

October 24, 1997

Mr. Tom Austin
Regulatory Assistance Project
177 Water Street
Gardiner, ME 04345

Dear Tom:

Attached in both paper and diskette are Green Mountain Energy Resources comments regarding RAP's final report on "Uniform Consumer Disclosure: Standards for New England."

We admire its thoroughness and largely concur with the opinions expressed in it.

We agree that disclosure should be based on the individual products a supplier is offering, not the suppliers' or parent company's entire portfolio of resources, and wish to reinforce two points the report makes:

First, being able to sell distinctive products is essential to the development of a market.

Second, disclosure by company raises a host of what you aptly term "formidable" issues.

We also believe there is considerable merit in the tracking that the report recommends. As we understand it, this approach would allow a retail supplier who purchases energy from a wholesale supplier also to purchase separately from the wholesale supplier fuel-source attributes for that energy, with the caveat that the wholesale supplier can sell attributes only to the degree that it has title to such generation that has actually run and the retail supplier can purchase attributes only to the degree that it has purchased energy from the wholesale supplier. This approach appropriately ties energy sales and fuel source disclosure, while creating flexibility in the market.

We also wish to reiterate our view that the level of disclosure should depend on whether an attribute-related claim is made. For products for which a claim is made, the disclosure should be source-specific; for other products, the system average should be used.

We do, however, disagree with the report's recommendations on two issues:

Prospective vs. historical disclosure, and

Treatment of energy imports from outside the New England ISO.

We attach our previous comments on these particular issues as formal comments to the report. In addition, we would like to add a couple of comments:

First, on both issues, RAP's recommendation could lead to disclosure that is misleading and have undesirable consequences.

Regarding the treatment of imports: a retailer importing electricity generated by coal plants would be able to "wash" its disclosure by using the system average of the region from which it is importing. And a retailer who is importing environmentally preferred power would be required to use the same average disclosure.

--Requiring the use of a system average for imports can only advantage dirty producers and disadvantage clean producers -- not a good outcome.

Regarding historical vs. prospective disclosure, we would remind regulators that a historical disclosure may not accurately reflect the product that the retailer is promising to sell, and therefore advertising and marketing materials may require a disclaimer.

--A disclosure that requires -- or at least deserves -- a disclaimer is a poor way to alert customers to what they are getting.

Finally, we wish to thank RAP and commend it for its careful and thoughtful work.

Sincerely,

Thomas H. Rawls
Manager, Environmental Affairs

Green Mountain Energy Resources

Comments on RAP's Final Report

ENERGY IMPORTS

GMER strongly supports the idea that energy imports from outside the pool may be disclosed by fuel type, if the retail supplier has a unit contract with the specific generator.

Jay Dwyer of MMWEC has clearly articulated the case for imports.

Legal concerns -- i.e. Commerce Clause, First Amendment, and possibly the North American Free Trade Agreement -- also argue in favor of a retailer's being able to disclose imports under bilateral contract.

GMER further supports the ability to disclose imports by source for the following reasons:

Imports can be recognized today; we should be able to recognize them tomorrow with competition. Drawing a line at a political (international, state, ISO) boundary is arbitrary and discriminatory. It limits a retailer's ability to provide meaningful information. Limiting a retailer's ability to speak accurately and meaningfully about its resources through disclosure may impose unreasonable burdens on its speech.

The environmental benefits of generation are not confined to the region in which the generation occurs. Environmental benefit -- notably improved air quality--can accrue to New England from generation outside the region. Retailers should be able to sell to consumers the benefits provided by imports.

The appropriate "region" for disclosure is not New England, but the actual market area from which supply can be purchased. If electricity can be bought and transmitted--and the retailer has purchased the necessary transportation--that retailer should be able to sell energy defined by fuel type.

Failure to allow all generation in the market area to be disclosed could result in an artificial concentration of desirable resources. In-pool generation would have an unreasonable advantage in the market if imports were not allowed to be identified by fuel type. Limiting a retailer's ability to identify potentially desirable imports would limit the efficiency of markets. The report addresses the issue of the dilution of the generation pool if imports could be disclosed, but never deals with the issue of the possible limiting of desirable resources available.

Insisting that imports be labeled generically simply results in a disclosure system that provides less meaningful information, surely not a good outcome

Regarding the issue of "flooding" that has been hypothesized, we are not sure we see the concern. Any regulated entity that sold preferred generation into a competitive market

would not be able to "double-dip" -- collect revenues from the resource through rates and again through competitive sales. Regulators currently have protocols for dealing with wholesale sales and would certainly scrutinize sales by regulated generators and require that any premium sales be appropriately reflected in rates.

Is it possible that flooding would result in a diminished premium for preferred generation? Perhaps. If, however, demand for certain resources were strong, that would send a strong signal to project developers, as new markets were ripe for opening.

We urge policymakers not to make judgments about disclosure on the basis of a static situation, but look to the market to adjust dynamically.

Third, verification of generation being imported could be handled contractually, with audits.

PROJECTED VS. HISTORICAL DISCLOSURE

In principle, GMER has a simple position. While a customer is being solicited, disclosure should include information about the electricity product offered, as is the case in all other competitive markets. Consumers want to know what they are buying before they buy it, whether it is a consumer loan or a box of cereal.

Once a customer has signed up and is being served an electricity product, then it makes sense to report what actually has been delivered.

An energy supplier making a claim about a product offered is making a claim about future performance. In that sense, when a customer signs up to be served electricity based on a claim that has been made, it is as though he bought a bond promising interest at a particular rate. It is different from making an investment in a mutual fund; the investor is merely guaranteed an opportunity, not performance, and past performance doesn't guarantee future results.

Therefore GMER believes that disclosure on product solicitations and at the time of contract signing should reflect the product that is being offered.

The disclosure, or reporting, to customers after they have signed up and are being served electricity should reflect the actual performance. Regular periodic reporting of performance should be included in bills and to regulatory authorities. Since the purpose of disclosure is to provide information to help consumers make an informed choice, once they have made the choices, reporting about performance serves a fundamentally different purpose. This reporting need not necessarily be monthly, and since price information is automatically included on bills, post-purchase reporting could be done in a streamlined format.

This suggestion for projected disclosure has not been embraced by the working group, but GMER continues to believe it is a principle that makes sense. The disclosure of price

in marketing materials is prospective. Why shouldn't the disclosure of product be prospective?

In the end, we are well aware that the market has yet to open up, and no one can predict perfectly how it will work and how consumers will react. We expect any system of disclosure that is adopted will be tested by fire in the marketplace and subsequently modified and adapted as our collective understanding the electricity market develops and as technology changes.