



STATE OF NEW JERSEY
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR A FORMAL) ORDER
HEARING FOR WAIVER OF N.J.A.C. 14:8-2.9(C) –)
JOHN J. TURI) DOCKET NO. QW14060548

Parties of Record:

John J. Turi, Pro Se

BY THE BOARD:

By this order, the Board of Public Utilities (“Board”) considers a waiver of its rules pertaining to the Renewable Portfolio Standards (“RPS”) rules at N.J.A.C. 14:8-2.1 et seq. pursuant to its authority under N.J.A.C. 14:1-1.2(b). The Board further considers a request by the customer-generator to be credited with solar renewable energy certificates for energy output measured by an inverter for a period of time, rather than actual metered solar generation from a revenue grade meter.

BACKGROUND

On February 9, 1999, the New Jersey Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 et seq., was enacted. L. 1999, c. 23 § 66. Among other things, EDECA established requirements to advance renewable energy and energy efficiency goals in New Jersey. The Board adopted the RPS to implement those provisions of EDECA. N.J.S.A. 48:3-87 and the RPS rules require entities that sell electricity at retail in this State, electric power suppliers and basic generation service providers, to include minimum percentages of qualified renewable energy in the electricity.

To comply with the RPS, suppliers and providers obtain and use Renewable Energy Certificates (“REC”) to reflect value; one REC represents the environmental attributes of one megawatt-hour (MWh) of renewable energy. N.J.A.C. 14:8-2.8. On the solar electric generation portion of the RPS, suppliers and providers obtain and use Solar Renewable Energy Certificates (“SRECs”). RECs and SRECs have a monetary value in the public market; over the course of their useful lives, they are bought, sold, and ultimately retired by BGS Providers or Third Party Suppliers to satisfy New Jersey RPS obligations.

N.J.A.C. 14:8-2.9 sets forth REC or SREC issuance requirements, including how to measure generation to determine the number of RECs or SRECs that may be issued. The only acceptable meter readings are those that are verified by recording kilowatt-hour production of electrical energy, consistent with the American National Standards Institute (“ANSI”) metering standard and certain operating rules. N.J.A.C. 14:8-2.9(b)(c). All RECs and SRECs must be based upon actual metered data from a revenue grade meter. And installation of a revenue grade meter is the only acceptable methodology used by the Board to determine SREC creation. In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Program: Revised 2012-2013 Programs and Budgets: Storm Response Program Modifications, Jan. 23, 2013, BPU Dkt Nos. EO07030203 & EO1110621V.¹ The Board adopted the rule on May 1, 2012, effective June 4, 2012, as market transparency and credibility demanded that high-value SRECs be based upon actual metered data. N.J.A.C. 14:8-2.9, 44 N.J.R. 1703(a).

STAFF RECOMMENDATION

The letter petition, dated June 2, 2014 by Mr. John J. Turi (“Petitioner”), requests that SRECs be credited for the period January 2013 to June 2014 on the basis of energy output measured by a combination of a June 2013 inverter reading and a June 2014 revenue grade meter reading. Petitioner purchased a solar system from Trinity Solar.² The solar system became operational in January 2009. An inverter was installed, but a revenue grade meter was not. Beginning in January 2009 and for the next four years, Petitioner reportedly sold its SRECs to Trinity Solar per a verbal agreement. By letter dated March 5, 2013, enclosing a final SREC payment, Trinity Solar informed Petitioner that management of its account would cease. On that date, Trinity Solar referred Petitioner to Knollwood Energy (“Knollwood”), an aggregator of SRECs for bulk sale. In April/May 2013, Petitioner contacted Knollwood and a broker informed him that SRECs would be purchased in blocks of ten (10) only. Thereafter, from April/May 2013 to April 2014, Petitioner reportedly accumulated approximately ten (10) SRECs. When Petitioner attempted to sell his SRECs in June 2014, a Knollwood broker reportedly told Petitioner that he needed a Revenue Grade Meter for the SRECs to be purchased. Petitioner claims that neither Trinity Solar nor the Board advised him of the requirement of the revenue grade meter, which caused Petitioner financial harm. Petitioner states he was unaware of the rule until April 2014. Thereafter, he installed a revenue grade meter in June 2014.

¹ By order dated January 23, 2013, the Board extended the compliance deadline to install a revenue grade meter to December 31, 2012. The Board modified certain 2012-2013 renewable energy program rules following the impact of Super Storm Sandy on solar systems. For all customer-generators submitting adverse impact certifications under RPS rules, the Board approved a ten-day expansion of the submission period for SREC registration consistent with the Board’s authority to administer the process under N.J.A.C. 14:8-2.4(c)(1)(i). The Board also approved a compliance period extension of the date, from December 4, 2012 to December 31, 2012, when customer-generators were required to install revenue grade meters under N.J.A.C. 14:8-2.9(c). For all customer-generators submitting the required adverse impact certification and providing an electricity bill demonstrating solar system operations during the month of December 2012, a notification was made to credit affected customer accounts for December 2012 based on estimates. In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Program: Revised 2012-2013 Programs and Budgets: Storm Response Program Modifications, Jan. 23, 2013, BPU Dkt Nos. EO07030203 & EO1110621V.

² At a cost of \$79,280.00, Trinity Solar installed Petitioner’s 10.4 kw residential solar system at 176 Westcott Road, Princeton, NJ 08540.

Staff with the Board of Public Utilities ("Staff") has reviewed the petition. Petitioner's solar system became operational in January 2009 with an inverter, but a revenue grade meter was not installed until June 20, 2014. Petitioner seeks to combine its January 2013 inverter reading with a June 2014 revenue grade meter reading to create SRECs. This proposed use of an alternative methodology to the Board-accepted methodology of a revenue grade meter implicates N.J.A.C. 14:8-2.9, requiring actual metered data from a revenue grade meter be used to measure energy output. As N.J.A.C. 14:8-2.9 applies, Petitioner is effectively seeking a waiver of that rule.

Staff does not view Petitioner's proposed measurement methodology as consistent with the intent of EDECA to advance renewable energy goals and the RPS rules requiring specific amounts of purchased renewable energy annually. Where no reading from a revenue grade meter for the period is available, there is no accurate measurement of the generation amount purchased or sold to fulfill the RPS. Therefore, a waiver of N.J.A.C. 14:8-4.1(b)(2) is inappropriate pursuant to the Board's authority under N.J.A.C. 14:1-1.2(b).

DISCUSSION AND FINDINGS

Preliminarily, the Board is not required to direct oral and written communications on its rulemaking and rule adoption to specific individuals. Petitioner is, therefore, not entitled to personal notice of Board rules. The Board is, instead, required to provide a general public notification of its rules, as discussed below. Any rule affecting customer equipment is published on the Board's website for public viewing.

N.J.A.C. 1:30-5.1 requires an agency to notice its rulemaking proceedings. The Board provided formal notice of the rule, a comment period, and a public hearing consistent with Administrative Procedure Act rulemaking procedures at N.J.S.A. 52:14B-4 and N.J.A.C. 1:30 et al. On March 30, 2011, a re-adoption of the regulations with amendments was proposed. On May 2, 2011, the proposed rule was published in the New Jersey Register consistent with N.J.A.C. 1:30-5.2, requiring notice of proposed rules. On July 1, 2011, the sixty day public comment period consistent with N.J.A.C. 1:30-5.4 ended. On May 1, 2012, the Board approved the re-adoption with amendments.³ On June 4, 2012, the adopted rule was published in the New Jersey

³ Following rule adoption, Staff circulated notice by: Staff's May 25, 2012 email announcing the Chapter 8 rule change to: renewables@njcep.com; INX@njcep.com, and cc: smallwind@njcleanenergy.com, including a courtesy copy of the Chapter 8 Renewable Energy and Energy Efficiency Re-adoption with Amendments effective June 4, 2012; a Renewable Energy Committee meeting on June 12, 2012; Staff's presentation at a Solar Energy Industries Association webinar open to the public on June 15, 2012; regular Renewable Energy meeting minutes; and periodic updates of the NJCEP website. Notice was also provided by the Board's mass mailing letter informing end use customers of the rule adoption and re-notifying them of the final date by which a revenue grade meter must be installed; posting the rule on the NJCEP website: <http://www.njcleanenergy.com/renewable-energy/programs/metering-requirements/production-meter-requirements-solar-projects-sreCs>; Market Manager notification letters to end use customers; Market Manager notification letters to solar installers; Market Manager notification to the Renewable Energy Committee email distribution list; the Market Manager compliance filing, specifically the NJCEP Honeywell Residential Energy Efficiency and Renewable Energy Program Plan Filing for 2012-13, Rev. Nov. 8, 2012 (2012-2013 Residential RE compliance filing) under SREC Registration Program (SRP) – Solar Projects, 2012-13 Program Changes, at pg 44; and the January 18, 2013 GATS announcement notifying of the January 31, 2013 automatic change to meter reading to its general subscribers. While Staff's circulation of the rule to targeted groups of subscribers on multiple occasions is a reasonable effort to accommodate the customer-generator class, the Board is not required to direct oral and written communications of its rulemaking and rule adoption to specific individuals.

Register and made effective on that date. Notice of the re-adoption of the Chapter 8 amendments and the rule, N.J.A.C. 14:8-2.9, was posted for public viewing on the New Jersey Clean Energy Program ("NJCEP") website consistent with N.J.A.C. 1:30-5.1. Thus, notice of the Board's rulemaking and rule adoption was provided on several dates.

Additionally, where renewable energy is delivered through wires and/or other installed equipment, the customer-generator as owner/operator, defined at N.J.A.C. 14:8-4.2, has an affirmative responsibility to comply with all applicable codes and other safety requirements, including the proper installation and maintenance of equipment that generates, manages, and/or monitors electricity. As the rule was published on multiple occasions, the Board **FINDS** adequate general notice was given.

The Board has the power to relax, or effectively waive, its administrative rules if doing so is in the public interest. N.J.A.C. 14:1-1-2. The Board may, in special cases and for good cause shown, permit deviation from its rules by a two-part test. The Board shall, in accordance with the general purposes and intent of its rules, waive a section of a rule or a rule if full compliance with the rule would adversely affect the ratepayers of a utility, the ability of said utility to continue to render safe, adequate and proper service, or the interests of the general public. N.J.A.C. 14:1-1.2(b)(1).

Under the first prong of the waiver test, the Board considers whether the request supports the general purpose and intent of the rules. The RPS rules were designed to promote and secure maximum accuracy in measuring energy output as a basis for SREC creation, by using revenue grade meter methodology that can be verified consistent with N.J.A.C. 14:8-2.9(b)(c). Because no revenue grade meter reading for the period January 2013 to May 2014 was made available, actual metered data cannot be verified. Therefore, the proposed methodology uses insufficient and potentially inaccurate data contravening the purpose of the rules. Any deviation from the rule would negatively affect the RPS, as energy generated for sale would be unverified. The Board **FINDS** the request is both inconsistent with the intent of EDECA to advance renewable energy goals and the RPS rules requiring specific amounts of purchased renewable energy annually.

The second prong of the waiver test evaluates whether less than full compliance with the rules would adversely affect the public interest. EDECA requires the State to promote clean solar generation. The Board has implemented that mandate through its RPS rules. Permitting use of a less accurate methodology does not serve the public interest, as ratepayers bear the costs of SRECs based on that generation. The Board notes its rules require SRECs be created based upon metered generation, that Petitioner had the responsibility to comply with the RPS rules, and that Petitioner does not meet the requisite criteria to waive the rule at N.J.A.C. 14:8-2.9(c). The Board thus **FINDS** that there is not sufficient cause to waive actual metered solar generation from a revenue grade meter as required by N.J.A.C. 14:8-2.9(c); therefore, no SRECs may issue or be credited to Petitioner from January 2013 to June 2014.

Additionally, Petitioner sought to be credited with SRECs by the Board. However, the price of an SREC is set by the solar market not the Board. As the relief requested is not available, the Board, therefore, **FINDS** that no SRECs may issue for the period beginning January 2013 and ending June 2014. Accordingly, all requests by Petitioner are **DENIED** and the petition is **HEREBY DISMISSED**.

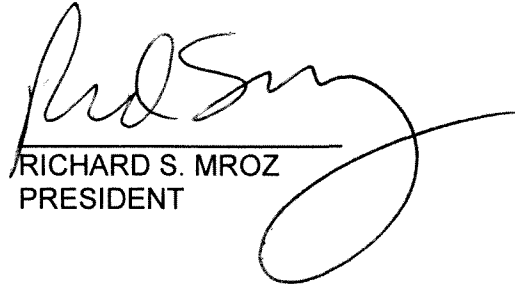
This effective date of this Order is May 29, 2015.

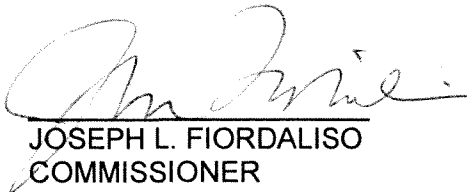
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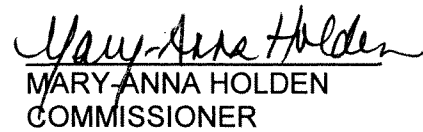
May 19, 2015


BOARD OF PUBLIC UTILITIES

BY:


RICHARD S. MROZ
PRESIDENT

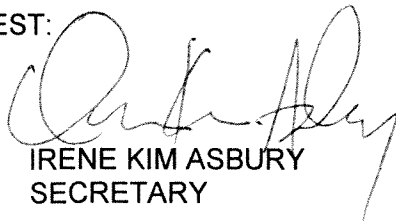

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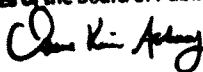

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ATTEST:


IRENE KIM ASBURY
SECRETARY

**I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities**



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14:8-2.9(C) – JOHN J. TURI - DOCKET NO. QW14060548

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