

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DPUC Administration of Disclosure Label : Docket No. 07-05-33
Requirements and Examination of Direct :
Billing by Electric Customers : September 21, 2007

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

Introduction

On May 18, 2007, the Department of Public Utility Control (“Department”) opened this proceeding to administer disclosure label requirements pursuant to Section 16-245p(c) of the General Statutes and to examine whether the information presented in electric supplier bills enables customers to compare pricing policies and charges among suppliers, as required by Section 16-245d of the General Statutes. On August 21, 2007, the Department issued a Notice of Request for Comments (“Notice”) that invited interested persons to respond to ten questions, most of which pertain to the disclosure label. The Retail Energy Supply Association (“RESA”) is pleased to submit these comments in response to the Notice.¹

RESA is a nonprofit organization and trade association that represents the interest of its members in regulatory proceedings in the New England, New York, Mid-Atlantic and Great Lakes regions. RESA’s members include providers of competitive supply products to electricity and gas consumers in the five New England states that

¹ RESA’s members include Commerce Energy, Inc.; Consolidated Edison Solutions, Inc.; Direct Energy Services, LLC; Gexa Energy; Hess Corporation; Intergrys Energy Services, Inc.; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions, LLC; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc.; and US Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

have restructured their electric markets. RESA therefore has substantial expertise with the disclosure label requirements of other states.

The majority of states that mandate disclosure labels do not require electric suppliers to include price information in their labels because it is more properly disclosed in the electricity supply contracts between the supplier and its customers. The sole purpose of the label in these states is to present the supplier's fuel source mix and associated emissions compared to average fuel source and emission statistics for the region. RESA urges the Department to adopt this approach in Connecticut for the reasons set forth in RESA's response to question 1 and submits the following additional recommendations:

- The Department should publish a standard disclosure label format, but should allow electric suppliers to use labels that are substantially similar to the standard label.
- Labels should be distributed to customers no more frequently than annually.
- The Department should not mandate disclosure of price information in marketing materials; rather, it should rely on suppliers to clearly communicate price information in their electricity supply contracts.

Responses to Questions Set Forth in the Notice

Question 1: Provide comment on whether the disclosure label created by the Department and CEAC at the outset of electric restructuring (Attachment 1) is sufficient to provide the information to be disclosed to customers pursuant to Conn. Gen. Stat. § 16-245p(c).²

Answer 1: Section 16-245p(c) of the General Statutes simply requires each electric supplier and each electric distribution company ("EDC") to disclose information that the Department

² Notice, p. 1.

considers “relevant.”³ Thus, in order to determine whether the information set forth on Attachment 1 is relevant, the Department must first define the purpose or role of the disclosure label within the context of the full set of materials that electric suppliers provide to their customers, including the electricity supply contracts and the pricing schedules embodied therein.

RESA believes that the purpose of the disclosure label should be limited to providing information to potential and existing customers about the supplier’s fuel mix and the emissions associated with that mix compared to the New England averages. RESA does not believe that the disclosure label should require pricing information for several reasons.

First, many of the prices of products offered by electric suppliers vary by time of use or in accordance with a specific price index and often require the direct pass-through of certain costs to customers. This variability in pricing renders it impossible to present a single price at a point in time that accurately reflects the price that the customer will pay for such products and services over the duration of the contract. RESA elaborates on this point in its response to Questions 5 below.

Second, in addition to offering generation service, electric suppliers also provide a variety of risk management services that have significant value to many C&I customers. As these services vary widely among suppliers, a customer cannot easily make an apple-to-apples comparison of retail supply offers by simply reviewing the suppliers’ “average generation price.” Rather, customers must look at the totality of the services offered by suppliers as stated in their electricity supply contracts.

Third, electric suppliers frequently customize the pricing of products and services offered to C&I customers based on the pricing preferences of the individual customer. If the Department requires inclusion of price information on the disclosure label, electric suppliers would need to generate separate labels for every customer because a customer’s price will typically be a function of both the product selected and the wholesale market prices when the selection was made. This approach would be unduly burdensome and costly for suppliers. It also is unnecessary because suppliers must disclose pricing information in the

³ Conn. Gen. Stat. § 16-245p(c) states in pertinent part: “Each electric supplier and electric distribution company shall disclose to customers, in a manner prescribed by the Department and not less than annually, such information as the department considers relevant.”

electricity supply contracts provided to customers, as more fully described in RESA's response to Question 4.

Fourth, an electric supplier's pricing strategy is proprietary information. If price data is required on the disclosure label, suppliers could not post their labels on their websites and would need to take protective measures to ensure that they are not otherwise disseminated to the general public. This approach would undermine the overall purpose of the disclosure label.

Finally, RESA's experience indicates that the majority of states that have label requirements limit the required disclosures to fuel mix and emissions data. Maine's disclosure label is typical in that regard and is attached hereto as Exhibit A for the Department's information. The Department has full discretion to embrace this approach because the Legislature has deferred to the Department to decide what types of information should be included on the label.⁴

With regard to the fuel mix disclosures set forth on Attachment 1, RESA suggests that such disclosures be modified as described in its response to Question 3. The air emissions chart on Attachment 1 is adequate and easy to understand, but the narrative descriptions of the emissions should be shortened substantially. Customers are not likely to read such detailed descriptions and their inclusion on the label makes it cluttered and less user friendly. RESA believes that the emission descriptions set forth on the Maine label are sufficient.

Question 2: Some electric suppliers submit disclosure labels to the Department that are similar, but not identical to, the Department's disclosure label. Provide comment on whether electric suppliers and the electric distribution companies should utilize the Department's disclosure label exclusively.⁵

Answer 2: Disclosure labels should be easy to read and structured in a format that allows customers to efficiently compare the labels of various suppliers. To promote these twin objectives, the Department should publish a standard disclosure label that sets forth the specific information that must be included therein and the basic presentation format. Electric suppliers should be allowed to customize the standard label to include their

⁴ See *id.*

⁵ Notice, p. 1.

company logos and signature colors and should have the latitude to modify the format so long as the overall presentation is substantially similar to the standard label and enables customers to compare the supplier's label with those of its competitors.

Question 3: The Department's disclosure label breaks down generation by fuel source. Provide comment on whether the fuel sources selected remain appropriate.⁶

Answer 3: RESA members, like other electric suppliers, prepare their disclosure labels in the New England states based on reports produced by the NEPOOL Generation Information System ("GIS"). The GIS creates and tracks electronic certificates for each megawatt hour ("MWh") of power generated and classifies the certificates according to their eligibility to meet the different states' renewable portfolio standards ("RPS"). Certificates are then assigned to each load serving entity based on the attributes of the power it purchases. For example, if an electric supplier procures a portion of its supplies through renewable energy certificates ("RECs") generated by wind farms, that portion of the supplier's mix would be classified under the fuel type "wind" in the GIS system. If, by contrast, the supplier purchases general power supplies in the wholesale market, certificates will be assigned to the supplier for the residual system mix. The GIS system tracks the fuel sources of the residual mix and classifies them as natural gas, oil, etc. on the reports made available to electric suppliers. Thus, every MWh of power purchased by an electric supplier to serve its customer load is classified by fuel source in the GIS.

The fuel sources required on the disclosure label must be easily obtainable from the GIS system. The fuel source breakdown on Attachment 1 appears to satisfy that requirement. However, the line item labeled "system power" should be eliminated as this term appears to be synonymous with the residual mix. Because the GIS tracks the fuel source of the residual mix, as described above, there is no need to include a separate line on the label entitled "system power" or "residual mix."

With regard to categories of fuel sources on Attachment 1, RESA questions whether the Class I and Class II renewable distinctions would be meaningful to customers and urges the Department to combine them into a single category labeled "Renewable Sources." If the Class I and Class II breakdown is retained, it

⁶ Notice, p. 3.

should be revised to reflect the present state of the law. For example, hydro power is listed exclusively as a Class II resource, but Sections 16-1(26)&(27) of the General Statutes state that it can be either a Class I or Class II resource depending upon the facility's date of operation.

RESA also recommends two other changes to the fuel source disclosures presented on Attachment 1. First, there should be a clearly marked column on the fuel source chart that identifies and distinguishes the supplier's fuel mix from the New England average mix, similar to the approach used in Maine (See Exhibit A). Second, the description of the power sources should be shortened.

Question 4: Suppliers are subjected to an increasing array of generation-related charges that were not contemplated at the outset of deregulation. These generation-related charges are passed along to consumers in some form. Provide comment on, and describe all generation-related charges that were not contemplated at the outset of deregulation, and how they should be treated on the disclosure label.⁷

Answer 4: Electric suppliers incur costs for energy, capacity and ancillary services to provide generation service to their customers. These costs are shaped by the ISO New England, Inc. wholesale markets, which continue to evolve. Suppliers charge customers for the costs of energy, capacity and ancillary services in different ways depending upon the customer's pricing preference. RESA interprets Question 4 to inquire whether the disclosure label should describe the means by which the customer will be charged for these costs. In other words, are they included in a quoted price or will they be charged to customers in the form of a separate pass-through cost?

RESA does not believe that price information should be required on the disclosure label for the reasons set forth in its response to Question 1. Rather, RESA posits that price information should be confined to the electricity supply contract between the customer and the supplier. Indeed, confining the price information to the contract is more beneficial to customers and electric suppliers because the contract, unlike the disclosure label, is a legally binding document executed by both parties and reflective of their mutual understandings and obligations in the purchase and sale of electricity supply services.

⁷ Notice, p. 1.

Question 5: The Department's disclosure label is designed to enable comparison of retail price offerings, and defines an "Average Generation Service Charge" for this purpose. The "Average Generation Service Charge" is defined as the total price (including the energy charge and other charges, such as a customer service charge) by the number of kWhs used at various levels of use.

(a) Is the term "Average Generation Service Charge" appropriate today in light of the proliferation of generation-related charges in recent years? Would a term such as "Total Generation Price per kWh," or another term be more appropriate?

(b) Should the Department define the scope of "Average Generation Service Charge" (or similar term) to include other generation-related charges passed along to customers?⁸

Answer 5: The term "Average Generation Service Charge" is an outdated concept that does not reflect the present dynamics of the retail electricity marketplace. Today, electric suppliers offer customers literally hundreds of products. Many of these products provide variable pricing ("VP") for some or all of the customer's generation needs. These include time-of-use products, index products, block products and a myriad of other VP offerings. In addition, many C&I customers prefer to pay for certain services, like capacity, separately as a pass-through charge based on the costs incurred by the supplier, instead of including such services in the price quoted at the inception of the contract. All of these pricing schemes, by design, will cause the generation price to vary throughout the contract. Thus, the term "average generation service charge" has no real meaning for many of the products available in the present retail electricity market, regardless of whether that term includes or excludes pass-through costs. Indeed, it would even be difficult to compute an average generation charge for a fixed price product that embodies all supply components because the contracts for such offerings often require customers to pay a different rate if their consumption rises above or below a stated bandwidth.

These issues are not alleviated by changing the term "Average Generation Service Charge" to "Total Generation Price per kWh"

⁸ Notice, pp. 1-2.

because, by definition, they are one in the same and require suppliers to estimate the price of VP offerings at a single point in time. Given the fact that a predetermined price estimate such as an “Average” or “Total” Generation Service Charge is likely to consistently deviate from the actual contract price, mandating such a disclosure would expose suppliers to the risk of claims for misrepresentation, unfair trade practices and other assorted violations. All of these challenges and risks serve to illuminate why price information should not be required in the disclosure label.

*Question 6: Conn. Gen. Stat. § 16-245p(c) allows the Department to prescribe the manner and frequency in which disclosure to customers should occur. Provide comment on whether disclosure required pursuant to § 16-245p(c) should occur on a quarterly, biennial or annual basis. Also comment on whether the requirement could be satisfied via electronic means, bill insert, or both.*⁹

Answer 6: RESA recommends that disclosure labels be distributed annually, as allowed by Section 16-245p(c) of the General Statutes.¹⁰ Requiring more frequent disclosures would be costly to suppliers and would not yield significant benefits to customers for three reasons. First, many suppliers do not change the source of their supplies markedly during the year. Second, the reports produced by GIS are two quarters in arrears and, therefore, quarterly and semiannual labels would not yield current information. Finally, RESA’s experience in other states suggests that most customers are more interested in what type of product they have selected (e.g., hydro, wind or generic system power) rather than in changes to the suppliers’ fuel mix and emissions profile.

As for the method of dissemination, electric suppliers should have the option to send labels to their customers through both electronic means and a bill insert.

Question 7: Pursuant to Regulations of Connecticut State Agencies (Conn. Agencies Regs.) Section 16-245a-1(a), electric suppliers and electric distribution companies are required to demonstrate compliance with the renewable energy portfolio standard (RPS) for each calendar year not later than October 15 of the following year. The RPS compliance report therefore provides historical resource mix information. Provide comment

⁹ Notice, p. 2.

¹⁰ See *supra* note 3.

on whether an electric supplier's resource disclosure should be consistent with its most recent RPS compliance report, or whether it should show the projected resource mix that would be used to serve load over the next twelve month period.¹¹

Answer 7: As noted in RESA's response to Question 3, electric suppliers prepare their disclosure labels from the historical information stored in the GIS. This approach is efficient and provides accurate data to the supplier's potential and existing customers. RESA opposes any disclosure rule that requires suppliers to project its future supply mix because such approach is prone to error and would expose suppliers to customer claims for misrepresentation and other legal violations.

Question 8: Provide comment on what can be done by the Department to ensure that electric supply options are marketed to customers in a consistent, accurate fashion? Should the Department construct a spreadsheet that ensures that all like charges are factored in when a supplier/aggregator markets a customer?¹²

Answer 8: While ensuring that electric suppliers provide accurate information to their existing and prospective customers is a duty the Department should diligently execute, and which is required by Section 16-245u of the General Statutes, attempting to impose "consistency" among the marketing materials and methods used by suppliers would be bad public policy that would ultimately harm consumers by limiting the ability of suppliers to offer innovative and customer-specific products and services. For that reason, RESA does not recommend that the Department exercise its monitoring authority by mandating disclosure of price information in the marketing materials of suppliers. Furthermore, such an approach would be impracticable due to the number of products offered by electric suppliers and the individualized pricing of customer contracts. Even if this approach were theoretically possible, it would intrude on the supplier-customer relationship to the detriment of the parties.

Marketing materials are generally distributed to customers at an early stage of the sales cycle and are used to familiarize the customer with the supplier's suite of products, its reputation and so on. Mandating detailed pricing information at this point

¹¹ Notice, p. 2.

¹² Notice, p. 2.

