

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Renewable Energy and Energy Efficiency

Proposed Amendments: N.J.A.C. 14:8-1.2, 2.9, 4.1, 4.2, 4.3, and 5.2

Authorized By: New Jersey Board of Public Utilities, Robert M. Hanna, President, Jeanne M.

Fox, Joseph L. Fiordaliso, Nicholas Asselta, and Mary-Anna Holden, Commissioners.

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13 and 48:3-87.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: EX11120885V.

Proposal Number: PRN 2012-099.

Comments may be submitted through October 5, 2012 by e-mail **in Microsoft Word format**, or in a format that can be easily converted to Word, to: rule.comments@bpu.state.nj.us or on paper to:

Kristi Izzo, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: EX11120885V

44 S. Clinton Ave., 9th floor,

P.O. Box 350

Trenton, NJ 08625-0350

The agency proposal follows:

Summary

The Board of Public Utilities (“Board” or “BPU”) is hereby proposing amendments to multiple sections of N.J.A.C. 14:8 addressing renewable energy and energy efficiency. The proposed amendments apply to the New Jersey renewable portfolio standards (RPS), class II renewable energy certifications (RECs), and net metering.

At N.J.A.C. 14:8-1.2, the Board has added a definition of EDC, which is proposed to mean as electric public utility is defined at N.J.A.C. 14:3-1.1.

The Board is proposing to amend N.J.A.C. 14:8-2.9(e)2iii, which will specify the eligibility criteria for electric generation to be used as the basis for class II RECs, rather than simply class I RECs. The effect of the new paragraph will be to codify existing practice and clarify that electric generation qualifies for the creation of class II RECs only if that energy has settled in the PJM wholesale electric market.

The Board proposes to add new N.J.A.C. 14:8-4.1(b) and (c). Proposed new paragraph (b)1 permits a renewable generation facility located on a property contiguous to that of the end use customer, or separated by no more than one existing easement, public thoroughfare, or utility or transportation right-of-way, to be considered behind the customer’s meter. Proposed new paragraph (b)2 requires that the renewable energy be delivered from the generation facility to the end user through facilities owned and operated by an entity other than the electric distribution company (EDC), and places an affirmative responsibility on that entity to comply with all applicable safety requirements set out in the Board’s rules. Proposed new paragraph (b)3 requires that the renewable generation facility serve only one net metering customer and that, if the property contains more than one generation facility, each facility serves a separate net metering customer. This paragraph also requires that the capacity of the generation facility not

exceed the electricity supplied to the customer over a historical 12-month period. Proposed new paragraph (b)4 makes the net metering customer responsible for ensuring compliance with N.J.A.C. 14:8-4, by making any noncompliance, whether of the customer or the generator, deemed a violation by the net metering customer. The effect of these provisions will be to expand the definition of renewable energy that is eligible for net metering. Proposed new subsection (c) requires that, prior to the interconnection by the EDC of a net-metering customer, the customer must have on line all of the electrical load that the renewable generation is proposed to offset. The effect of this provision will be to clarify that load must be in place prior to receipt of authorization to energize the renewable generation which is to be net metered.

At N.J.A.C. 14:8-4.2, the Board proposes to amend the definition of “customer-generator” and “customer-generator facility” and add several definitions. The definition of “customer-generator” is amended to delete the examples of “customer” as that term is already defined at N.J.A.C. 14:3-1.1 and to state that the Board may deem a “net metering customer” and a “net metering generator,” acting together, to be a “customer-generator.” Customer-generator facility is also amended to specify that only interconnection equipment connecting a facility to a customer is included. A “net metering customer” is defined as an entity that owns and/or operates electrical equipment that is connected to the EDC’s electric distribution system through a meter used for net metering; it may or may not be the same entity as the net metering generator. A “net metering generator” is defined as an entity that owns and/or operates a renewable energy generation facility and delivers the electricity from that facility to a net metering customer. The net metering generator may or may not be located on the same property as the net metering customer but must be connected to the customer through wires that are not owned by the EDC.

At N.J.A.C. 14:8-4.3(a), the Board proposes to replace the term “annualized period” with

the term “historical 12-month period.” The change will have the effect of avoiding possible confusion over the meaning of “annualized period” as this term is derived from statute and is used elsewhere for purposes of billing. N.J.A.C. 14:8-4.3(a) deals with the process of sizing a generator, and the Board believes that the proposed change will help to avoid confusion.

Proposed new N.J.A.C. 14:8-5.2(j), states that unauthorized system interconnection and operation will result in no payment for excess generation credits until the application is approved. This change will have the effect of penalizing those systems that are interconnected to the grid without final approval from the EDC.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments to the renewable portfolio standards rules (N.J.A.C. 14:8-2), the net metering rules (N.J.A.C. 14:8-4), and the interconnection rules (N.J.A.C. 14:8-5), will have a positive social impact for New Jersey, because the amendments to these subchapters will clarify the meaning of these rules for stakeholders and also facilitate investment in distributed renewable energy (renewable energy located close to the source of energy consumption). In addition to the benefits provided by all renewable energy - reducing pollution and the need for investment in new power plants powered by fossil fuels - distributed renewable energy has two specific benefits: 1. helping alleviate the demand for large electric transmission investments; and 2. reducing congestion and overloading of existing electric distribution lines, thus reducing power outages and improving the reliability of electric service to all customers.

In addition, the amendment to the interconnection rules will serve as a deterrent to the unauthorized energizing of generation facilities. As the number and size of renewable energy generating units in New Jersey increases, it is more important than ever that these generation facilities be subject to EDC review and approval prior to interconnection with the distribution system.

Economic Impact

The several amendments to the RPS, net metering, and interconnection rules vary in their economic impact. The amendments proposed will update the rules to include changes that could not be made in the readoption of Chapter 8 because there had not been an opportunity for public comment. The amendment to the RPS rules, which clarify that only energy which has settled in the PJM market is eligible to create class II RECs, codifies existing practice and is not anticipated to have any economic impact. Class II renewable energy sources include existing large municipal solid waste incinerators and hydropower installations that sell their power in the PJM wholesale markets where settlement data provides the basis for power transactions and is subsequently provided to PJM-EIS GATS toward solar renewable energy certificate (SREC) creation. The existing practice dates back to when the use of RECs to enable RPS compliance was first adopted by the Board in 2005. No stakeholders have identified this requirement as an economic barrier to participation in the NJ Class II REC market.

Similarly, the amendment to the net metering rules, which clarifies the terminology for the time period that is used to correctly size renewable generation facilities has no economic impact. This is a change in the wording used to describe the time period for sizing facilities rather than a substantive change.

The amendment to the interconnection rules, which would prohibit payment for excess generation credits until the application is approved by the EDC, will have no significant impact upon the market as a whole. A small but growing number of renewable owner/operators have been energizing their systems prior to receiving final approval from their EDC. The prohibition on payment for excess generation credits is intended to remove an incentive for such action but does not remove any asset already owned by an owner/operator. The proposed expansion of net metering to generation facilities located on contiguous properties has the potential to have an impact upon ratepayers. All net metering is to some extent subsidized by non-net metering customers because customer-generators, or net metering customers, receive a full retail credit against usage for each kilowatt hour (kWh) generated during the annualized period, even though the generation produced by the net metering customer-generators does not include any contribution toward the transmission and distribution investments made by the EDCs. Basic generation service providers and electric power suppliers will need to recoup these costs through the pricing of their electricity supply. The Board may authorize EDCs to pass on these costs to electricity customers through rates, assuming the costs meet the Board's standard that the costs are reasonable and prudent. Because the proposed amendments would expand the availability of net metering to include generation located on contiguous lots, there is a potential increase in the extent to which non-net metering customers pay for net metering in their rates. However, the amendments also have the potential to increase the beneficial effects of net metering. Increased net metering means a greater reduction in electricity costs in the long-term by supporting the development of renewable energy in New Jersey.

In the long term, the Board's programs for developing renewable energy use and generation can act as a spur to development of renewable energy markets, thus reducing use of

environmentally damaging fossil fuels and decreasing U.S. dependence on foreign oil imports. Ultimately, this will have an important beneficial economic impact on the country as a whole.

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 and the net metering 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 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 the proposed amendments.

Regarding the interconnection rules (N.J.A.C. 14:8-5), the Federal Energy Regulatory Commission (FERC) has interconnection rules at 18 CFR 35, which apply to interconnection with transmission lines. The Board's interconnection rules apply only to interconnections with the electric distribution system. Therefore, no Federal standards analysis is required.

Jobs Impact

The proposed amendments to the RPS and the interconnection rules codify existing practice and clarify terminology. These amendments will have no impact on jobs in the State. The proposed amendment to the net metering rule will encourage the development of net metered renewable facilities by expanding the number of installations eligible for net metering

treatment. Providing those incentives to a larger number of facilities will tend to have a positive impact on jobs in the development, construction, and operation of renewable energy facilities.

Agriculture Industry Impact

The Board does not expect the proposed amendments to have a direct material effect on the agriculture industry in New Jersey. To the extent that the proposed amendments increase the incentives for renewable generation, a greater number of renewable energy facilities will benefit the agriculture industry, if increased renewable electric generation displaces fossil-fuel generation that is linked to acid rain, global warming, and other air pollution that can harm agricultural crops.

Regulatory Flexibility Statement

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 full-time employees. The proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses operating renewable electric generation facilities in New Jersey or in the rest of the PJM region. Accordingly, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on affordable housing in New Jersey because the amendments are primarily limited to codifying existing practice or clarifying existing regulatory requirements intended to increase the use of renewable energy. The existence of the renewable energy programs, participation in which is voluntary, do not impact the costs in

the housing market. These existing regulatory requirements, while they probably have some effect on electricity rates, do not affect the availability or price of housing. One proposed amendment is intended to increase the number of renewable generation projects for which net metering is available, but to the impact of this amendment, as discussed above in the Economic Impact statement, would also be on rates rather than on housing because the rules address only renewable energy generation and do not affect housing prices or the housing market.

Smart Growth Development Impact Analysis

The existing regulatory requirements and the proposed amendments, while they probably have some effect on electricity rates, do not affect housing production or the price of housing in Planning Areas 1 and 2, or within designated centers, as these areas are defined in the State Development and Redevelopment Plan. While they probably have some effect on electricity rates once an owner has opted to participate in a renewable energy program, these programs do not affect housing production or the price of housing.

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

SUBCHAPTER 1. RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

14:8-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1 and 14:4-1.2.

...

“EDC” means an electric public utility as defined in N.J.A.C. 14:3-1.1.

...

SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS

14:8-2.9 Issuance of RECs and SRECs

(a) – (d) (No change.)

(e) Electric generation qualifies for issuance of RECs or SRECs only if:

1. (No change.)

2. It is class I renewable energy, other than solar electric generation, and one or more of the following requirements is met:

i. – ii. (No change.)

iii. The generating facility has the sale of the class I **or** class II renewable energy settled in the PJM wholesale market.

(f) – (i) (No change.)

SUBCHAPTER 4. NET METERING FOR CLASS I RENEWABLE ENERGY SYSTEMS

14:8-4.1 Scope

(a) This subchapter sets forth net metering requirements that apply to electric power suppliers, basic generation service providers, and electric distribution companies, as defined at N.J.A.C.

14:4-1.2, which have customers who generate class I renewable energy, as defined at N.J.A.C.

14:8-1.2, on the customer’s side of the meter.

(b) For the purposes of this subchapter, class I renewable energy that meets all of the following criteria shall be deemed to be generated on the customer's side of the meter:

1. The renewable energy generation facility is located either:

i. Within the legal boundaries of the property on which the energy is consumed as set forth in the deed for the property; or

ii. Within the legal boundaries of a property that is contiguous to the property on which the energy is consumed. The property on which the energy is consumed and the property on which the renewable energy generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an existing easement, public thoroughfare, or transportation or utility-owned right-of-way and, but for that separation, would share a common boundary. The fact that a public thoroughfare may be encumbered by third-party easements does not alter a determination as to whether two properties would be considered contiguous;

2. The renewable energy is delivered from the generation facility to the property on which the energy is consumed through wires and/or other equipment installed, owned, and operated by an entity other than the EDC and the entity that owns and/or operates the equipment used to transport the renewable energy shall have the affirmative responsibility for complying with all applicable codes and other safety requirements set forth in the Board's rules, including, but not limited to, the requirements imposed upon underground facility operators at N.J.A.C. 14:2-4;

3. The renewable energy generation facility serves only one net metering customer.

If a property contains more than one generation facility, each facility shall:

i. Serve a separate net metering customer; and

ii. Meet the requirement at N.J.A.C. 14:8-4.3(a) that the generation facility's capacity not exceed the electricity supplied to the customer over an historical 12-month period; and

4. The Board shall hold the net metering customer responsible for ensuring compliance with this subchapter. Noncompliance with this subchapter, whether due to the action or inaction of the net metering generator or the net metering customer, will be deemed a violation by the net metering customer.

(c) Prior to the grant of authorization to energize to the renewable energy facility, the net-metering customer must have installed and activated the entire proposed load against which the renewable energy generation will be netted.

14:8-4.2 Net metering definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and 14:8-1.2.

...

"Customer-generator" means an electricity customer[, such as an industrial, large commercial, residential or small commercial customer] that generates electricity on the customer's side of the meter, using a class I renewable energy source. **The Board may deem a pair of entities acting together – that is, a net metering generator and a net metering customer – to constitute one customer-generator for the purpose of net metering.**

"Customer-generator facility" means the equipment used by a customer-generator to generate, manage, and/or monitor electricity. A customer-generator facility typically includes an

electric generator and/or interconnection equipment **that connects the customer-generator facility directly to the customer.**

“Net metering customer” means a customer that owns and/or operates electrical wires and/or equipment that is connected to the EDC’s electric distribution system through a meter used for net metering. The net metering customer may or may not be the same entity as the net metering generator, and may or may not be located on the same property as the net metering generator.

“Net metering generator” means an entity that owns and/or operates a renewable energy generation facility, the electricity from which is delivered to a net metering customer. The net metering generator may or may not be the same entity as the net metering customer; and may or may not be located on the same property as the net metering customer.

14:8-4.3 Net metering general provisions, annualized period selection

(a) All electric distribution companies (EDCs) and supplier/providers, as defined at N.J.A.C.

14:4-1.2 and 14:8-1.2, respectively, shall offer net metering to their customers that generate electricity on the customer’s side of the meter, using class I renewable energy sources, provided that the generating capacity of the customer-generator’s facility does not exceed the amount of electricity supplied by the electric power supplier or basic generation service provider to the customer over an [annualized period] **historical 12-month period** that the customer-generator selects in accordance with this section.

(b) - (n) (No change.)

SUBCHAPTER 5. INTERCONNECTION OF CLASS I RENEWABLE ENERGY SYSTEMS

14:8-5.2 General interconnection provisions

(a) – (i) (No change.)

(j) The applicant shall not operate the customer-generator facility until the EDC's application and inspection process is completed. Unauthorized system interconnection and operation will result in no payment for excess generation credits.