

## Appendix D

### Draft Model Disclosure Rule

*This draft rule is intended to provide the framework for a New England-wide disclosure rule. It does not represent the only workable rule or even the only rule which would be generally consistent with the thrust of this report. We recommend that the Commission staff team begin with this rule, modify it as needed, and recommend a uniform proposed rule for adoption by all six New England states.*

I. Purpose. The purpose of this rule is to provide customers with information to assist in comparing competitive electricity products. Providing customers with comparable price and contract information will make the market more efficient and reduce the costs consumers pay for electricity. Providing reliable and understandable resource mix and emission information will yield important health, safety and environmental improvements.

#### II. Definitions

A. Adjusted Net Interchange (ANI) — As defined in the NEPOOL agreement (sales to and purchases from the competitive energy market).

B. ANI Provider — A generating company which provides energy to ISO-NE in excess of its obligations and is compensated for that energy as ANI.

C. AP-42 emission factors — Emission factors found in the U.S. Environmental Protection Agency's *Compilation of Emission Factors, Volume I: Stationary Point and Area Sources*, AP-42, January 1995.

D. Biomass — Fuel derived from agricultural or forestry products or by-products

E. Bundled services — A product which includes an electricity product and one or more other products where the customer does not have the option to purchase electricity without the other product or products.

F. CEMS — Continuous Emissions Monitoring System as defined in the Clean Air Act Amendments of 1990 and associated US Environmental Protection Agency rules.

G. Certificate — The certificate an LSE must have to sell electricity products to retail customers.

H. Cogeneration Facilities — Electricity generation facilities where a portion of the heat input is used for useful purposes other than electricity generation.

I. Contract — The written or oral contract between an LSE and its customer.

J. Dual fuel generators — Generators which use two or more fuels for generation and where no single fuel provides 95 percent or more of the total heat input.

K. Electricity product — All of an LSE's retail electricity sales that are characterized, at any point in time, by the same label and Terms of Service.

L. Energy efficiency products or services — Any product or services that reduces a customer's electricity use below what it would otherwise be.

M. Fixed charge — Any charge an LSE assesses its customers for electricity that does not vary with the energy or peak use of the customers, e.g. a customer charge.

N. Fixed price — Any fee that does not vary over the term of the contract, e.g. an LSE offers to sell electric energy for three cents per kilowatt-hour for the entire term of a multi-year contract.

O. Flat energy charge — A charge for energy that does not vary according to the amount of energy consumed, e.g. three cents per kilowatt-hour for all energy consumed in a given month.

P. Hourly settlements — ISO-NE's practice of balancing generation and use of electricity in each hour for purposes of balancing loads and resources and settling accounts.

Q. ISO-NE — The independent system operator for New England

R. Label — Information described in this rule that must be disclosed to customers.

S. Load Serving Entity (LSE) — A firm or individual engaged in the business of providing electricity for retail sale to customers.

T. New England region — The region comprised of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

U. Sub-Pooling — A situation where an LSE does not participate in the ISO-NE process directly but rather has another entity act as its agent.

V. Storage — A facility which stores electricity, directly or indirectly, for future use, e.g. pumped storage, compressed air storage and batteries.

W. Reasonable basis — A basis derived from competent and reliable, as opposed to anecdotal, evidence.

X. Regional average emissions — The total amount of SO<sub>x</sub>, NO<sub>x</sub>, and CO<sub>2</sub>, respectively, produced by generators physically located in the New England region, divided by the total generation of those plants, adjusted for line losses on the transmission system.

Y. Regional load profile — The average hourly, weekly and seasonal load shapes of customers in New England.

Z. Resource mix — The fuels, as defined in section V.E.3.b, used by a firm to meet its electric energy loads.

AA. Sale inducements — Marketing incentives given to customers to induce them to take or continue service from an LSE.

BB. Spot prices — A short-term energy price set by market forces. Examples include the ISO-NE market clearing price and a price set by trading in some other commodity market.

CC. System power (contract) — A bi-lateral contract between two parties doing business in New England for wholesale power where the contract is independent of the operation of any specific generating unit.

DD. Terms of Service — A disclosure of certain aspects of the contract between an LSE and its customer.

EE. Unit power (contract) — A bi-lateral contract between two parties doing business in New England for wholesale power where the contract is contingent on the operation of one (or more) specific generating unit(s).

### III. Disclosure Requirements for Retail Sellers

A. Each LSE may sell one or more electricity products.

B. Each electricity product sold to consumers must have an associated label and Terms of Service.

C. Each LSE shall provide each of its customers with a label roughly in the form shown in figure 1 in the body of the paper, showing the LSE's weighted average composite resource mix and air emissions information. Price and contract information shall not be included in this report.

### IV. Marketing claims

A. General

1. Any person making an expressed or implied marketing claim concerning an electricity product must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim.

B. Claims based on historic performance

1. LSEs making expressed or implied marketing claims concerning any aspect of an electricity product included in the label or terms of service described in sections V. and VI. below may substantiate the claims with the information required to be disclosed by this rule.

C. Claims based on projected performance

1. LSEs may make expressed or implied marketing claims relating to their projected performance provided, at the time the claim is made, they possess and rely upon a reasonable basis for substantiating the claim. LSEs making such claims must provide customers every six months with updated, historical performance clearly comparing prior projected performance with actual performance. If the actual performance differs from the projected performance in a material way, the LSE shall provide the customer

a. A brief explanation for the difference and

b. A notice that as a result of the difference the customer has the right to change suppliers without incurring any transfer charge

V. Label. Information

A. General. Label information shall:

1. Be in the form shown in Figure 1 in body of the paper, to the extent practical.

2. Be provided in a clear and conspicuous manner.

3. Be printed in compliance with the following minimal font sizes:

a. The title shall be at least 10 point and 2 points larger than headings

b. The headings shall be at least 8 point and 2 points larger than sub-headings

c. Sub-headings and other text shall be at least 6 point .

4. Indicate the date on which the label information was compiled.
5. Be updated at least every three months.
6. Be readily available, including:
  - a. Printed in a prominent location in all written marketing materials describing one or more electricity products including newspaper, magazine, and other written advertisements; direct mail materials; and electronically-published advertising including Internet materials.
  - b. Provided in any service contract or other written explanation of service terms provided to customers.
  - c. Provided to customers at least quarterly.
  - d. Available to any person upon request.
  - e. Where products are marketed in non-print media, the marketing materials shall indicate that the customer may obtain the information upon request.

#### B. Label title

1. Labels intended for residential customers shall state “Electricity Facts — Residential Customers” centered at the top of the label. Labels intended for commercial customers shall state “Electricity Facts — Commercial & Industrial Customers” centered at the top of the label.

#### C. Average price section

##### 1. General

- a. Average price information shall be included in the labels for all consumers with connected loads under 100 kW.
- b. Unless otherwise required or excepted by this rule, each label shall display the price information specified in this section.

##### 2. Average price heading

- a. The average price heading shall state “Average Price”.

b. A subheading shall state “Average Price (cents per kWh) for varying levels of use. Prices do not include charges for delivery service”.

### 3. Average price information

a. Average prices shall be shown for four levels of use. The average price for each usage level shall be the total generation cost for the specified usage level, divided by the kWh for the particular usage level.

(1) Residential. Average prices for residential consumers shall be shown for usage levels of 250, 500, 1000 and 2000 kilowatt hours per month.

(2) Commercial. Average prices for commercial consumers shall be shown for 1,000, 10,000, 20,000 and 40,000 kWh per month.

b. A subheading shall be printed below the average prices stating one or more of the following

(1) If prices vary by time of use, including seasonal prices, the statement shall read “Your average electricity price will vary according to when and how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices.”

(2) If prices vary only by volume of sales, including prices that have a fixed charge and a flat energy charge, the statement shall read “Your average generation price will vary according to how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices.”

(3) If prices do not vary by time of use or volume (the average prices are the same as actual prices), no statement need be shown

(4) If the average electricity price includes energy efficiency products or services delivered to the consumer, the LSE has two options:

(a) The average price can be the same as if there were no efficiency products or services delivered to the consumer, or

(b) The average price can be adjusted based to reflect the energy savings, e.g., if energy savings are ten percent at a given usage level, the average energy price would be reduced by ten percent. To invoke this option, the savings figures must conform to rules to be adopted by the Commission. On the label, the statement shall read “The **Effective** Average prices have been reduced to reflect estimated electricity savings from energy conservation services.”

c. Except as allowed for bundled services in subsection f below, prices shall include generation prices only. Prices shall not include any local connection or delivery charges.

d. Average prices for time-of use-and seasonal prices shall be based on regional load profiles for each customer class.

e. Average prices for service based on spot or other variable prices shall be shown based on the average prices which would have been charged in the last month of the prior quarter. (i.e., if the last month of the prior quarter was March, then the LSE would determine what price would have been in effect on each day in March and average these prices together.)

f. Bundled electricity products. LSEs that offer products where electricity is bundled with any other product or service such as Internet service, security service or gas service, can display electricity price either as

(1) The average price for which the customer can purchase an unbundled electricity product from the LSE, or

(2) The average electricity price, assuming the entire cost of the product is attributable to electricity. If this option is selected the label may include a statement in the same font as subheadings that “The average price includes \_\_\_\_\_”

g. One-time inducements. Average prices shall not reflect any adjustment for one-time cash or non-cash sales inducements.

## D. Contract Terms section

### 1. General

a. Contract terms price information shall be included in the labels for all consumers with connected loads under 100 kW

b. Unless otherwise required or excepted by this rule each label shall have the price information displayed in subsection 3.b.below.

## 2. Contract terms heading

a. The heading shall state “Contract”.

b. The subheading shall state “See your contract or Terms of Service for more information”.

## 3. Contract terms information

a. Duration of contract. The label shall show the duration of any service agreement. For the purpose of this section, the duration shall be a period within which the customer will incur a charge for early termination of service.

b. Fixed or variable prices. The label shall show whether the prices charged for the electricity product are fixed or variable. If the prices are variable, the label should refer the consumer to the Terms of Service for more specific pricing terms. If the prices are fixed, the label shall also state the period during which the prices are fixed.

## E. Resource mix section

### 1. General

a. Resource mix information shall be included in the labels for all consumers.

### 2. Resource mix heading

a. The heading shall state “Fuel Mix”.

b. The subheading shall state “We used these sources of electricity to supply this product from X/XX to Y/YY” where X/XX and Y/YY are the beginning and ending dates of the year for which the mix was determined, see section.G.1.a below.

### 3. Resource mix information

a. Each label shall include a pie chart showing the resource mix of the electricity product offered.

b. Resources shall include the following categories

(1) Coal

(2) Oil

(3) Nuclear

(4) Natural Gas

(5) Hydro-electric

(6) Waste-to-Energy (refuse burning generation plants)

(7) Wind, Solar, and Biomass (Other renewables may also be listed here.)

(8) Landfill gas

(9) Imports from (specify list)

c. If one or more of wind, solar, or biomass individually is more than five percent of the mix, it shall be listed separately.

d. Other than wind, solar and biomass, individual sources comprising five percent or less of the total may be listed as a single category provided that the total contribution of the combined source shall not exceed ten percent of the electricity product mix.

e. Each generating plant shall report to ISO-NE what resource it uses. This information shall be publicly available.

## F. Emissions section

### 1. General

a. Emission information shall be included in the labels for all consumers.

### 2. Emissions heading

a. The heading shall state "Air Emissions"

b. The subheading shall state "Nitrogen Oxides (NO<sub>x</sub>), Sulfur Dioxide (CO<sub>2</sub>), and Carbon Dioxide (CO<sub>2</sub>) emissions from this generation relative to regional average."

### 3. Emissions information

a. Each label shall include three horizontal bars showing of SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> emissions per kWh respectively relative to the regional average emissions per kWh. The percentage of the regional average shall be shown to the right of each horizontal bar.

b. The regional average emissions per kWh shall be clearly marked by a bold vertical line for each pollutant.

c. ISO-NE shall be the source of regional average emission information.

d. Emission factors. Each generator shall report emissions using a single emission factor revised annually and based on

(1) CEMS emissions data for the most recent reporting year divided by net electricity generation for the same period.

(2) If CEMS data is not available, emission factor information shall be derived from AP-42 emission factors.

(3) This information shall be publicly available to anyone who requests it.

e. Exception for new plants. If the generating facility has been in service for less than twelve months, the facility may report a reasonable estimate of the plant's emissions.

f. Dual fuel generators. Generating facilities that use more than one fuel may treat the facility as if it were two (or more) generating facilities, one for each type of fuel.

g. Cogeneration facilities. Cogeneration plants may make a reasonable allocation of emissions between electricity production and other useful output based on measured heat balances.

h. Landfill gas. Landfill gas plants may reduce their CO<sub>2</sub> emissions by the CO<sub>2</sub> equivalent of methane they prevent from being released into the atmosphere. This could result in a negative emission from an individual plant but may not result in the emission of an entire electricity product being reduced below zero. The CO<sub>2</sub> equivalence

shall be derived using conversion factors published by the IPCC in the Second Assessment Report, Science of Climate Change, Table 2.9, page 121.

i. Biomass. Biomass plants fueled from certifiably sustainable fuel sources may reduce their CO<sub>2</sub> emissions in proportion to their use of sustainable fuel sources.

j. Energy storage facilities. Energy storage facilities shall disclose the resource mix and emission characteristics of the energy used as input to the storage device. The characteristics disclosed shall include any losses as a result of storage.

## G. Reconciliation

### 1. Report input

a. The resource mix and emission characteristics disclosed by each LSE existing electricity product shall reflect the most recent 12 months ending in March 31, June 30, September 31 or December 31, whichever is later.

b. Each LSE will receive monthly reports of its resource mix and emission characteristics from ISO-NE.

c. At the end of each three month period, the LSE shall determine its annual average resource mix and emission characteristics by performing an annual weighted average of the monthly data provided by ISO-NE.

d. Exception for new plants. For plants less than 12 months old, an LSE may adjust its historical annual resource mix and emission characteristics to reflect new generating plant. Generating facilities that are less than 12 months old may report generation based on reasonable projections of the plants' annual performance, taking into account any actual historical information. The LSE may only adjust its performance to the extent that it has a reason to expect it will, in fact, receive power from the plant, as determined by the tracking mechanism.

### 2. Existing electricity products

a. Any LSE selling more than one electricity product may allocate its average resource mix and associated emissions among its various electricity products.

### 3. New electricity products

a. Any LSE may offer a new electricity product at any time. The resource mix and emission characteristics for the new electricity product shall reflect the LSE's reasonable estimate. The LSE's estimate shall be replaced with historical information no later than four months after the electricity product has first been sold to consumers.

### 4. Reconciliation Report

a. Each LSE shall file a quarterly reconciliation report with the commission no later than 45 days after the end of the quarter.

b. The reconciliation report shall provide an annual balancing (most recent four quarters) of the LSEs actual average resource and emission characteristics and the resource mix it reported to its customers. LSE's which sell more than one electricity product shall report the weighted average resource and emission characteristics reported to customers of all of its electricity product sales.

c. If any part of the LSE's actual resource mix or emission characteristics differs by more than the greater of five percentage points or ten percent from the weighted average of the characteristics of the LSE's electricity product mix, or any part of the LSE's actual emission characteristics exceeds the weighted average of the characteristics of the LSE's electricity product mix by the greater of five percentage points or ten percent, the LSE shall

(1) allocate its average mis among its various products and determine which produces(s) fall outside the specified ranges;

(2) notify all affected consumers of the error together with corrected information;

(3) if the marketing of the product at any time made reference to the resource mix or environmental characteristics of the product the LSE shall notify all affected consumers of their right to change suppliers without incurring any cancellation or termination charge; and

(d) notify the Commission of the actions taken by the LSE. The notification shall include copies of any material concerning the error that was sent to consumers.

***Note: this means that this year the LSE can sell in proportion to last year's mix. As the year goes on, the LSE either adjusts its product mix, changes the label for some of its existing products or changes its supply mix so as to stay w/in the rules ten percent tolerance. The LSE can also add new products using projected data.***

d. Repeated or willful errors may be considered by the Commission in issuing or renewing certificates. In such consideration, the Commission will pay particular attention to any relationship between the marketing claims for the electricity product and the nature of the error.

***For example, a Commission should be much less concerned if a product with a 50 percent nuclear, 50 percent coal label beingsold as a low price option ultimately had a 30 percent nuclear, 70 percent coal mix, than it would be if a product marketed as green with a 75 percent renewable mix ultimately proved to be 30 percent nuclear, 70 percent coal.***

e. Periodic updates. Emission information displayed to consumers shall be updated quarterly to reflect changes in emissions associated with changes in resource mix.

## H. Rounding

1. Price. Average prices shall be rounded to the nearest tenth of a cent per kWh.
2. Resource mix. Resource mix shall be rounded to the nearest full percentage point.
3. Emissions. Emissions shall be rounded to the nearest full percentage point.

## VI. Terms of Service

### A. Content

1. The contract disclosures must be issued in the language used in the sale to the customer and contain a disclosure that the information is available in the following languages (those spoken in area) at a toll free number.

2. A complete, itemized listing of all charges for which the customer is responsible.
3. Charges, if any, to cancel the contract prior to the end of the contract period.
4. If any of the charges can vary over time, a description of the formula by which those charges may change.
5. Contract length, including beginning and ending dates.
6. Method of renewal.
7. Any other services sold as part of the contract (so-called “non basic services”) itemized and with definitions of terms.
8. Bill payment policies if any, including due date and late fees.
9. Collection policies. Minimum cancellation notice; how to avoid cancellation; right to payment arrangement, if applicable.
10. Payment allocation (if applicable): How are payments allocated between regulated and unregulated services?
11. How to obtain the standard offer or default service.
12. The customers’ right to receive financial assistance and energy management services below cost if they meet the requirements of a Universal Service program. Reference to the office or person to call to apply for such programs.
13. Dispute/complaint handling procedures and policies, contact person with the supplier and, if not satisfied, the customer’s right to contact the state public utilities commission and the Commission’s toll free number.
14. The conditions under which the customer may be required to pay a deposit, and if so, the deposit amount, the interest paid and the method by which the deposit will be returned or forfeited.
15. Where applicable, a bold statement: **“This contract is for only the generation [electricity] portion of your total monthly electric bill. You must also pay for delivery and transmission services to [your local electric utility].”**
16. Origin of customer’s electricity. An explanation might read as follows:

The electricity you consume comes from the New England power grid. It includes electricity from many power plants. The grid transmits electricity throughout the region, as needed to meet customer requirements. When you choose an electricity supplier, that supplier will add electricity to the grid to match your needs. There is no way to know the physical origin of the electricity you actually receive at your meter. Nevertheless, your choice of supplier will determine the fuel mix and emission characteristics of the electricity your supplier provides to the grid to meet your electricity requirements. The pie chart on the label shows the fuel mix used by the electricity supplier over the most recent 12 months. The air emissions released by this fuel mix are shown at the bottom of the label.

17. The customer's right to rescind the transaction within three business days, the method to rescind, and the result of a rescission, if applicable.

B. Provision to customers and others. Terms of service, in the form prescribed in this section, shall be provided to any person upon request and shall be provided to customers

1. At the time service agreements are reached and annually thereafter, and
2. Whenever there are changes in any charges (other than charges which change by formula).

## VII. Tracking

A. General tracking system.

1. Each LSE's resource mix and emission information shall be based on a modified settlement reports provided monthly by ISO-NE.

B. Requirements of ISO-NE. ISO-NE shall

1. Collect from each generator fuel source and emission factor information.
2. Collect from each dual fuel generators monthly reports showing energy generated by each fuel.
3. File monthly Summary Reports with the commission showing
  - a. The monthly average fuel mix and emissions for the New England region.

b. The twelve month rolling average fuel mix and emissions for the New England region.

c. The name and owner of each generator failing to provide ISO-NE with fuel and emission information and the extent to which each LSE obtained power from any such generator.

d. Imports and exports, described separately.

C. Hourly settlement reports. ISO-NE shall provide each LSE with a monthly report showing the hourly settlements. The report shall show for each hour the sources of electricity used by the LSE to meet the LSE's hourly energy requirement.

D. System power contracts. Notwithstanding the hourly settlement reports, any LSE purchasing energy under a system power contract from a source within New England may agree with the seller to designate the source of the energy, provided

1. The seller agrees to inform ISO-NE of the resource mix and emissions of under this contract, and
2. The seller affirms that the transaction will not result in the same generation being sold twice.

E. Adjusted Net Interchange. Notwithstanding the hourly settlement reports, any LSE purchasing ANI energy may agree with any ANI provider to designate the source of the energy provided

1. The ANI provider agrees to inform ISO-NE of the transaction, and
2. The ANI provider affirms that the transaction will not result in the same generation being sold twice.
3. Where a firm is both an ANI provider and purchaser in the same month, it may assume both the role of an ANI provider and purchaser.

F. Imports and exports. Imports to the New England region and exports from the region shall be treated as follows

1. If the exporting region has a tracking system and consumer information disclosure requirements that are comparable to those set forth in this rule, the treatment of imports and exports shall be comparable to the treatment of transactions within the New England region.
2. If the exporting region does not have comparable tracking system and consumer information disclosure, the resource mix shall state "Imports

from” and shall include the name of the exporting region. The associated emissions shall reflect the average emissions of the exporting company if available or the average emissions of the exporting region e.g. New Brunswick, New York, if not.

3. Exports shall be deemed to be the pro rata average mix of the exporting firm’s own resources.

#### G. Transition rule within New England

***1. If some states within New England do not have disclosure and/or retail competition, there is a concern that consumers in states without disclosure and/or choice might be deprived of environmentally-desirable resources while the market for those resources would be flooded in states with disclosure and choice. States should consider the desirability of treating states without disclosure and/or choice similarly to imports from outside New England.***

#### H. Sub-pooling

1. Where an LSE participates in ISO-NE through an agent, the LSE and the agent will be responsible for agreeing how the resources attributed to the agent will be allocated between the agent and the LSE. This agreement will determine the resources attributed to the LSE.

### VIII. Interim Tracking Mechanism.

A. Beginning \_\_\_\_\_ and ending \_\_\_\_\_ LSEs may rely on an interim tracking mechanism (ITM). The ITM shall track each LSE’s resource mix and emission characteristics for all unit entitlements including units that are owned or subject to a specific unit contract. All other sources of supply, including system contracts and ANI shall be aggregated regionally and treated as a single source, with the weighted average characteristics of that generation not included as “unit entitlements” above.

### IX. Complaints

A. Complaint filed. Any person believing that based on the information covered by this rule any LSE has provided false or inaccurate information in the required label or Terms of Service may file a complaint with the Commission.

B. LSE response. The Commission will review the complaint and forward a copy of it to the LSE together with a request for the LSE’s response and the specific information needed to resolve the complaint. The LSE’s response shall be submitted to the Commission within 14 days of the Commission’s request.

## X. Enforcement

A. The Commission, acting of its own or in response to a complaint, or as a result of a notification made under section V.G.4.D. may periodically audit LSE compliance with the requirements of this rule. The LSE shall be notified that the Commission has found possible violations of the requirements of this rule. No violation will be found if all the information shown in the label is within the following tolerances

1. Average price information shall be within .05 cents per kWh of actual average price for the stated usage levels and assumed load profiles.
2. Resource mix information is within one half percentage point or ten percent of the actual data, whichever is greater.
3. Emission information is within one half percentage point or ten percent of the actual data, whichever is greater

B. The LSE shall be given ten business days to respond to the Commission's initial audit results. The Commission shall consider the LSE's response and either inform the LSE that its response has resolved the issue or take one or more of the following actions:

1. Warnings. The commission may issue a warning informing the LSE of the violation. The issuance of warnings shall be considered by the Commission when issuing certificates. Certificates shall not be issued to any LSE that has received three or more warnings during the most recent 24 month period.
2. Corrective actions. The Commission may
  - a. Require the LSE to notify all affected consumers of the error and provide corrected information.
  - b. Require the LSE to notify all affected consumers of their right to change suppliers without incurring any cancellation or termination charge.
3. Fines. The commission may impose reasonable fines.
4. Referral. The commission may refer the matter to the Attorney General for further action.
5. Certificate revocation. Repeated or willful violations of this rule are cause for revocation of the seller's right to sell electricity in the state.

C.False or inaccurate information. The Commission may review the accuracy of any LSE's information disclosure. If, after notice to the LSE and an opportunity to be heard, the Commission determines that material information is false or inaccurate, the Commission may order one or more of the remedies listed in section X.B. above.