

# NEW JERSEY BOARD OF PUBLIC UTILITIES

## Adopted Amendments to the Renewable Portfolio Standards

N.J.A.C. 14:8-2.7 and 2.9

Docket No. EX08050346

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### PUBLIC UTILITIES

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### Renewable Portfolio Standards

Adopted Amendments: N.J.A.C. 14:8-2.7, 2.9

Proposed: December 1, 2008 at 40 N.J.R. 6759(a).

Adopted: July 29, 2009 by the Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Joseph L. Fiordaliso, Nicholas Asselta, and Elizabeth Randall, Commissioners.

Filed: \_\_\_\_\_, 2009, as R. 2009 d.\_\_\_\_, **without change.**

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

BPU Docket Number: EX08050346

Effective Date: September 8, 2009

Expiration Date: April 18, 2011

The New Jersey Board of Public Utilities is herein adopting amendments to the rules governing New Jersey’s renewable energy portfolio standards (RPS) at N.J.A.C. 14:8-2. The New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (EDECA), provides the foundation for these standards, authorizing the BPU to adopt, readopt, and amend them.

The proposed amendments concern the conditions under which a Class I renewable energy certificate (REC) can be based on electricity generated at a facility not connected to an electric distribution system serving New Jersey.

### **Summary of Public Comments and Agency Responses:**

The following commenters submitted timely comments:

1. David B. Applebaum, NextEra Energy Resources, LLC (NextEra);
2. Latoya Glenn (Latoya Glenn);
3. Michelle N. Harhai, PJM Interconnection, L.L.C. (PJM)
4. Massimo Passini, Fortistar Methane Group LLC (Fortistar Methane);
5. Richard Singer, MidAmerican Energy Company (MidAmerican);
6. Eric Thumma, Iberdrola Renewables, Inc. (Iberdrola); and
7. Radu Tutos, Horizon Wind Energy, Inc. (Horizon Wind).

### **General Comments**

1. **COMMENT:** Horizon Wind commends the Board for implementing ambitious RPS targets, and agree that only true green energy should receive RECs. (Horizon Wind)  
**RESPONSE:** The Board appreciates this comment in support of its efforts.
2. **COMMENT:** NextEra commends the continued leadership of the Board and the Administration in promoting a highly progressive program to encourage the development and integration of clean renewable technologies in New Jersey and throughout the region. (NextEra)  
**RESPONSE:** The Board appreciates this comment in support of its efforts.
3. **COMMENT:** The proposed rules do not address how behind-the-meter generators will be impacted as it relates to affidavits signed in 2007 and 2008 and to be able to claim 2009 RECs. (Latoya Glenn)  
**RESPONSE:** The Board allowed the use of the affidavits to which the commenter refers under an existing rule at N.J.A.C. 14:8-2.9(d), which states that the Board may waive the requirement for renewable energy to be interconnected with an electric distribution system that supplies New Jersey. The Board's ability to issue such a waiver is unaffected by the amendments being adopted. Accordingly, the Board has allowed behind-the-meter (BTM) generators within PJM but outside New Jersey to earn RECs without having their sales settled in the PJM wholesale market in reporting years 2008 (June 1, 2007 through May 31, 2008) and 2009 (June 1, 2008 through May 31, 2009), by using the affidavits to which the commenter refers. The Board notes that BTM generators located outside PJM are, by definition, directly serving a customer outside of PJM; accordingly, energy from those generators cannot be considered to have been "delivered into the PJM region." For the reasons discussed below, the affidavits can continue to be used through May 31, 2010. Behind-the-meter generators outside of New Jersey but within PJM have been able to use the affidavits to which the commenter refers pursuant to the Board Order dated January 31, 2008, In the Matter of the Renewable Portfolio Standards – Request for Board Action Regarding Renewable Energy Certificates, Docket No. EO07110886, (January 2008 Order).

In the January 2008 Order, the Board waived the requirement, applicable to renewable energy facilities that are not connected to an electric distribution system serving New Jersey, for a REC to be based on energy that has had its sale “settled” in the PJM wholesale market. The Board conditioned the waiver on the use of the affidavits to which the commenter refers, with the expectation that an alternative to settling in the PJM wholesale market would be developed.

Although the Board originally planned to make the waiver available through May 31, 2008, the waiver was allowed to continue because the alternative to settling in the PJM wholesale market had not been developed. However, the Board has separately proposed amendments to N.J.A.C. 14:8-2 that will allow the use of an alternative. To allow time for a transition to that alternative, the Board, by Order dated May 15, 2009, has allowed the waiver to continue but has terminated the waiver as of May 31, 2010.

Upon termination, BTM generators in PJM which are not connected to an electric distribution system serving New Jersey customers will not be able to qualify for New Jersey RECs on their energy output unless (i) the sale of the energy is settled in the PJM wholesale market, or (ii) the energy output is reported electronically to PJM at least monthly via an “e-meter” satisfying the requirements of American National Standards Institute (ANSI) “Electric Meters Code for Electricity Metering,” C12.1-2008 (as amended or supplemented). The Board, by Order dated July 1, 2009 as noted above, has proposed additional amendments to N.J.A.C. 14:8-2.9 setting forth the use of such an e-meter as an alternative to settlement in the PJM wholesale market. Termination of the waiver will occur on May 31, 2010.

4. **COMMENT:** MidAmerican [requests](#) that the Board recertify the wind energy that was delivered to and settled in the PJM market consistent with the prior certification process developed in the January 2008 Order with PJM and the Board staff. MidAmerican believes that the decertification effective December 19, 2008 on a proposed rulemaking requiring dynamic scheduling was premature and should await the effectiveness of final rules adopted by the Board. (MidAmerican)

**RESPONSE:** The Board has not made the requested recertification. The ineligibility of facilities to earn RECs that could be used to comply with the New Jersey Class I Renewable Portfolio Standard was not based on the proposal of the amendments adopted herein; it was based on a failure to satisfy the requirements that were already in effect under N.J.A.C. 14:8-2.9(b). As discussed in the proposal, the eligibility of renewable generators outside the PJM region depends in part upon the energy being “delivered into the PJM region”; it also depends upon the Board or its designee verifying the measurement of a renewable generator’s output in accordance with N.J.A.C. 14:8-2.9(b). Inasmuch as the output from the commenter’s generation facility was not verified by the Board or its designee in accordance with N.J.A.C. 14:8-2.9(b), the prior certification was not supported by the rules already in effect on the date that the facility became ineligible to earn New Jersey Class I RECs.

5. **COMMENT:** According to the affidavits, generators [were](#) required by no later than commencement of Reporting Year 2009 to install an e-metering system compatible with the requirements and protocols established by PJM-EIS GATS for metering generations. According to PJM-EIS GATS, however, e-metering options are not yet in place. The only

way a generator is able to qualify for NJ RECS is via Interconnection to PJM, but this statement is not stated in the affidavit. For small generators, the cost to go in front of the meter is not financially feasible, and installing an e-meter would be more feasible, but not optimal. This uncertainty jeopardizes many REC contractual agreements between buyers. (Latoya Glenn)

**RESPONSE:** The Board agrees with the commenter, and will continue to employ the affidavit process established in the January 2008 Order pending a rulemaking to provide an alternative to that process. As discussed in the response to Comment 3 above, the Board will propose amendments to N.J.A.C. 14:8-2.9 providing a second option for behind-the-meter generators in PJM outside of New Jersey. As an alternative to having the sale of their energy settled in the PJM wholesale market, BTM generators within PJM will be able to earn NJ RECs based on energy output reported electronically to PJM, at least monthly, via a meter satisfying the requirements of American National Standards Institute (ANSI) “Electric Meters Code for Electricity Metering,” C12.1-2008 (as amended or supplemented).

- 6. COMMENT:** Fortistar Methane would like the rights established in the Board’s January 2008 Order retained, since the process was not completed. The January 2008 Order called for the development of a sworn affidavit signed by the appropriate official of the BTM facility seeking to qualify for NJ RECS as first step to verifying eligibility (volume and status). Approval via affidavit was contingent on the installation of an e-meter meeting PJM-EIS standards by the commencement of the Energy Year 2009 (June 1, 2008). The Board directed Board Staff to work with PJM-EIS GATS and stakeholders to develop the detailed data necessary to further analyze markets, of which PJM compatible e-metering is essential. The process was not completed, as a PJM-EIS compatible meter was never approved or made available for BTM generators. For months following the January 2008 Order, Fortistar Methane pursued several conversations with PJM regarding a qualifying e-meter; however, Fortistar Methane never received a list of approved meters. Fortistar Methane stands ready to fulfill its obligations per the affidavits it has signed. Therefore, because the process set in motion in the Board’s January 2008 Order was never completed, the rights granted should be retained until satisfactory resolution of the Board’s January 2008 Order. It is in the interest of New Jersey rate payers to have access to this supply of renewable energy to minimize the cost of RPS compliance. (Fortistar Methane)

**RESPONSE:** Please see the response to Comment 5 above.

- 7. COMMENT:** The proposal requiring all facilities to directly settle with PJM in order to qualify for NJ RECS is unnecessary for BTM facilities within PJM, as verifying the plant output and PJM delivery of the facility is not as onerous as suggested, and delivery into the PJM system can be verified. Any BTM facility inside PJM is likely to sell its output to an entity scheduling power with PJM such as Com Ed, Mid Am, etc. As such, the quantity generated and delivered can be measured and verified via a revenue quality meter and invoices with the scheduling entity in a simple audit process. Furthermore, the buyer will schedule the power it has purchased into the PJM system (or net it against its obligations to the PJM system), the result being an indirect settlement with the PJM system of the power generated by the BTM facility. Therefore, until an e-meter, as discussed in the Board’s January 2008 Order, is approved and installed, invoices with a PJM connected entity should provide sufficient evidence of PJM delivery. (Fortistar Methane)

**RESPONSE:** Please see the response to comment 5 above.

8. **COMMENT:** Latoya Glenn described a landfill gas-to-energy facility that is not interconnected and does not settle with PJM. The facility self-reports to the PJM-GATS tracking system via facilities located in the PJM region in which the facility qualifies to sell in other PJM states. If the Board waives the interconnection and requirement to settle with PJM, would a BTM facility that self-reports to PJM-GATS be able to qualify for NJ Class I RECs according to the proposed amendment? (Latoya Glenn)

**RESPONSE:** The Board does not at present have any plans to waive the requirement for interconnection with a New Jersey distribution system or the requirement to settle in PJM, beyond the continuation of the affidavit process established in the January 2008 Order through May 31, 2010. The Board expects that the alternative to settlement in the PJM system as discussed above will be available at that time.

### **Dynamic Scheduling – Purpose**

9. **COMMENT:** The Board states that the proposed amendments would put internal and external resources on a level playing field, and avoid the potential for external-to-PJM generation owners to verify delivery through self-reporting of data after the fact. This concern is solely a verification and measurement issue. The Board’s concern regarding the temporal distinction is invalid. The fact that the data for the delivery of generation and renewable attributes, which occurs in real-time, is verified by PJM (and New Jersey) after it is actually generated and delivered should be of no less qualitative value than if it was real-time metered data. The megawatts and their renewable attributes are still delivered and settled in the PJM system, and only those megawatts that are actually verified as delivered are, in fact, credited under New Jersey’s RPS. The requirement for dynamic scheduling provides no qualitative benefit to the Board or New Jersey residents. (NextEra)

**RESPONSE:** The Board disagrees with the commenter’s contention that the requirement for dynamic scheduling provides no qualitative benefit to New Jersey residents. Pursuant to N.J.S.A. 48:3-87(d), which authorizes the RPS, a percentage of the kilowatt-hours sold in New Jersey by each electric power supplier and each basic generation service provider must be from renewable energy sources. These suppliers and providers document their compliance with the RPS through the use of RECs. New Jersey customers pay electricity bills that reflect the cost of these RECs; for this reason, New Jersey customers are entitled to assurance that the RECs are based on renewable energy that can credibly be said to be in the portfolio of energy that the suppliers and providers are delivering in New Jersey. The Board does not claim that dynamic scheduling is tantamount to tracking an electron from its origin at a generation facility outside the PJM region to its arrival at the PJM border; however, the Board does believe that dynamic scheduling involves a much more credible level of management of the delivery of the energy than is available under the “block loading” approach outlined in the proposal. Dynamic scheduling of the output of renewable generation from outside of the PJM region to load inside the region depends on matching, in real time, the generation of energy outside the PJM region with the delivery of energy from the generator to the PJM region. With dynamic scheduling, the operator of each control area along the route from the generator to the PJM region specifically includes the generator’s real-time output in the constant matching of load within the control area, with generation

from within and outside the control area. No such active management is associated with the “block loading” alternative to dynamic scheduling.

- 10. COMMENT:** Dynamic scheduling allows generators to have their output adjusted automatically to meet electric system demands through direct signals from a control area operator, such as PJM. This is appropriate for fossil generation, where the generator being controlled can adjust output based on market economics or reliability. However, the “fuel” (i.e., wind or solar resources) for renewable energy generators is variable and not subject to dispatch control or “price” direction. Therefore, requiring dynamic scheduling for wind generation is inappropriate. (NextEra)

**RESPONSE:** The Board is not seeking to use dynamic scheduling to control the dispatch of renewable generators outside of PJM, or to provide some kind of “price” direction. Rather, as discussed in the response to comment 8, the Board’s purpose in requiring dynamic scheduling is to provide New Jersey electricity customers some assurance that the RECs used for compliance with the New Jersey RPS are based on renewable energy that can credibly be said to be in the portfolio of energy that the suppliers and providers are delivering in New Jersey.

#### **Dynamic scheduling – difficulty, and availability of alternatives**

- 11. COMMENT:** Transmission is not sufficiently available to accommodate dynamic scheduling by external generators into the PJM market. Pursuant to Section 1.12(d) of PJM’s Operating Agreement, a generator must reserve firm or non-firm transmission service necessary to deliver “the range of dynamic transfer and any required ancillary services” in order to dynamically schedule power in the PJM market. This means that, even though wind facilities do not typically generate power at full capacity in every hour of the day, wind generators must reserve transmission for the full nameplate capacity of the generating facility for every period that it may seek to move power. To ensure efficiency, it is desirable that the reservations are secured for blocks of a month or longer. However, long-term firm transmission reservations are frequently not available, particularly from MISO to PJM, which is the most likely path for non-PJM renewable generation that can physically deliver energy in PJM. The lack of firm transmission leaves external generators to rely on non-firm transmission, which also is not always available on a long-term basis. The highly uncertain quantity of delivered energy would make it unattractive for potential buyers that are interested either in physical renewable energy or RECs only. (Horizon Wind)

**RESPONSE:** The commenter identifies a significant problem with the delivery of energy into PJM using “block loading.” The commenter describes significant difficulty in obtaining transmission to deliver renewable energy into PJM from outside the PJM region. That difficulty strongly suggests that, in the absence of dynamic scheduling, RECs would be based on energy that is unlikely to have any opportunity to reach PJM, let alone New Jersey. As stated above, New Jersey customers bearing the cost of these RECs are entitled to better assurance that the RECs are based on renewable energy that can credibly be said to be in the portfolio of energy that the suppliers and providers are delivering in New Jersey.

- 12. COMMENT:** Managing transmission curtailment under a dynamic scheduling regime requires more complex coordination between PJM and the applicable neighboring control



area than required for block loading because power dynamically scheduled in one market for a period may be excluded from the other market's model for that same period. The procedures and infrastructure required to accomplish this coordination are not fully developed. The communications systems necessary for PJM to implement dynamic scheduling with external generators in MISO is not fully developed and is costly to implement. External generators should not be expected to comply with requirements that are presently technically infeasible. Having multiple control areas "talk to each other" automatically through dynamic scheduling can technically be done, but not easily or inexpensively. This is particularly the case when one of the control area interfaces is based on DC conversions. While it may one day be far more feasible or readily available, it is not today. (NextEra) (Horizon Wind)

**RESPONSE:** The commenters identify further problems with the delivery of energy into PJM using "block loading." The commenters explain that complex coordination is needed in order to manage transmission curtailment under a dynamic scheduling regime. Block loading can avoid the need for that complex coordination; by doing so, however, it removes any reason to believe that the inter-regional coordination needed to manage the delivery of energy to PJM in the face of a transmission curtailment is taking place. The absence of that coordination suggests that the RECs would be based on energy that is unlikely to have any opportunity to reach PJM, let alone New Jersey.

- 13. COMMENT:** There are two major parts to delivering wind energy from a source outside of PJM into the PJM market and obtaining Board certification of the associated RECs: *First*, transmission reservations must be obtained and the energy must be scheduled for delivery with NERC Electronic Tagging (eTag). After delivery, the balancing authority areas involved must agree upon the integrated hourly quantity of energy (MWh) exchanged using a checkout process, and finally PJM assigns appropriate charges or credits for the energy delivered; and *second*, the information regarding the actual generation must be delivered to PJM-EIS GATS to certify the NJBPU RECs. E-Tagging, checkout, settlement and generation verification will essentially remain unchanged under the proposed rule. What will change is a far more complex *process* to communicate the information of the generator output from the local balancing authority to PJM EIS. The proposed new requirement makes dynamic scheduling the only option for such data transfer, prohibiting any other option of transferring the same data collected by the same metering on the same time interval. (EMS) (MidAmerican)

**RESPONSE:** As discussed in the responses to comments 11 and 12 above, the Board recognizes the complexity of the process – which is linked to the complexity of demonstrating that energy generated outside the PJM region has some reasonable opportunity to be "delivered into" the PJM region and to New Jersey customers.

- 14. COMMENT:** Dynamic scheduling exposes external generators to greater risk and revenue uncertainty because dynamic scheduling would mean that within one hour energy would be settled in two wholesale energy markets and at two separate Locational Marginal Prices – PJM and the generator's market of origin for the portion of the energy output that cannot be scheduled in PJM. Greater risk and revenue uncertainty for generation can lead to higher prices for the REC supply, which can translate to higher rates for consumers. (Horizon Wind)

**RESPONSE:** The Board recognizes that if the supply of Class I RECs is reduced because renewable generation outside the PJM region chooses not to dynamically schedule its energy for delivery into PJM, the reduced supply could lead to higher prices for Class I RECs. In exchange, New Jersey electricity customers receive some level of assurance that they are not simply paying for RECs that have no realistic connection to New Jersey.

- 15. COMMENT:** If the Board’s goal is to ensure that both internal and external renewable resources meet the same real-time telemetered data requirements, this can be readily accomplished by requiring transmittal of real-time telemetered output directly from the generating resource to PJM and/or the Board either from the generation owner/operator or from the interconnecting distribution/transmission company. This option ensures output data in real-time, as well as any concerns about the data being self-reported by the generating resource or its owner/operator. It also avoids creating a discriminatory situation wherein external-to-PJM generators would face a different requirement than internal-to-PJM generators. This can be combined with the requirement, previously ordered in the January 2008 Order, that calls for a “sworn affidavit to be signed by the appropriate official, with personal knowledge, at a non-Jersey-connected generator seeking to provide RPS-eligible RECs.” (NextEra)

**RESPONSE:** The commenter is partially correct. One of the Board’s goals is to ensure that both internal and external renewable resources provide actual production data to PJM in real time, to the extent that PJM requires this information as part of its constantly ongoing real-time security analysis. However, as discussed in the response to comment 10 above, New Jersey customers bearing the cost of RECs are entitled to better assurance that the RECs are based on renewable energy that can credibly be said to be in the portfolio of energy that the suppliers and providers are delivering in New Jersey. With dynamic scheduling, the operator of each control area along the route from the generator to the PJM region specifically includes the generator’s real-time output in the constant matching of load within the control area with generation from within and outside the control area. No such active management is associated with the “block loading” alternative to dynamic scheduling. The provision of production data to PJM via telemetry does not make up for that lack of management.

- 16. COMMENT:** New Jersey should adopt a rule similar to Connecticut’s behind-the-meter qualification by allowing a third party meter reader to report generation allowing a generator to claim RECs. (Latoya Glenn)

**RESPONSE:** Although this recommendation is beyond the scope of this rulemaking, the Board invites the commenter to discuss the recommendation further with the Office of Clean Energy.

- 17. COMMENT:** There is an equally effective alternative to verify renewable generation, which would not require amending the definition of energy “delivered into the PJM region.” Block loading requires each megawatt hour that is imported to PJM to have a NERC e-tag, which provides NERC-authenticated information. This information would not require new and costly communication systems. In order to confirm that the power actually flows to PJM, metering data from the facility can be sent to PJM GATS for reconciliation. If green power does not flow, then a REC isn’t credited. PJM GATS currently reconciles power sales



for internal generators through a 30-day process, which Horizon Wind believes is sufficient for PJM GATS to also reconcile power sales from external generators. Consequently, block load scheduling yields equal assurance of accuracy of the data relevant to the NJ RPS verification process. Additionally, block loading only requires transmission to be available for the particular hour block that is scheduled; long-term reservations are not necessary. Scheduling power on an hourly basis also enables external generators to manage their resources more efficiently between PJM and other markets, which results in lower cost renewable power. To provide an additional layer of protection against inappropriate transactions being credited with RECs, Horizon Wind proposes two new amendments to the RPS rules. First, to prevent round trip transactions that would send green energy into the market but at the same time export equivalent amounts of power, each Generation Unit Owner or Operator should provide an attestation that it will not itself, or through any affiliate or other contracted party, import eligible New Jersey Class I Renewable Generation into PJM for the creation of New Jersey Class I RECs, and then export that energy or a similar quantity of other energy out of the PJM Control Area during the same hour. (Horizon Wind)

**RESPONSE:** Please see the response to comments 11 through 14 above.

#### **Dynamic scheduling – effect on supply of renewable energy**

**18. COMMENT:** Emissions-free generation in other regions benefits New Jersey by displacing carbon dioxide (CO<sub>2</sub>) emissions. CO<sub>2</sub> goes “global” in 30 days, meaning carbon-emitting “dirty power” displaced in Texas, California, or South Dakota by wind resources in those states has the same carbon reduction effect on New Jersey residents as wind resources located in New Jersey. If New Jersey is really interested in curbing the impact of external coal resources, it must encourage and recognize the value of external renewable resources that displace coal facilities and their global warming emissions. Creating barriers to renewable imports does just the opposite. (NextEra)

**RESPONSE:** The Board agrees that CO<sub>2</sub> has global impacts. In addition, as outlined in Governor Corzine’s Energy Master Plan, New Jersey seeks substantial reductions in its contributions to global warming and to provide an example that others can follow as they seek to reduce their own impacts on global warming. However, New Jersey looks to renewable energy to accomplish other goals as well. EDECA cited the need for diversity in the supply of electric power throughout New Jersey (N.J.S.A. 48:3-50(a)(7)); renewable energy that is truly capable of being delivered to New Jersey helps to provide such diversity. EDECA also states the importance of preserving the reliability of power supply and delivery systems (N.J.S.A. 48:3-50(a)(11)); renewable energy generated in New Jersey or in the vicinity of the state contributes to such reliability, while energy generated in distant parts of the nation without a credible means of delivery to New Jersey does not. Thus, the Board notes that it is taking a course of action that seeks to satisfy a multitude of differing goals.

**19. COMMENT:** Dynamic scheduling will reduce, and possibly eliminate, the importation of RECs from control areas adjacent to PJM for New Jersey RPS compliance. The cost and risk associated with dynamic scheduling will be high, particularly for non-dispatchable intermittent generators like wind. This will in turn tighten long-run REC supply making the

New Jersey market more susceptible to price pressures resulting from supply shortages.  
(Iberdrola)

**RESPONSE:** The Board recognizes that some renewable generators outside PJM may elect not to use dynamic scheduling for the delivery of their energy to PJM, thus reducing the supply of renewable energy from outside PJM that would contribute to achieving the New Jersey RPS. However, as discussed in the proposal, the absence of credible requirements for the delivery of energy into PJM not only threatens to undermine the ability to verify energy generated outside PJM, but also threatens to undermine efforts to encourage the development of renewable sources of electricity and new, cleaner generation technology by depressing the value of RECs held by generators who are actually located in the PJM region, and the value of RECs held by generators outside the PJM region who take the steps needed to schedule and deliver the energy to the PJM region at the time it is generated so that the sale of the energy can be settled in PJM.

**20. COMMENT:** New Jersey recently increased its RPS targets to 22.5% by 2021. As other regional states make similar upward adjustments in their RPS targets, meeting these goals will be increasingly difficult. Imposing technical hurdles that add nothing to the quality of renewables will result in higher costs across the entire electric network and an inability to meet New Jersey's renewable goals. (NextEra)

**RESPONSE:** Please see the response to comment 19 above.

#### **Limited eligibility for renewable generators outside the PJM region**

**21. COMMENT:** If the Board seeks to minimize the number of generators outside of PJM that are eligible to qualify for NJ RECS, we suggest that the Board limit participation to those external generators that are located in a control area that is adjacent to PJM. For example the RPS program in Massachusetts only allows generators that are within, or in control areas adjacent to, ISO-New England to be eligible for RECs. (Horizon Wind)

**RESPONSE:** The Board is not seeking to minimize the number of generators in any location that are eligible to earn New Jersey RECs. As discussed above, the Board is seeking to provide New Jersey electricity customers, who eventually pay the cost of RECs, with assurance that the RECs are based on renewable energy that can credibly be said to be in the portfolio of energy that the suppliers and providers are delivering in New Jersey. For the reasons discussed above, the Board believes that dynamic scheduling involves a much more credible level of management of the delivery of the energy than is available under the "block loading" approach outlined in the proposal. It also results in similar requirements for generators within PJM and outside PJM with respect to real-time reporting of production data, which supports the verification of renewable energy that is the basis for New Jersey RECs.

**22. COMMENT:** It is clear that the Board is concerned about ensuring that New Jersey and its residents benefit from the State's leadership in promoting its own renewable resources, and capture the corresponding economic benefits. However, achieving such goals by imposing technical hurdles to otherwise eligible external renewable resources seems misguided as well as discriminatory. By requiring dynamic scheduling, the Board would be imposing a differential standard, one which is discriminatory and should be reviewed in

light of potential Commerce Clause issues. Perhaps New Jersey should consider imposing geographic restrictions, as do certain other states. For example, both Maryland and Pennsylvania have enacted geographic restrictions on renewable eligibility. While we disagree with that approach as well, it is a more direct approach. (NextEra)

**RESPONSE:** The Board's rules allow renewable generators within New Jersey, renewable generators within the PJM region, and renewable generators whose energy is delivered into the PJM region, to earn New Jersey RECs. The requirement for dynamic scheduling, far from imposing a differential standard, is an effort to provide opportunities to generation both within and outside the PJM region. The Board is not discriminating against generators outside of the PJM region to benefit its own citizens; rather, it is putting all generators, no matter where they are located, on equal footing. Through the use of dynamic scheduling, the Board will enable renewable energy generated outside of the PJM region to provide the basis for New Jersey Class I RECs in a manner that is credible because of the submittal of real-time data and the appropriate management of the delivery of the energy to PJM. This will place it on an appropriately equal footing with renewable energy generated within New Jersey and elsewhere within the PJM region.

The Board recognizes that other states have enacted geographic restrictions on eligibility to earn RECs, but has preferred to ensure the credibility of renewable generation regardless of location instead of imposing geographic restrictions. The decision not to impose geographic restrictions, and to allow instead that renewable energy may qualify as class I or class II renewable energy if it is "generated within or delivered into the PJM region," was made when the Board adopted the rules now codified at N.J.A.C. 14:8-2.7(b), and is not the subject of this rulemaking.

- 23. COMMENT:** One option for promoting New Jersey's renewable industry while recognizing national environmental policy is to limit the percentage of RECs eligible for class I credit from external-to-PJM resources. This provides a more appropriate balance, one which recognizes the importance of promoting a New Jersey-based renewable industry, avoids any significant price depression in REC values, and avoids simply walling off New Jersey and PJM from the benefits of renewables across the country. Allowing external-to-PJM renewables to be class I-eligible is very unlikely to result in depressed REC values for PJM-based resources. Scheduling energy and renewable attributes across multiple control areas requires transmission and other costs that would render such activity uneconomic in most circumstances. Companies would not engage in scheduling energy and RECs from external control areas into PJM unless market economic conditions were advantageous. Those circumstances are unlikely to be frequent, as externally-based resource owners would not want to drive down REC prices in New Jersey to the point where such transactions fail to make economic sense. (NextEra)

**RESPONSE:** The Board recognizes the option of limiting the percentage of RECs to be earned by generators outside PJM. The decision not to impose such a limit, and to allow instead that renewable energy may qualify as class I or class II renewable energy if it is "generated within or delivered into the PJM region," was made when the Board adopted the rules now codified at N.J.A.C. 14:8-2.7(b), and is not the subject of this rulemaking.

- 24. COMMENT:** The Obama Administration has established a national renewable energy standard as one of its key priorities, along with a national CO2 reduction program. Such

goals are likely to include a national market for renewable energy credits where such credits are fungible on a national scale. The proposed RPS amendment is contrary to the progressive policy stance taken by the Obama Administration. (NextEra)

**RESPONSE:** The Board is aware of national developments that may result in a national renewable energy standard. However, it would be premature for the Board to modify its RPS rules to accommodate such a standard before the standard is adopted. If and when a national standard is adopted, the Board will review these rules to determine if any modifications are needed.

- 25. COMMENT:** How will the BPU address fluctuations in REC market supply, and how will it deal with both short and long REC positions? In REC markets, supply and demand is highly price-inelastic, particularly in the short-term. Without price-elasticity on either the supply or demand-side, REC market imbalances can result in significant price volatility. As REC markets mature, state regulators should institute policies that will help smooth prices during compliance years in which supply and demand are out of balance, such as imports, and banking and borrowing. Banking allows RECs created in one year to be used for future compliance years, while borrowing allows obligated parties to meet their current year requirement by essentially agreeing to acquire more RECs in the future. Banking and borrowing enable buyers to either take advantage of long-supply positions by procuring RECs at a lower price than they otherwise could in the future (allowing buyers to hedge risk) or overcome a short supply position by delaying procurement until a time when market conditions are more favorable. Flexible compliance mechanisms should be the first choice to address changes in REC market supply, rather than changes in RPS eligibility requirements. It is important to note that providing this flexibility in no way weakens the RPS targets. By requiring dynamic scheduling for REC imports, New Jersey is shutting off one potential REC price safety valve. Without these market flexibility options, periods of short supply resulting in high prices or non-compliance can lead regulators to make significant and immediate changes to eligibility rules which can threaten the long-term viability of and confidence in REC markets. (Iberdrola)

**RESPONSE:** The Board recognizes the commenter's concern. However, the establishment of mechanisms such as banking and borrowing are not the subject of this rulemaking. In requiring dynamic scheduling, the Board has not sought to "shut off" a source of renewable energy, but instead has sought to preserve the credibility of New Jersey RECs.

- 26. COMMENT:** Page three of the Board's Proposed Amendment Summary states that: *"Outside of New Jersey, PJM Environmental Information Systems, Inc. (PJM-EIS) performs the necessary verification. Generators in the PJM region whose transactions are settling in the PJM system are required to provide actual production data in real time (with the exception of some small generators, who must submit production data to the PJM settlement system by noon the next business day) to PJM, as part of PJM's constantly ongoing real-time security analysis. The renewable energy in question normally will have been sold in the PJM wholesale market and paid for through the PJM market settlement process. PJM-EIS can compare the data entered into the PJM settlement system against the generation data submitted in real time, and identify discrepancies. PJM-EIS also relies in part on PJM member*

*electric distribution companies to ensure that the meters meet PJM requirements that support verification”.*

For purposes of clarification, it is important to recognize that PJM-EIS does not perform the verification. Rather, the verification is performed by PJM as part of the PJM settlement process. When PJM-EIS receives the data from the PJM settlement system it has already been verified. Similarly, the verification referred to in page 5 of the Board’s Proposed Amendment Summary is also carried out by PJM, not PJM- EIS:

*“The proposed amendments incorporate the settlement requirement into N.J.A.C. 14:8-2.9. For generators connected to an electric distribution that serves New Jersey, the verification requirements in the current rules and the verification measures described above provide sufficient certainty about the accuracy of production information submitted by those facilities. For other generators, the Board continues to believe that the verification provided by PJM-EIS provides sufficient assurance of accuracy and will continue to rely on that verification for sales of energy that settle in the PJM system.”*

Therefore, we request that the Board reference “PJM” instead of “PJM-EIS”, as applicable, in its final version of Amendments to the Renewable Portfolio Standards N.J.A.C. 14:8-2.7 and 2.9. (PJM)

**RESPONSE:** The erroneous terminology was included only in the proposal summary and does not appear in the rule text itself. Only the rule text will be published in the New Jersey Administrative Code (N.J.A.C.), whereas the proposal summary is published only once, in the New Jersey Register with the proposal, and therefore it is too late to make the correction suggested. However, the Board notes the distinction and will apply it in future rules.

### **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 regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The RPS has no Federal analogue, and is 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.

Full text of the adopted amendments and new rules follows (additions indicated in boldface with asterisks **\*thus\***; deletions indicated in brackets \*[thus]\*):

## **TITLE 14. BOARD OF PUBLIC UTILITIES**

### **CHAPTER 8. RENEWABLE ENERGY AND ENERGY EFFICIENCY**

#### **SUBCHAPTER 2. RENEWABLE PORTFOLIO STANDARDS**

##### **14:8-2.7 Requirements that apply to both class I and class II renewable energy**

- (a) (No change.)



(b) To qualify as class I or class II renewable energy for the purposes of this subchapter, energy shall be generated within or delivered into the PJM region, as defined in N.J.A.C. 14:4-1.2. Energy **\*generated outside the PJM\*** region shall be considered delivered into the PJM region if it **\*[complies with the energy delivery rules established by PJM Interconnection]\*** **\*has been added to the PJM region through dynamic scheduling of the output to load inside the PJM region, pursuant to section 1.12(b) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., including future supplements and amendments. The Amended and Restated Operating Agreement is available at <http://www.pjm.com/~media/documents/agreements/oa.ashx>\***.

(c) (No change)

#### **14:8-2.9. Board issuance of RECs**

(a) – (c) (No change)

(d) To qualify for issuance of a REC, electric generation shall be produced by a generating facility that is interconnected with an electric distribution system, as defined at N.J.A.C. 14:8-2.2, that supplies New Jersey\*; **or, for class I renewable energy other than solar electric generation, the electric generation need not be interconnected with an electric distribution system that supplies New Jersey if its sale is settled in the PJM wholesale market\***. The Board may waive this requirement by Board order if the Board **\*[adopts a joint or regional REC tracking system, and ]\*** determines that such waiver would facilitate participation in the **\*regional REC tracking\*** system **\*adopted by the Board\***.

(e) – (m) (No change.)