



Agenda Date: 4/21/17  
Agenda Item: 8B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE PETITION FOR A FORMAL )  
HEARING REGARDING THE ENERGY YEAR 2016 ) ORDER  
RETAIL SALES FOR NJ RPS COMPLIANCE – PUBLIC )  
POWER & UTILITY OF NEW JERSEY, LLC; TRIEAGLE )  
ENERGY, LP; AND VIRIDIAN ENERGY ) DOCKET NO. QO17030252

**Parties of Record:**

**Carrie Cammarano, Esq.**, for Crius Energy, Public Power & Utility of New Jersey, LLC,  
TriEagle Energy, LP, and Viridian Energy

BY THE BOARD:

**BACKGROUND**

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to -109 (“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 (“BGS providers”), taken together referred to as “TPS/BGS Providers.” N.J.S.A. 48:3-87(d). Specific reporting requirements are set out at N.J.A.C. 14:8-2.11. The compliance true-up period commences immediately after the end of the energy year (May 31), and ends on October 1.<sup>1</sup> N.J.A.C. 14:8-2.2. Each TPS/BGS Provider with retail sales in New Jersey during the energy year (“EY”) must submit an annual compliance report (“Annual Report”) to the Board by October 1 of each calendar year, demonstrating that it has complied with the RPS for Class I, Class II, and solar renewable energy. The Annual Reports for Energy Year 2016 (“EY16”) were therefore due, under the Rules, on October 1, 2016.

The Annual Reports must demonstrate how compliance with the RPS was achieved by including the total number of megawatt-hours (“MWh”) of electricity sold to retail customers, the amount of Solar Renewable Energy Certificates (“SREC”) and Renewable Energy Certificates

<sup>1</sup> An Energy Year is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

("REC") retired taken together ("S/RECs"), and the Solar Alternative Compliance Payments ("SACP") and Alternative Compliance Payments ("ACP") paid, similarly ("S/ACPs").

The Board has authorized the use of PJM-Environmental Management System Generator Attribute Tracking System ("PJM-EIS GATS" or "GATS") to facilitate the creation, retirement, and tracking of RECs and SRECs for NJ RPS compliance purposes. BGS Providers comply with the regulatory requirements with the assistance of the respective electric distribution companies ("EDCs") for which they serve load. They provide each EDC they serve with compliance documentation specific to the load served in that EDC's service territory. Each EDC then aggregates, compiles, and summarizes the reports provided by the BGS providers and submits this information to the Office of Clean Energy ("OCE") as the Annual Report. TPSs submit their own Annual Reports.

On January 18, 2010, the Solar Energy Advancement and Fair Competition Act, P.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, beginning Energy Year 2011 ("EY11"), set out a specific requirement for solar energy generation. This requirement was expressed as an absolute number of gigawatt-hours instead of as a percentage of kilowatt hours sold, and included a directive for dividing this requirement among the State's TPS/BGS Providers.

On July 23, 2012, the Solar Act of 2012, P.L. 2012, c. 24 ("Solar Act"), made many new changes to the legal and regulatory framework for solar development. Among these was an increase in the solar portion of the RPS and a change in the way each TPS/BGS Provider was to calculate its obligations under the solar portion of the RPS. Both changes took effect in EY14. In addition, the Solar Act returned the calculation to a percentage of kilowatt hours sold for EY14 and beyond. N.J.S.A. 48:3-87(d)(3). At the same time, the law exempted certain BGS provider load from the new, higher RPS requirement if the supply was covered by a BGS contract that was executed prior to enactment of the Solar Act.<sup>2</sup>

Since SEAFCA took effect in 2011, Staff has provided guidance to TPS/BGS Providers on how to comply with the solar RPS obligation. Staff did so again for compliance with the obligation for EY15. On September 3, 2015, Staff issued a document titled Solar Compliance Instructions & Preliminary Retail Sales Figures ("Compliance Instructions") and posted it on the New Jersey Clean Energy Program's website ([www.njcleanenergy.com](http://www.njcleanenergy.com)). This document included instructions on how to comply with the solar obligation under the Solar Act. Nonetheless, after reviewing the EY15 RPS Compliance Reports, Staff found that the total retail sales reported by certain TPS were less than the load served data listed in the GATS "My RPS Compliance Report."<sup>3</sup> Staff worked with the affected TPSs to resolve the reporting discrepancies, which caused a delay in issuing the EY15 RPS compliance results.

---

<sup>2</sup> The Solar Act also 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 RPS requirements. The Board has adopted amendments to the current rules to implement this directive for future Energy Years.

<sup>3</sup> The main difference between the retail sales data in GATS and the data supplied by the TPS in their final compliance reports is due to the impact of distribution losses. The GATS sales figures do not include distribution losses because GATS has no way of knowing this information.

Since the retail sales reconciliation deadline for EY16 ended on September 30, 2016, the Board recognized that it would be unreasonable to expect that the RPS compliance reports could be submitted by the October 1, 2016 due date stated in the Rules. Therefore, by Order dated August 24, 2016 ("August 24 Order"), the Board extended the compliance deadline and the reporting deadline for EY16 by thirty days, to November 1, 2016.<sup>4</sup> In light of the discrepancies found between the GATS numbers and the sales numbers of the TPSs in EY15, the August 24 Order required that, beginning in EY16, all TPS/BGS Providers be given a period of time to review their PJM-EIS GATS "My RPS Compliance Report" and compare it to their EY16 retail sales amount. In addition, the Board directed the TPS/BGS Providers to work with Staff to make the reporting process faster and more efficient with the aim of avoiding requests for extension in future energy years.<sup>5</sup>

PJM-EIS receives the numbers for load served by each TPS/BGS Provider from the PJM settlement market. In early August 2016, PJM-EIS posted these figures, on GATS, in each TPS/BGS Providers' My RPS Compliance report. On August 25, 2016, Staff sent the August 24, 2016 Order to PJM-EIS and the next day PJM-EIS sent the Order to its "supplier's data base"<sup>6</sup> via email. AEG (the NJCEP Program Administrator at the time) also posted the Order on the New Jersey Clean Energy Program website (NJCleanenergy.com). On August 31, 2016, in accordance with the Board's directives, Staff sent the "NJ RPS EY16 Retail Sales Reconciliation Procedure" memo ("Reconciliation Memo") to all providers/suppliers in the PJM-EIS supplier data base via electronic mail ("email") and AEG posted the Reconciliation Memo on the NJCleanenergy.com website. The EY16 NJ RPS Compliance documents were also part of the email and posting. The Reconciliation Memo and the other compliance documents described the process to be followed to produce the Annual Reports, including the deadline of September 30, 2016, for the TPS/BGS Providers to review the GATS retail load served data and work with Staff, if necessary, to reconcile those numbers with their retail sales reports. In addition, Staff discussed the Reconciliation Memo at the September 20, 2016 Renewable Energy stakeholder meeting and resent the Reconciliation Memo on September 26, 2016.

## **FACTUAL AND PROCEDURAL HISTORY**

On October 31, 2016, Crius Energy ("Crius") submitted NJ RPS compliance reports for its three subsidiary companies Public Power & Utility of New Jersey, LLC ("Public Power"), TriEagle Energy, LP ("TriEagle"), and Viridian Energy ("Viridian") (collectively, the "Companies" and collectively with Crius "Petitioners"). However, the compliance obligation numbers submitted by Crius did not match the numbers contained in GATS and no justification for the difference was supplied to Staff. On November 4, 2016, following an email from Staff, the Companies submitted revised reports using the numbers recorded in GATS, but did not retire the additional S/RECs nor pay the S/ACPs required with higher retail sales amounts. Staff advised Mr. David Greenwood of parent company Crius that, since the Companies had not met the Board-ordered deadline of September 30, 2016 to reconcile their retail sales numbers with those of GATS, the Companies must satisfy their RPS obligation by paying the S/ACP or retiring additional S/RECs

<sup>4</sup> The Board also extended these dates for Class I and Class II RPS requirements in the interest of administrative efficiency.

<sup>5</sup> I/M/O the New Jersey Renewable Portfolio Standard - (NJ RPS) Request for Board Action Extending NJ RPS Compliance Deadline for Energy Year 2016, BPU Dkt. No. QO16080701, Order dated August 24, 2016.

<sup>6</sup> The PJM-EIS GATS "supplier's database" includes the TPS/BGS Providers as well as the EDCs.

based the higher numbers appearing in GATS. On the same day, November 4, 2016, Mr. Greenwood requested and received the procedures for filing a petition, but he did not respond to a November 22, 2016 follow-up email from Staff requesting that the Companies complete their EY16 RPS Compliance Reports.

On February 2, 2017, Staff sent a letter ("Letter") to Mr. Greenwood, copying the Companies, reiterating that the Companies must use the GATS numbers to calculate their compliance requirements and also stating that these requirements must be satisfied by paying the S/ACPs. Specifically, the Letter identified the compliance figures for Public Power, Tri-Eagle, and Viridian as \$48,970, \$803,794, and \$620,593, respectively:

TPS	Rejected Load	GATS Load	SREC Short Fall	Class I REC Short Fall	Class II REC Short Fall	SACP \$ (\$323 per)	ACP \$ (\$50 per)	Total
Public Power	34,757	38,037	90	316	82	\$29,070	\$19,900	\$48,970
Tri-Eagle	509,181	562,916	1,478	5,185	1,343	\$477,394	\$326,400	\$803,794
Viridian	452,381	493,870	1,141	4,004	1,037	\$368,543	\$252,050	\$620,593
<b>Total</b>	<b>996,319</b>	<b>1,094,823</b>	<b>2,709</b>	<b>9,505</b>	<b>2,462</b>	<b>\$875,007</b>	<b>\$598,350</b>	<b>\$1,473,357</b>

The Letter directed the Companies to make the S/ACP payments within 15 days. In addition, the Letter expressly noted that should the Companies fail to pay the required S/ACP, Staff would recommend enforcement actions to the Board for failure to fully comply with these RPS compliance reporting rules, in accordance with N.J.A.C. 14:8-1.3.<sup>7</sup>

The Companies did not submit the S/ACPs. Instead, on February 24, 2017, the Petitioners filed a petition ("Petition") requesting the Board to accept their lower, unreconciled retail sales calculations for the Companies as the basis for calculating their EY16 RPS compliance.<sup>8</sup>

**PETITION**

Petitioners seeks to have the Board change the final numbers as reflected in the GATS "My RPS Compliance Report" to match the numbers shown in the Companies' own records. (Petition at Point 2, "Relief Requested.")<sup>9</sup> Petitioners contend that the Board should allow it to rely upon its own retail sales numbers because it had not received the various notices sent regarding the reconciliation process and its deadlines. More specifically, the Petition states that the email attaching the Reconciliation Memo went to the Companies' and/or Crius' "spam" folder; that Crius moved its headquarters during September 2016, which may have caused any hard copy of the Reconciliation Memo to go astray; and that a transfer of responsibility for managing Crius' RPS obligation from a third party company to Crius' employees may have

<sup>7</sup> Staff recommends that any enforcement actions against the Companies be determined at a later date.

<sup>8</sup> The Petition acknowledges receipt of the Letter.

<sup>9</sup> The Petition has no page or paragraph numbers.

resulted in a failure by the former manager to forward this memo to Petitioners. (Petition at Point 1,) "Basic Facts." Petitioner believes that the Companies' own retail sales numbers are the most accurate gage of the number of megawatt hours they sold in EY16 and asks the Board for its assistance in adjusting the GATS load data to conform to the Companies' sale numbers. (Petition at Point 2, "Relief Requested," and Point 3, "Assistance Required.")

### **STAFF RECOMMENDATION**

As of EY16, the year for which Petitioners contest their RPS obligation, the solar requirement is a percentage of retail sales calculation for all TPS/BGS Providers, and the necessary calculation is simpler than what was required under SEAFCA and the Solar Act. The Board noted this fact when it approved an extension period of thirty days rather than the sixty days requested by the EDCs. August 24 Order at p. 5. Nonetheless, in recognition of the need to reconcile the differences that often appear between load reflected in GATS and the retail sales recorded by the BGS Providers and the TPS, the Board approved the process described above whereby these entities have thirty days to review the figures posted by PJM-EIS and compare them to the volumes shown in their EY16 sale figures. *Ibid.* PJM-EIS posted PJM settlement load numbers in the "My RPS Compliance Report" in early August 2016. The BGS providers and the TPS were directed to enter the adjusted retail sales number on or before October 1, 2016, affording them the month of September to work with Staff to reconcile the two sets of numbers, if necessary. The Board ordered that the RPS load numbers would be considered final as of October 1, 2016, and that no other adjustments would be allowed. August 24 Order at p. 5. All S/REC obligation calculations were to be based on the sales numbers in the "My RPS Compliance Report" as of October 1.

The BGS providers and TPSs were given ample notification of the above requirements. On July 27, 2016, as part of an effort to avoid the issues that had delayed publication of the EY15 compliance results, Staff held a stakeholder meeting with TPSs, EDCs, and BGS providers to discuss compliance issues and a process to improve consistent reporting going forward. Approximately one month later, the Board issued the August 24 Order setting out the process and its deadlines. In addition to posting the August 24 Order on both the Board and NJCEP websites, PJM-EIS emailed the Order to its listserve on August 26, 2016.<sup>10</sup> On August 31, 2016, PJM-EIS emailed the Reconciliation Memo along with the EY16 Compliance instruction documents to its supplier data base via email. These documents were also posted on the New Jersey Clean Energy Program website. In addition, Staff reviewed the August 24 Order and Reconciliation Memo at the September 20, 2016 Renewable Energy Committee meeting. Lastly, Staff re-sent the Reconciliation Memo (via PJM-EIS email) on September 26, 2016.

As rationale for the Companies' failure to timely file, Petitioners offer both emails shunted into the wrong file by the Petitioners' email servers and a possible "falling between the cracks" due to Crius' removing the RPS compliance responsibility from a third party and bringing that responsibility in-house. However, neither of these facts suffices to excuse the Companies' error. Nor does Crius' change in address, also cited as support for the failure to comply, as Petitioners never notified Staff of its address change until the Petition was filed. The obligation to reconcile their sales numbers with those in GATS rests with the BGS providers and the suppliers. These entities cannot rid themselves of responsibility by relying upon a third party, whether an email server or an outside vendor. In addition, 39 TPSs submitted retail sales

---

<sup>10</sup> Crius' email is on the PJM-EIS listserve.

reconciliation requests by the September 30, 2016 deadline. Three other TPSs who did not meet the deadline quickly submitted corrected reports retiring the additional S/RECs and/or paying the required S/ACPs. The Companies affiliated with Crius, on the other hand, did not retire the additional S/RECs or pay the required S/ACPs based on the GATS numbers.

Staff recommends that the Board deny the Petition and require the Companies to satisfy their EY16 RPS obligation on the basis of the load numbers reflected in PJM-EIS GATS.

### **DISCUSSION AND FINDING**

After carefully reviewing the record and Staff's recommendation, the Board **FINDS** that Petitioner and the Companies were provided adequate notice of the reconciliation process for EY16 and of the associated deadlines. The Board **FURTHER FINDS** that from November 4, 2016 through February 2, 2017, Staff made several outreaches to Crius and the Companies, advising them of the discrepancy and of the obligation to retire S/REC or pay the S/ACP. Additionally, the Letter requested that Petitioners submit the S/ACP payments for the unfulfilled compliance obligations within 15 days of the Letter, but Petitioners failed to do so.

The Board **FURTHER FINDS** that Petitioners have not provided a satisfactory rationale for the Companies' failure to take advantage of the thirty days allowed for reconciliation.

The Board also notes that the S/REC market has an interest in obtaining timely information on the number and price of the S/RECs retired for the previous energy year. The Board seeks to provide that information as close to the end of the true-up period as possible. For that reason, the Board sets a date certain by which every load serving entity ("LSE") must fix its retail sales quantity and lock it down consistently with all other LSEs. The October 1 deadline is the most important milestone in this process.

The Board **ORDERS** that Public Power, TriEagle, and Viridian pay the S/ACPs of \$48,970, \$803,794, and \$620,593, respectively, based on the load numbers which appear in PJM-EIS GATS and **DENIES** the Petition.

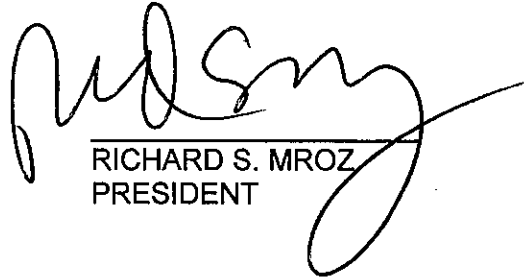
The Board **FURTHER ORDERS** the Companies to pay the required S/ACPs within 5 days of the effective date of this Order. Payments must be made out to "**TREASURER, STATE OF NEW JERSEY.**" ACPs and SACPs must be made via separate and distinct checks. In the memo field for each check, the Companies must indicate the number and type of payment, indicate the reporting year, and include the Companies' business name.

Send checks to: New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
Attn: Ronald Jackson

The effective date of this order is May 1, 2017.

DATED: 4/21/17

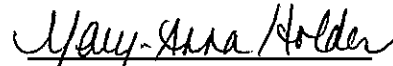
BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



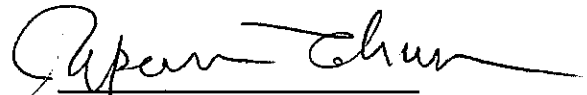
JOSEPH L. FIORDALISO  
COMMISSIONER



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

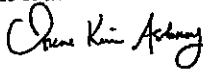


UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST: 

IRENE KIM ASBURY  
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 PETITION FOR A FORMAL HEARING REGARDING THE ENERGY  
YEAR 2016 RETAIL SALES FOR NJ RPS COMPLIANCE – PUBLIC POWER &  
UTILITY OF NEW JERSEY, LLC; TRIEAGLE ENERGY, LP; AND VIRIDIAN ENERGY  
DOCKET QO17030252

SERVICE LIST

Carrie Cammarano, Esq.  
Crius Energy, Public Power &  
Utility of New Jersey, LLC,  
TriEagle Energy, LP, and Viridian Energy  
535 Connecticut Avenue, 6<sup>th</sup> Floor  
Norwalk, CT 06854  
[ccammarano@criusenergy.com](mailto:ccammarano@criusenergy.com)

Irene Kim Asbury, Esq.  
Secretary of the Board  
Board of Public Utilities  
44 South Clinton Ave, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Irene.asbury@bpu.nj.gov](mailto:Irene.asbury@bpu.nj.gov)

Caroline Vachier, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[caroline.vachier@dol.lps.state.nj.us](mailto:caroline.vachier@dol.lps.state.nj.us)

Marisa Slaten, Director  
Economic Development & Emerging Issues  
Board of Public Utilities  
44 South Clinton Ave, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Marisa.slaten@bpu.nj.gov](mailto:Marisa.slaten@bpu.nj.gov)

Emma Yao Xiao, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[emma.xiao@dol.lps.state.nj.us](mailto:emma.xiao@dol.lps.state.nj.us)

Andrew McNally, Esq.  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Ave, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Andrew.McNally@bpu.nj.gov](mailto:Andrew.McNally@bpu.nj.gov)

Rachel Boylan, Esq.  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Rachel.boylan@bpu.nj.gov](mailto:Rachel.boylan@bpu.nj.gov)

Ronald Jackson, Research Scientist II  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Ave, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Ronald.jackson@bpu.nj.gov](mailto:Ronald.jackson@bpu.nj.gov)

Allison E. Mitchell  
Board of Public Utilities  
Office of Clean Energy  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Allison.Mitchell@bpu.nj.gov](mailto:Allison.Mitchell@bpu.nj.gov)

Benjamin S. Hunter, Renewable Energy  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Ave, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Benjamin.Hunter@bpu.nj.gov](mailto:Benjamin.Hunter@bpu.nj.gov)