

SPECIAL ADOPTION

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Renewable Energy Portfolio Standards Amount of Renewable Energy Required

Special Adopted Amendments: N.J.A.C. 14:8-2.2 and 2.3

Adopted: March 30, 2011 by the New Jersey Board of Public Utilities, Lee A. Solomon, President; Jeanne M. Fox, Joseph L. Fiordaliso and Nicholas Asselta, Commissioners.

Filed: March 30, 2011 as R.2011 d.130.

Authority: N.J.S.A. 48:2-13 and 48:3-49 et seq.

BPU Docket Number: EX10050316.

Effective Date: March 30, 2011.

Expiration Date: September 30, 2012.

Take notice that, in accordance with N.J.S.A. 48:3-87d, the New Jersey Board of Public Utilities has adopted amendments to its Renewable Portfolio Standards (RPS) rules at N.J.A.C. 14:8-2. These amendments took effect on March 30, 2011. The RPS rules require electric power suppliers and basic generation service (BGS) providers (supplier/providers) to include minimum percentages of renewable energy in the electricity they sell; those minimum percentages increase over time. The rules specify separate minimums for solar electric generation, for class I renewable energy, and for class II renewable energy. Compliance with the rules must be demonstrated by either retiring renewable energy certificates (RECs) or solar renewable energy certificates (SRECs) or paying an alternative compliance payment (ACP) or solar alternative compliance payment (SACP).

These adopted amendments codify new statutory requirements enacted through the Solar Energy Advancement and Fair Competition Act (SEAFCA), P.L. 2009, c. 289. These amendments will remain in effect until September 30, 2012, or until these amendments are proposed for public comment and adopted through standard rulemaking procedures.

SEAFCA requires a schedule of gradually increasing solar energy requirements, which are higher than previous solar requirements. This new schedule is found in this adoption in Table B in N.J.A.C. 14:8-2.3. SEAFCA also changes the method by which each supplier/provider's solar obligation is calculated. Historically, a supplier/provider's solar energy obligation was a percentage of the amount of retail electricity the supplier/provider supplied (that is, a percentage of the supplier/provider's entire electricity portfolio). Under the method set by the SEAFCA, the Statewide solar energy target is divided among supplier/providers based on the market share of each supplier/provider. This new volumetric method applies only to solar requirements. The method for calculating class I and class II renewable energy requirements remains unchanged by SEAFCA, and continues to be a simple percentage of electricity supplied.

SEAFCA exempts electricity supply from the new higher solar requirements if the supply is covered by a BGS contract that was executed prior to enactment of the law. The solar obligation for this exempt electricity is determined under the rules in place when the BGS contract was executed. Thus, exempt electricity carries a lower solar obligation than non-exempt electricity. However, SEAFCA requires that the Statewide solar target for each year must still be met. Therefore, during energy years 2011 through 2012, when some electricity supply will be exempt, the incremental solar obligation that is not met because of the exemption must be distributed among the non-exempt electricity supplied in each energy year until the prior BGS contracts expire. This special adoption includes provisions for calculating each supplier/provider's solar obligation for the years during which some electricity supply is exempt, and separate provisions calculating each supplier/provider's solar obligation for subsequent years, in which the

solar obligation for all electricity supply will be calculated in the same manner, without exemptions, absent a triggering event under N.J.S.A. 48:3-87d(3).

To reflect the new volumetric method of calculating solar obligations, the existing terminology referring to the "percentage" of renewable energy is changed throughout the rule sections amended herein, so that the rule refers more broadly to the "amount" of renewable energy required. Since each supplier/provider's SREC obligation will be calculated using a different method from that used to determine the supplier/provider's class I and class II requirements, the solar requirements are removed from Table A in N.J.A.C. 14:8-2.3, and relocated to N.J.A.C. 14:8-2.3(j) through (o).

The definitions of "total cost of solar incentives" and "total retail cost of electricity" are deleted, as they are used only in N.J.A.C. 14:8-2.3(j) and (k), which limit the number of SRECs required. Such limits are now prohibited under SEAFCA and are therefore being deleted in this Special Adoption.

The special adoption also includes amendments to certain definitions, which were made in SEAFCA, including, among others, changes to the definition of "SREC" and replacement of the term "reporting year" with "energy year." Also, the previous rules referred to the "submittal" of RECs. In actuality, supplier/providers do not submit RECs, but rather retire them permanently and document this retirement in order to demonstrate RPS compliance. This inaccuracy is corrected throughout the rule sections amended herein.

It should be noted that SEAFCA calls for changes in addition to those it mandated for implementation through this special adoption. Those amendments are proposed in the notice of proposal for the re-adoption of Chapter 8 with amendments published elsewhere in this issue of the New Jersey Register. Please note that the amendments in this special adoption are not included in that proposed Chapter 8 re-adoption.

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

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:

"Alternative compliance payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a supplier/provider may submit [in lieu of supplying] **to comply with** the class I or class II renewable energy [required under] **requirement in** Table A in N.J.A.C. 14:8-2.3.

"Energy year" or "EY" means the 12-month period from June 1st through May 31st and shall be numbered according to the calendar year in which it ends.

"Renewable Energy Certificate" or "REC" means a certificate representing the environmental benefits or attributes of one megawatt-hour of generation from a generating facility that [meets the requirements of this subchapter. Class I RECs represent the environmental benefits or attributes of one megawatt-hour of class I renewable energy generation; class II RECs represent the environmental benefits or attributes of one megawatt-hour of class II renewable energy generation; and solar RECs represent the environmental benefits or attributes of one megawatt-hour of solar electric generation] **produces class I or class II renewable energy, but shall not include a solar renewable energy certificate.**

["Reporting year" means the 12-month period from June 1st through May 31st. A reporting year shall be numbered according to the calendar year in which it ends, so that reporting year 2005 runs from June 1, 2004 through May 31, 2005.]

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 “Solar alternative compliance payment” or “SACP” means a payment of a certain dollar amount per megawatt-hour (MWh), which a supplier/provider may submit [in lieu of complying] to the Board to comply with the solar electric generation requirements [in Table A in N.J.A.C. 14:8-2.3] under N.J.S.A. 48:3-87.

“Solar [REC] renewable energy certificate” or “SREC” means a [type of REC, as defined in this section,] certificate issued by the Board or its designee, which represents [the environmental benefits or attributes of] one megawatt-hour (MWh) of solar [electric generation, as defined in N.J.A.C. 14:8-1.2] energy that is generated by a facility connected to the distribution system in New Jersey, and has value based upon, and driven by, the energy market.

[“Total cost of solar incentives” means the sum of the following for a reporting year, provided that any particular cost that is within more than one of the categories listed below shall not be counted twice:

1. The total amount of financial assistance for solar electric generation paid from:

- i. The societal benefits charge established under N.J.S.A. 48:3-60;
- ii. The retail margin on certain hourly-priced and larger non-residential customers pursuant to the Board’s continuing regulation of Basic Generation Service pursuant to N.J.S.A. 48:3-51 and 57;
- iii. Other monies appropriated for such purposes; and
- iv. Cost recovery for renewable energy programs approved by the Board under N.J.S.A. 48:3-98.1, after January 13, 2008, which is paid from any source other than i, ii or iii above;

2. The total cost incurred by all suppliers/providers selling electricity to retail customers in New Jersey for solar RECs used for compliance with the solar electric generation requirement under N.J.A.C. 14:8-2.3, Table A; and

3. The total revenue from the payment of solar alternative compliance payments.

“Total retail cost of electricity” means the total revenue from New Jersey electricity sales over a reporting year, as stated in “Revenue from Retail Sales of Electricity to Ultimate Customers, All Sectors” reported by the United States Energy Information Administration based on Form EIA-826, “Monthly Electric Sales and Revenue Report with State Distributions Report,” or the successor to such report and form designated by the United States Energy Information Administration.]

“True-up period” means the period each year from the end of the [reporting] energy year until [September] October 1.

...

14:8-2.3 [Minimum percentage] Amount of renewable energy required

(a) Each supplier/provider, as defined at N.J.A.C. 14:8-1.2, that sells electricity to retail customers in New Jersey, shall ensure that the electricity it sells each [reporting] energy year in New Jersey includes at least the minimum [percentage] amount of qualified renewable energy, as defined at N.J.A.C. 14:8-2.2, required for that [reporting] energy year, [from each category specified in Table A below, except as provided at (h), (j) or (k) below] as specified in this section. Requirements for class I and class II renewable energy are set forth in Table A below:

Table A

What Percentage Of Energy Supplied Must Be Class I Or Class II Renewable Energy?

[Reporting Energy Year]	[Solar Electric Generation (solar RECs)]	Class I Renewable Energy	Class II Renewable Energy	[Total Renewable Energy]
June 1, 2004 - May 31, 2005	[0.01%]	.74%	2.50%	[3.25%]
June 1, 2005 - May 31, 2006	[0.017%]	0.983%	2.50%	[3.5%]

June 1, 2006 - May 31, 2007	[0.0393%]	2.037%	2.50%	[4.5763%]
June 1, 2007 - May 31, 2008	[0.0817%]	2.924%	2.50%	[5.5057%]
June 1, 2008 - May 31, 2009	[0.16%]	3.84%	2.50%	[6.5%]
June 1, 2009 - May 31, 2010	[0.221%]	4.685%	2.50%	[7.406%]
EY 2011: June 1, 2010 - May 31, 2011	[0.305%]	5.492%	2.50%	[8.297%]
EY 2011: June 1, 2011 - May 31, 2012	[0.394%]	6.320%	2.50%	[9.214%]
EY 2011: June 1, 2012 - May 31, 2013	[0.497%]	7.143%	2.50%	[10.14%]
EY 2011: June 1, 2013 - May 31, 2014	[0.621%]	7.977%	2.50%	[11.098%]
EY 2011: June 1, 2014 - May 31, 2015	[0.765%]	8.807%	2.50%	[12.072%]
EY 2011: June 1, 2015 - May 31, 2016	[0.928%]	9.649%	2.50%	[13.077%]
EY 2011: June 1, 2016 - May 31, 2017	[1.118%]	10.485%	2.50%	[14.103%]
EY 2011: June 1, 2017 - May 31, 2018	[1.333%]	12.325%	2.50%	[16.158%]
EY 2011: June 1, 2018 - May 31, 2019	[1.572%]	14.175%	2.50%	[18.247%]

EY 2011: June 1, 2019 - May 31, 2020	[1.836%]	16.029%	2.50%	[20.365%]
EY 2011: June 1, 2020 - May 31, 2021	[2.120%]	17.880%	2.50%	[22.5%]

(b) The Board shall adopt rules setting [the] minimum [percentages] **amounts** of solar electric generation, class I renewable energy, and class II renewable energy required for [reporting year] EY 2022 and each subsequent [reporting] **energy** year. These minimum [percentages] **amounts** shall be no lower than those required for [reporting year] EY 2021 [in Table A above, except as may have been adjusted as provided in (j) and (k) below]. Each of the rules setting such minimum [percentage] **amount** shall be adopted at least two years prior to the minimum [percentage] **amount** being required.

(c) **Each supplier/provider's solar electric generation obligation shall be calculated in accordance with (j) through (o) below.** A supplier/provider shall meet the requirements for solar electric generation [in Table A above] through:

1. [submittal of solar RECs , or through submittal] **Retirement of SRECs through a renewable energy trading program approved by the Board in consultation with the Department of Environmental Protection; or**

2. **Submittal** of one or more SACPs[, as those terms are defined at N.J.A.C. 14:8-2.2].

(d) A supplier/provider may meet the class I and class II renewable energy requirements in Table A above by [submitting] **retiring** RECs in accordance with N.J.A.C. 14:8-2.8. **Alternatively, a**

[(e) A] supplier/provider may[, in lieu of meeting the requirements in Table A above,] **comply with the class I and class II requirements** of this subchapter by submitting the appropriate number of ACPs [or SACPs], in accordance with N.J.A.C. 14:8-2.10.

(e) **(Reserved.)**

(f) The following shall apply to the type of energy, and type of documentation, used for compliance with each of the requirements in [Table A above] **this subchapter:**

1. [Solar RECs] **SRECs** may be used to meet any requirement [in Table A, whether the requirement is] for solar electric generation, class I renewable energy, or class II renewable energy;

2.-3. (No change.)

(g) A supplier/provider shall not demonstrate compliance with this subchapter using direct supply of any type of renewable energy. [All RPS compliance shall be submitted in the form of RECs.]

(h) (No change.)

(i) The same renewable energy shall not be used for more than one of the following:

1. Creation of [a solar REC] **an SREC** under N.J.A.C. 14:8-2.9;

2.-3. (No change.)

(j) If the Board determines that the total cost of solar incentives for a reporting year exceeds two percent of the total retail cost of electricity for that reporting year, then the percentage of solar electric generation required under Table A for the reporting year in which the Board makes its determination shall continue to be the percentage required in each subsequent reporting year, until the limitation ends under (k) below. For example, if the Board determines on December 1, 2018 that the cost limitation was triggered, the percentage of solar electric generation required shall remain at 1.572 percent until the limitation ends under (k) below. The Board may revise Table A accordingly by administrative correction pursuant to N.J.A.C. 1:30-2.7.

(k) If the limitation in (j) above was triggered, the limitation shall end after the Board determines that the total cost of solar incentives for a reporting year did not exceed two percent of the total retail cost of electricity for that reporting year.

1. For the next reporting year after the limitation ends under (k) above, the percentage of solar electric generation required shall be the percentage in Table A for the reporting year immediately following the reporting year in which the limitation in (j) above was triggered.

2. Thereafter, the percentage of solar generation shall continue to increase each reporting year in increments as set out in Table A above until it reaches 2.12 percent or, if a minimum percentage of solar electric generation has been adopted pursuant to (b) above for reporting year 2022 or after, then until it reaches the percentage for the last subsequent reporting year for which a minimum percentage has been adopted.

i. For example, if the limitation in (j) above is imposed in the reporting year ending May 31, 2019, and the Board determines on December 1, 2020 that the two-percent threshold was not met in the reporting year ending May 31, 2020, then the percentage of solar electric generation required for the reporting year ending May 31, 2022 shall be 1.836 percent, and the percentage for the reporting year ending May 31, 2023 shall be 2.120 percent.

3. The Board may revise Table A accordingly by administrative correction pursuant to N.J.A.C. 1:30-2.7.]

(j) **Each megawatt-hour (MWh) of retail electricity supplied in New Jersey by a supplier/provider subject to this subchapter carries with it an accompanying solar obligation. Beginning on June 1, 2010, each supplier/provider shall calculate its solar obligation for each energy year as set forth in (m) through (o) below. Subsections (m) through (o) below allocate the Table B Statewide solar obligation among all supplier/providers that are subject to this subchapter. All supplier/provider solar obligations, taken together, must equal the Statewide solar obligation set forth in Table B below for the applicable energy year.**

(k) **Notwithstanding any other provision of this section, if a BGS provider has, prior to January 17, 2010, executed a BGS contract to provide retail electricity, the solar obligation resulting from the electricity supplied under that contract shall be determined using the provisions of this subchapter that were in effect at the time the contract was executed. For the purpose of this section, the electricity supply covered by these contracts shall be called "exempt electricity," and electricity supply not covered by such a contract shall be called "non-exempt electricity."**

(l) **All contracts subject to exemption under (k) above will expire on or before May 31, 2012. Therefore, for EY 2011 and 2012, the solar obligation that attaches to exempt electricity supply must be calculated separately from the solar obligation for non-exempt electricity supply, in accordance with the applicable provisions of (m) through (o) below. If a supplier/provider's energy portfolio includes both exempt and non-exempt electricity supply, the solar obligation for each shall be calculated separately and summed to determine that supplier/provider's total solar obligation for the energy year.**

(m) **For any exempt electricity supplied, a provider shall calculate its solar obligation as follows:**

1. **Determine the MWhs of exempt electricity the provider supplied during the energy year;**

2. **Determine the solar electric generation percentage requirement in effect when the BGS contract subject to (k) above was executed; and**

3. **Multiply (m)1 and 2 above.**

(n) **For any non-exempt electricity supplied during EY 2011 or 2012, a supplier/provider shall calculate its solar obligation as follows:**

1. **Determine the supplier/provider's market share of the non-exempt electricity supplied Statewide during the applicable energy year, as follows:**

i. **Consult the Board's NJCEP website to determine the number of MWhs of non-exempt electricity supplied Statewide during the energy year by all supplier/providers subject to this subchapter;**

ii. **Determine the number of MWhs of non-exempt electricity the supplier/provider supplied during the energy year; and**

iii. **Divide (n)1ii above by (n)1i above to obtain a fraction representing the supplier/provider's non-exempt electricity market share for the applicable energy year;**

2. Determine the total Statewide solar obligation for non-exempt electricity supply during the applicable energy year as follows:

i. Consult Table B below to determine the total Statewide solar obligation for all electricity supplied during the energy year;

ii. Consult the Board’s NJCEP website to obtain the cumulative solar obligation for the exempt electricity that was supplied during the energy year;

iii. Subtract (n)2ii above from (n)2i above. The result is the total Statewide solar obligation for non-exempt electricity supplied during the energy year; and

3. Multiply the supplier/provider’s non-exempt market share from (n)1 above by the Statewide non-exempt solar obligation from (n)2 above. The result is the supplier/provider’s solar obligation for the non-exempt electricity that it supplied during the energy year.

(o) For electricity supplied during EY 2013 or later, a supplier/provider shall calculate its solar obligation as follows:

1. Determine the supplier/provider’s market share of all electricity supplied Statewide during the applicable energy year, as follows:

i. Consult the Board’s NJCEP website to determine the number of MWhs of electricity supplied Statewide during the energy year by all supplier/providers subject to this subchapter;

ii. Determine the number of MWhs of electricity the supplier/provider supplied during the energy year; and

iii. Divide (o)1ii above by (o)1i above to obtain a fraction representing the supplier/provider’s market share; and

2. Multiply the supplier/provider’s market share from (o)1 above by the applicable Statewide solar obligation from Table B below. The result is the supplier/provider’s solar obligation for the electricity that it supplied during the energy year.

Table B
Total Statewide Solar Obligation
Starting June 1, 2010

<u>Energy Year</u>	<u>Statewide Solar Obligation in GWhs</u>
EY 2011: June 1, 2010 - May 31, 2011	306
EY 2012: June 1, 2011 - May 31, 2012	442
EY 2013: June 1, 2012 - May 31, 2013	596
EY 2014: June 1, 2013 - May 31, 2014	772
EY 2015: June 1, 2014 - May 31, 2015	965
EY 2016: June 1, 2015 - May 31, 2016	1,150
EY 2017: June 1, 2016 - May 31, 2017	1,357
EY 2018: June 1, 2017 - May 31, 2018	1,591
EY 2019: June 1, 2018 - May 31, 2019	1,858
EY 2020: June 1, 2019 - May 31, 2020	2,164
EY 2021: June 1, 2020 - May 31, 2021	2,518
EY 2022: June 1, 2021 - May 31, 2022	2,928
EY 2023: June 1, 2022 - May 31, 2023	3,433
EY 2024: June 1, 2023 - May 31, 2024	3,989
EY 2025: June 1, 2024 - May 31, 2025	4,610
EY 2026: June 1, 2025 - May 31, 2026	5,316
EY 2027 and Beyond	At Least 5,316 Per Year