generation. Because electricity generation can be a significant source of air pollution, these rules are also a component of New Jersey's efforts to meet State and Federal clean air goals.

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These proposed amendments complement an earlier set of amendments to these rules, which were proposed in October 2003 and which are being adopted in this issue of the New Jersey Register (hereinafter referred to as the earlier amendments). The amendments proposed herein make four changes to the RPS rules, described in detail below:

- ✍ Provide a limited waiver for holders of 34-month supply obligations, committed to through the 2003 basic generation service (BGS) auction, applying the RPS requirements in effect at the time of the 2003 auction to those supply obligations;
- ✍ Adjust the RPS percentage requirements for the years following the expiration of the 34-month supply obligations, to compensate for the renewable energy that would have been supplied absent the limited waiver;
- ✍ Restrict issuance of solar RECs to energy generated at a facility directly connected to a distribution system supplying New Jersey; and
- ✍ Authorize the Board to adopt a different tracking system than the PJM Generation Attribute Tracking System (GATS) if necessary.

### **Limited Waiver for 2003 BGS Winners**

The earlier amendments increased the percentage of a supplier's energy portfolio that must be derived from renewable energy, starting from 2004 onward. However, commenters on the earlier amendments objected to the application of the percentage increases to certain supplier/providers who participated in the Board's 2003 BGS auction. Through the Board's annual BGS auction, suppliers bid on the right to provide basic generation service at fixed prices for one or more tranches. A tranche is a portion of the electricity load from New Jersey electric customers who have not chosen an independent energy supplier. Under the earlier amendments, the winning bidders in the 2003 auction would have had to comply with the increased percentages, but could not raise their prices to compensate, because they had committed through the auction to supply energy at a fixed price.

The BGS procurement process operates as a BPU-sponsored energy market and thus the Board bears responsibility for honoring the business rules implemented during the prior BGS auction, as they relate to obligations incurred through the auction. However, the rule change required to correct this problem would be substantive and therefore could not be made upon adoption through the earlier rulemaking. Therefore, the Board is proposing the amendments herein to N.J.A.C. 14:4-8.3 to address the situation.

The amendments proposed herein would apply to any 34-month tranche contracted for as part of the Board's February 2003 BGS auction. This proposal will provide a limited waiver from the increased percentages in the earlier amendments, so as to allow suppliers holding 34-month tranches won in 2003 to comply with the same RPS percentage requirements that were in effect at the time of the 2003 BGS auction. The limited waiver will apply only to energy supplied pursuant to the long-term tranches awarded during the 2003 BGS auction. All other energy supplied during the 2004 and

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2005 reporting years is subject to the increased percentages as they were adopted in the earlier amendments. Furthermore, the limited waiver applies only until the tranches expire on May 31, 2006.

In order to compensate for the decrease in renewable energy that will result from the limited waiver proposed herein, these proposed amendments increase the percentage requirements for all supplier/providers in the reporting years after May 31, 2006. This will ensure that, by the end of reporting year 2009 (on May 31, 2009), the amount of renewable energy supplied to retail customers under the RPS will be the same as would have been supplied under the earlier amendments.

### **Restriction On Issuance Of Solar RECs**

Proposed new N.J.A.C. 14:4-8.9(e) would place limits on the location of solar electric generation that could form the basis for issuance of a solar REC. To be eligible for REC issuance, solar electric generation must be produced by a generating facility that is interconnected with an electric distribution system that supplies New Jersey. The term "electric distribution system" is defined in recently proposed amendments to the Board's net metering and interconnection rules (see the December 1, 2003 New Jersey Register at 35 N.J.R. 5356(a)) as "that portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises. An electric distribution system generally carries less than 69 kilovolts of electricity."

The proposed requirement that solar energy generation be directly connected to a New Jersey distribution system will provide many benefits. Solar electric generation is decentralized, and generates energy during daylight hours, which are peak demand periods for electricity. This will reduce the need for excess energy generation capacity for serving peak loads. Locating this peak-serving generation close to the consumers provides extra energy in high demand areas, while avoiding the costs of building new power plants, or transporting energy over long distances.

Locating generation close to consumers also improves reliability, by reducing congestion on long distance transmission lines, and reducing the distance over which energy must travel. The August 2003 blackout in the Northeast and Midwest was partially caused by congestion and failure on high capacity, long distance transmission lines. Localized energy generation reduces the amount and size of transmission and distribution infrastructure that is needed to serve a given area, thus reducing costs. Finally, by encouraging solar generation to be located in or near New Jersey, the proposed connection requirement will provide local air quality benefits to the New Jersey area. All of these benefits ultimately translate into lower energy rates for consumers. The Board's long term goal is participation in a strong regional renewable energy market. To that end, the Board has and will continue to participate in the development of a regional and interstate REC system.

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### **Authority For The Board To Adopt A Tracking System Other Than GATS**

The final change proposed herein is to broaden the Board's authority regarding future adoption of a tracking system for renewable energy. The Board believes that a successful RPS program will eventually require a tracking system through which RECs can be issued for all types of renewable energy. Because electricity can pass through several intermediate business entities between its generation and retail sale, and can be combined with electricity generated by several different companies, it is often difficult for an electric power supplier or basic generation service provider to determine the precise amount of electricity generated from renewable energy sources. The tracking system will enable supplier/providers and the Board to track how and where energy is generated, and thus to better determine whether the percentage requirements for renewable energy set forth in this subchapter have been met. The tracking system will also support a renewable energy trading program, as provided for by EDECA at N.J.S.A. 48:3-87d(2), to provide supplier/providers with greater flexibility in complying with the rules.

In the earlier amendments, several rule provisions authorized the Board to adopt by Board order a tracking system for renewable energy called the Generation Attribute Tracking System (GATS). Board staff are active participants in the efforts to develop GATS, under the auspices of PJM Interconnection, L.L.C. (PJM), which operates the wholesale electricity market serving New Jersey. However, due to delays in the development of GATS, it is unclear whether GATS will be operational in a timely manner. Therefore, the amendments proposed herein would broaden the rules slightly, by giving the Board the authority to adopt whatever tracking system the Board determines will best serve New Jersey's needs. This change is reflected in proposed modifications to N.J.A.C. 14:4-8.3(d), 8.8(c), and 8.9(a).

### **Social Impact**

The amendments proposed herein will have a positive social impact. First, the limited waiver for 2003 BGS winners will rectify an inequity that the Board had inadvertently created through the adoption of the earlier amendments, while also ensuring that the renewable energy goals of EDECA will continue to be met. Second, the amendment restricting issuance of solar RECs to generation directly connected to New Jersey supply will reduce energy rates and improve local energy reliability and air quality. Finally, broadening the Board's authority as to selection of a tracking system will provide the Board with flexibility in the event of undue delays in the implementation of the GATS system.

### **Economic Impact**

The limited waiver proposed herein will have a beneficial economic impact on supplier/providers who hold 34-month tranches won in the 2003 BGS auction, in that it will not impose the costs of increased percentage requirements that cannot be recouped from customers. The 2006 through 2009 percentage increases necessary to compensate for the limited waiver may cause a slight increase in compliance costs for all supplier/providers. However, these impacts are likely to be minimal in both cases,

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and are amply compensated for by the importance of fairness to 2003 BGS auction winners.

Restricting solar REC issuance to generation directly connected to a New Jersey distribution system may have some economic impacts on generators of solar energy who are located far away from an electric distribution system serving New Jersey and are interested in obtaining solar RECs. For these generators, RECs will be more expensive to obtain, depending on how far away they are located. However, the degree of economic impact is not clear. Under the earlier amendments, there was no restriction on location of generation that was eligible for a REC. However, N.J.A.C. 14:4-8.9(k) (as adopted in this issue of the New Jersey Register) provides that the Board "shall impose application fees, inspection fees, and/or other charges for work required to verify solar electric generation and issue RECs." Presumably, it would be more costly to verify solar electric generation located farther from New Jersey because of travel and other administrative costs. Therefore, it is likely that remotely located solar electric generation would be subject to higher costs than local generation, even without the restriction proposed herein. In addition, solar RECs are a new mechanism in a nascent market. While the Board believes that they will eventually have substantial value, it is impossible at this juncture to accurately assess their value. The broadening of the Board's authority to select an appropriate tracking system is not expected to have any economic impact, other than the beneficial impact of government efficiency resulting from the flexibility to act promptly and appropriately in selecting a tracking system.

### **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 regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:4-8 is 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 incorporate 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 these proposed amendments.

### **Jobs Impact**

The Board anticipates that the amendments proposed herein will have little or no impact on jobs in New Jersey. The proposed limited waiver merely redistributes increases in renewable energy percentages across a several year period. The restriction of RECs to solar energy generation that is directly connected to New Jersey supply could slightly increase jobs by encouraging solar electric generation in areas close to distribution systems that serve New Jersey. The broadening of the Board's authority to select a tracking system is not expected to have an impact on jobs, because the operation of a tracking system requires only one or two employees.

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### **Agriculture Industry Impact**

The Board does not anticipate that the proposed amendments will have any impact on the agriculture industry in New Jersey. While some farmers participate in renewable energy generation through leasing of land for wind generator installations, these amendments redistribute the timing of percentage increases but do not increase them overall.

### **Regulatory Flexibility Statement**

The proposed amendments to subchapter 8 will not impose any additional record keeping, reporting or other compliance requirements on small businesses because they do not apply to any small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. Subchapter 8 applies only to utilities and third party electricity suppliers. The Board is not aware of any utilities or third party electricity suppliers that meet the definition of a small business.

### **Smart Growth Impact**

The Board anticipates that the proposed amendments will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." These rules apply uniformly Statewide and the Board does not expect that they will affect the location of future development. Therefore, the proposed amendments will not impact smart growth or the State Plan.

**Full text** of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

## **SUBCHAPTER 8. RENEWABLE ENERGY PORTFOLIO STANDARDS**

### **14:4-8.3 Minimum percentage of renewable energy required**

(a) Each supplier/provider, as defined at N.J.A.C. 14:4-8.2, 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 qualified renewable energy, as defined at N.J.A.C. 14:4-8.2, required for that reporting year from each category specified in Table A below , except as provided at (j) below:

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Table A  
 [Minimum] What Percentage Of Energy Supplied Must Be Renewable Energy?  
 – 2004 through 2008

<b>Reporting Year</b>	<b>Solar Electric Generation (solar RECs)</b>	<b>Class I Renewable Energy</b>	<b>Class II Renewable Energy</b>	<b>Total Renewable Energy</b>
<u>June 1, 2004 – May 31, 2005</u>	0.01%	.74%	2.5%	3.25%
<u>June 1, 2005 – May 31, 2006</u>	0.017%	0.983%	2.5%	3.5%
<u>June 1, 2006 – May 31, 2007</u>	[0.036%] <u>0.0393%</u>	[1.964%] <u>2.037%</u>	2.5%	[4.5%] <u>4.5763%</u>
<u>June 1, 2007 – May 31, 2008</u>	[0.076%] <u>0.0817%</u>	2.924%	2.5%	[5.5%] <u>5.5057%</u>
<u>June 1, 2008 – May 31, 2009</u>	0.16%	3.84%	2.5%	6.5%

(b) - (c) (No change.)

(d) A supplier/provider may choose to meet the class I and class II renewable energy requirements in Table A above through supplying renewable energy or through the use of RECs in accordance with N.J.A.C. 14:4-8.8. However, class I and II renewable energy RECs shall be used only after the [GATS system is operational and the] Board has authorized such use by Board order.

(e) - (i) (No change.)

(j) If a supplier/provider participated in the Board's 2003 basic generation service (BGS) auction, and won the right to supply one or more 34-month tranches in that auction, the supplier/provider shall be subject to this subsection. For the portion of such a supplier/provider's energy portfolio supplied pursuant to a 2003 BGS 34-month tranche, the supplier/provider's RPS obligation shall not be determined under (a) above but instead shall be determined under Table B below. For all other energy in the supplier/provider's energy portfolio, the supplier/provider shall meet the percentage requirements of (a) above.



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**Table B**  
**What Percentage Of Energy Supplied Pursuant To 2003 BGS Tranches Must Be Renewable Energy?**

<b><u>Time Period</u></b>	<b><u>Class I</u></b>	<b><u>Class I or II</u></b>	<b><u>Total</u></b>
<u>Through May 31, 2004</u>	<u>0.75%</u>	<u>2.5%</u>	<u>3.25%</u>
<u>June 1, 2004 through May 31, 2005</u>	<u>0.75%</u>	<u>2.5%</u>	<u>3.25%</u>
<u>June 1, 2005 through May 31, 2006</u>	<u>1.0%</u>	<u>2.5%</u>	<u>3.5%</u>
<u>After May 31, 2006</u>	<u>See N.J.A.C. 14:4-8.3(a), Table A</u>	<u>See N.J.A.C. 14:4-8.3(a), Table A</u>	<u>See N.J.A.C. 14:4-8.3(a), Table A</u>

**14:4-8.8 Renewable Energy Certificates (RECs)**

(a) - (b) (No change.)

(c) Until issuance of a Board order that specifies otherwise, the only RECs that may be used to comply with this subchapter are solar RECs, issued by the Board or its designee in accordance with N.J.A.C. 14:4-8.9. [Once the GATS system is operational and PJM Interconnection begins issuing class I and class II RECs, the] The Board may issue an order approving use of class I and class II RECs issued by PJM Interconnection or another entity for compliance with this subchapter.

(d) (No change.)

**14:4-8.9 Board issuance of solar RECs**

(a) The Board or its designee shall issue solar RECs for use in complying with this subchapter, in accordance with this section. The Board may, after public notice, issue an order discontinuing Board issuance of solar RECs and/or approving use of solar RECs issued by PJM Interconnection or another entity for compliance with this subchapter.

(b) - (d) (No change.)

(e) [Reserved] To qualify for issuance of a solar REC, solar electric generation shall be produced by a generating facility that is interconnected with an electric distribution

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system, as defined at N.J.A.C. 14:4-9.2, that supplies New Jersey. 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 system.