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# **NEW JERSEY BOARD OF PUBLIC UTILITIES**

## **Proposed Amendments And Repeal Renewable Energy And Energy Efficiency Environmental Information Disclosure Rules N.J.A.C. 14:8-3.6, 3.7 and 3.9 BPU Docket #: EX09030200**

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### **PUBLIC UTILITIES**

#### **BOARD OF PUBLIC UTILITIES**

##### **Renewable Energy And Energy Efficiency**

Proposed Amendments: N.J.A.C. 14:8-3.6 and 3.7

Proposed Repeal: N.J.A.C. 14:8-3.9

Authorized By: Board of Public Utilities, Jeanne M. Fox, President;  
Frederick F. Butler, Joseph L. Fiordaliso, Nicholas  
Asselta, and Elizabeth Randall, Commissioners.

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

Calendar Reference: See Summary below for an explanation of exception  
to calendar requirement.

BPU Docket Number: EX09030200

Proposal Number: PRN 2008-

Comments may be submitted through July 31, 2009 through either of the following  
methods:

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- Electronically, in Microsoft WORD format, or in a format that can be **easily converted to WORD**, by e-mailing them to the following e-mail address: [rule.comments@bpu.state.nj.us](mailto:rule.comments@bpu.state.nj.us); or
- On paper to:  
Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
**ATTN: BPU Docket Number: EX09030200**  
Two Gateway Center  
Newark, New Jersey 07102

The agency proposal follows:

### Summary

The New Jersey Board of Public Utilities is herein proposing 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 the proposal apply to electric power suppliers and basic generation service (BGS) providers.

The amendments proposed herein will reduce the regulatory burden on electricity suppliers and basic generation service (BGS) providers. Since these rules were 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 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 proposed amendments will remove those provisions and reduce the burden of compliance.

Proposed amendments to N.J.A.C. 14:8-3.6 would remove detailed and specific documentation requirements that are no longer necessary in light of improvements in energy tracking systems such as the Generation Attributes Tracking System (GATS)

operated by PJM-EIS. In addition, permissive language at N.J.A.C. 14:8-3.6(d)2, 3, and 5 is changed to mandatory language, so that if imported power is obtained through certain types of contracts, the environmental characteristics of the power must be reported on disclosure labels by generating unit or as an average of a class of generating units owned by the generator.

Proposed amendments to N.J.A.C. 14:8-3.7 would reduce the required frequency of reporting to annually rather than semi-annually. This is based on Board staff's experience that the data being reported do not change so quickly as to justify the more frequent reporting requirement. In addition, the date by which labels must be completed is moved from October 1 to November 1, and the period of time covered by the report is adjusted correspondingly. This makes the rules consistent with recent amendments to the Board's Renewable Portfolio Standards (RPS) rules, which moved a similar reporting date back one month, since the same data are used for both reports.

The proposed repeal of N.J.A.C. 14:8-3.9 would remove a requirement for an independent audit of the information reported under the rules. Again, due to increased accuracy of tracking systems, these audits are no longer useful or necessary.

Appendix G, which was reserved, is proposed for deletion. Appendix H, which sets forth the required timing of label updates and distribution, is proposed for deletion as it addresses issues now covered in the rule text itself.

As the Board has provided a 60-day comment period on the proposed amendments and repeal, it is exempt from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and repeal will have a positive social impact by simplifying the environmental disclosure rules and removing outdated requirements.

### **Economic Impact**

The proposed amendments and repeal will have a positive economic impact because they will significantly reduce the cost of complying with the environmental information disclosure rules at N.J.A.C. 14:8-3.

### **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.

### **Jobs Impact**

The proposed amendments and repeal are likely to have a minimal impact on jobs in New Jersey. The simplification of the environmental information disclosure rules may result in a slight loss of jobs for CPAs and consultants. However, the Board does not expect the potential impact, if any, to be significant.

### **Agriculture Industry Impact**

The proposed amendments and repeal are expected to have no impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (the Act), the Board has determined that the proposed amendments and repeal will not impose reporting, recordkeeping or other compliance requirements on small businesses, and in fact will reduce such requirements for any small business to which the rules apply.

### **Smart Growth Impact**

The Board anticipates that the proposed amendments and repeal will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. "Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." These rules apply uniformly Statewide and the Board does not expect that the proposed amendments and repeal will affect the location of future development. Therefore, they will not impact smart growth or the State Plan.

### **Housing Affordability Impact**

The proposed amendments and repeal will have an insignificant impact on affordable housing in New Jersey because the scope of the proposal is limited to reducing reporting under the environmental information disclosure rules. In addition, there is an extreme unlikelihood that the proposed amendments and repeal would evoke a change in the average costs associated with housing, because the impact of the environmental information disclosure program does not affect housing prices or the housing market.

## **Smart Growth Development Impact**

The proposed amendments and repeal will have an insignificant impact on smart growth in New Jersey because the scope of the proposal is limited to reducing reporting under the environmental information disclosure rules. In addition, there is an extreme unlikelihood that the proposed amendments and repeal would evoke a change in housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the environmental information disclosure program does not affect housing construction or the housing market.

**Full text** of the rule proposal follows (additions are indicated in boldface **thus**; deletions are indicated in brackets [thus]):

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

#### **14:8-3.6 Methodology for developing a disclosure label**

(a) - (c) (No change.)

(d) In developing disclosure labels, each category of electric generating resources shall be treated as follows:

1. (No change.)
2. Unit contracts. An electricity supplier that purchases electric power through a unit contract shall ascribe the fuel mix and emissions associated with the specified unit or units to all electric power purchased through that contract. With respect to a unit contract for imported power, the electricity supplier ~~[may]~~ **shall** characterize this power with the electric generating unit's emissions and fuel mix information ~~[after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Rockland & Orange, into the NYPP control area; and certification from the generating company that it has not sold the electricity claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:8-3.9. In the event that the electricity supplier does not file such information],~~ **or** the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company from which the electricity was purchased.
3. Contracts for specified resources. An electricity supplier that purchases electric power through a contract for specified resources shall ascribe the fuel mix and emissions associated with the resources actually used to supply the contract. With respect to imported power, the electricity supplier ~~[may]~~ **shall** characterize this power with the electric generating unit's emissions and fuel mix information ~~[after filing the following with the Board or the Program Administrator: documentation that the unit or units generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the~~

~~PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company or wholesaler supplying the electricity supplier that the electricity claimed by the electricity supplier has not been sold to any party other than that electricity supplier. The certification documentation shall be included in the annual certifications completed by an independent entity as set forth in N.J.A.C. 14:8-3.9. In the event that the electricity supplier does not file such information], or the supplier shall characterize the electricity with the average environmental characteristics of the generating units owned by the company in the control area from which the electricity was purchased.~~

4. (No change.)
5. With respect to a system contract for imported power, an electricity supplier ~~[may]~~ shall characterize this power with the generating company's average emissions and fuel mix information ~~[after filing the following with the Board or the Program Administrator: documentation that the specified system generated the amount of electricity claimed during the specified period; documentation that the electricity was scheduled for transmission into the PJM control area, or in the case of Orange & Rockland, into the NYPP control area; and certification from the generating company that it has not sold the electricity claimed by the electricity supplier to any party other than that electricity supplier. The certification documentation shall be included in the annual certification completed by an independent entity as set forth in N.J.A.C. 14:8-3.9. In the event that the electricity supplier does not file such information], or the supplier shall characterize the electricity with the average environmental characteristics of the generating units located in the control area from which the electricity was purchased.~~
6. (No change.)

(e) - (g) (No change.)

#### **14:8-3.7 Disclosure information updating and reporting requirements**

(a) Each electricity supplier (except for suppliers of new products) ~~[will be required to]~~ shall update and distribute the environmental information on its label(s) ~~[semi-]annually~~. The disclosure shall be based on data reflecting the product sold during the most recent 12-month period. Suppliers relying on historical information for disclosure shall be required to provide updated labels on ~~[April 1 and October]~~ November 1. This information shall be based on four quarters' information, but recognizing that some period is needed for information gathering and processing, a three-month lag will be allowed between the date that disclosure of an updated label is required and the last day of the period on which the label is based. For example, an updated label issued on ~~[April 1, 2000, shall be based on data reflecting the generation of power provided from January 1 through December 31, 1999. An updated label issued on October]~~ November 1, 2000 shall be based on data reflecting the generation of power from [July] June 1, 1999 to [June 30] May 31, 2000. [An updated label issued on April 1, 2001, shall be based on data reflecting the generation of power provided between January 1, 2000, and December 31, 2001.]

(b) Suppliers of basic generation service shall provide environmental information to basic generation customers according to the schedule set forth in (a) above [~~and in subchapter Appendix H, incorporated herein by reference~~].

(c) Each electricity supplier of a new product for which an environmental claim is made shall [be required to update its label after a 12-month period for which power was supplied to the customer. However, suppliers of new products shall] distribute the label to their customers [~~semi-~~] annually, [~~as set forth in Appendix H,~~] whether making an environmental claim for the product or using the default label.

(d) - (e) (No change.)

**[14:8-3.9 — Certification by an independent entity] (Reserved)**

~~[(a) Prior to distributing disclosure information to customers and annually thereafter, each supplier of an existing product shall obtain a certified verification of the environmental information to be disclosed from a certified public accountant (CPA) that is independent of such electricity supplier. Any electricity supplier of a new electricity product who makes a specific environmental claim on the product's disclosure label, including a claim of support for energy efficiency, shall, following the 12-month or longer period during which the claim is made, demonstrate that the claim was met within the allowable limits, and obtain a certified verification from an independent CPA that the demonstration is complete, accurate and true. Electricity suppliers of new electricity products who rely on the allowed default values for the initial 18-month period are not required to obtain verification or audit of the default emissions and fuel mix information.~~

~~(b) The CPA shall certify that the environmental information disclosed on the label has been properly determined, including that the supplier's wholesale portfolio information is based on an accurate calculation of the emissions of owned generation units and of units and/or systems for which the supplier has bilateral contracts and that proper default values have been used for electricity obtained from wholesale electricity purchases and purchases through the spot market.~~

~~(c) Both for existing products and for verification that the product environmental claims have been met, the electricity supplier shall be required to file the CPA's certified verification with the Board or Program Administrator. Power purchase contracts do not need to be provided to the Board as supporting documentation, unless specifically requested by the Board or Program Administrator.]~~

**[APPENDIX G (Reserved)]**

**APPENDIX H**

**Label Update and Distribution Timing Requirements**

**NEW PRODUCT LABEL (CLAIM OR DEFAULT)**

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	<b>Date of label update</b>	<b>Reporting period on label</b>	<b>Distribution to customer</b>
Initial prospective label	Commencement of marketing	12-month period for which power will first be provided in New Jersey	Commencement of marketing & six months after power is first provided
First historical label	3 months after the end of the 12-month period	The same time period used on the prospective label (above)	3 months after the end of the 12-month period
Future historical labels	Semiannually]		