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# NEW JERSEY BOARD OF PUBLIC UTILITIES

## Adopted Amendments to the Environmental Information Disclosure Rules

N.J.A.C. 14:8-3

Docket No. EX09030200

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### PUBLIC UTILITIES

#### BOARD OF PUBLIC UTILITIES

##### Renewable Energy And Energy Efficiency

Adopted Amendments: N.J.A.C. 14:8-3.6 and 3.7  
 Adopted Repeal: N.J.A.C. 14:8-3.9 and 14:8-3 Appendix H-

Adopted: December 1, 2009, by the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Joseph L. Fiordaliso, Nicholas Asselta, and Elizabeth Randall, Commissioners.

Filed: December 8, as R.2009 d. , with changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13, 48:3-87

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The New Jersey Board of Public Utilities is herein adopting changes to its Environmental Information Disclosure rules, N.J.A.C. 14:8-3, to reduce the verification and reporting requirements in that subchapter. The rules affected by this adoption apply to electric power suppliers and basic generation service (BGS) providers.

The amendments adopted herein will reduce the regulatory burden on electricity suppliers and basic generation service (BGS) providers. Since these rules were initially adopted, there have been major changes in the electricity market, in the types of

transactions through which energy is transferred, and in the technology and methods of tracking the information with which this chapter is concerned. When the environmental information disclosure program was established in 1999, energy customers were being encouraged to “comparison shop” for electricity, and the program was intended to provide customers with information to help them compare energy products with one another. A customer might want to help the environment by choosing electricity generated at a plant that used a “cleaner” fuel mix or had lower air pollutant emissions than electricity generated at another plant.

Since the original enactment of these rules a number of things have changed. One of them is that the Board has helped to establish the Generation Attributes Tracking System (GATS). That system, administered by PJM, performs a majority of the verification of the emissions and the fuel usage data that appear on the environmental disclosure labels. Furthermore, environmental attributes are now often split off from the electricity commodity itself and tracked and traded separately, fulfilling some of the original goals of the environmental information disclosure program. Finally, in administering the environmental information disclosure program, the Board has found that the data upon which the disclosure labels are based rarely changes more often than annually. Because of these changes, the Board has found that some of the chapter’s requirements are outdated, and these amendments will remove those provisions and reduce the burden of compliance.

### **Summary of Public Comments and Agency Responses:**

The following commenters submitted timely comments:

- Alexander C. Stern, Public Service Electric and Gas Company (PSE&G).

1. COMMENT: We support the Board’s proposal to reduce the verification and reporting requirements in this subchapter. The amendments will assist the compliance and reporting efforts of electric power suppliers, basic generation service (“BGS”) providers as well as the electric distribution companies (“EDCs”) and appropriately recognize the changes in the electricity market since the 1999 passage of the Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 et seq. (PSE&G)

RESPONSE: The Board appreciates this comment in support of the rules.

2. COMMENT: The Board’s actions properly recognize that the creation of the Generation Attributes Tracking System (“GATS”) by PJM Interconnection, LLC (“PJM”) and the expanding separate and distinct marketplace for renewable energy certificates together provide the right mechanisms for verification of emissions and fuel usage data. (PSE&G)

RESPONSE: The Board appreciates this comment in support of the rules.

3. COMMENT: The proposed amendments to N.J.A.C. 14:8-3.7(a) reducing the frequency of the reporting requirement to annual rather than semi-annual; revising the energy label year to make it consistent with the renewable portfolio standard

(“RPS”) energy year (from June to the following May); and changing the date by which environmental information disclosure labels must be completed to November 1st will significantly assist efforts to ensure that information concerning the fuel mix utilized to generate electricity providing service to customers in New Jersey is as accurate as possible. (PSE&G)

RESPONSE: The Board appreciates this comment in support of the rules.

4. COMMENT: These rule amendments will help efforts directed at meeting New Jersey’s Energy Master Plan (“EMP”) goals and objectives by improving the accuracy of the fuel mix information provided. (PSE&G)

RESPONSE: The Board appreciates this comment in support of the rules.

5. COMMENT: N.J.A.C. 14:8-3.3(a): The default value for fuel mix (energy source) is set forth in Appendix F, Table I. However, the Appendix F values are dated and may in fact go back as far as 1997. We recommend that the default emission rates be updated to reflect the current actual “PJM System Mix” as determined by PJM-GATS. PJM-GATS provides information about how megawatt-hours of electricity were generated. The data is used to meet the information disclosure requirements of states with fuel mix and emissions disclosure requirements or that have renewable portfolio standard requirements. One way of doing this would be to eliminate Appendix F and instead define default values as follows:

“Default values” are the emission rates and fuel mix defined in the “PJM System Mix.” The PJM System Mix provides average emission rates and percentages by fuel type for all electricity delivered in PJM. These averages are determined by GATS via generator specific electronic Certificates that identify the relevant Generation Attributes necessary for electricity suppliers to satisfy state policies and to support voluntary green markets. The major data that are included in the database of the GATS are:

- (1) Meter information from the PJM Market Settlement System;
- (2) Emissions data (primarily sourced from the Environmental Protection Agency (“EPA”) and supplemented by data from other sources, as available, to improve accuracy and/or timeliness); and
- (3) Static data input by the GATS Administrator and/or the generator (such as fuel source, location, state program qualification, etc.). The PJM-GATS System Mix report is available to PJM GATS subscribers on a monthly and on an annual basis at [www.pjm-eis.com](http://www.pjm-eis.com). (PSE&G)

RESPONSE: Please see the response to comment 7 below.

6. COMMENT: N.J.A.C. 14:8-3.5(a) states that the fuel mix and emissions information associated with electricity products and disclosed on labels shall be based on “historical” data that reflect the generation of the power provided by the supplier in the preceding year. We suggest that “historical data” be reworded to state “PJM-GATS data”, since this data is from PJM-GATS. (PSE&G)

RESPONSE: Please see the response to comment 7 below.

7. COMMENT: Consistent with the proposed changes to N.J.A.C. 14:8-3.6(d), the

following amendments to N.J.A.C. 14:8-3.6(b) and (e) would also be appropriate:

- (b) ... The supplier can determine these characteristics utilizing information that is obtained from [reported] PJM- GATS, which obtains emissions data at the general level from the U.S. Environmental Protection Agency on an annual basis., ~~and made available by, the U.S. Environmental Protection Agency and Energy Information Administration, or information supplied by the generator that is made available to and is verifiable by the Board or Program Administrator.~~
- ... The source of publicly available information shall be PJM-GATS, which can be accessed at [www.pjm-eis.com](http://www.pjm-eis.com) or the USEPA's Emissions and Generation Resource Integrated Database (EGRID), which can be accessed at: [www.epa.gov/cleanenergy/egrid/index.htm](http://www.epa.gov/cleanenergy/egrid/index.htm).
- (e) . . . The average emission rate (pounds per MWh [~~mWh~~]) of a generating unit can, for most units, be determined by reference to the most recent data reported to, and made available to the public by the U.S. Environmental Protection Agency and/or PJM-GATS. (PSE&G)

RESPONSE: RESPONSE to comments 5 through 7: The Board agrees that the commenter's suggestions make sense and meet the goals of the enabling statutory authority. However, these changes are substantive and cannot be made upon adoption. Therefore, the Board will propose amendments to meet the commenter's concerns in a future proposal.

8. COMMENT: We recommend that a definition of "PJM-GATS" be added consistent with how PJM defines GATS, as follows:  
"PJM-GATS" means PJM's Generation Attribute Tracking System (GATS). PJM Environmental Information Services, Inc. (PJM EIS) owns and administers PJM-GATS. PJM-GATS tracks generation attributes and the ownership of the attributes as they are traded or used to meet government standards. (PSE&G)

RESPONSE: The Board agrees that this term should be defined for clarity, and has added a definition of PJM-GATS, which closely tracks PJM's description of the GATS system, upon adoption. The Generation Attribute Tracking System (GATS), administered by PJM, L.L.C. is a certificates-based tracking system: the attributes or characteristics (for example, that the electricity was generated using solar power) of electric generation are separated from the megawatt-hour of electricity that was produced. These attributes are recorded onto a certificate after the electricity is produced. One certificate with a unique serial number represents the generation attributes of each megawatt-hour produced. New Jersey was one of the parties that contributed funding and expertise to the development of GATS, and the Board's renewable energy programs rely on the data provided by GATS to ensure the accuracy of reported electricity generation.

9. COMMENT: N.J.A.C. 14:8-3.4(a)4 establishes the "energy information" electricity suppliers are permitted to disclose to customers concerning investments in energy efficiency. It specifically precludes retail electricity suppliers from including in their disclosures "electricity saved under energy efficiency programs funded through the Societal Benefits Charge." This provision was drafted when energy customers were

being encouraged to “comparison shop” for electricity. The exclusion of SBC funded programs was intended to prevent these programs from being double counted – i.e. ratepayers were already paying for these programs in regulated EDC rates and thus competitive electric retail suppliers were precluded from taking credit for these programs in their environmental information disclosures. However, competition on the residential level has primarily manifested in New Jersey on the wholesale level as opposed to the retail level. We and the other EDCs have made and continue to make significant investments in energy efficiency, but because of this outdated regulatory provision, are precluded from referencing these investments in our environmental information disclosures. This not only is misleading to customers, but it also has the unintended affect of completely disregarding virtually all of the Board’s work with the utilities to promote energy efficiency programs and innovations. We recommend allowing SBC investments to be reflected on the label. The Board’s recent approval of non-SBC funded carbon abatement programs and economic energy efficiency programs further supports the need to update this rule provision. There is no reason that these investments will be permitted on our environmental information disclosure label while SBC funded investments remain barred. (Editor’s Note: Here commenter inserted two example environmental information disclosure labels to illustrate this point.) (PSE&G)

RESPONSE: The issue raised by the commenter’s suggestion is outside of the scope of the proposal. The proposal addresses procedural and administrative aspects of the environmental information disclosure program, while the commenter advocates a change in the types of utility activities that can be included in the information reported. Therefore, the commenter’s suggested change has not been made. However, the Board will consider this suggestion in any future rulemakings concerning the environmental information disclosure program.

10. COMMENT: N.J.A.C. 14:8-3.4(a)4 references discrete emission reduction (“DER”) credits, generated pursuant to New Jersey’s open market emissions trading (“OMET”) program as well as the NOX budget program and these programs have expired. Accordingly, reference to these programs should be deleted.

RESPONSE: The Board has deleted the references to these two defunct programs upon adoption.

### **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 that exceed any Federal standard or requirement to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:8-3 is 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 these proposed amendments and repeal.

**Full text** of the rule adoption follows (additions are indicated in boldface with asterisks

**\*thus\***; deletions are indicated in brackets with asterisks **\*[thus]\***):

## **CHAPTER 8 RENEWABLE ENERGY AND ENERGY EFFICIENCY SUBCHAPTER 3. ENVIRONMENTAL INFORMATION DISCLOSURE**

### **14:8-3.3 Definitions**

(a) The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, definitions set forth at N.J.A.C. 14:3-1.1 and 14:4-1.2 shall apply to this subchapter, unless the context clearly indicates otherwise.

. . .

**\*“PJM-GATS” means PJM’s Generation Attribute Tracking System (GATS), a regional environmental registry and information system that tracks the environmental and fuel attributes of energy generation. PJM Environmental Information Services, Inc. (PJM EIS) owns and administers PJM-GATS.\***

### **14:8-3.4 Environmental information required**

(a) Pursuant to the mandates embodied in P.L. 1999, c. 23, the rules for environmental disclosure to retail customers require every electric service supplier to provide the following:

1. - 3. (No change.)
4. Energy efficiency information: Each electricity supplier serving retail customers in New Jersey shall disclose, to its retail customers, the amount of electricity that has been saved through the supplier's investments in energy efficiency. This shall not include electricity saved under energy efficiency programs funded through the Societal Benefits Charge. The supplier shall report the amount of electricity savings, expressed in kilowatt hours, represented by the retirement of emissions credits based on the implementation of electrical energy efficiency measures. ~~\*[Such credits may be discrete emission reduction (DER) credits, generated pursuant to New Jersey's open market emissions trading (OMET) program (N.J.A.C. 7:27-30), or allowances allocated from the Incentive Reserve under New Jersey's NO<sub>x</sub> budget program.]\*~~ Documentation of the kWhs saved is a component of the quantification required for the generation or claiming of these credits; therefore, the value of the credits in kWhs can readily be determined by consulting this documentation. All electricity suppliers will be required to file each disclosure label with the Board or Program Administrator.