PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Renewable Energy and Energy Efficiency Definitions; Using RECs and SRECs for RPS Compliance; Alternative Compliance Payments (ACPs and SACPs)

Adopted Amendments: N.J.A.C. 14:8-2.2, 2.8, and 2.10

Proposed: March 4, 2013, at 45 N.J.R. 455(a).
Adopted: February 19, 2014, by the New Jersey Board of Public Utilities, Dianne Solomon, President, Jeanne M. Fox, Joseph L. Fiordaliso and Mary-Anna Holden, Commissioners.
Filed: February 19, 2014, as R.2014 d.048, **without change**.

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

BPU Docket Number: EX13010006.

Effective Date: March 17, 2014.
Expiration Date: May 1, 2019.

The Board of Public Utilities (Board) is adopting amendments to three sections of N.J.A.C. 14:8-2, specifically to conform the existing rules to provisions within the Solar Act of 2012, P.L. 2012, c. 24, which prescribed changes to the schedule for Solar Alternative Compliance Payments (SACP) and extended the time period during which Solar Renewable Energy Certificates (SREC) and Offshore Wind Renewable Energy Certificates (OREC) may be used to satisfy Renewable Portfolio Standards (RPS). The adopted amendments are prescribed by statute and are adopted to bring the Board's rules into compliance with the law.

Summary of Public Comment and Agency Response:

Comments were submitted timely on the notice of proposal by Mr. James B. Butera.

COMMENT: Mr. Butera states that the Board "must regain control of the contracting provisions of the basic generation service[.]" He proposes a specific provision requiring the pass-through of any savings realized by electric distribution companies (EDCs) providing basic generation service to their ratepayers, these savings to be calculated by determining the difference between the SACP as revised by P.L. 2012, c. 12, and the amount of the SACP prior to the revision, an amount the commenter characterizes as "calculated by the Board."

Mr. Butera states that the above-described provision would "immunize" the Board from any objections to the new rule and, potentially, from any "broader contractual issues." The commenter references, in particular, the need for any rulemaking to comply with a 2011 New Jersey Supreme Court ruling that the Board institute new notice and comment procedures. *In re Provision of Basic Generation*, 205 *N.J.* 339, 369 (2011).

Mr. Butera suggests that the Board take action to amend N.J.A.C. 14:8-2.10(c) because he has identified a conflict between the language of N.J.S.A. 48:3-87.j, which has been amended to remove the directive to the Board to establish a 15-year SACP, and the language of N.J.A.C. 14:8-2.10(c), which continues to refer to that directive. Mr. Butera believes that the Court's ruling in *In re Provision of Basic Generation, supra* may have motivated the Legislature to amend the statutory language.

RESPONSE: The Board thanks the commenter for his suggestions. The Board notes that the adopted amendments simply address changes in the SACP mandated by the provisions of the Solar Act, and do not address the provision of basic generation service (BGS). In New Jersey, customers have the right to buy their energy supply either through contracts with third-party suppliers (TPS) or from the EDCs through BGS. Energy supply includes, among other things, the cost of energy, capacity, and the costs for complying with the Board's renewable portfolio standards, including the cost of SRECs. Currently, BGS is procured annually through a process proposed by the EDCs with Board oversight. Therefore, the price for BGS service includes many components, only one of which includes the cost of the SRECs which the winning suppliers are required to obtain to satisfy the RPS.

Whether there are any savings realized through the decrease in the SACP is somewhat more complicated than determining the difference between the prior and current SACP amounts for a given year. The commenter appears to assume that there is a close correlation between the SACP amount and the cost of the SRECs, ultimately born by ratepayers, which is a component of the BGS price. The SACP amount may act as a rough proxy for the cost of an SREC when the market is under-supplied with SRECs, but has very little relationship to that cost when, as now, the market is over-supplied. Additionally, as stated above, the cost to the BGS provider (or a TPS) of any needed SRECs is only a part of the total cost of providing energy supply, so that a decline in the cost of RPS compliance may not result in a decrease in the cost to provide energy supply as there may be increases in the remaining components of the service. Moreover, the prices of individual SRECs vary greatly from each other as well as from the SACP figure, depending upon a number of factors – the timing and method of procurement, the extent of reliance upon spot market transactions, a price set by contract being the most common.

With regard to the Court's directive to the Board to comply with the requirements of the Administrative Procedures Act, the Board has complied with those requirements in this rulemaking.

With respect to the commenter's proposed change to N.J.A.C. 14:8-2.10(c), the Board notes that as this section was not a part of the proposed amendments. Therefore, as the requested change is outside of the scope of this rulemaking, the Board will not take the requested action.

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 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 incorporates 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 follows:

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:

. . .

"Offshore wind renewable energy certificate" or "OREC" shall mean as defined at N.J.A.C. 14:8-6.1.

. . .

14:8-2.8 Using RECs, SRECs, and ORECs for RPS compliance

(a) An REC, SREC, or OREC shall be used to meet New Jersey RPS requirements for specific energy years, based on the type of renewable energy upon which the REC, SREC, or OREC is based, and the energy year during which the renewable energy was generated, as follows:

1. A class I REC based on energy generated on or after July 1, 2010, an SREC based on energy generated on or after July 1, 2010 but before July 23, 2012, or an OREC based on energy generated on or after July 23, 2012, shall be used to comply with RPS requirements for any one of the following three energy years:

i.-ii. (No change.)

2. (No change.)

3. An SREC based on energy generated on or after July 23, 2012 shall be used to comply with RPS requirements for any of the following energy year periods:

i. The energy year in which the underlying energy was generated; or

ii. Any of the four energy years immediately following the energy year in which the underlying energy was generated.

(b) (No change.)

14:8-2.10 Alternative compliance payments (ACPs and SACPs)

(a)-(g) (No change.)

(h) Table C sets forth the SACP for each energy year from energy year 2013 through energy year 2028:

Table C

SACP Schedule

Energy Year	SACP
June 1, 2012-May 31, 2013	$641.00
June 1, 2013-May 31, 2014	$339.00
June 1, 2014-May 31, 2015	$331.00
June 1, 2015-May 31, 2016	$323.00
June 1, 2016-May 31, 2017	$315.00
June 1, 2017-May 31, 2018	$308.00
June 1, 2018-May 31, 2019	$300.00
June 1, 2019-May 31, 2020	$293.00
June 1, 2020-May 31, 2021	$286.00
June 1, 2021-May 31, 2022	$279.00
June 1, 2022-May 31, 2023	$272.00
June 1, 2023-May 31, 2024	$266.00
June 1, 2024-May 31, 2025	$260.00
June 1, 2025-May 31, 2026	$253.00
June 1, 2026-May 31, 2027	$250.00
June 1, 2027-May 31, 2028	$239.00

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BOARD OF PUBLIC UTILITIES

Water and Wastewater

Readoption with Amendments: N.J.A.C. 14:9

Proposed: October 7, 2013, at 45 N.J.R. 2174(a).

Adopted: February 19, 2014, by the New Jersey Board of Public Utilities, Dianne Solomon, President, Jeanne M. Fox, Joseph L. Fiordaliso and Mary-Anna Holden, Commissioners.

Filed: February 19, 2014, as R.2014 d.049, **without change**.

Authority: N.J.S.A. 48:2-13, 48:2-20, 48:2-24, 48:2-27, 48:3-3, 48:3-7.8, 48:3-12, 48:19-18, and 58:11-59.

BPU Docket Number: WX13020140.

Effective Dates: February 19, 2014, Readoption;
March 17, 2014, Amendments.

Expiration Date: February 19, 2021.

Summary of Public Comments and Agency Responses:

Robert J. Brabston, Esq., New Jersey American Water Company (NJAWC) submitted timely comments on the notice of proposal:

N.J.A.C. 14:9-2.2(f)

1. COMMENT: NJAWC has no comments or recommendations on the proposed changes and does not object to the proposed change to N.J.A.C. 14:9-2.2(f), extending the record retention period from at least five years to at least six years, per the National Association of Regulatory Utility Commissioners' Record Retention Rules (2007).

RESPONSE: The Board appreciates NJAWC's comment.

N.J.A.C. 14:9-4

2. COMMENT: NJAWC recommends the Board change some of the activities currently undertaken by water utilities, like NJAWC, that do not have a specific basis in the New Jersey Administrative Code. For example, the Board currently receives meter test reports from utilities that are typed onto a pre-printed card stock media and mailed to the Board. The card stock is not used for any other purpose, and is cumbersome to use compared to other formats such as Excel. NJAWC is recommending that the Board take the reports in electronic format, such as Excel, via email. NJAWC notes that the current rules do not specify the media or format, only the content, of the meter test reports.

3. COMMENT: NJAWC asserts that the preprinted card stock media (referred to in Comment 2) requires 10 percent of all new incoming meters must be tested by "utility personnel." The company currently performs this activity even though the requirement does not appear anywhere in the BPU's rules and regulations, and NJAWC does not believe that the 10 percent threshold is based in sound statistical sampling methods. In NJAWC's experience, meter manufacturers test 100 percent of all new meters prior to shipment and send a certified list of serial numbers and test results with each shipment. The additional testing performed by NJAWC may be redundant to the testing done by the manufacturers and rarely results in corrective action or shipment returns. Alternatively, in the absence of a rigorous process to evaluate the results of NJAWC testing, the 10 percent incoming test sample may be inadequate to validate new meter types or new meter manufacturers. NJAWC believes that the data and documentation supplied to the water utilities by the water meter manufacturers, including individual meter test results certified by the manufacturers, could provide the Board staff with the information necessary to review new meter accuracy with the companies. NJAWC suggests that the Board consider using meter manufacturer quality control data to satisfy the new meter accuracy validation. If the Board determines that it needs time to see if the meter manufacturer data meets their needs, NJAWC suggests that the Board consider alternative sampling sizes or techniques for the companies to use that could be more statistically valid and economically efficient.

4. COMMENT: NJAWC states that another effect of the 10 percent new meter testing requirement (referred to in Comment 3) is that it encourages companies like NJAWC to centralize meter inventory receipt to facilitate testing. Centralized meter inventory and testing of new meters for later distribution to the operating areas where the meters will be placed in service adds expense and complexity to the meter replacement process. If 10 percent of all new meters were not being tested by NJAWC, meter shipments could be delivered directly to the operating areas, reducing the expense and complexity of administering a centralized meter inventory "way-station."

5. COMMENT: NJAWC states that for these two activities associated with water meter testing and reporting, which are not codified in N.J.A.C. 14:9-4, NJAWC recommends that the Board discontinue the use of the pre-printed card stock reports in favor of Excel-based electronic reports, and the Board discontinue the practice of companies testing 10 percent of all new incoming meters. These two changes will result in lower expenses for the water utilities, which will reduce pressure on customer rates. NJAWC believes these changes will also enhance the efficiency of regulatory reporting and the ability of Board staff to review and analyze meter test reports.

RESPONSE TO COMMENTS 2 THROUGH 5: While the Board appreciates these comments, it notes that they relate to the general meter rules in N.J.A.C. 14:3-4 and not this chapter proposed for readoption.

N.J.A.C. 14:9-4.1

6. COMMENT: NJAWC notes that it is part of American Water Works Company (AWK) with affiliates in 12 other states. NJAWC has access to AWK meter expertise, experience, and data from a broad cross-section of the country. NJAWC is one of six AWK states that has a 10-year periodic testing requirement for five-eighths (5/8) inch meters, the size most commonly used for single residential dwellings. Eight states have a 15-year requirement, and both Pennsylvania and California have a 20-year testing requirement. NJAWC believes the 10-year periodic testing requirement drives costs up for NJAWC and its customers, causing expenses to be higher and using capital that might otherwise be allocated more efficiently and to more "value-added" investments. This is particularly true now that the industry has become far advanced in its transition to automated meter (or mobile) reading devices. These devices typically have a battery life of 15-20 years, and companies have made significant investments in these programs—investments that have