State of New Jersey
Board of Public Utilities

Comments of the Retail Energy Supply Association to the Renewable Energy and Energy Efficiency Standards Proposed Amendments:
N.J.A.C 14:8-1.2, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, and 2.10

I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] respectfully submits these comments in the above-referenced proceeding addressing the Proposed Amendments to the Renewable Energy and Energy Efficiency Standards ("RE and EE Standards") at N.J.A.C 14:8-1.2, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, and 2.10. The Board of Public Utilities' ("Board's") RE and EE Standards are particularly significant to RESA, whose member companies are licensed third party suppliers ("TPSs") in New Jersey that are required to comply with the state's Renewable Energy Portfolio Standards ("RPS") for Class I and Class II Renewable Energy Credits ("RECs") and Solar Renewable Energy Credits ("SRECs") requirements.

While RESA supports many of the modest proposed rule changes as detailed below, RESA is concerned that several important rule amendments are not included in this rule proposal as discussed herein. It is particularly disappointing since RESA and individual TPSs have raised concerns on numerous occasions to Board staff concerning these rules. Accordingly, RESA submits the following specific comments and suggested changes to the RE and EE Standards, which are intended to significantly improve the compliance process for TPSs and reduce the administrative burden on Board staff, while promoting the state's renewable energy and energy efficiency policies.

II. N.J.A.C. 14:8-1.2

RESA supports the proposed change of the term "supplier/provider" to "TPS/BGS provider," because referring to a BGS provider as a "supplier" and a TPS as a "provider" is confusing and inconsistent with both common parlance, as well as other sections of the Board's rules, including the Energy Competition Rules at N.J.A.C. 14:4 *et seq*. RESA would be remiss not to point out, however,

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

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that the proposed rulemaking does not include modifications to N.J.A.C. 14:8-2.11, which also includes the confusing term "supplier/provider."

III. N.J.A.C. 14:2.2

RESA supports modification of the definition of "True-up period," but believes the Board's proposed definition is too uncertain, in providing "a period, as determined by the Board, of no less than 120 days following the end of the energy year by which a BGS provider or TPS must demonstrate compliance with the RPS for that energy year." Under the status quo, BGS providers and TPSs must make filings requesting extensions to the October 1 compliance deadline each year due to lack of timely data from Board Staff necessary to complete the compliance filings. Although the Board generally grants these requests via Order, the piecemeal process requires an unnecessary expenditure of TPSs', BGS Providers' and Board Staff's time and resources. In order to avoid these yearly extension filings, RESA submits that the Board should modify the definition of "True-up period" to extend through November 15 each year. This modification would provide TPSs and BGS Providers with the advantage of a certain date, as well as the time necessary to file their annual reports.

RESA is concerned that the Board did not amend the language in N.J.A.C. 14:8-2.11, which was not included in this proposed rulemaking. The current text of that rule provides that "By October 1st of each year, each supplier/provider shall file an annual report with the Board, demonstrating that the supplier/provider has met the requirements…for the preceding reporting year." For the same reasons RESA proposes to change the definition of "True-Up Period" as provided above, RESA submits that this rule should also be changed to extend the deadline for submission of RPS compliance reports to November 15 of each year.

IV. N.J.A.C. 14:2.3

RESA believes that the Board should modify N.J.A.C.14:2-3(k)(iv) to clearly provide a uniform definition of "total retail sales" applicable to BGS Providers and TPSs when calculating their RPS obligations. Currently, there is no such definition and it is unclear whether TPSs and BGS Providers should calculate their RPS obligations using the PJM GATS-settled or actual metered load. In order to promote fair, standard treatment of RPS obligations among all BGS Providers and TPSs, the Board should provide a clear and uniform definition of "total retail sales."

While RESA believes that the Board's provision of a rule setting forth *any* definition of "total retail sales" would be preferable to the status quo as long as it were uniformly applied, RESA further submits that the Board should provide that the term means "metered load." While the PJM-GATS settled load amount is not a true reflection of the usage billed to a retail customer, the actual cumulative customers' "metered load" is a more accurate measure of "total retail sales." As RESA has pointed out before in prior correspondence and testimony before the BPU, the difference between PJM-GATS-settled and metered load can be a significant and material amount which could result in

customer overpayments and suppliers over-purchasing RECs.[2] In several instances in the proposed version of N.J.A.C. 14:2-3, the terms "sales" and "supply" are used interchangeably,[3] yet the term "sales" more accurately reflects the true basis for calculating RPS obligations than the term "supply." Therefore, RESA asks that the rule be modified accordingly.

V. N.J.A.C. 14:8-2.5(h)

RESA supports the proposed minor modifications to this rule changing the term "supplier/provider" to "TPS/BGS provider" for the reasons indicated above. RESA believes, however, that further more meaningful changes should be made to this provision as often discussed with Board staff in the past. Specifically, RESA proposes that the rule require that the determination regarding whether a biomass facility qualifies as Class I renewable energy occur at the beginning of the Energy Year on or around June 1, such that, absent fraud or administrative error, all RECs listed in PJM-GATS remain so-eligible throughout an Energy Year and its associated true-up period.

RESA believes that providers of RECs are responsible for selling RECS that are certifiable. Under the status quo, biomass facilities must apply to Board staff for certification as a Class I facility; the Board, in turn, forwards the application to the Department of Environmental Protection ("DEP") for an environmental compliance determination. If Board staff, in conjunction with the DEP, determines that the facility is compliant, it issues a certification number to the facility. The facility may then submit such certification number to the PJM GATS administrator and qualify to generate Class I RECs monthly throughout the Energy Year. After these RECs are recorded in GATS, biomass facilities may, and do, start selling such RECs to TPS/BGS providers, which may, and do, start buying them to meet their RPS obligations.

The current rule, however, also requires TPS/BGS providers to annually provide the Board with an affidavit of environmental compliance by October 1 – i.e., after the close of the preceding Energy Year – which, pursuant to N.J.A.C. 4-8:2-11(a) must demonstrate that the provider "has met the requirements of this subchapter for the *preceding* reporting year," by purchasing the required Class I RECs for the Energy Year ending May 31 of the same calendar year. If RECs purchased by the TPS/BGS provider throughout the Energy Year are subsequently determined to be non-compliant, or the affidavit from the biomass facility is not timely submitted, the associated RECs purchased by the TPS/BGS provider are de-certified. The TPS/BGS provider is then put in a very difficult position of having purchased RECs that it believed to be eligible – and in fact were listed in PJM GATS as such. As a result, the TPS/BGS provider must make up the shortfall by purchasing other RECs after the Energy Year has closed (and during the true up period when such RECs may be in high demand and/or short supply, and thus more expensive) and/or submitting Alternate Compliance Payments

[2] See, for example, PSE&G's website, providing that line losses among all rate classes exceed 7%--https://www.pseg.com/business/energy_choice/third_party/rate_class.jsp.

[3] See, for example, the proposed language in N.J.A.C. 14:8-2.3(k)(1)(ii) directs BGS providers to "determine market share of all electricity ***supplied*** Statewide during Energy Year 2015" (emphasis added) for contracts that were effective prior to July 23, 2012. The proposed language in N.J.A.C. 14:8-2.3(k)(2)(ii)(1), on the other hand, directs BGS providers to "determine the total retail electricity ***sales*** of exempt BGS providers statewide" (emphasis added).

("ACPs").[4] Under the Board's current regulatory scheme it is almost impossible for a TPS or BGS provider to know if its Class I RECs are actually eligible for use by the TPS or BGS provider at the time they are purchased.

Due to confusion and regulatory risk that de-certification of RECs poses on TPS/BGS providers, RESA submits that this rule be modified to require a determination of whether these biomass facilities are compliant at the *beginning* of the Energy Year, rather than after the Energy Year, which leaves TPSs with little to no time to find and purchase replacement RECs needed to satisfy their RPS requirements. Once deemed compliant, absent fraud or administrative error, all RECs listed in the GATS as Class I eligible would remain so eligible throughout an Energy Year and its associated true-up period.

In order to facilitate a Board/ DEP determination of whether a biomass facility is eligible to generate Class I RECs early in the Energy Year, the Board should modify the rules to provide that the Calendar Year preceding a given Energy Year constitutes the "Test Year" for determining compliance. If the Board/DEP finds that the facility was compliant during the Test Year, then that facility's RECs shall be recorded as eligible to generate Class I RECs in the GATS during the corresponding Energy Year. If the Board/DEP determines, however, that the facility was not compliant during the Test Year, then it shall not be eligible to generate RECs. Such a rule change would eliminate the challenges associated with de-certification of RECs.

VI. N.J.A.C. 14:8-2.6(g)(iii)

For the same reasons that RESA believes the Board should change N.J.A.C. 14:8-2.5(h) to require a determination of whether a biomass facility qualifies to generate Class I renewable energy occur at the beginning of the Energy Year, RESA believes that the Board should modify N.J.A.C. 14:8-2.6(g)(iii) to require a determination of whether a resource recovery facility qualifies to generate Class II renewable energy at the beginning of the Energy Year. Specifically, in order to facilitate a Board/ DEP determination of whether a resource recovery facility is eligible to generate Class II RECs early in the Energy Year, the Board should modify the rules to provide that the Calendar Year preceding a given Energy Year constitutes the "Test Year" for determining compliance. If the Board/DEP finds that the facility was compliant during the Test Year, that facility's RECs shall be recorded as eligible to generate Class II RECs in the GATS during the corresponding Energy Year. If the Board/DEP determines, however, that the facility was not compliant during the Test Year, then it shall not be eligible to generate RECs.

VII. N.J.A.C. 14:8-2.11

In addition to modifying this provision to contain the new term "TPS/BGS provider," as opposed to supplier/provider, RESA is concerned that the existing rule, which the Board did not

[4] Such a situation increases the possibility of higher prices to consumers.

include in the proposed rule modifications, requires TPSs to attest to information outside of their control, or even knowledge. Specifically, N.J.A.C. 14:8-2.11(d)(3) requires that TPSs must submit "an affidavit from the supplier/provider that the specified megawatt-hours were delivered into the PJM region and complied with PJM Interconnection delivery rules." RESA submits that this requirement be omitted or imposed on the operator of the units who generated the electricity, which is the party with control and knowledge of how the electricity was delivered into PJM and whether delivery was in compliance with PJM's rules.

As RESA pointed out above, it also believes that the language in N.J.A.C. 14:8-2.11(a) should be modified to conform to the Board's new proposed definition of "True-up period" in N.J.A.C. 14:2.2. Instead of imposing a hard date of October 1 for submission of the annual reports, RESA believes the Board should give itself the flexibility to determine the deadline for submission of RPS compliance rules based on extenuating circumstances. Such flexibility would eliminate the need for BGS providers and TPSs to make filings-- and for Board staff to process such filings—each year requesting compliance extensions due to forces outside of their control.

VIII. CONCLUSION

RESA submits that the proposed changes it recommends better serve the wholesale and retail energy marketplace, while promoting New Jersey's renewable energy and energy efficiency policies. Therefore, RESA encourages the Board to incorporate the suggestions contained herein before adopting the final rules.

Respectfully submitted,



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