PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Renewable Energy and Energy Efficiency

Adopted Amendment: N.J.A.C. 14:8-2.4

Proposed: September 16, 2019, at 51 N.J.R. 1457(a).

Adopted: January 8, 2020, by the Board of Public Utilities, Joseph L. Fiordaliso, President; Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: January 9, 2020, as R.2020 d.016, with a non-substantial change not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).


BPU Docket Number: QX19060720.

Effective Date: February 3, 2020.

Expiration Date: May 20, 2026.

Summary of Public Comments and Agency Responses:

Timely comments were submitted by: IGS Solar (IGS); Morris County Improvement Authority (MCIA), Somerset County Improvement Authority (SCIA), and the New Jersey School Boards Association (NJSBA), together (MCIA/SCIA/NJSBA); New Jersey Resources (NJR); True Green Capital (TGC); Public Service Electric and Gas Company (PSE&G); Rockland Electric Company (RECO); and Solar Energy Industries Association (SEIA).
N.J.A.C. 14:8-2.4(b)6

1. COMMENT: IGS identified a conflict regarding the Board of Public Utilities’ (Board) proposed amendments to the Solar Renewable Energy Certificate (SREC) registration program provisions within the Renewable Portfolio Standards for reporting forecasts on the status of attainment of the 5.1 percent milestone. The summary statement in the notice of proposal advises that Board staff anticipates that the 5.1 percent milestone will be reached on or about June 2020, and that Board staff will provide quarterly forecasts on the status toward attainment until it appears that the milestone will be reached within six months and will provide monthly forecasts thereafter. The amendment to N.J.A.C. 14:8-2.4(b)6 proposes that starting in March 2020, the Board shall report monthly. IGS recommends the reference to March 2020 be removed and replaced with a reference to monthly reporting once the market is within six months of Board staff’s estimated date for achieving the 5.1 percent milestone.

2. COMMENT: MCIA/SCIA/NJSBA recommends the rule be amended to state that reporting will start in January 2020.

3. COMMENT: SEIA encourages the Board to dispense with the amendment to issue quarterly reports and begin reporting on a monthly basis in January 2020, since the notice of proposal Summary references June 2020 as an approximate month for the attainment of the 5.1 percent milestone.

RESPONSE TO COMMENTS 1, 2, AND 3: The Board acknowledges the conflicting dates addressing the scheduled release of reports and will delete the reference to March 2020 upon adoption. The removal of this reference will result in the Board reporting on a monthly basis following the effective date of this rulemaking.
4. COMMENT: MCIA/SCIA/NJSBA recommends that, rather than adopt the proposed practice of estimating solar electricity production from installed capacity based upon the placed in-service date, the Board should model annualized solar electricity production. The commenters believe that the proposed method relies upon annualized retail sales estimates, that it should, therefore, annualize solar electricity production as well.

RESPONSE: The Board disagrees that the proposed methodology for estimating retail electricity sales over the trailing 12 months relies upon annualized retail sales estimates. Rather, the proposed method simply adjusts PJM-EIS reports of load served to account for transmission and distribution line losses. In other words, the proposed method converts the reported wholesale electricity sales into retail electricity sales. Both the solar electricity production (the numerator) and the retail sales (the denominator) in the calculation of the ratio are measured over the same time period. This choice intentionally aligns the time periods covered by numerator and denominator, so that the calculation comports with the statutory language requiring SREC Registration Program (SRP) closure upon “attainment of 5.1 percent of kilowatt hours sold.”

5. COMMENT: NJR argues that the proposed methodology for calculating the fraction of retail electricity sales provided from solar electric generation facilities will irrevocably oversupply the SREC market. NJR's analysis presumes closure in November 2020, at which time it estimates cumulative installed capacity will total approximately 3420 MWdc. NJR believes that this amount will be 150 to 200 MW higher than that required to supply 5.1 percent of retail sales. The
commenter asserts that, as a result, this approach conflicts with the intent of the Clean Energy Act. NJR recommends that the Board close the market to new applications when installed capacity is capable of meeting the 5.1 percent target, on an “annualized, prospective basis.” This “prospective” methodology results in reaching the 5.1 percent milestone and SRP closure in June 2020, when NJR forecasts cumulative installed capacity will reach 3270 MWdc.

6. COMMENT: TCG agrees with and supports NJR’s positions in Comment 5.

RESPONSE TO COMMENTS 5 AND 6: It is not entirely clear how the commenter has arrived at a projection of 5.1 percent attainment in November 2020, using the methodology in the proposed rule. The Board issued an Order on SREC market changes in February 2019, that applied the same methodology under two sets of installed capacity assumptions. The higher installed capacity assumption of 40 MWdc per month resulted in a projection for the 5.1 percent milestone in April or May 2020. In the subject rulemaking, published on September 16, 2019, the Board projected that the 5.1 percent milestone would be reached in June 2020.

7. COMMENT: SEIA cites the rule proposal’s summary statements, which acknowledges that the methodology for calculating the attainment of the 5.1 percent milestone may have market implications. It references the industry estimates that under the proposed methodology the SREC market would be oversupplied, with between 150 to 200 MW more than needed to meet the 5.1 percent milestone. SEIA proposes that the Board establish an annual “market divergence test,” similar to the practice adopted by New York to implement its Clean Energy Standard. SEIA envisions a process that would involve the Board seeking stakeholder input on the development
of measurements for market balance, on monitoring the closed SREC market, and on remedies to respond to swings in SREC supply or demand.

**RESPONSE:** The Board appreciates the solar industry’s concern about the market implications of the methodology used to calculate attainment of the 5.1 percent milestone. Since SRECs have a five-year useful life, prices have remained above $200.00 per MWh through Energy Year (EY) despite the looming oversupply that existed prior to the passage of the Clean Energy Act of 2018. Based on this history, the Board anticipates continued mitigation of SREC price volatility, such that investors will continue to receive adequate returns. The Clean Energy Act increased the solar RPS requirements to 4.3 percent. EY 2019 ended with a slight surplus in created SRECs only due to the Act’s exemption from that increase for previously contracted Basic Generation Supply (BGS). The exemption meant that all or part of the BGS load did not have to meet the increased solar RPS obligation in EY 2019, EY 2020, and EY 2021, and the Board reallocated the avoided increase for each energy year to the two subsequent energy years. Thus, the entire BGS obligation from EY 2019 was shifted to EY 2020 and EY 2021; a portion of the EY 2020 obligation was shifted to EY 2021 and EY 2022; and a smaller portion from EY 2021 to EY 2022 and EY 2023. Absent the exemption and the above-described reallocation, the statutory increase in the solar RPS would likely have resulted in a scarcity of SRECs and an associated increase in price. As a result of the reallocation, and depending upon the proportionate share of retail sales sold by BGS providers in a given energy year, the net effective solar RPS requirement rises to as much as 5.6 percent and more closely aligns with the generation capability of New Jersey’s anticipated installed solar capacity. The Board will
continue to monitor SREC supply and demand, but does not share the commenter’s concern that the immediate future holds a crash for SREC prices.

8. COMMENT: RECO supports the use of PJM-EIS’s Generation Attribute Tracking System (GATS) to estimate retail electricity sold and the use of New Jersey’s Clean Energy Program (NJCEP) data to estimate installed solar capacity. RECO supports the proposal to adjust the retail sales data for distribution line losses based upon input from stakeholders including EDCs and third-party electric suppliers.

RESPONSE: The Board appreciates the commenter’s support of the rulemaking and the offer to participate in the public stakeholder process envisioned to refine the proposed inputs to the methodology for determining attainment of the 5.1 percent milestone.

9. COMMENT: PSE&G concurs with the Board’s proposed rule and agrees that basing the 5.1 percent calculation methodology upon actual solar generation and actual kilowatt-hour sales is consistent with the statute. Similarly, PSE&G agrees with the proposed use of data from GATS. However, PSE&G does not agree that solar output should be estimated using a representative output-per-unit capacity factor developed from stakeholder input. Rather, PSE&G believes that the variability and uncertainty due to weather and other factors should be avoided to mitigate “the risk that the SREC market may never actually attain the 5.1 percent threshold.” PSE&G proposes the use of actual solar generation data, provided to GATS as part of the SREC creation process, as the most accurate source of actual solar generation.
RESPONSE: The Board has proposed a methodology to calculate the percentage of retail electricity sales met with eligible solar electricity that measures the amounts in both the numerator and denominator over the same time period. The Board believes that this approach is as close to the intent of the statute as possible, given delays in data availability. The commenter proposes an alternative methodology that can be characterized as retrospective. There is a significant lag between when the relevant solar electricity is produced and metered, and when the generation data from the meter is submitted by its owners to GATS. There is no regulatory requirement for solar owners to submit their recorded solar generation data to GATS for REC creation within an established time period. As a result, some solar owners wait to submit their generation data until the true-up period following the conclusion of the Renewable Portfolio Standard compliance period when SREC demand is firmed and prices are relatively high. Some solar owners never submit their solar generation data to create and sell SRECs, with the result that no SRECs are created despite the production of solar electricity from those systems. Although PSE PSE&G G states that the actual solar generation data is readily available, this data is not recorded contemporaneously with the production of the solar electricity. Thus, reliance upon SREC creation as a proxy for solar electricity produced ensures an inaccurate measurement of solar generation and is likely to lead to SRP closure much later than methodology in the proposed rule.

N.J.A.C. 14:8-2.4(b)7

10. COMMENT: MCIA/SCIA/NJSBA suggests that N.J.A.C. 14:8-2.4(b)7 should be clarified with respect to how the achievement of 5.1 percent will be calculated.
RESPONSE: The comment appears to be about proposed N.J.A.C. 14:8-2.4(b)6, which provides the methodology for calculating the fraction of retail electricity sales provided from solar electric power. Proposed N.J.A.C. 14:8-2.4(b)7 addresses the SREC eligibility criteria for each class of SRP registrant following the Board’s determination that the 5.1 percent milestone has been met. Pursuant to N.J.A.C. 14:8-2.4(b)6, stakeholder input on the two data points specified in that provision has been, and will continue to be, considered in the calculation of the 5.1 percent milestone.

11. COMMENT: MCIA/SCIA/NJSBA suggests that N.J.A.C. 14:8-2.4(b)7 should clarify how solar output factors will account for a lag in permission to operate (PTO) reporting. The commenters’ analysis suggests that current monthly reports of installation activity may only capture around one half of the capacity that goes into service in that month. RESPONSE: N.J.A.C. 14:8-2.4(b)6 sets forth that the trailing 12 months of solar electricity generated shall be estimated by multiplying the latest NJCEP-supplied figure on cumulative installed capacity for the previous 12 months by a corresponding solar output factor. Board staff shall produce this output factor, based upon stakeholder input, as an estimate of expected energy output in MWh from one MWhdc of installed solar capacity that is representative of the fleet of New Jersey solar installations. The commenters correctly point out that each monthly NJCEP solar installation report updates the most recent monthly report because installations from previous months continue to be reported for several months after installation occurs. However, the remaining half of the unreported capacity is ultimately reported in the next two to three months. For example, an October report will not reflect all previous installations because some
of the completed installations from the previous month will not have been reported prior to the issuance of the October report. Additional reports of completed installations from previous months will continue to be received after the October report is issued and will be reflected in subsequent reports. At an average of 35 MW of installed capacity per month, roughly 18 MW of aggregate capacity will report commencing commercial operations in the month following the issuance of its “Permission to Operate”; nine MW of aggregate capacity will report achieving commercial operations in each of the two following months. Nine MW of installed capacity operating for one month and 18 MW of installed capacity operating for two months before being recorded in the NJCEP solar installation report results in a relatively inconsequential amount of electricity produced in relation to 2,800 MW operating over 12 months. However, the Board admits that this typical lag in reported capacity together with the anticipated surge in projects seeking to qualify for SREC eligibility before SRP closure must be accounted for to accurately determine the date of milestone attainment. The Board envisions incorporating stakeholder input on these variables into the monthly estimates of solar electricity as soon as practicable after that input has been received and reviewed.

N.J.A.C. 14:8-2.4(h)4ii and 4iii

12. COMMENT: RECO recommends that the proposed language addressing the registration length and opportunity for an extension for facilities registered after August 7, 2019, should be changed, to provide certainty and clarity and to minimize the bill impacts of the SREC program for customers. RECO would like the proposed language suggesting facilities registered after August 7, 2019 “may not be granted a full 12-month registration length” to be changed to “will
not be granted a full 12-month registration length.” Similarly, RECO recommends that the proposed language suggesting facilities registered after August 7, 2019 “may not be granted an extension” be changed to “will not be granted an extension.”

RESPONSE: The Board proposed this language to provide notice within the rules that the mere act of registering for SREC eligibility does not automatically grant eligibility in light of the statutory requirement for SRP closure upon the 5.1 percent milestone attainment. The August 7th date was included since this is when the Board approved the rulemaking. On further review, the Board has determined that the statute, the stakeholder proceedings that have been occurring as the Board has worked toward implementing the law, the related Board Orders, and continuing public notices about the impending need to close the SRP provide sufficient notice to market participants.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires 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 solar, class I, and class II 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, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for this rulemaking.
DISCLAIMER – THIS IS A DRAFT OF A RULE ADOPTION THAT IS PENDING REVIEW BY THE OFFICE OF ADMINISTRATIVE LAW. PLEASE NOTE THAT MODIFICATIONS TO THIS RULE, MINOR AND/OR MAJOR, MAY BE FORTHCOMING UPON PUBLICATION IN THE NEW JERSEY REGISTER. FURTHERMORE, RELEASE OF THIS DRAFT DOES NOT INITIATE OR OTHERWISE INFLUENCE RULEMAKING TIME PERIODS PRESCRIBED BY LAW OR CODE.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*):

14:8-2.4 Energy that qualifies for an SREC; registration requirement; additional approval, designation, and certification processes for grid supply projects; termination of registration program

(a) (No change.)

(b) To be eligible for issuance of an SREC usable for compliance with this subchapter, electricity shall:

1. (No change.)

6. No new SREC registration program submittal shall be accepted following a determination by the Board that 5.1 percent of the kilowatt-hours sold in the State by each electric power supplier and each basic generation provider comes from solar electric power generators connected to the State's electric distribution system has been attained. The Board shall announce the State’s attainment of the 5.1 percent milestone when the installed solar capacity reported through New Jersey’s Clean Energy Program (NJCEP) is estimated to have produced 5.1 percent of the retail electricity sales estimated to have been sold over the previous 12 months. *[Starting in March 2020, the] * The Board shall report no later than the last business day of each month the estimated solar electricity generated over the previous 12 months. The trailing 12 months of solar electricity generated shall be estimated by multiplying the latest NJCEP-supplied figure on cumulative installed solar capacity for the previous 12 months by a corresponding solar output factor for each month. The solar output factor is an estimate of solar MWh output from one MWdc of capacity. Board staff shall produce, based upon stakeholder input, an estimate of solar
electricity in MWh expected energy output from one MWdc of installed solar capacity representative of the fleet of New Jersey solar installations. An estimate of retail electricity sold in the previous 12 months shall be calculated from data supplied by PJM-EIS GATS for load served adjusted for distribution line losses through a factor based upon stakeholder input. The Board’s monthly report on estimated solar electricity generated as a percent of estimated retail sales shall include the variables and methodology used for calculation, which will include:

i.-iii. (No change from proposal.)

7. (No change from proposal.)

(c)-(s) (No change from proposal.)