Filed March 27, 2013

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Renewable Energy and Energy Efficiency

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

Proposed: August 6, 2012 at 44 N.J.R. 2043(a).

Adopted: March 20, 2013 by the Board of Public Utilities, Robert M. Hanna, President; Jeanne M. Fox, Joseph L. Fiordaliso, and Mary-Anna Holden, Commissioners.

Filed: March 21, 2013 as R.2013 d.066, **with substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13 and 48:3-49 et seq.

BPU Docket Number: EX11120885V.

Effective Date: April 15, 2013.

Expiration Date: May 1, 2019.

The New Jersey Board of Public Utilities is herein adopting amendments to its definitions, Renewable Portfolio Standards, net metering, and interconnection rules. These rules implement provisions of the Electric Discount Energy Competition Act (EDECA), N.J.S.A. 48:3-49 et seq., and other statutory authority. N.J.A.C. 14:8 applies to electric power suppliers, electric public utilities, and entities that provide basic generation service (BGS).

Summary of Public Comment and Agency Response:

N.J.A.C. 14:8-4.1

1. COMMENT: Wyeth Holding Company, a subsidiary of Pfizer Inc. (Pfizer) urges the New Jersey Board of Public Utilities (the Board) to adopt the definition of "contiguous" proposed in the Board's Office of Clean Energy Straw Proposal (Straw Proposal). Specifically, Pfizer supports a definition of "contiguous" that would include properties separated by more than one easement, public thoroughfare, or transportation or utility-owned right of-way. The commenter supports defining “contiguous” to encompass multiple easements, public thoroughfares, and/or transportation or utility-owned right of ways to all sites within the State, but proposes that at a minimum the Board apply the Straw Proposal definition of "contiguous" when the development of a landfill is at issue in order to enable the productive reuse of these sites. Pfizer argues that unless “contiguous” is defined to include properties separated by more than one easement, etc., it will be unable to pursue a project of its own which entails placing solar generation on a landfill site, thus depriving New Jersey of the economic and environmental benefits which Pfizer believes would result from its project. In addition, the commenter points to the specific encouragement given to developing solar on landfills and brownfields by Federal policy, New Jersey’s Energy Master Plan, and the Solar Act signed into law on July 23, 2012, P.L. 2012, c. 24. Pfizer claims that its expanded definition would add only a small pool of projects to those qualifying for net metering because potential solar developers would still need to obtain easements or right-of-ways over all intervening properties, which would only be feasible in a limited amount of cases.

RESPONSE: The statutory definition of “on-site generation” specifies that properties “may be separated by **an** easement, public thoroughfare, transportation or utility-owned right of way” (emphasis added). The Board has determined that this rulemaking may not expand the definition beyond what is provided by statute.

2. COMMENT: Rockland Electric Company, Public Service Electric & Gas, and Jersey Central Power and Light (collectively, "the three EDCs") allege that the proposed description of "legal boundaries of a property" in N.J.A.C. 14:8-4.1(b) is likely to lead to confusion. (Atlantic City Electric Company (ACE) submitted separate comments, but stated that it "recognizes and fully supports" the comments of the three EDCs) While the three EDCs agree that a definition of the unit of property is needed in the regulation, they assert that defining the unit of property as "as set forth in the deed for the property" is vague. The three EDCs propose that the Board modify N.J.A.C. 14:8-4.1(b)1 within the legal boundaries of the property by deleting "as set forth in the deed for the property" and replacing it with "as set forth within the official tax map."

RESPONSE: The Board concurs with the commenter that the recommended language would clarify the rule and has made the suggested change upon adoption.

3. COMMENT: The three EDCs have no objection to the concept, regarding the amendment at N.J.A.C. 14:8-4.1(b)3, to allow multiple net metering generators on a single property to serve multiple net metering customers, but suggest that the language be clarified to state that multiple net metering generators must meet all the requirements contained in the proposed amendments at N.J.A.C. 14:8-4.1(b)1 and 2. Those paragraphs require that a net metering generator must be contiguous to a net metering customer being served, and that each net metering generator must be directly connected to the net metering customer being served through wires and other equipment not owned by the electric distribution company. Thus, the three EDCs suggest that N.J.A.C. 14:8-4.1(b)3 be modified as follows (additions indicated in boldface **thus**):

"3. The renewable energy generation facility serves only one net metering customer. If a property contains more than one generation facility, each facility **shall meet the requirements of N.J.A.C. 14:8-4.1(b)1. and N.J.A.C. 14:8-4.1(b)2, and additionally** shall: ..."

RESPONSE: The Board believes the commenter is directing comments to the instance where multiple generators on a single property each serve a single customer as the rules do not allow for these generators to serve multiple net metering customers. The Board concurs with the commenter that the recommended language would clarify the rule because as originally written in order to be deemed to be generated on the customer's side of the meter, each renewable energy facility was required to satisfy **all** of the criteria in N.J.A.C. 14:8-4.1(b). Accordingly, it would not have been possible for a renewable energy facility to be deemed on the customer's side of the meter without meeting paragraphs (b)1 and 2. However, expressly stating these requirements apply in the instance where more than one generation facility are on a property more clearly expresses the regulatory requirements. Accordingly, the Board has made the suggested change upon adoption.

4. COMMENT: KDC Solar LLC (KDC), a New Jersey based developer of large scale net metered facilities, comments that the proposed rule be modified to allow a business, not-for-profit, or government facility to net meter if either the entity and its solar generation facility exist on a single-owner property which may be bisected by one or more roads, easements, or rights-of-way, or the entity and the facility are adjacent to a single-owner property which may be similarly bisected. The commenter argues that this more expansive application of net metering would be more in line with the New Jersey Energy Master Plan, which according to the commenter, prioritizes driving down the cost of energy for New Jersey employers, capitalizing on emerging

technology for power generation through photovoltaic installations, and supporting the renewable portfolio standard (RPS) goal of producing 22.5 percent of New Jersey's energy through renewable sources by 2021.

RESPONSE: As noted in the Response to Comment 1, the statutory definition of "on-site generation" specifies that properties "may be separated by **an** easement, public thoroughfare, transportation, or utility-owned right of way" (emphasis added). The Board may not broaden the definition beyond what is provided for by statute.

5. COMMENT: The Division of Rate Counsel (Rate Counsel) objects to the proposed rule, stating that the extension of the benefits of net metering to on-site generation facilities fueled by Class I renewable energy sources is inconsistent with the statutory limitation of net metering to end-use customers. According to Rate Counsel, by stating that the net metering customer and net-metering generator need not be the same entity, and allowing an entity to construct more than one generating facility on a single property, the proposed amendment could result in unregulated mini-utilities.

RESPONSE: The Board notes that during the pendency of this rulemaking, the Legislature amended the definition of "on-site generation" to expressly include "a generation facility that produces Class I or Class II renewable energy," indicating a legislative intent to make the benefits of on-site generation available to a broader range of renewable energy generation. N.J.S.A. 48:3-51. With respect to the commenter's concern that the rule amendments could result in unregulated mini-utilities, the Board notes that the proposed amendments require the entity that owns and/or operates the equipment used to transport the renewable energy to comply with all applicable codes and other safety requirements set out in the Board's rules. In addition,

the requirement that each renewable energy generation facility serve only one customer will limit the extent to which building multiple dedicated units to serve multiple unique customers will be economically desirable.

6. COMMENT: Rate Counsel also argues that the Board has not provided any meaningful analysis of the costs and benefits of the proposed rule's expansion of net metering, and that the rule cannot be justified in the absence of such analysis. The commenter alleges that the impact statements that appeared as part of the notice of proposal contained unsupported allegations that the benefits of the proposed rule outweighed its potential costs, without quantitative data to back them up. Pointing to the fact that the State now expects to exceed its RPS goals at least through Energy Year 2016, Rate Counsel suggests that the proposed rule provides a spur to solar development, which is no longer necessary.

RESPONSE: The Board does not concur with Rate Counsel's critique of the impact statements that accompanied the notice of proposal. The amendment of the net metering rules to allow, in certain limited circumstances, for generation to be located on property contiguous to the end use customer is a new application of the net metering rules. As to the nexus the commenter perceives between the rule amendments and the achievement of RPS goals, the Board has not proposed these amendments in order to spur solar development, but to provide in its rules for the increasing variety and complexity of the development models which are appearing in the solar market as it matures.

7. COMMENT: ACE expresses reservations about allowing a pair of entities to act together as one customer-generator, stating that allowing the customer and the generator to be two separate

entities could lead to an arrangement subject to the Federal Energy Regulatory Commission's jurisdiction over sales for resale. In addition, ACE states a concern that the expansion of the definition might open the door to further expansion and to possible undefined "gaming" of the system.

RESPONSE: The Board notes that the practice of two entities acting together to own and operate a net-metered system is already a common occurrence, via a power purchase agreement, and, to the Board's knowledge, no jurisdictional issues have arisen. The Board does not know how or in what manner any "gaming" referenced by the commenter would occur, and so suggests that the commenter raise this concern again when it has specific concerns to air. Should stakeholders wish to further expand or otherwise modify the definition of "customer-generator" in the future, any such proposed changes will go through the public stakeholder process and, if the Board deems it a beneficial change, will then go through the rulemaking process.

8. COMMENT: ACE contends that the proposed amendments raise safety issues that are not resolved by the Board's requirement that any systems constructed pursuant to these amendments be subject to the Board's rules concerning underground facility operators at N.J.A.C. 14:8-2.4. ACE states that "A renewable energy system is usually understood to be tied behind a meter located on the same property. Conversely, with no renewable energy system, utility workers assume that there is no other generation which could back feed at that point of interconnection." The commenter also suggests that renewable energy systems may require "unique" placarding or designators that could be used at the renewable energy system and on the associated facility, and clearly indicate the connection, along with a special designator at the meter.

RESPONSE: ACE's concern that "with no renewable energy system, utility workers assume that there is no other generation which could back feed at that point of interconnection" does not

appear realistic to the Board. The Board takes worker safety very seriously and would not move forward with adoption of the proposed amendments were it not satisfied that the arrangement poses no threat to that safety. With respect to "unique" designations for renewable energy facilities, the Board does not believe that these are necessary. The Board does not believe that additional placarding requirements must be included in the rules beyond those already contained in N.J.A.C. 14:8-2.4, but encourages the EDCs to utilize best utility practices to ensure worker safety.

9. COMMENT: Rate Counsel criticizes the Board's existing net metering rules, stating that they result in subsidization of net metering customers by non-net metering customers because net metering customers receive a credit against the full retail rate of their electric bills, which includes various non-generation items, despite the fact that they provide only generation to the EDC.

RESPONSE: This argument is outside the scope of the current rulemaking proceeding.

N.J.A.C. 14:8-4.2

10. COMMENT: Rate Counsel objects to the expansion of the definition of "customer-generator," and to the newly defined terms "net-metering customer" and "net-metering generator," maintaining that these terms go beyond the statutory authorization of net metering for "customers." Rate Counsel points to the Electric Discount and Energy Competition Act (EDECA), N.J.S.A. 48:3-49 et seq. definition of "customer" as an "end-user" and argues that a "net metering customer" would not necessarily meet that definition. Rate Counsel also argues that by permitting the Board to "deem a pair of entities acting together" to constitute a single

customer-generator without articulating the standards by which the Board will make that determination, the rule would grant too much discretion to the Board.

RESPONSE: The Board notes that in authorizing net metering, EDECA provides that it shall be offered to "industrial, large commercial, residential and small commercial customers, **as these customers are classified and defined by the board**[.]" (emphasis added). EDECA thereby contemplates that the Board may define classes of customers. In fact the term "customer-generator" itself does not appear in the statute but was created and defined by the Board to accommodate developments in the market, so that in amending that definition the Board is modifying a term it created rather than a statutory definition. The Board also believes that a "net metering customer" satisfies the definition of "customer" as "end user" since the net metering customer would not be selling or otherwise passing the energy generated by the net metering generator to another entity, other than an electric distribution company or third-party supplier providing the net metering. Finally, the Board does not concur that the definition affords the Board undue discretion. The Board is limited to considering a "net metering customer" and a "net metering generator" as the entities that may be deemed to constitute a single customer-generator; moreover, the definition further limits the Board's discretion by including the phrase "[w]ithin the limits at N.J.A.C. 14:8-4.1." N.J.A.C. 14:8-4.1 prescribes various limitations on the Board, including the requirement that the renewable energy be in one of two specific locations relative to the net metering customer, that the net metering generator own the infrastructure by which the energy is delivered to the net metering customer, and that the entity or entities will be required to comply with all applicable safety rules of the Board.

N.J.A.C. 14:8-4.3

11. COMMENT: Regarding new N.J.A.C. 14:8-4.3(a), to replace the term "annualized period" with the term "historical 12-month period," the three EDCs agree that the term "historical 12-month period" is clearer than "annualized period," but suggest that the term be further clarified to refer to the most recent consumption data available because the purpose of this section is to limit the size of a renewable resource in order to provide for a customer's current annual consumption. The three EDCs suggest this can be accomplished by modifying the term as follows (addition indicated in boldface **thus**): "**most recent** historical 12-month period."

RESPONSE: The Board had considered this language when framing the proposed changes and rejected it as lacking in flexibility. External conditions, such as an extended outage due to weather, can skew usage, so that it does not reflect the normal consumption pattern for the location which should be the standard for sizing the generation facility. Should the commenter wish to further explore these issues, the Board maintains a standing stakeholder advisory group regarding net metering and interconnection. Any interested party may participate in this group by visiting http://www.njcleanenergy.com/main/clean-energy-council-committees/clean-energy-committee-meetings-notes.

N.J.A.C. 14:8-5.2(j)

12. COMMENT: ACE suggests that the proposed rule be written as follows (additions indicated in boldface **thus**):

> The applicant shall not operate the customer-generator's facility until the electric distribution company's application and inspection process is completed **and final written approval is given. An** unauthorized system interconnection and operation will result in no

payment for excess generation credits **and subjects the applicant to a potential disconnection of service until the application is approved.**

RESPONSE: The Board has never required that operation of a net metered facility wait until final written approval is received from the EDC and it does not see a reason to do so here. Similarly, subjecting an applicant to potential disconnect of service is not a penalty the Board has found necessary to effective functioning of net metering. Should the commenter wish to further explore these issues, the Board maintains a standing stakeholder advisory group regarding net metering and interconnection. Any interested party may participate in this group by visiting http://www.njcleanenergy.com/main/clean-energy-council-committees/clean-energy-committee-meetings-notes.

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 renewable portfolio standards (RPS) and the net metering rules have no Federal analogue and are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for the adopted amendments.

Regarding the interconnection rules (N.J.A.C. 14:8-5), the Federal Energy Regulatory Commission (FERC) has interconnection rules at 18 CFR 35, which apply to interconnection

with transmission lines. The Board's interconnection rules apply only to interconnections with the electric distribution system. Therefore, no Federal standards analysis is required.

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

N.J.A.C. 14:8-4.1 Scope

(a) (No change from proposal.)

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

1. The renewable energy generation facility is located either:

i. Within the legal boundaries of the property***, as set forth within the official tax map,*** on which the energy is consumed *[as set forth in the deed for the property]*; or

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

2. (No change from proposal.)

3. The renewable energy generation facility serves only one net metering customer***, as defined in this subchapter****. If a property contains more than one generation facility, each

facility ***shall meet the requirements of (b)1 and 2 above, and additionally*** shall:

i. – ii (No change from proposal.)

4. (No change from proposal.)

(c)(no change from proposal.)