Agenda Date: 8/21/13
Agenda Item: 8C

# STATE OF NEW JERSEY

**Board of Public Utilities**
**44 South Clinton Avenue, 9th Floor**
**Post Office Box 350**
**Trenton, New Jersey 08625-0350**
**www.nj.gov/bpu/**

CLEAN ENERGY

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| IN THE MATTER OF THE NEW JERSEY RENEWABLE PORTFOLIO STANDARD (NJ RPS) – REQUEST FOR BOARD ACTION EXTENDING NJ RPS COMPLIANCE DEADLINE FOR ENERGY YEAR 2013 | ) | ORDER |
| | ) | DOCKET EO13070671V |

**Parties of Record:**

**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel
**Mally Becker, Esq.,** PSEG Services Corporation, on behalf of the Electric Distribution Companies
**Murray Bevan**, Esq., Retail Electric Supply Association, on behalf of third party suppliers

BY THE BOARD:

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA") was signed into law. EDECA requires compliance with New Jersey's Renewable Portfolio Standards ("RPS") by electric power suppliers, commonly referred to as third party suppliers ("TPS" or "suppliers"), and basic generation service ("BGS") providers ("providers"). N.J.S.A. 48:3-87 (d). On January 18, 2010, the Solar Energy Advancement and Fair Competition Act, L. 2009, c. 289 ("SEAFCA") was signed into law. SEAFCA amended several provisions of EDECA, among them the manner in which suppliers/providers were to comply with the solar portion of the RPS. SEAFCA set out a specific requirement for solar energy generation; this requirement is expressed as an absolute number of gigawatt-hours instead of as a percentage, and included a directive for dividing this requirement among the State's suppliers/providers.[1]

Specific reporting requirements are set out at N.J.A.C. 14:8-2.11. An energy year ("EY") is the twelve-month period from June 1 to May 31, with the EY numbered for the year in which it ends. The compliance true-up period commences immediately after the end of the energy year, and ends on October 1. N.J.A.C. 14:8-2.2. Each electric supplier and BGS provider with retail sales in New Jersey during the EY must submit an annual report ("Annual Report") to the Board by October 1 demonstrating that it has complied with the RPS for the relevant EY. The Annual

[1] These requirements were in force for EY2012 and EY2013, the energy year regarding which the petition was filed, but have been superseded by more recent solar legislation for future energy years. L.2012, c. 24.

Reports for EY2013 are therefore due on October 1, 2013.[2] The Annual Reports must demonstrate how compliance with the RPS was achieved, including in the report the total number of megawatt-hours ("MWh") of electricity sold to retail customers, Solar Renewable Energy Certificates ("SREC") and Renewable Energy Certificates ("REC") retired, and Solar Alternative Compliance Payments ("SACP") and Alternative Compliance Payments ("ACP") paid.

Providers comply with the regulatory requirements with the assistance of the respective electric distribution companies ("EDCs") for which they serve load, with compliance documentation specific to the load served in that territory. The EDCs, in turn, submit an aggregated compliance report on behalf of the BGS providers supplying energy for delivery by the EDCs to end users of retail electricity within their territories. Each EDC compiles and summarizes the reports provided by the BGS providers serving load in its market, and submits this information under one cover to the Office of Clean Energy ("OCE").

The EDCs, on June 21, 2013, requested an extension of the deadline for complying with the RPS rules at N.J.A.C. 14:8-2.11 from October 1, 2013 to December 1, 2013, citing a number of reasons for their request, primarily the changes to the solar RPS made by SEAFCA. The EDCs also assert that the setting of the true-up period at October 1, the same day the Annual Reports are due, means that they do not have the numbers they need to perform the necessary calculations in a timely fashion. The Retail Energy Supply Association ("RESA") submitted a similar request on behalf of its members on July 15, 2013.

As previously stated, SEAFCA established a schedule of increasing solar energy requirements expressed in gigawatt-hours as well as changing the method by which a supplier/provider's solar obligation is calculated. N.J.S.A. 48:3-87 (d)(3); N.J.A.C. 14:8-2.3 at Table B. Historically, a supplier/provider's solar energy obligation was a percentage of the amount of retail electricity the supplier/provider sold, that is, a percentage of the supplier/provider's entire electricity portfolio. Under the method set by SEAFCA, a statewide solar energy target is divided among all suppliers and providers based on the market share of each supplier/provider.[3]

To put the timeline into perspective, reconciliation of the retail electricity sales data begins with the PJM financial settlement markets where the data originates; typically sixty days elapse from the end of the Energy Year until PJM provides preliminary reconciled data. PJM provides this data to the EDCs and PJM-EIS GATS. PJM-EIS uses this basic data on load served to populate the accounts of each supplier/provider with a preliminary amount of load served for the relevant compliance period. The EDCs reconcile the data on load served for each of the BGS providers in their respective territories.

The EDCs maintain that they will not be able to verify individual TPS and BGS provider retail electricity supply numbers for OCE in the short time which will be available. They assert that

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[2] The Solar Act of 2012, effective as of July 23, 2012, directs the Board to determine an appropriate period of no less than 120 days following the end of the energy year for a provider or supplier to demonstrate compliance for that energy year with the annual renewable portfolio standard. Staff will be proposing amendments to the current rules to implement this directive for future energy years.

[3] SEAFCA's 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. The Solar Act returns calculation of the solar RPS obligation to a percentage of electricity supplied beginning with EY2014.

suppliers/providers will not be able to determine their final solar generation obligations for EY2013 in the time allowed by the rules. Their inability to do so, they assert, will in turn delay the ability of the EDCs and TPS to complete and submit the Annual Reports to the Board.[4] Similarly, RESA asserts that its members will need the additional sixty days to review the Board's estimate of load to review the accuracy of Board staff's solar load data and complete transactions related to SRECs and SACPs.

A provider or supplier may secure SRECS to comply with its RPS obligation through the end of the true-up period. The EDCs report that during the development of past Annual Reports, there have been difficulties in completing transfers, particularly during peak periods of use on the GATS system. In addition, the EDCs state that the removal of significant numbers of reported RECs and SRECs, or "data scrubbing," can be required if the RECs and SRECs submitted by suppliers are not New Jersey certified or are otherwise defective.[5] The EDCs claim that they will likely be unable to complete this data scrubbing, particularly for data reported close to or on October 1, 2013, for submittal of a final report on that same date. As previously stated, the EDCs have requested that the due date for the Annual Reports be extended to December 1, 2013.

Both the EDCs and the TPS have worked cooperatively with OCE to address the issues created by the compliance requirements of the rules implementing SEAFCA. Staff therefore recommends that both the EDCs and the TPS be granted a sixty-day extension for the solar portion of the compliance report. Staff notes that the increased complexity caused by SEAFCA does not affect reporting compliance with the Class I and Class II portions of the RPS, and its recommendation for an extension is limited to the solar portion of the reporting requirements leaving the due date for the compliance report for Class I and Class II renewable energy as October 1, 2013.

**DISCUSSION AND FINDING**

The Board acknowledges the increased complexity of compliance with the solar portion of the RPS during the energy years covered by SEAFCA. SEAFCA changed both the solar energy generation requirements and the SREC reporting requirements for the TPS and the EDCs, with the changes requiring more complex calculations to determine the EDC and TPS solar generation requirements. As stated above, final supply numbers are not expected to be posted by Staff as required by N.J.A.C. 14:8-2,3(k) until later in September 2013, and the timeframe for the data availability results in an extremely abbreviated time period for the EDCs and TPS to generate accurate and timely reports by October 1, 2013. Under the current circumstances, the Board **FINDS** that extending the time for submission of those portions of Energy Year 2013 Annual Reports which cover solar energy obligations to December 1, 2013 will provide the EDCs and the TPS with sufficient time to comply with the solar portion of the RPS reporting requirements while not unduly delaying the completion of transactions for EY2013. The dates for reporting compliance with Class I and Class II RECs remain as they are set out in the Board's rules.

[4] The EDCs maintain that they will not be able to give OCE final reconciled data for individual TPS in sufficient time to process compliance reports; however, they have pledged to give this data several months after the end of the true up period, well after compliance reports are submitted.

[5] Although the EDCs reference data scrubbing as a problem with respect to "suppliers," it is the BGS providers that submit RECs to the EDCs, so that any data scrubbing issues for the EDCs would appear to originate with provider data.

Under its authority to relax its procedural rules for good cause under N.J.A.C. 14:1-1.2, the Board **HEREBY APPROVES** an extension of sixty (60) days to December 1, 2013 for the EDCs and the TPS to comply with the solar portion of the reporting requirements of New Jersey's Renewable Portfolio Standards by submitting the solar portion of their Annual Reports at that time.

DATED: 8/21/13

BOARD OF PUBLIC UTILITIES
BY:

ROBERT M. HANNA
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

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

IN THE MATTER OF THE NEW JERSEY RENEWABLE PORTFOLIO STANDARD (NJ RPS) – REQUEST FOR BOARD ACTION EXTENDING NJ RPS COMPLIANCE DEADLINE FOR ENERGY YEAR 2013

DOCKET NO. EO13070671V

SERVICE LIST

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MURRAY E. BEVAN
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July 15, 2013

**VIA ELECTRONIC AND REGULAR MAIL**

The Honorable Kristi Izzo
Secretary, New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
kristi.izzo@bpu.state.nj.us

***Re: Request for Extensions to File Renewable Energy Portfolio Standard Compliance Reports and Complete Related Financial Transactions for the Period June 1, 2012 through May 31, 2013***

Dear Secretary Izzo:

This firm represents the Retail Energy Supply Association ("RESA"), a broad and diverse group of retail energy suppliers who advocate for and promote vibrant and sustainable competitive retail energy markets that provide robust choice for residential, commercial and industrial consumers.[1] For the reasons stated below, RESA respectfully requests that the Board of Public Utilities ("Board") grant Third Party Suppliers ("TPSs" or "suppliers") a sixty (60) day extension until December 1, 2013 to file their annual reports regarding compliance with the state's Renewable Energy Portfolio Standards ("RPS") for Energy Year 2013. RESA believes TPSs will need sixty (60) days to review the Board's estimate of load to determine the validity and accuracy of staff's solar load data and complete transactions related to the acquisition of Solar Renewable Energy Credits ("SRECs") and Solar Alternative Compliance Payments ("SACPs"). Failure to grant this extension of time would result in a significant hardship to TPSs

[1]RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

as they would have to make tens of millions of dollars of investments in an extremely brief timeframe without confidence in the solar load data. RESA remains appreciative of the Board's actions the past two years which granted TPSs a sixty (60) day extension of time for TPSs to comply with their EY 2011 and EY 2012 solar RPS obligations, and we believe a similar extension is warranted for this energy year.

RESA notes that the EDCs, in their June 21, 2013 correspondence, expressed no opposition to TPSs receiving an extra thirty (30) days to comply with their solar obligations, which has been their position in the past. However, the EDCs do not speak for TPSs, and the EDCs' correspondence fails to acknowledge that TPSs were granted a sixty (60) day extension of time for EY 2011 and EY 2012 compliance the past two years, far short of the EDCs' suggested extension for EY 2013 compliance. In light of this, RESA respectfully requests that the EDCs' suggested timeframe for TPS compliance with the Board's RPS standards be disregarded, and that a more reasonable, identical sixty (60) day extension be granted for TPSs.[2]

The Solar Energy Advancement and Fair Competition Act ("SEAFCA"), enacted on January 17, 2010, imposed significant changes on TPS by requiring them to procure a greater solar energy load overall, as well as establishing a new compliance structure by which these suppliers must demonstrate they have met these increased solar requirements. Specifically, SEAFCA requires that each supplier's solar obligation be based on its market share of total energy load, rather than a percentage of total energy load as had been the previous compliance mechanism. The experience of the past two energy years shows that TPSs will not have final load data from the Office of Clean Energy ("OCE") until late in September, allowing almost no time to comply with the current October 1 deadline.

While some of the inequities of SEAFCA have lapsed, and TPSs no longer have to account for exempted BGS contracts, it should be noted that for EY 2013, a fixed percentage requirement has not been implemented pursuant to the 2012 Solar Act, and a fixed GWh requirement remains in place. Additional work needs to be done to determine what each suppliers solar obligation is for EY 2013. Given the experience of the past two energy years, it is likely that OCE will require additional time in September to make the necessary calculations in order to inform each supplier of their obligation. An extension of time for compliance for TPSs is therefore both practical and necessary.

While new solar legislation signed into law on July 23, 2012 increases the solar RPS requirement, converts the fixed GWh requirement into a percentage effective EY 2014

[2] Unlike the EDCs treatment of TPSs, RESA does not object to the EDCs request for a sixty (60) day extension of time to submit annual RPS reports.

(beginning June 1, 2013), this legislation does nothing to assist TPSs in determining their solar RPS obligations for the EY 2013 compliance period. Due to the expected delays in being able to compute suppliers' solar obligations, RESA is requesting an additional sixty (60) days until December 1, 2013 to file its compliance reports with the Board for Energy Year 2013.

Please do not hesitate to contact me should you have any questions or concerns.

Very truly yours,

Murray E. Bevan

cc: Mike Winka (via electronic mail only)
Scott Hunter (via electronic mail only)
Ron Jackson (via electronic mail only)
Babette Tenzer, Deputy Attorney General (via electronic mail only)

**Mally Becker**
**Assistant General Regulatory Counsel**

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PSEG
*Services Corporation*

June 21, 2013

***VIA ELECTRONIC MAIL & OVERNIGHT MAIL***

Re: Renewable Electric Energy Portfolio Reports
For the Period June 1, 2012 through May 31, 2013

Kristi Izzo
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Dear Secretary Izzo:

Pursuant to the requirements of N.J.A.C. 14:8-2.11, Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company (collectively, the "EDCs") are required to submit annual reports ("Annual Reports") with the Board of Public Utilities (the "Board") by October 1, 2013 demonstrating that they, along with their various Basic Generation Service ("BGS") suppliers, have complied with the Board 's Renewable Energy Portfolio Standards ("Standards", "RPS") for Energy Year 2013 (i.e., June 1, 2012 through May 31, 2013). For the reasons set forth below, the EDCs respectfully request that the Board grant them a two month extension of time (i.e., until December 1, 2013) to submit their Annual Reports. Similar extensions were granted by the Board on September 21, 2011 and on September 13, 2012 when these same issues were encountered during the 2011 and 2012 Energy Year Compliance Processes. Further, the EDCs would not oppose the Board granting suppliers/providers ("Suppliers") a one month extension of time for the true-up period (i.e. until November 1, 2013) during which Suppliers would complete their transactions and send the required paperwork to the EDCs.

The task of preparing and submitting the Annual Reports has been complicated by changes to the Standards resulting from enactment of the Solar Energy Advancement and Fair Competition Act ("SEAFCA"). SEAFCA established a schedule of gradually increasing solar energy requirements, as set forth in Table B of N.J.A.C. 14:8-2.3. SEAFCA also changed the method by which a Supplier's solar obligation is calculated. Historically, a Supplier's solar energy obligation was a percentage of the amount of retail electricity the Supplier supplied. Under the method adopted by SEAFCA, however, the statewide solar energy target is divided among the Suppliers based on the market share of each Supplier.

Pursuant to N.J.A.C. 14:8-2.3(k), the first step in calculating a Supplier's solar obligation is to determine said Supplier's market share of the total electricity supplied statewide during the applicable energy year ("Total Supply"). The Total Supply during the energy year is calculated by the Office of Clean Energy ("OCE") and posted on the Board's website.

**2011 and 2012 Actual Experience:**

Based on our experience in the 2011 and 2012 Energy Year Compliance Processes, the required information (most critically the Total Supply) will not be available until the September timeframe. This delay results from several factors: (1) the fact that PJM has 60 days after the end of the energy year to make corrections to the actual usage data before the final data is sent to the EDCs; (2) once this corrected data is made available to the EDCs in August, further calculations requiring several weeks to complete are necessary before the EDCs can send the required data back to the OCE for use in their calculations; and (3) a further step is that Suppliers, at that point, have an additional two weeks to reconcile their actual sales with the data contained within the PJM GATS system or provide documentation of any discrepancies. As a result of these additional steps, in the 2011 and 2012 Energy year Compliance Processes, the final data from the OCE was made available to Suppliers on September 30, 2011 and September 28, 2012, respectively.

**Completing the Compliance Process:**

Once all sales and obligation data are final, the Suppliers are required to purchase the proper number of solar renewable energy certificates ("SRECs") to cover their obligations. Until the final obligations are known, Suppliers will remain unsure as to the number of SRECs they are required to obtain. Moreover, the inability of Suppliers to finalize their arrangements to comply with their solar obligations also serves to impede and delay the EDCs' ability to complete and submit the Annual Reports to the Board.

The Standards also allow a Supplier to secure SRECs to comply with its solar obligation for Energy Year 2013 through the end of the true-up period (i.e., through October 1, 2013). Given the expected delay in posting the Total Non-Exempt Supply to the Board's website, one can reasonably expect that many Suppliers will not finalize their solar obligation arrangements until late September 2013. Indeed, it is possible that a Supplier will not finalize its arrangements until mid-October 2013 which is after the October 1st date by which the EDCs' Annual Reports currently are due. During the development of past Annual Reports, users of the PJM GATS system have encountered difficulties in completing transfers, particularly during peak periods. For example, Renewable Energy Certificates ("RECs") have been lost during the transfer process, thereby requiring that such RECs be retrieved manually -- a process that can be quite time consuming. Moreover, significant data scrubbing can be required when RECs and SRECs

submitted by Suppliers are not New Jersey certified or are otherwise non-compliant. The EDCs would not be able to complete this data scrubbing process, particularly for RECs and SRECs submitted at the end of September, by October 1, 2013.

In light of these circumstances, the EDCs respectfully request that the due date for the Annual Reports be extended for two months, until December 1, 2013.[1] This extension would afford the EDCs sufficient time to address any GATS-related issues, and review and compile the information provided by the Suppliers, thereby adding to the overall quality of the Annual Reports. It does not appear that either the Board or any third parties will be disadvantaged by the granting of this extension.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Mally Baker

Attachments

C Michael Winka
Ronald Jackson
Scott Hunter
BGS Service List (Electronic)

[1] As stated earlier in this letter, the EDCs do not oppose moving the Supplier compliance date to November 1, 2013.