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State of New Jersey

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April 8, 2021

To the Service List:

Re: Docket No. QO20100664 – In the Matter of Cavallo Petition for Enforcement of Environmental Information Disclosure (EID) rules and for Amendments to EID Rules.

Agenda Date: April 7, 2021 – Agenda Item: 8D

Please be advised that the Board of Public Utilities (“Board”) is re-issuing the Order for the above-referenced agenda item that was approved by the Board at the April 7, 2021 Board agenda meeting to correct an error in the listing of Parties of Record. Stefanie Brand, Director of the Division of Rate Counsel was incorrectly listed as a Party to this proceeding, when in fact the Division of Rate Counsel has had no involvement.

This is the only change to the Order, which will be re-distributed to the parties of record and the attached Service List.

Sincerely,

A handwritten signature in blue ink that reads "Aida Camacho-Welch".

Aida Camacho-Welch
Secretary to the Board

/dg



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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CLEAN ENERGY

IN THE MATTER OF CAVALLO PETITION FOR)
ENFORCEMENT OF ENVIRONMENTAL) ORDER
INFORMATION DISCLOSURE (EID) RULES AND FOR)
AMENDMENTS TO EID RULES.) DOCKET NO. QO20100664

Parties of Record:¹

Alfred Cavallo, Petitioner
Charles Skinner
Michael Bell
Dale Meade

BY THE BOARD:

In this Order, the Board of Public Utilities ("Board") considers the petition of Alfred Cavallo, Charles Skinner, Michael Bell, and Dale Meade ("the Petitioners") requesting that the Board initiate enforcement action against Third Party Suppliers ("TPS") that Petitioners claim are using Renewable Energy Certificates ("RECs") as a misleading marketing tool. For the reasons discussed below, the Board denies the petition.

BACKGROUND

New Jersey law requires compliance with New Jersey's Renewable Portfolio Standards ("RPS") by TPS and basic generation service ("BGS") providers (together, "TPS and BGS Providers").² Each TPS and BGS Provider with retail electricity sales in New Jersey during the energy year ("EY") must demonstrate that it has complied with the RPS by submitting an annual compliance report to the Board. In addition, each TPS and BGS Provider must disclose to its customers a uniform, common set of information about the environmental characteristics of the energy they have purchased, including the fuel mix and air pollutants.³ Pursuant to the statutory directive, the Board adopted Environmental Information Disclosure ("EID") rules, which codify the above

¹ The Director of the Division of Rate Counsel was previously shown as a Party of Record to this matter. Rate Counsel had no involvement in this matter, so the Director's name has been removed.

² N.J.S.A. 48:3-87(d). The Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to - 109 ("EDECA"), was signed into law on February 9, 1999.

³ N.J.S.A. 48:3-87(d). The rules, N.J.A.C. 14:8-3.1, call for these disclosures to be made on a customer's bill or on customer contracts or marketing materials.

directives. N.J.A.C. 14:8-3.1. The EID rules require disclosure of the fuel mix used in generating the electricity supplied, including among others categories for gas, nuclear, solar, and wind. If it is not practicable to determine the fuel mix for particular electricity, the TPS and BGS Providers shall include a regional average determined by the Board. Id. Pursuant to the EID rules, the Secretary of the Board issues a letter annually establishing the requirements for transparent disclosure by Electric Distribution Companies (“EDCs”), TPS, and BGS Providers of the environmental attributes of the electricity they provide to customers.

Petition

The Petition was filed on July 9, 2020. Petitioners appear to object to the use of the RPS and the retirement of RECs as New Jersey’s primary means of promoting renewable energy. Petitioners assert that “Instead of buying these ‘renewable energy certificate products’ consumers should focus on actions that really do reduce fossil fuel use such as conservation and efficiency, supporting New Jersey’s offshore wind program, and moving to electric vehicles to reduce petroleum consumption.”⁴

Additionally, Petitioners assert that many TPS do not post the required information on the environmental impacts of the energy sources that they use or else post outdated or incorrect information. In support of this claim, Petitioners have provided a list of links to TPS websites, attached to their petition as Appendix 1. Petitioners further contend that even if the information is posted and accurate, it is nearly impossible to locate on the vast majority of TPS websites. In addition, Petitioners maintain that “[t]hird Party Suppliers are misleading consumers into thinking that they are using renewable energy when they are in fact still using conventional fuels with all their associated negative environmental impacts.”⁵

Petitioners note that some TPS do state explicitly that the RECs they purchase do not contain renewable energy; however, Petitioners believe that these TPS mislead their customers as well, by stating that their purchase of RECs supports renewable energy. Petitioners discount this claim. In Petitioners’ opinion, “the financial assistance a REC provides to a project is completely negligible,” since according to Petitioners a national wind REC costs less than 0.1 cents per kilowatt-hour (kWh).⁶

Petitioners also allege that several TPS sites make false claims that a REC in combination with conventional energy is “pollution free,” or that purchasing a REC results in clean energy entering the PJM grid.⁷ Finally, Petitioners state that they suspect that some TPS are considering their REC purchases as the equivalent of purchasing renewable energy and are posting an EID that reflects this false assumption. Such actions, in Petitioners’ opinion, are undermining efforts to move away from fossil fuels.

As a remedy to the problems summarized above, Petitioners propose that “[a]ll TPS must post a current EID.”⁸ If a TPS claims environmental impacts more beneficial than those of the default PJM data, Petitioners propose that this claim be verified by the Board. Petitioners also wish to see “so-called ‘Green Options,’” wherein a REC is linked to the conventional energy being sold,

⁴ Petition at 2.

⁵ Id.

⁶ Petition at 1.

⁷ Id.

⁸ Petition at 1.

accompanied by an affirmative statement that a REC is not itself renewable energy and by the price paid for the REC.⁹

STAFF RECOMMENDATION

While Staff lauds Petitioners' obvious commitment to clean energy, we recommend denial of the Petition. REC-based markets form the basis of many of New Jersey's statutory clean energy programs, including the State's Renewable Portfolio Standard, as well as its solar, offshore wind, and other clean energy incentive programs. With the Clean Energy Act of 2018, the Legislature increased New Jersey's renewable energy goals by mandating that beginning on January 1, 2020, twenty-one percent of the kilowatt hours sold in the State by each electric power supplier and each basic generation service provider must be from Class I renewable energy sources. Staff notes that in enacting the new goals, the Legislature left unchanged the existing statutory authorization of RECs as a means to meet renewable energy targets.¹⁰

RECs are created on the basis of megawatt-hours ("MWh") of electricity that are generated and delivered to the electricity grid from a renewable energy resource, with one REC created for each MWh. While Petitioners are correct in stating that RECs are not in and of themselves renewable energy, RECs are a nationally-recognized tool for promoting the production of clean energy. Currently, 30 states and the District of Columbia rely on RPS programs similar to those in New Jersey.¹¹ The United States Environmental Protection Agency Green Power Partnership describes RECs as a market-based instrument that represents the property rights to the environmental, social, and other non-power attributes of renewable electricity generation.¹² In addition, there is a voluntary market for RECs, through which electric customers may choose to pay a surcharge to support the retirement of RECs. In the voluntary market, TPS may purchase the renewable energy "attributes" associated with the production of renewable energy and "retire" a sufficient number of RECs to offset a set percentage of the electricity consumption of their customers.¹³ The Federal Trade Commission ("FTC") also provides green guidelines for environmental marketing claims, which support the proposition that it is appropriate to make environmental claims regarding consumption of system electricity if the TPS retires an equivalent amount of RECs.¹⁴

⁹ Petition at 2.

¹⁰ N.J.S.A. 48:3-87.

¹¹ See, e.g., Berkeley National Laboratory, Electricity Markets & Policy, "U.S. Renewables Portfolio Standards 2021 Status Update: Early Release," at p. 9, available at: <https://emp.lbl.gov/publications/us-renewables-portfolio-standards-3>.

¹² See, e.g., Berkeley National Laboratory, Electricity Markets & Policy, "U.S. Renewables Portfolio Standards 2021 Status Update: Early Release," at pp.16-17 (finding that "RPS requirements constitute 45% of total U.S. [renewable energy] growth since 2000" and that for the Northeast and Mid-Atlantic, "RPS needs have outpaced actual RE growth, suggesting that RPS demand has been a key driver") available at: <https://emp.lbl.gov/publications/us-renewables-portfolio-standards-3>.

¹³ See, e.g., the United States Environmental Protection Agency's Green Power Partnership, which defines and explains the use of RECs. <https://www.epa.gov/greenpower/renewable-energy-certificates-recs#certificate>.

¹⁴ FTC Green Guides, § 260.15(c), "Renewable Energy Claims," (<https://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides>) (noting that "[i]t is deceptive to make an unqualified "made with renewable energy" claim unless all, or virtually all, of the significant manufacturing processes involved in making the product or package are powered with renewable energy **or non-renewable energy matched by renewable energy certificates.**") (emphasis added).

Given the extensive statutory support for a market-based compliance mechanism for the RPS, Staff sees no merit to Petitioners' generalized allegation that TPSs are misleading customers by touting the environmental benefits of renewable energy production. Even when that production is not geographically proximate to New Jersey, customers should be encouraged to help offset their carbon footprint and the pollution associated with all energy consumption. Further, while locally-sourced RECs clearly have the greatest environmental impact in New Jersey, they also tend to be significantly more costly, which can deprive lower income customers of the opportunity to shop green. When EDECA opened the New Jersey electricity markets to retail competition, it was designed, in part, to promote exactly this type of consumer choice.¹⁵

However, while Staff rejects Petitioners' facial challenge to the validity of RECs, to the extent that Petitioners or others witness specific violations of the EID rules, Staff will investigate those matters on a case-by-case basis. In addition, Staff recommends that the Board reiterate the requirement for full disclosure on the EID label of the use of RECs and the source of electricity underlying the RECs in a clear and conspicuous place on the bill and accompanying websites.

Staff recommends that Petitioners' suggestion on additional labelling within the EID regarding the nature of a REC should likewise be rejected. The Board's rules already require that a BGS and TPS Provider shall disclose information on the environmental characteristics of its energy supply, and that if the fuel mix for particular electricity cannot practicably be determined, the supplier/provider shall disclose a regional average that has been determined by the Board. N.J.A.C. 14:8-3.1(a)(b). The goal of these disclosure requirements is better consumer understanding of the impact of a supplier/provider's fuel sources. Further, the Board's rules require EIDs to be displayed on marketing materials (including websites), and the Staff noted in its most recent annual letter to TPS that EID labels must be kept up to date.¹⁶ Staff urges the Board to increase spot audits of this issue, and to notify TPS when they are not in compliance and, if necessary, to initiate enforcement actions against entities that are not compliant.

DISCUSSION AND FINDINGS

After review of the record and Staff's recommendations, the Board **HEREBY DENIES** Petitioners' requests for generic Board action.

The Board now turns to Petitioner's objection to New Jersey's reliance upon the retirement of RECs to satisfy the RPS as the State's primary means of promoting renewable energy. Before addressing this objection, it is important to clarify the distinct functions of the RPS and of the EID rules. The RPS mandates that the supplier/providers procure a certain percentage of their supply from renewable sources, with the goal of bringing about a market change. The EID rules, on the other hand, are intended to influence the market in a different manner, by encouraging consumers to use their buying power to support renewable energy development.

With respect to the RPS, as noted above, New Jersey law explicitly authorizes the use of RECs: "An electric power supplier or basic generation service provider may satisfy the requirements of this subsection by participating in a renewable energy trading program approved by the Board[.]" N.J.S.A. 48:3-87(d)(2). As an administrative agency, the Board has no power to adjudicate a claim challenging its enabling statute, and thus Petitioners' argument is not cognizable here. Therefore, the Board **DENIES** Petitioners' request that the Board initiate a generic proceeding to

¹⁵ Staff notes that without full knowledge and an ability to compare products, consumers are more likely to choose the least expensive option.

¹⁶<https://www.nj.gov/bpu/pdf/energy/Secretary%20Letter%20EID%20Label%20EY%202020%20Final.pdf>

alter the State's RPS policies. More importantly, the Board believes that the Legislature's decision to authorize RECs as a tool to achieve the State's renewable energy goals was a sound one and has been justified by New Jersey's record on renewable energy. As noted above, the RPS has proven successful in providing sufficient clean energy attributes to meet the percentages established by the statute. As Staff noted, an RPS is used by 30 states and the District of Columbia.

Petitioners' request that the Board initiate a generic proceeding into product labeling requirements is likewise rejected. The Board's rules already require that a BGS or TPS Provider shall disclose information on the environmental characteristics of its energy supply, and that if the fuel mix for particular electricity cannot practicably be determined, the supplier/provider shall disclose a regional average that has been determined by the Board. N.J.A.C. 14:8-3.1(a)(b). The goal of these disclosure requirements is better consumer understanding of the impact of a supplier/provider's fuel sources. Further, the Board's rules require EIDs to be displayed on marketing materials including websites, and Staff recently noted in a letter to TPS that EID labels must be kept up to date. The Board **DIRECTS** Staff to increase spot audits of this issue, and to notify BGS and TPS Providers when they are not in compliance and, if necessary, to initiate enforcement actions against entities that are not complying sufficiently.

This Order will take effect on April 17, 2021.

DATED: April 7, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



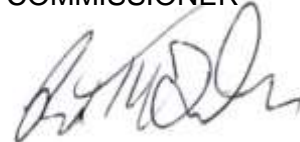
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COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF CAVALLO PETITION FOR ENFORCEMENT OF ENVIRONMENTAL
INFORMATION DISCLOSURE (EID) RULES AND FOR AMENDMENTS TO EID RULES

DOCKET NO. QO20100664

SERVICE LIST

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