

MASSACHUSETTS DIVISION OF ENERGY RESOURCES

Comments Regarding the Final Report of the New England Disclosure Project

Submitted to: New England Public Utility Regulatory Commissions and

The Regulatory Assistance Project

I. Introduction

Over the past seven months, the Massachusetts Division of Energy Resources (DOER) has participated, along with numerous other stakeholders, in the New England Uniform Disclosure Pilot Project (“Pilot Project”) that was convened by the National Council on Competition in the Electric Industry. The National Council hired the Regulatory Assistance Project (“RAP”) to lead the Pilot Project and to develop recommendations on information disclosure (e.g., price, price variability, resource mix, and air pollution emissions) in a final report for review by the New England public utility commissions. The final version of this report was issued on October 6th 1997, with the request for stakeholder comments that would be appended to the report. DOER submits these comments to express its support for many of the recommendations contained in the report along with its suggestions for clarification, modification or continuing review in other areas of the report.

II. General Comments

As retail access approaches in New England and elsewhere, consumers will soon be empowered to select their own electricity suppliers and products based on individual preferences, such as price, resource type, and environmental considerations, among others. Recent pilot programs in Massachusetts and New Hampshire have shown that consumers want to be able to compare supplier offerings in an “apples-to-apples” manner and favor the development of uniform information about electricity supplies that facilitates informed comparison shopping. In Massachusetts and several other New England states, proposed or enacted legislation and PUC directives have called for the development of uniform disclosure in the form of supplier information labels.

The Pilot Project has been a useful opportunity for stakeholder discussion and exploration of a number of critical issues affecting uniform disclosure. While the Pilot Project was not intended to achieve a consensus (and did not produce one) significant progress has been made that could help pave the way for uniform information disclosure through labeling in New England and in other parts of the country.

DOER generally supports several of the key conclusions of the of the Report and accompanying Model Rules. Among these are:

1. The need for a disclosure label and the general format and content of the label presented in the Report.

2. The use of product-level rather than company-level information for disclosure purposes.
3. The use of a hybrid tracking system that embodies the most desirable features of settlements-based tracking and tagging.
4. The use of an interim tracking system, if needed, that relies on bilateral unit contracts and default values for power exchange and bilateral system purchases.
5. The use of a Terms of Service documents to provide a complete set of information to consumers when they select a supplier and annually thereafter.

Specific comments on the Uniform Disclosure Report and the related Draft Model Disclosure Rule follow.

III. Specific Comments of the Uniform Disclosure Report and Draft Model Disclosure Rule

Subject 1: Price disclosure with variable prices

Refer to: Model Rule: V.C.3.e (p. D5)

Report: 3.3 “How should label deal with variable prices such as prices that vary with the spot market price?”

Comment: The report indicates that, where a supplier offers a price that varies (e.g. with spot market or other indices) the supplier’s label must reflect the price of electricity on the last Wednesday of the most recent quarterly period. The Draft Rule differs, calling for the label price of such suppliers to reflect the average of daily prices during the last month of the quarter. Further, though not addressed specifically in the Report or Model Rules, we presume that suppliers offering fixed prices would be able to reflect the current price on their label, even if the price differed from that in effect during the last month of the prior quarter.

To promote information comparability between fixed and variable price offerings, we suggest that the labels for all products, (whether pricing is on a fixed or variable basis), should display price information as of the first day of the current quarter. If an interim label is produced during the quarter, an updated price may be used. In all cases, the label should indicate an “as of” date for price information.

Subject 2: Price disclosure for bundled products

Refer to: Model Rule: V.C.3.f (p. D5 -D6)

Report: 3.3 “How can price be disclosed for bundled products?”

Comment: The Report and Model Rule would allow a supplier selling a bundled electricity product (for which a single price would pertain to electric service and other services such as cable, gas, etc.) to disclose the electricity price using either: (1) the price for which the customer can purchase an unbundled electricity product from the LSE or (2) the price of the bundled services.

While this provision is intended to provide flexibility to LSEs that wish to offer bundled services to customers, DOER is very concerned that this will create confusion for customers when they try to compare prices for bundled versus unbundled electricity services on the label. This will defeat the whole purpose of providing customers with uniform, “apples-to-apples” information regarding price and price variability. DOER recommends that for disclosure purposes, the supplier of a bundled product should be required to offer the unbundled electricity product and associated price on the label, but would direct customers to bundled price information in their marketing material where customers can decide whether they want to pay a bundled price for services beyond just electricity (e.g., internet, cable, gas, etc.). If the customer signs on with an LSE offering a bundled product and price, then the bundled price should be described in the Contract as well as in the Terms of Service. Any updated label information provided to that customer (e.g., on a quarterly basis) should reflect the unbundled electricity price offered by the supplier in order to preserve the uniformity of labels among competitive suppliers.

Another important reason for keeping the label price specific to electricity service is to acknowledge that the price should, to the extent possible, reflect the market value of the fuel mix resources. This should be recognized in light of the fact that by moving to a competitive generation market (and away from integrated resource planning), the PUCs are largely placing control of resource acquisition decisions into the hands of customers, and thus customers should have information on the value of those resources, and not values that are distorted as a result of bundling prices with other services/products.

Subject 3: Fuel disclosure

Refer to: Model Rule: V.E.3.d (p. D7)

Report: 3.5 “How should fuel use be reported?”

Comment: The Report would allow fuel sources (other than wind solar, and biomass) each comprising less than five percent of the total resource mix to be shown in a combined category with other such sources, provided the combined category does not exceed 15 percent of the total mix. The Draft Rule limits the size of the combined category to 10 percent of the total mix. We recommend using the 10 percent limit.

Subject 4: Format for emissions disclosure

Refer to: Model Rule: V.F.3.a (p. D7)

Report: 3.5 “What format should be used for emissions disclosure?”

Comment: To provide consumers with specific information about the emissions profile of the electricity product, each horizontal bar should specify the percentage of regional average emissions in numerical form as well in graphical form.

Subject 5: The settlement (ISO) approach for tracking

Refer to: Report: 4.1 The Settlement (ISO) Approach

Comment: This section fails to point out the pros and cons of a ‘pure’ settlements-based tracking approach. In our view, the positive features of this tracking approach include:

- The likelihood that consumers will find the general concept behind this form of tracking to be credible and meaningful - especially in comparison to a tag system.
- The administrative benefits of relying on a system that will share many features with the settlements system that is already being established by ISO New England.

Some of the negative features of a “pure” settlements-based tracking approach include:

- The possibility that “dirty” power sold through the power exchange (or Adjusted Net Interchange) will “free ride” on the cleaner emissions average of the mix of resources sold through the exchange while the cost benefits of such power can be directed to an LSE or other purchaser who enters into a contract for differences with the “dirty” power producer.
- Clean power sold through the power exchange effectively deprives the seller of the premium market value that may relate to environmental or other generation characteristics. In addition, buyers of power exchange power do not have the opportunity to select the specific types of power they would like (or not like) to obtain.

The “hybrid” settlements-based approach proposed by RAP, and which DOER supports, generally preserves the positive features of the “pure” settlements-based approach, but eliminates the negative features by providing a tag auction for fuel characteristics for both power exchange and system power transactions.

In addition to the above, it should be noted that a remaining significant uncertainty about a settlements-based approach, as well as other approaches that have been proposed under the Pilot Project (e.g., full tagging), is the cost of implementing such a system. DOER believes that the costs and benefits of whatever disclosure system is ultimately adopted in Massachusetts and throughout New England should be considered carefully. To date, estimates by ISO New England and others have been very tentative and more detailed information is certainly needed. It is our understanding that ISO New England will be undertaking a feasibility study to determine the potential cost of tracking fuel mix and emissions data. Once this information, as well as other relevant information is available, the cost-effectiveness of this recommended disclosure system should be reviewed in further detail.

Subject 6: The tagging approach for tracking

Refer to: Report: 4.2 The Tagging Approach

Comment: A tagging system offers a remedy to the two negative features of settlements-based tracking identified above. Specifically, a tagging system prevents opportunities for dirty power sold through the power exchange to free ride on a cleaner average mix of resources. This is because the LSE who obtains power through the power exchange obtains the characteristics of the power only with its tag purchases. Similarly, the existence of a tag market for power exchange transactions allow clean generators to realize a premium for their power, even if it is sold through the power exchange.

Despite these positive aspects of a tagging system, DOER concurs with the Report that there are significant questions surrounding customer acceptance of a full tagging system - particularly one that would allow bilateral unit contracts or unit entitlements to be characterized based on tags rather than a contractual settlements basis. Accordingly we support the conclusion that a full tagging system should not be implemented at this time, unless sufficient customer research is performed that demonstrates that a tag approach would be acceptable to customers. At this time, however, DOER does support elements of the tagging approach that can be used to a limited extent with regard to power exchange transactions and bilateral system transactions.

Subject 7: Tracking power imports and exports

Refer to: Model Rule: VII.F

Report: 4.2 "How should border issues and imports and exports be treated?"

Comment: The Report correctly identifies the possibility that if power control areas outside of New England (or even states within New England) do not have tracking and disclosure requirements in place, a disclosure system in New England could be susceptible to gaming and verification problems pertaining to power imported from or exported to such areas. To address the potential for "market flooding" of desirable resources in New England states with disclosure requirements and opportunistic export of undesirable resources from New England to areas without disclosure, the Report and Model Rule propose the following:

- If neighboring control areas have comparable tracking and disclosure requirements to those in New England states, then such areas would be treated in the same manner as the New England states with tracking and disclosure requirements.
- If neighboring control areas do not have comparable tracking and disclosure requirements to those in New England states, then power exported to New England would be identified as "imported" (rather than the type of resource claimed by the exporter) in the Fuel Mix section of the LSE label. The emissions associated with the

power would be based on the average emissions of the exporting company (if available) or the average emissions of the exporting region.

Conversely, power exported from New England would be deemed to be the average mix of the exporting firms resource mix.

While RAP's proposal clearly attempts to diminish opportunities for gaming a New England tracking and disclosure system, DOER is not convinced that RAP's proposal should be accepted without further review of alternative approaches of achieving this goal, as well as legal considerations regarding interstate commerce. At the very least, the RAP proposal should be revised so that along with proxy emission characteristics (e.g. company average or regional average) the tracking system also tracks the associated data on the fuel mix characteristics of the particular proxy. Therefore, the currently proposed resource mix designation of "import" that RAP proposes for the LSE label would no longer be necessary.

More fundamental changes may also be appropriate. In a recent proposal for tracking and disclosure in New Jersey, the National Resources Defense Council (NRDC) proposes to account for power exported to the NJ control area in the following manner:

- To the extent that an LSE sells energy purchases from an identifiable wholesale provider outside PJM (the control area that NJ is part of) the fuel mix and emission rates would be based on the wholesaler's entire system (including its generating and marketing affiliates in the eastern interconnection). Unit-specific information could be used, provided the LSE obtained a unit-specific contract and could demonstrate that power from a specific unit was dispatched for its use.
- To the extent that an LSE sells energy purchased from generating companies that the LSE is unable or unwilling to identify, the LSE would be required to disclose proxy fuel mix and emission rates for this component of the LSE's portfolio based on the type of generation with the highest emission rate for the relevant pollutants in the control area in which the generation is located.

While DOER does not necessarily endorse this approach proposed by NRDC, we believe that further analysis of alternative ways to deal with import/export issues should be explored.

Subject 8: Back of the Label Information

Refer to: Report: 4.3 "What information is needed beyond the label?"

Comment: DOER supports the development of a comprehensive Terms of Service document described in the Report and Model Rules. However, we believe that it would also be beneficial to have additional information on the back of the label itself. The "back of the label" would assist consumers in understanding the label and its significance. Such information would include definitions, clarifying comments, and a description of the

three air pollutants reported and the associated environmental and health impacts. Given the space requirement for a “back of the label,” this information should be required to accompany the label in direct marketing materials, internet websites, and bill inserts. It should not be required in image advertising, TV, radio or newspapers.