

ORDER NO. 77412

IN THE MATTER OF:	*	BEFORE THE
		PUBLIC SERVICE COMMISSION
THE COMMISSION'S INQUIRY	*	OF MARYLAND
INTO THE PROVISION AND		
REGULATION OF ELECTRIC	*	
SERVICE.		

(Emissions and Fuel Mix Disclosure)

CASE NO. 8738

Before the Public Service Commission (“Commission”) is the Second Report of the Emissions Disclosure Working Group (“EDWG”) filed October 3, 2000.¹ This Report follows the issuance of Commission Order No. 76241, dated June 15, 2000, adopting rules for the disclosure of emissions and fuel mix data by electric companies and electricity suppliers to retail consumers.

In its Report, the EDWG indicates that, following the issuance of Order No. 76241, it reconvened working group participants as directed to address: disclosure label development; emissions and fuel mix disclosure verification; PJM’s conceptual design for a regional tracking system; cooperation with other states within the region; and timetables for emissions and fuel mix disclosures.² A third report of the EDWG is expected in December 2001. At that time the

¹ Participants in Emissions Disclosure Working Group discussions included Allegheny Energy, Baltimore Gas and Electric Company, Delmarva Power & Light Company, d/b/a Conectiv, Constellation Energy, Enron, First Energy, Inc., the Maryland Department of Natural Resources (Power Plant Research Program), the Maryland Department of the Environment, the Maryland Energy Administration, the Maryland Public Interest Research Group, Mid-Atlantic Power Supply Association, the Montgomery County Department of Environmental Protection, the Maryland Office of People’s Counsel, Old Dominion Electric Cooperative, Potomac Electric Power Company, Pepco Energy Services, Inc., the PJM Interconnection LLC, and Southern Maryland Electric Cooperative.

² EDWG Second Report at 1-2.

Commission will address further development of the emissions and disclosure labels approved by the Commission in calendar year 2000. At this juncture, the Commission will address the EDWG's recommendations and comments of the parties with regard to verification and tracking of emissions disclosures.

The tracking approaches presented for consideration in the EDWG Report provide for self-certification by electric companies and electricity suppliers or third-party verification, i.e., verification using a certified accounting procedure, green-e certification using a voluntary certification and verification program for "green" electricity products developed by a San Francisco-based nonprofit organization, or PJM region emissions and fuel mix tracking in which PJM would match settlement data for transactions with environmental data currently available. Another approach suggests the use of tagging by which blocks of electricity would be tagged at the source of generation to identify its particular fuel mix and emissions data. The respective tags would follow the transfer of electricity through multiple transactions, so as to allow the purchase, sale and trading of emissions and fuel mix tags.

In its Comments on the Second EDWG Report, Staff recommended that the Commission adopt the third-party PJM tracking system for tracking and verifying emissions and fuel mix disclosure for both electric companies and electricity suppliers who provide retail electricity to Maryland consumers.³ According to Staff, adoption of the PJM tracking system would minimize the use of regional averages and would provide a workable system through which the Commission can audit emissions information, when necessary.⁴ At the time of its

³ Staff Comments, January 5, 2001 at 4.

⁴ *Id.*

Comments, however, Staff acknowledged that the PJM tracking system was still developmental and not yet fully operational. Staff recommended that until the PJM system becomes fully operational, the Commission should continue to allow self-certification by electricity providers.

Staff also suggested that, should the Commission adopt this approach, once the PJM system became operational, electricity providers should be allowed to opt-out and continue self-certification if the provider could demonstrate that using the PJM system would be unduly burdensome.⁵ A provider seeking to opt-out would be required to document that it had sufficient controls in place to assure that its disclosures meet or exceed the adequacy and accuracy standards met by the PJM system.⁶ The EDWG initially estimated the development cost for the PJM tracking system would amount to approximately \$500,000 and that annual operation and maintenance cost would be in the range of \$100, 000 per year.⁷

The Joint Utilities support self-certification by electric companies and electricity suppliers and are opposed to third-party verification.⁸ According to the Joint Utilities, "[c]omprehensive reporting requirements [inclusive of] prescriptive quality assurance provisions are already in place to ensure that the data supplied are accurate and complete."⁹ They also suggest that significant federal enforcement exists to ensure that proper monitoring and reporting practices are followed.¹⁰

⁵ *Id.*

⁶ *Id.*

⁷ EDWG Second Report at 7. PJM later indicated that the development costs will be underwritten by its members, significantly reducing electricity suppliers exposure to costs associated with use of the PJM tracking system.

⁸ Joint Utilities Comments at 1.

⁹ *Id.*

¹⁰ *Id.*

In its Comments, MAPSA recommended that the Commission require any supplier making environmental claims about its electricity product to provide third-party verification.¹¹ MAPSA noted that with regard to self-certifying suppliers, the Commission would reserve the right to audit source information and end-products to ensure adequacy and accuracy.¹² MAPSA also supports self-verification and certification for suppliers who do not make environmental claims. According to MAPSA, self-verification and certification allows suppliers to compete on a least-cost basis without unduly burdensome and costly certification.¹³

Enron, an independently competitive electricity supplier, urged that the Commission adopt the certificate approach as a means of tracking fuel mix and emissions information.¹⁴ Under the certificate model, all fuel types would be issued certificates. The certificates would later be used to verify the fuel mix and emissions data on each products label. Part of the certificate approach is the purchase, sale and trading component. According to Enron, "[s]uppliers would have the option to purchase certificates and claim the fuel type and emissions characteristics on their label on a product-by-product basis."¹⁵ Alternatively, like MAPSA, Enron also supports self-verification and certification by all electricity suppliers not making environmental claims.¹⁶ According to Enron, many of the environmental disclosures required under the Public Utilities Companies Article are also required by other State and federal governmental agencies. Enron submits that since self-verification is the accepted method for

¹¹ MAPSA Comments at 2-3.

¹² *Id.* at 3.

¹³ *Id.* at 8.

¹⁴ Enron Comments at 2.

¹⁵ *Id.* Certificates would only be issued at the time of generation yet could be based on historical or prospective generation. *Id.*

¹⁶ *Id.* at 4.

providing information to other State and federal agencies, it should also be acceptable to the Commission.¹⁷ Enron also suggests that, if self-certified information provided to the Commission is later found to be inaccurate, civil and criminal penalties could be imposed.¹⁸

The Office of People's Counsel in its Comments stated that the PJM tracking system would be the preferred method of fuel mix and emission verification.¹⁹ According to OPC, "[c]alculation and verification of emissions and fuel mix data could best be performed by a PJM-wide tracking system that uses the transactions data recorded by the PJM control area operator."²⁰ OPC observed that, as compared with individualized self-verification, "a PJM-wide tracking system better serves the ultimate goal of providing a uniform, consistent, and accurate set of emissions and fuel mix data to [consumers]."²¹ OPC also observed that the PJM control area operator already obtains data on fuel mix and emissions for the PJM region as a whole. It would be a short step from PJM's current process to tracking fuel mix and emissions data from generation source to market for Maryland electricity suppliers.

OPC viewed the self-verification and certification procedures suggested by MAPSA and Enron as purely "stop-gap" measures that fail to provide uniform data and require duplicate auditing and verification by Commission Staff.²² MDE also urged the Commission to adopt uniform verification procedures that apply to all electricity suppliers regardless of the energy

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ OPC Comments at 2.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *See id.* at 5.

sources used. According to MDE, uniform procedures will make review of the information simpler and require similar reporting burdens for all providers.²³

The Commission heard additional comments from the parties during a hearing on January 16, 2001. During the hearing the parties further elaborated on their written comments, yet echoed the same diverse sentiments. However, in supplemental comments filed by Enron on February 16, 2001, MAPSA asserted that the PJM contract tracking system would not necessarily provide environmental information to the level of accuracy desired.²⁴ Enron also noted that, at the time, no written description pertaining to the proposed operation of the PJM tracking system had been presented either to the Commission or to the parties.²⁵ Attached to Enron's supplemental comments was a "Proposal for a Generation Information System Database."

According to Enron, the document described a proposal for use by the New England Independent System Operator (ISO-NE) for creating generator-specific certificates. Again, Enron urged the Commission to adopt the certificate approach that allows for the purchase, sale and trading of generation certificates for providers other than those making environmental claims. OPC moved to exclude Enron's supplemental filing as untimely and an improper effort to confuse the record on a critical issue.²⁶ The Commission, however, finds that Enron's supplemental filing has some merit, particularly its notation that the PJM tracking system proposal had not been reduced to writing for consideration by the Commission and the parties.

²³ MDE Comments at 1.

²⁴ MAPSA's Supplemental Comments at 1.

²⁵ *See id.* at 2.

²⁶ OPC's Motion to Exclude MAPSA's February 16, 2001 Filing at 1.

Subsequently, at the Commission's request, PJM provided in writing its "Generator Attribute Tracking System - Conceptual Design."²⁷ PJM has also produced a "white paper" describing its proposal to meet the tracking needs for a competitive generation market.²⁸ Having reviewed these materials, the Commission believes that use of the PJM contract tracking system would satisfy the obligation of electric companies and electricity suppliers to ensure the provision of adequate and accurate fuel mix and emissions information to Maryland consumers and to the Commission. Furthermore, the Commission finds that removal of the development costs from consideration reduces a significant burden for providers who may be required to utilize the system.

Upon consideration of the EDWG Second Report and the comments received by the Commission, the Commission believes that adoption of the third-party PJM emissions and fuel mix tracking system best serves the public interests. Electricity providers may be allowed to opt-out and continue self-certification if the provider is able to demonstrate that using the PJM system would be unduly burdensome. A provider seeking to opt-out shall be required to document that it has sufficient controls in place to assure that its disclosures meet or exceed the adequacy and accuracy standards set by the PJM tracking system and their standards are subject to audit by the Commission when necessary.

Based upon its assessment of the PJM tracking system, the Commission is poised to require the use of the PJM system as the primary verification and certification system for use by electric companies and electricity suppliers that provide electricity to consumers in Maryland.

²⁷ Appendix A.

²⁸ Appendix B.

Since, however, as Enron correctly noted: the PJM proposal had not been reduced to writing and shared with the parties, the Commission will defer implementation of the system for 60 days. Within that time, any party wishing to do so may obtain the appropriate documents and comment on both the conceptual and operational design of the PJM system may do so.

With regard to electric companies and electricity providers making environmental claims, the Commission shall permit self-certification and verification. The Commission shall reserve the right to audit providers' reports to ensure adequacy and accuracy of reporting. Further, the Commission may impose civil penalties for any willful or negligent error made by any provider in reporting fuel mix and emissions data.

WHEREFORE, for the foregoing reasons, the Commission hereby adopts the PJM emissions and fuel mix tracking system for use by electric companies and electricity suppliers providing retail electricity to customers in Maryland. The Commission shall suspend this order for 60 days in order to permit parties to comment on the PJM conceptual and operational design.

IT IS, THEREFORE, this 11th day of December, in the year Two Thousand One, by
the Public Service Commission of Maryland,

ORDERED: (1) That the Commission hereby adopts the PJM emissions and fuel mix tracking system for use by electric companies and electricity suppliers providing retail electricity to customers in Maryland;

(2) That this Order shall be and hereby is suspended for 60 days in order to permit parties to comment on the PJM conceptual and operational design.

Commissioners