



# IssuesLetter

## New England Model Disclosure Rule

**Regional-based regulatory undertakings** are not easy. One reason for this is that significant differences can exist among states within a region (not to mention states in different regions). Even if differences can be resolved, because there is no regional regulatory authority, uniformity cannot be assured. Electricity markets, however, will be strongly regional in operation, and most of the issues critical to creating a truly competitive electricity market - market power, use and pricing of transmission, ISOs , power exchanges - are regional as well. Having the same sellers in large, multi-state markets cries out for standardized approaches.

It is with this challenging backdrop that utility commissioners from the six New England states have agreed upon a model rule for disclosing standardized information to retail electricity customers throughout the New England region. The rule culminates a year of joint activity on information disclosure by the New England Conference of Public Utility Commissions (NECPUC), the regional organization of utility commissioners for the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island and Connecticut.

The following statement accompanied the model rule:

*This document is a model rule on uniform information disclosure developed by NECPUC staff. The model rule builds upon a project initiated by the National Council on Competition and the Electric Industry, and supported by NECPUC, to develop uniform information disclosure for retail electricity sales throughout New England. The purpose of the model rule is to provide a common starting point for commissions in the region developing information disclosure policies. The model rule does not represent any formal action or conclusion by any individual state commission. While NECPUC acknowledges that each New England state will be developing its own specific information disclosure policy, NEC-PUC continues to believe that a uniform regional approach is in the public interest for two reasons. First, such an approach will assist consumers in comparing suppliers' offers, thereby enabling consumers to make informed decisions about electricity suppliers in the region. Second, such uniformity will reduce supplier expenses attributable to compliance with different state requirements which, in turn, will lower the cost of electricity in the region.*

*-NECPUC Commissioners -March 3, 1998*

The New England disclosure work is significant both for the unique regional effort used to develop a common disclosure framework as well as for the groundbreaking development of several key disclosure issues.

### The Regional Process

The New England effort was initiated by the NECPUC commissioners in March 1997 as a pilot project of the National Council on Competition and the Electric Industry. Chairman Janet Besser of the Massachusetts Department of Telecommunications and Energy headed a steering

committee composed of a utility commissioner from each of the states. As Project Manager of the National Council's Disclosure Project, RAP advised and coordinated the project.

Stakeholders in electric restructuring, including consumers, existing utilities, non-utility generation suppliers, environmentalists, state energy offices and utility commission staff participated in a series of discussions. Dr. Jona-than Raab of Raab Associates facilitated these stakeholder discussions. Representatives of the ISO for the New England regional market (ISO-NE) were consulted as needed and included in the discussions on the issues related to information tracking.

The commissioners made two important procedural decisions that helped to make the meetings productive. The first was that the purpose of the effort was to address the "How-to" and not "Whether" questions. "Whether" questions were relegated to rulemaking proceedings in the individual states. When disagreement did flare among parties, commissioners reiterated that they wanted to know how to track and disclose information, not whether to track and disclose. This, together with a requirement that the effort to be concluded in a reasonable time period, kept the process moving forward.

Second, commissioners decided that the stakeholder group should be an ad hoc working group, charged with developing the issues and identifying possible solutions; it was not set up as a consensus-seeking body. This ground-rule kept everyone in the process working toward feasible solutions.

At the conclusion of the stakeholder meetings, RAP prepared a Draft Report setting out the key issues, making recommendations and drafting a model rule. Stakeholders provided written comments on the draft. The report and comments were published in November 1997. The NEC-PUC staff, composed of staff members from each of the six states, prepared the final Model Rule. (The New England report and much other disclosure information is available at RAP's website: < [www.rapmaine.org/disclose.html](http://www.rapmaine.org/disclose.html) )

A conclusion agreed upon by all stakeholders was that no matter what disclosure requirements emerged, all parties would be better off if the requirements were uniform.

## **Key Disclosure Issues**

An early product of the initial discussions of possible disclosure goals was a long and varied list, representing the many different objectives of the stakeholders. A condensed set of three information disclosure goals enjoyed wide support among the stakeholders.

1. *Allows customers to make the choices they wish to make and thereby achieves customer-driven outcomes.* Customers can find the product and services they want and the prices they are willing to pay. Firms that sell what customers want will thrive; those who do not, will suffer.
2. *Enhances customer protection.* Presenting basic information in a uniform format allows customers to compare directly terms and products among competing suppliers with a minimum of confusion. Consumers are less likely to be confused either by complex price offers or by unclear claims and/or mistaken beliefs about environmental characteristics.
3. *Makes the electricity market more efficient.* Disclosure drives prices down and forces competitors to supply the types of products and services consumers want. Suppliers who offer what customers want at the lowest prices will be more easily identified and rewarded.

Knowing disclosure goals, however, is not the same as knowing what and how information is best disclosed. With the assistance of the National Council's research, the regional effort addressed five key issues:

- \* What information should be disclosed?
- \* What format will best convey the information?
- \* How can the information be tracked and verified?
- \* Should a default label be available?
- \* Where should the information (label and *Terms of Service*) appear?

*What information?* Customer research in New England as well as elsewhere in the country shows customers have a strong interest in being able to compare prices on a consistent basis. Customers also want to know the environmental attributes of a product, the reliability and customer service track record of the seller and complete contract terms. All of this information is essential, but it will not all fit on a concise product label.

Price and a few key price terms, such as the length of the contract or whether price is a fixed or variable can be put on a label. Other price and service details such as late payment fees, cancellation fees and who to contact to restore services needs to be provided to the customer in a more comprehensive format. A *Terms of Service* document containing a detailed statement of all relevant contract terms should be provided to the customer before the agreement to purchase becomes final.

Reliability - uninterrupted supply and prompt service restorations in the event of an outage - was frequently mentioned in the customer research, but power reliability is essentially the result of T& D system operation and is not affected by choice of supplier. The reliability or reputation of a supplier could be found out by giving the phone number of the complaint receiving agency in the *Terms of Service* document and on customer bills.

Fuel mix and air emissions information are easily accommodated in a label format. This combination of information provides customers with the environmental facts they want. Research has demonstrated that when customers are given (and read) fuel and emission information together, they can choose which products are cleaner (or dirtier). Research also shows that customers currently do not know what fuels are used to produce the electricity they buy, and when asked to guess, they consistently guess much cleaner resources than are actually used.

*What format?* The information disclosed by each seller needs to appear in a uniform format if it is to be of use to customers. The points of comparison, such as price, fuel mix and emissions need to be easily identified and consistently displayed. If disclosure was strictly voluntary, some sellers would never label their products. Research shows the ability of customers to correctly identify the products they want declines sharply if only some products are labeled. The same occurs when all products are labeled but different label formats are used. A standard approach for all products is most helpful to customers.

*Tracking and verification.* There are different mechanisms available to track and verify the accuracy of the information placed on the label. The two most discussed in New England are: tracking settlements information through the ISO-NE or using a tagging approach which allows the fuel and emissions characteristics of electricity to be traded independently of the power itself.

The New England regulators preferred a tracking system based upon settlements information available through the ISO-NE. This preference was partly based on a concern that consumers would not understand or accept a tradable tag approach. NECPUC is working with the ISO-NE to insure the fuel mix and emissions information is tracked as efficiently as possible.

*Should there be a default label?* In the interim, before the ISO-NE is fully prepared to track the fuel source and emissions of each wholesale transaction, a default disclosure approach will be used that allows sellers to report system average characteristics. The Model Rule distinguishes between resources that can be linked to a specific seller and those which are simply in the regional pool. Sellers who hold specific unit entitlements or unit contracts are required to disclose the fuel mix and emissions related to the kilowatt hours sold from these units. All other sales will disclose the system power mix minus (net of) the known unit entitlements and specific contracts. This default label will be available until an acceptable tracking system for all sales is established through the ISO-NE or other entity.

*Where and when should disclosure occur?* The label and *Terms of Service* must be given to customers at the critical decision making moments. Receiving the information after the fact will not help in decision making. The Model Rule requires the label to be used on all marketing materials. The Model Rule does not require the label to appear in newspaper advertising. It requires instead a notice that labels are available upon request. RAP strongly believes the label, or a modified version of the label, should appear in newspaper advertising because that is where many customers will have their first contact with electricity vendors. The *Terms of Service* document is to be given to potential customers upon request and at the time a customer agrees to buy from the seller. The customer is given a three day right to cancel the agreement to purchase after receipt of the *Terms of Service*.

## **Labels Do Not Equal Environmental Protection**

Labeling is a tool which informs and protects customers. It has an especially important role for an intangible product like electricity where there is no previous history of retail choice. Labeling allows customers who want cleaner resources to find them just as it allows customers who want lowest price and care little about cleanliness to find the right products. Labeling has potential to help cleaner resources find market support, but it should not be relied upon as the sole or even the primary means of providing environmental protection.

Renewable resources and energy efficiency require continued and firm policy support if they are to be a meaningful piece of our electrical energy mix. This is especially true in competitive retail electricity markets where short-term price pressure suppresses investment in resources with higher, upfront costs, which includes most renewable energy sources and energy efficiency. The restructuring plans adopted by each of the New England PUCs and state legislatures provide continued public funding of energy efficiency and renewables. Finally, the most serious environmental problem raised by electric industry restructuring - the continued operation of older fossil plants that do not meet modern clean air standards - is not solved by labeling.

## Disclosure Activity

The Clinton Administration Comprehensive Electricity Competition Plan announced on March 25, 1998 includes the disclosure of price, terms and conditions, generation fuel mix and generation emissions characteristics. (Section II.A. The Plan can be found at <[www.doe.gov](http://www.doe.gov)>)

A regional discussion similar to that of the New England states has recently begun for an 11 state Western region.

States which have addressed disclosure in their restructuring laws or commission orders include:

By legislation:

- Maine
- Massachusetts
- Connecticut
- Illinois
- California
- Montana
- Nevada
- Pennsylvania

Used in pilot retail projects:

- Washington
- Oregon

By commission order:

- New York
- New Hampshire
- New Jersey
- Vermont
- Rhode Island

State utility commission recommendations to legislatures:

- Kansas
- Delaware

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