

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: April 30, 2014
AT (OFFICE): NHPUC

FROM: Elizabeth Nixon, Utility Analyst IV ^{EN}
David K. Wiesner, Staff Attorney ^{DKW}

SUBJECT: DE 13-322 South Jersey Energy Company
Objection to 2011 Alternative Compliance Payment

TO: Commissioners
Debra A. Howland, Executive Director
Jack K. Ruderman, Director, Sustainable Energy Division

Summary

South Jersey Energy Company (SJE) has filed a petition requesting an adjudicative proceeding with respect to its request for retroactive banking of 2010 RECs and related reduction in its alternative compliance payment (ACP) obligation for the 2011 Renewable Portfolio Standard (RPS) compliance year. This petition follows a series of prior SJE requests for retroactive banking that were previously denied by the Commission. Staff has completed a comprehensive review and analysis of SJE's most recent filings and has concluded that they contain no new evidence and do not adequately support its claims for retroactive banking of 2010 RECs.

SJE's petition could only be granted if applicable filing requirements and deadlines under the Commission's rules were waived. Staff does not believe that the public interest would be served by granting such rules waivers. Staff also believes that, whether or not the rules waivers are granted, SJE is not entitled to an adjudicatory proceeding with regard to its claims, and it would not be necessary for a hearing to be held before the Commission to resolve SJE's claims for retroactive REC banking. Staff recommends that the Commission deny SJE's requests for rules waivers and an adjudicatory proceeding and dismiss SJE's petition.

Procedural History

On July 2, 2012, SJE submitted its Form E-2500 RPS compliance report for compliance year 2011, and on July 10, 2012, the associated ACP. After Commission Staff reviewed the 2011 Form E-2500 compliance report, it notified South Jersey that additional ACP amounts were due. After several e-mails between SJE and Commission Staff, SJE submitted a revised Form E-2500 for both the 2010 and 2011 compliance years on November 30, 2012, and submitted another revision of the 2011 Form E-2500 on April 2, 2013. With these revisions, SJE requested that the Commission waive Puc

2503.04(c)(1) to allow SJE to bank additional renewable energy certificates (RECs) for the 2010 compliance year and use those banked RECs for 2011 compliance year.

In a secretarial letter dated July 9, 2013, the Commission responded to SJE's request by denying the requested rules waivers and related retroactive banking of the 2010 RECs. In a letter dated July 19, 2013, SJE asked for reconsideration of this decision, and the Commission denied reconsideration in a letter dated October 14, 2013. In a letter dated November 1, 2013, SJE notified the Commission that they would be filing a petition seeking an adjudicative proceeding. On November 12, 2013, SJE filed a petition seeking an adjudicative proceeding with respect to its retroactive banking request. In a letter dated November 13, 2013, SJE submitted an Errata Sheet, and in a letter dated February 6, 2014, SJE submitted an additional letter regarding the law applicable to its petition.

Substantive Issue – Retroactive Banking of RECs

The key substantive issue in this proceeding is the ACP amount that SJE owes for RPS compliance year 2011. The amount of the ACP is based in part on the amount of banked RECs owned and settled by SJE. The focus of SJE's petition and requests has been on SJE's 2010 banked RECs. In SJE's original 2010 compliance report, the company requested that the Commission recognize certain 2010 RECs as banked. SJE provided documentation indicating that it owned and settled enough RECs to cover the amount of RECs used for compliance and requested in the original submittal for banking for future use.

More than 16 months after the deadline for requesting banked RECs, SJE requested that additional 2010 RECs be recognized as banked. In subsequent correspondence, SJE requested various amounts of RECs to be retroactively banked for 2010. Table 1 outlines the various submittals and the amount of 2010 banked RECs indicated by SJE for use or banking.

Table 1. Summary of SJE's Requests for 2010 Banked RECs

2010	Class I	Class II	Class III	Class IV
SJE's original 2010 banking request on E2500 Form submitted on July 1, 2011	22	0	1014	50
SJE's July 1, 2012 submittal of 2011 form showing 2010 banked RECs used ¹	22	0	1014	50
SJE's November 30, 2012 revised 2011 form showing 2010 banked RECs used	418	19	1863	405
SJE's April 2, 2013 revised 2011 form showing 2010 banked RECs used	418	19	1863	405
SJE's July 19, 2013 letter request for 2010 banking	418	19	1863	405
SJE's November 13, 2013 request for 2010 banking	440	19	2877	405

The Form E2500 submitted by SJE for compliance year 2010 was received on July 1, 2011 with a request to bank RECs. The GIS² documentation that they submitted on July 1, 2011 supported their claim to have settled sufficient RECs for compliance and banking in the amounts originally requested. As shown in Table 1 above, in subsequent submittals SJE requested that additional RECs be banked for 2010 or indicated the use of additional banked RECs from 2010.

On Form E2500, electricity providers are required to indicate the amount of RECs purchased and used for compliance and also the amount of RECs requested for banking. Providers are also required to submit documentation evidencing the settlement and retirement of sufficient RECs to cover the amount of RECs indicated on the E2500 Form. The Commission cannot just assume that any unused RECs should be banked, because many electricity providers retire more RECs than are required for RPS compliance. Electricity providers retire additional RECs for various reasons, including customer

¹ Note that SJE incorrectly reported the amount of 2011 RECs that it had purchased on the initial 2011 compliance year submittal; the amount over-reported as purchased is equal to the amount that it later requested for retroactive banking.

² New England Power Pool Generation Information System (GIS).

purchases of electricity supplied by renewable energy or a commitment to provide a certain amount of renewable energy beyond what is required by the RPS.

Without retroactive banking of 2010 RECs, SJE's method of compliance with the RPS requirements for 2011 is shown in Table 2.

Table 2. Summary of SJE RPS Compliance for 2011

2011	RECs (MWh)			
Electricity Sold (kWh)	Class I	Class II	Class III	Class IV
123,264,643				
Percentage Obligation	2.0%	0.08%	6.5%	1.0%
RECs Needed	2465	99	8012	1233
2011 RECs Purchased	2033	94	0	828
RECs Banked from Previous Years	22	0	1014	50
30% of Need (Banked Usable)	740	30	2404	370
Total RECs (Purchased and Banked)	2055	94	1014	878
ACP amount	410	5	6998	355

Table 3 summarizes the amount of RPS shortfall (in MWh), assuming that no additional RECs could be banked for 2010, the ACP rate (in \$/MWh), and the total ACP amounts due by class. Without retroactive banking of additional 2010 RECs, SJE owes a total ACP amount of \$250,261 for the 2011 compliance year. To date, SJE has paid a total of \$187,299 in two installments of \$156,412 and \$30,887. SJE still owes \$62,962 to the Commission for compliance year 2011, without retroactive banking of RECs.

Table 3. Summary of ACPs for 2011 Compliance Year

2011	Class I	Class II	Class III	Class IV
RPS shortfall w/out retro banking (MWh)	410	5	6998	355
ACP rate (\$/MWh)	\$62.13	\$163.16	\$30.46	\$30.46
ACP w/out retro banking	\$25,473	\$816	\$213,159	\$10,813

Review of SJE Retroactive Banking Documentation

Staff has completed a comprehensive review and analysis of the factual basis for SJE's requests for retroactive banking of RECs, taking into consideration the documentation submitted by SJE as well as available GIS reports and information. SJE's most recent filings contain no new material information and continue to contain significant calculation errors. Staff has concluded that SJE has not adequately supported its requests to retroactively bank RECs, and that any retroactive banking would require

waivers of Commission rules and requirements regarding filing deadlines, and, in some cases, the GIS report specified for filing.³

Staff's investigative review raises the following questions for determination by the Commission at this time:

1. Should the Commission grant rules waivers in order to consider and determine SJE's late-filed requests for retroactive banking of RECs and accordingly reduce its ACP payment obligation for RPS compliance year 2011?
2. If such rules waivers were granted, would it be necessary to conduct an adjudicative proceeding in order to determine SJE's retroactive REC banking requests?

Staff's analysis of these two questions and Staff's recommendations regarding their resolution are described below.

Waiver of Rules

Retroactive banking of RECs as requested by SJE would require the Commission to waive provisions of Puc 2503.03(a) and (d) and Puc 2503.04(c)(1), and the Commission thus far has declined to grant these waivers to permit SJE to bank RECs more than a year after the applicable deadline. These rules provide as follows:

Puc 2503.03(a) On or before July 1 of each year, a provider of electricity shall file a report with the commission on Form E-2500, Annual Renewable Portfolio Standard Compliance Filing, documenting the provider's compliance with this part for the preceding calendar year.

Puc 2503.03(d) The report shall include:

(14) Total excess certificates by class to be banked for future compliance years.

Puc 2503.04(c) An owner of certificates, or fractional certificates, may bank unused certificates by filing with the commission:

(1) By July 30 of each year, for certificates tracked by the GIS to be banked from the prior calendar year, a report issued by GIS to the owner indicating the total number of certificates owned and settled for the prior calendar year.

Under these rules, SJE was required to list the number of excess RECs it sought to bank for use during the 2011 and/or 2012 RPS compliance years in the E2500 report it filed on July 1, 2011, and support its claim to bank RECs by submitting the specified GIS reports as back-up documentation. SJE is attempting to revise and supplement these required filings to claim additional banked RECs more than 16 months after the applicable deadline.

³ For example, in support of its claim that certain 2010 RECs should be retroactively banked, SJE submitted a copy of an additional GIS report different from the report specified to be filed for the relevant year.

Pursuant to Puc 201.05(a), the Commission can waive its rules if the waiver serves the public interest, and will not disrupt the orderly and efficient resolution of matters before the Commission. Under Puc 201.05(b), the public interest is based on whether:

- (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
- (2) The purpose of the rule would be satisfied by an alternative method proposed.

Staff does not believe SJE has provided sufficient evidence to support granting rules waivers pursuant to these standards. Given that other electricity providers have been able to comply with the filing requirements and meet the filing deadlines without issue, Staff cannot determine that “compliance with the rule would be onerous or inapplicable given the circumstances of the affected person.” Nor did SJE propose any alternative method that would satisfy the purposes of the REC banking reporting rules. Staff believes, moreover, that requested rules waivers would “disrupt the orderly and efficient resolution of matters before the commission,” because the RPS compliance reports are due to the Commission by July 1 with respect to the preceding year.⁴ SJE did not originally request waiver of these rules until more than 16 months after the deadline for requesting REC banking. SJE’s latest recalculation of RECs requested to be retroactively banked was submitted on November 13, 2013, more than two years after the banking request was due on July 1, 2011.

In a supplemental letter dated February 6, 2014, SJE’s attorney noted that RSA 362-F:7, I permits the banking of unused RECs of the proper class issued for production during the prior two years to meet up to 30 percent of a provider’s RPS requirements, and he argued that “provision of law trumps any contrary rule, including Puc Form E-2500.” Staff notes, however, that the Commission’s Puc 2500 rules have been adopted pursuant to statutory authority in RSA 362-F:13, I, which specifically direct the Commission to develop rules to administer the RPS program, and under RSA 541-A. Staff understands these rules have the force of law, and can be waived only pursuant to the procedures and standards set forth in Puc 201.05. The rules implement the statute and are not superseded by the statute.

As noted above, SJE has not demonstrated that rules waivers are justified in these circumstances. Staff recommends that the Commission deny the rules waivers requested by SJE in connection with its petition.

Hearing Request

SJE has requested an adjudicative proceeding to resolve its claims, citing Puc 102.01 and Puc 2505.13, based in part on a reference to this rules section contained in the Commission’s secretarial letter dated October 14, 2013. Puc 2505.13, however, provides an adjudicative process for PART Puc 2505, *Source Eligibility Determination and*

⁴ Pursuant to Puc 2503.04(c)(1), electricity providers also must file with the Commission by July 30 of each year the GIS report showing the total certificates owned and settled to justify the amount of RECs to be banked and retired for RPS compliance.

Monitoring, which part covers certification of renewable energy generators as eligible to produce RECs. No specific provision in PART Puc 2504, *Issuance and Transfer of Renewable Energy Certificates*, addresses adjudicative proceedings. Puc 102.01 defines an adjudicative proceeding as a “proceeding conducted pursuant to the procedure followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36 and the rules of the commission.”

Under RSA 541-A:31, II, the Commission “may commence an adjudicative proceeding at any time with respect to a matter within [its] jurisdiction.” Staff understands this authority is permissive, and does not require the Commission to conduct an adjudicative proceeding merely because a party has requested such a proceeding. If SJE’s rules waiver request is denied, as recommended by Staff, then no hearing would be necessary. If the rules waiver request is granted, Staff does not believe it would be necessary to conduct an adjudicative proceeding in order to render a decision regarding the substantive merits of SJE’s claims. SJE’s most recent filings do not contain any new evidence and, as noted above, do not adequately support SJE’s arguments for retroactive banking of RECs for the year(s) in question, in Staff’s view. Staff recommends that SJE’s request for an adjudicative proceeding be denied.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

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- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**