PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Reneable Energy and Energy Efficiency

Definitions; Using RECs and SRECs for RPS

Compliance; Alternative Compliance Payments

(ACPs and SACPs)

Adopted Amendments: N.J.A.C. 14:8-2.2, 2.8, and 2.10


Adopted: February 19, 2014, by the New Jersey Board of Public
Utilities, Dianne Solomon, President, Jeanne M. Fox, Joseph L.
Fiordaliso and Mary-Anna Holden, Commissioners.

Filed: February 19, 2014, as R.2014 d.048, without change.

BPU Docket Number: EX13010006.

Effective Date: March 17, 2014.
Expiration Date: May 1, 2019.

The Board of Public Utilities (Board) is adopting amendments to three
csections of N.J.A.C. 14:8-2, specifically to confirm the existing rules to
provisions within the Solar Act of 2012, P.L. 2012, c. 24, which
prescribed changes to the schedule for Solar Compliance Payments
(SACP) and extended the time period during which Solar
Renewable Energy Certificates (SREC) and Offshore Wind Renewable
Energy Certificates (OREC) may be used to satisfy Renewable Portfolio
Standards (RPS).

This rulemaking is adopting amendments prescribed by statute and are
adopted to bring the Board’s rules into compliance with the law.

Summary of Public Comment and Agency Response:

Comments were submitted timely on the notice of proposal by Mr. James B. Butera.

COMMENT: Mr. Butera states that the Board “must regain control of the
contracting provisions of the basic generation service.” He proposes a
specific provision requiring the pass-through of any savings realized by
electric distribution companies (EDCs) providing basic generation service
to their ratepayers, these savings to be calculated by determining the
difference between the SACP as revised by P.L. 2012, c. 12, and the
amount of the SACP prior to the revision, an amount the commenter
characterizes as “calculated by the Board.”

Mr. Butera states that the above-described provision would “immunize” the Board from any objections to the new rule and, potentially, from any “broader contractual issues.” The commenter references, in particular, the need for any rulemaking to comply with a
2011 New Jersey Supreme Court ruling that the Board institute new
notice and comment procedures. In re Provision of Basic Generation, 205

Mr. Butera suggests that the Board take action to amend N.J.A.C. 14:8-2.10(c) because he has identified a conflict between the language of
N.J.S.A. 48:3-87j, which has been amended to remove the directive to the
Board to establish a 15-year SACP, and the language of N.J.A.C. 14:8-2.10(c), which continues to refer to that directive. Mr. Butera believes that the Court’s ruling in In re Provision of Basic Generation, supra may have motivated the Legislature to amend the statutory language.

RESPONSE: The Board thanks the commenter for his suggestions. The
Board notes that the adopted amendments simply address changes in the
SACP mandated by the provisions of the Solar Act, and do not
address the provision of basic generation service (BGS). In New Jersey,
customers have the right to buy their energy supply either through
contracts with third-party suppliers (TPS) or from the EDCs through
BGS. Energy supply includes, among other things, the cost of energy,
capacity, and the costs for complying with the Board’s renewable
portfolio standards, including the cost of SRECs. Currently, BGS is
procured annually through a process proposed by the EDCs with Board
oversight. Therefore, the price for BGS service includes many
components, only one of which includes the cost of the SRECs which the
winning suppliers are required to obtain to satisfy the RPS.

With regard to the Court’s directive to the Board to comply with the
requirements of the Administrative Procedures Act, the Board has complied with those requirements in this rulemaking.

With respect to the commenter’s proposed change to N.J.A.C. 14:8-2.10(c), the Board notes that as this section was not a part of the proposed amendments. Therefore, as the requested change is outside of the scope of this rulemaking, the Board will not take the requested action.

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 rules exceeding any
Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The RPS rules have no Federal analogue
and are 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 incorporates 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 the proposed amendments.

Full text of the adopted amendments follows:

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.2 Definitions

The following words and terms, when used in this subchapter, shall
have the meanings given below, unless the context clearly indicates
otherwise:

“Offshore wind renewable energy certificate” or “OREC” shall mean as
defined at N.J.A.C. 14:8-6.1.

14:8-2.8 Using RECs, SRECs, and ORECs for RPS compliance

(a) An REC, SREC, or OREC shall be used to meet New Jersey RPS
requirements for specific energy years, based on the type of renewable
energy upon which the REC, SREC, or OREC is based, and the energy
during which the renewable energy was generated, as follows:

1. A class I REC based on energy generated on or after July 1, 2010,
and an SREC based on energy generated on or after July 1, 2010 but before
July 23, 2012, or an OREC based on energy generated on or after July 23,
2012, shall be used to comply with RPS requirements for any one of the
following three energy years:

i. The energy year in which the underlying energy was generated; or
ii. Any of the four energy years immediately following the energy year
in which the underlying energy was generated.

(b) (No change.)

NEW JERSEY REGISTER, MONDAY, MARCH 17, 2014 (CITE 46 N.J.R. 549)
14:8-2.10 Alternative compliance payments (ACPs and SACPs)
(a)-(g) (No change.)
(h) Table C sets forth the SACP for each energy year from energy year 2013 through energy year 2028.

Table C
SACP Schedule

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<thead>
<tr>
<th>Energy Year</th>
<th>SACP</th>
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<td>June 1, 2014-May 31, 2015</td>
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<td>June 1, 2015-May 31, 2016</td>
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<td>June 1, 2018-May 31, 2019</td>
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<td>June 1, 2019-May 31, 2020</td>
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<td>June 1, 2020-May 31, 2021</td>
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BOARD OF PUBLIC UTILITIES
Water and Wastewater
Readoption with Amendments: N.J.A.C. 14:9

Adopted: February 19, 2014, by the New Jersey Board of Public Utilities, Dianne Solomon, President, Jeanne M. Fox, Joseph L. Fiordaliso and Mary-Anna Holden, Commissioners.
Filed: February 19, 2014, as R.2014 d.049, without change.
BPU Docket Number: WX13020140.
Expiration Date: February 19, 2021.
Summary of Public Comments and Agency Responses:
Robert J. Brabston, Esq., New Jersey American Water Company (NJAWC) submitted timely comments on the notice of proposal:
N.J.A.C. 14:9-2.2(f)
1. COMMENT: NJAWC has no comments or recommendations on the proposed changes and does not object to the proposed change to N.J.A.C. 14:9-2.2(f), extending the record retention period from at least five years to at least six years, per the National Association of Regulatory Utility Commissioners’ Record Retention Rules (2007).
RESPONSE: The Board appreciates NJAWC’s comment.
N.J.A.C. 14:9-4
2. COMMENT: NJAWC recommends the Board change some of the activities currently undertaken by water utilities, like NJAWC, that do not have a specific basis in the New Jersey Administrative Code. For example, the Board currently receives meter test reports from utilities that are typed onto a pre-printed card stock media and mailed to the Board. The card stock is not used for any other purpose, and is cumbersome to use compared to other formats such as Excel. NJAWC is recommending that the Board take the reports in electronic format, such as Excel, via email. NJAWC notes that the current rules do not specify the media or format, only the content, of the meter test reports.
3. COMMENT: NJAWC asserts that the preprinted card stock media (referred to in Comment 2) requires 10 percent of all new incoming meters must be tested by “utility personnel.” The company currently performs this activity even though the requirement does not appear anywhere in the BPU’s rules and regulations, and NJAWC does not believe that the 10 percent threshold is based in sound statistical sampling methods. In NJAWC’s experience, meter manufacturers test 100 percent of all new meters prior to shipment and send a certified list of serial numbers and test results with each shipment. The additional testing performed by NJAWC may be redundant to the testing done by the manufacturers and rarely results in corrective action or shipment returns. Alternatively, in the absence of a rigorous process to evaluate the results of NJAWC testing, the 10 percent incoming test sample may be inadequate to validate new meter types or new meter manufacturers. NJAWC believes that the data and documentation supplied to the water utilities by the water meter manufacturers, including individual meter test results certified by the manufacturers, could provide the Board with the information necessary to review new meter accuracy with the companies. NJAWC suggests that the Board consider using meter manufacturer quality control data to satisfy the new meter accuracy validation. If the Board determines that it needs time to see if the meter manufacturer data meets their needs, NJAWC suggests that the Board consider alternative sampling sizes or techniques for the companies to use that could be more statistically valid and economically efficient.
4. COMMENT: NJAWC states that another effect of the 10 percent new meter testing requirement (referred to in Comment 3) is that it encourages companies like NJAWC to centralize meter inventory receipt to facilitate testing. Centralized meter inventory and testing of new meters for later distribution to the operating areas where the meters will be placed in service adds expense and complexity to the meter replacement process. If 10 percent of all new meters were not being tested by NJAWC, meter shipments could be delivered directly to the operating areas, reducing the expense and complexity of administering a centralized meter inventory “way-station.”
5. COMMENT: NJAWC states that for these two activities associated with water meter testing and reporting, which are not codified in N.J.A.C. 14:9-4, NJAWC recommends that the Board discontinue the use of the pre-printed card stock reports in favor of Excel-based electronic reports, and the Board discontinue the practice of companies testing 10 percent of all new incoming meters. These two changes will result in lower expenses for the water utilities, which will reduce pressure on customer rates. NJAWC believes these changes will also enhance the efficiency of regulatory reporting and the ability of Board staff to review and analyze meter test reports.
RESPONSE TO COMMENTS 2 THROUGH 5: While the Board appreciates these comments, it notes that they relate to the general meter rules in N.J.A.C. 14:3-4 and not this chapter proposed for readoption.
N.J.A.C. 14:9-4.1
6. COMMENT: NJAWC notes that it is part of American Water Works Company (AWK) with affiliates in 12 other states. NJAWC has access to AWK meter expertise, experience, and data from a broad cross-section of the country. NJAWC is one of six AWK states that has a 10-year periodic testing requirement for five-eighths (5/8) inch meters, the size most commonly used for single residential dwellings. Eight states have a 15-year requirement, and both Pennsylvania and California have a 20-year testing requirement. NJAWC believes the 10-year periodic testing requirement drives costs up for NJAWC and its customers, causing expenses to be higher and using capital that might otherwise be allocated more efficiently and to more “value-added” investments. This is particularly true now that the industry has become far advanced in its transition to automated meter (or mobile) reading devices. These devices typically have a battery life of 15-20 years, and companies have made significant investments in these programs—investments that have