



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

CLEAN ENERGY

IN THE MATTER OF THE AUTHORIZATION TO USE) ORDER
CLASS I AND CLASS II RENEWABLE ENERGY)
CERTIFICATES ISSUED BY PJM-ENVIRONMENTAL)
INFORMATION SERVICES, INC. FOR COMPLIANCE)
WITH NEW JERSEY'S RENEWABLE PORTFOLIO)
STANDARDS) NON-DOCKETED

(SERVICE LIST ATTACHED)

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. N.J.S.A. 48:3-87(d) authorizes the Board to promulgate regulations to establish renewable energy portfolio standards which may be amended, adopted and readopted by the Board. Further, this section provides that compliance with the RPS may be satisfied by participating in a renewable energy trading program approved by the Board in consultation with the New Jersey Department of Environmental Protection (NJDEP).

On February 1, 2005 the Board authorized the adoption of the New Jersey Renewable Energy Portfolio Standards (RPS) at N.J.A.C. 14:4-8. The RPS were published in the March 7, 2005 New Jersey Register and were effective on publication. The provisions at N.J.A.C. 14:4-8.8(c) provided for compliance with New Jersey's RPS through renewable energy certificates (RECs) issued by PJM Interconnection (Now established as PJM – Environmental Informational Systems (EIS) as follows:

(c) Until issuance of a Board order that specifies otherwise, the only RECs that may be used to comply with this subchapter are solar RECs, issued by the Board or its designee in accordance with N.J.A.C. 14:4-8.9. The Board may issue an order approving use of class I and class II RECs issued by PJM Interconnection or another entity for compliance with this subchapter.

In addition, the Board, in the adoption of the Renewable Energy Portfolio Standards at N.J.A.C. 14:4-8.9, authorized the establishment of a Solar REC administrator for the issuances and management of a Solar REC tracking and trading system.

On March 24, 2005 the Board approved the financing of the PJM – EIS Generator Attributes Tracking System (GATS) for New Jersey RPS tracking and trading through the use of New Jersey's Clean Energy Program funds. On March 24, 2005 President Fox, on behalf of the Board, entered into an agreement with PJM – EIS to finance the development and implementation of GATS.

In an April 20, 2005 Board Order in Docket No. EO04080879, *In the Matter of the Ownership of Renewable Energy Certificates under the Electric Discount and Energy Competition Act as it Pertains to Non-Utility Generators and the Board's Renewable Energy Portfolio Standard*, the Board found that, for pre-existing contracts with non-utility generators, the attributes belong to the purchasing Electric Distribution Companies (EDC) for the duration of those contracts and that if and when a REC trading system for Class I and Class II renewables is implemented in New Jersey, the RECs for the contracts in question in this docket belong to the EDCs and shall be used for the benefits of the EDCs' customers.

Discussion

On June 12, 2001, the Board authorized the adoption of the RPS, pursuant to EDECA., N.J.A.C. 14:4-8. N.J.A.C. 14:4-8.8(c) provides:

(c) Until issuance of a Board Order that specifies otherwise, the only renewable energy certificates (RECs) that may be used to comply with this subchapter are Solar RECs, issued by the Board or its designee in accordance with N.J.A.C. 14:4-8.9. The Board may issue an order approving use of class I and class II RECs issued by PJM Interconnection or another entity for compliance with this subchapter.

In addition, pursuant to N.J.A.C. 14:4-8.9, a Solar REC Administrator has been issuing Solar RECs and administering the Solar REC tracking and trading system.

On September 13, 2004, the Board approved the financing, through the use of New Jersey's Clean Energy Program funds, of the PJM-Environmental Information Services, Inc. Generation Attributes Tracking System for New Jersey RPS tracking and trading. On March 24, 2005, in Docket No. EF05010056, the Board authorized the execution of a loan agreement between the Board and PJM-EIS to finance the development and implementation of GATS.

By Board Order dated January 24, 2004, *I/M/O the Provision of Basic Generation Service for Year Two of the Post-Transition Period-Committed Supply Renewable Attributes*, Docket No. EO03050394, the Board issued an Interim Order which provided guidance for the February 2004 BGS auction with respect to existing contracts between the State's four EDCs and various non-utility generators. The Board ordered Staff and/or the REC Administrator to recognize for current BGS suppliers, either as a direct result of the RECs being available through the EDCs or as an administrative credit to the EDCs, an equivalent level of RECs as would be available to suppliers, through the EDCs, assuming the EDCs had definitively determined rights to such RECs. The Board further ordered Staff and/or the REC Administrator to recognize for winning bidders in the 2004 BGS Auction, for the term of their contracts, either as a direct result of RECs being available through the EDCs or as an administrative credit to the

EDCs, an equivalent level of RECs as would be available to them through the EDCs assuming the EDCs had definitively determined rights to such RECs. The Board also indicated that a procedure for arriving at a definitive determination of REC ownership would be forthcoming.

After soliciting and reviewing comments from interested parties on this issue, by Order dated April 20, 2005, *I/M/O the Ownership of Renewable Energy Certificates under the Electric Discount and Energy Competition Act, as it Pertains to Non-Utility Generators and the Board's Renewable Energy Portfolio Standards*, Docket No. EO04080879, the Board ruled that, with respect to pre-existing contracts with non-utility generators, as a matter of State law and policy, the renewable attributes, including the RECs, belong to the purchasing Electric Distribution Companies for the duration of those contracts.¹ The Board also ruled that if and when a REC trading system for Class I and Class II renewables is implemented in New Jersey, the RECs for these contracts will belong to the EDCs and shall be used for the benefit of the EDCs' customers.²

The BPU and NJDEP through their Staffs, as well as other PJM states that have or are in the process of enacting RPS, have been working with PJM-EIS to develop and implement GATS by the time frames set forth by the PJM-EIS and NJBPU loan agreement. By letter dated June 23, 2005, Joseph Kerecman, Executive Director of PJM-EIS, updated the Board on the status of the activities to implement GATS and reported that work was essentially on schedule to support producing certificates in the September 2005 timeframe. This would enable PJM-EIS to begin registering subscribers to GATS in August. Mr. Kerecman requested that the Board issue an Order authorizing the use of Class I and Class II renewable energy certificates issued by PJM-EIS GATS for compliance with New Jersey's Renewable Portfolio Standards.

Pursuant to EDECA and the RPS, the Board HEREBY APPROVES the use of Class I and Class II renewable energy certificates issued by PJM-EIS GATS for compliance with New Jersey's Renewable Energy Portfolio Standards set forth at N.J.A.C. 14:4-8 to commence as soon as PJM-EIS GATS is operational, which is projected to be on or about September 15, 2005, except that Solar RECs and all "Behind the Meter" (BTM) RECs utilized for compliance with New Jersey's Renewable Portfolio Standards must continue to be issued by the Solar REC Administrator or the BTM REC Administrator, as designated by the Board. A BTM system means any Class I renewable energy system that is interconnected and net meters the electricity generated from the renewable energy system into New Jersey's electric distribution system. A BTM REC is issued to a BTM Class I renewable energy system. PJM-EIS shall notify the Office of Clean Energy (OCE) when PJM-EIS becomes operational. OCE will provide notification that the system is operational on its website. This approval does not supercede and is subject to the Board's decision regarding the ownership of RECs as it pertains to the pre-existing contracts between NUGs and EDCs as set forth in its Orders dated January 29, 2004,

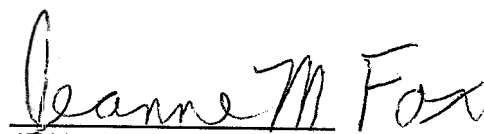
¹An appeal is currently pending in the Superior Court of New Jersey, Appellate Division, from the Board's January 24, 2004 Order in Docket No. A-3710-03T5. Three appeals are currently pending in the Superior Court of New Jersey, Appellate Division, from the Board's April 20, 2005 Order, Docket Nos. A-5189-04T5, A-5191-04T5 and A-5183-04T5. A complaint challenging the Board's April 20, 2005 Order also has been filed in the United States District Court, Docket No. 05-2844 (KSH)(PS).

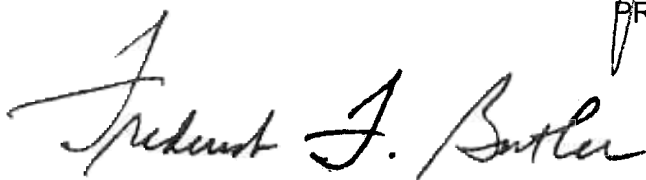
²The January 24, 2004 and the April 20, 2005 Orders only apply to RECs associated with pre-existing NUG contracts. In all future contracts, the parties to the contract will negotiate the ownership of the RECs and memorialize their agreement in the contract. The ownership of RECs for net-metering facilities on or after October 4, 2004 is addressed in N.J.A.C. 14:4-9.3(h) and (i).

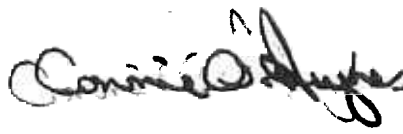
Docket No. EO03050394 and April 20, 2005, Docket No. EO04080879, including but not limited to, the Board's ruling as set forth in its April 20, 2005 Order in Docket No. EO04080879, that if and when a REC trading system for Class I and Class II renewables is implemented in New Jersey, the RECs associated with existing Board-approved purchase power agreements between the State's EDCs and various non-utility generators belong to the EDCs and shall be used for the benefit of the EDCs' customers.

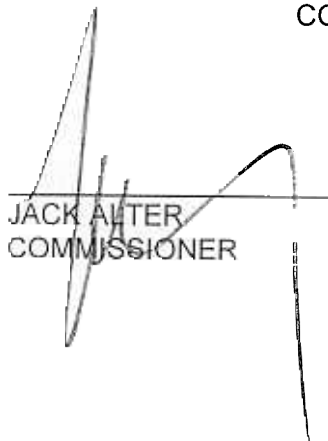
DATED: 8/31/05


BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
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

