

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DPUC ADMINISTRATION OF : DOCKET NO. 07-05-33
DISCLOSURE LABEL REQUIREMENTS :
AND EXAMINATION OF DIRECT BILLING :
BY ELECTRIC SUPPLIERS : February 22, 2008

WRITTEN EXCEPTIONS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association (“RESA”) submits these Written Exceptions to the February 15, 2008 Draft Decision (“Draft Decision” or “Draft”) issued by the Department of Public Utility Control (“Department”) in the above-captioned docket.¹ RESA appreciates the Department’s inclusion of many of the suppliers’ recommendations in the Draft Decision. RESA believes, however, that several elements of the Draft rest on the flawed premise that the disclosure label is a shopping tool for customers, when, in reality, it serves no such purpose in the competitive electricity supply business. Thus, including price information on the label will do nothing to help customers compare electricity offerings and may actually undermine that objective by confusing customers. In the event that the Department decides to retain price information on the label, RESA requests that it clarify and modify the price disclosures, as recommended in Part II of these Exceptions.

The best shopping tool for residential customers is the website that the Department is presently developing. RESA commends the Department for taking this important initiative and

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

appreciates its efforts to consider the design of the shopping website implemented by the New York State Public Service Commission (“NYSPSC”).² RESA recommends that the Department also adopt the supplier price posting rules used by the NYSPSC, which are described in Part III of these Exceptions.

I. PURPOSE OF THE DISCLOSURE LABEL

The Draft Decision states that the disclosure label is the proper tool to carry out the statutory requirements described below:³

- Conn. Gen. Stat. §16-245p(a) - requires electric suppliers to submit to the Department information that will assist customers in making an informed choice when shopping for an electric supplier.
- Conn. Gen. Stat. § 16-245o(e) - requires electric suppliers, prior to the initiation of service, to provide the customer with a written notice of the rates, information on air emissions and resource mix of the source generation facilities and other information set forth in the statute.
- Conn. Gen. Stat. § 16-245p(c) directs suppliers to disclose to their existing customers not less than annually such information as the Department deems relevant.

The Draft Decision overburdens the label by requiring it to perform too many functions. In so doing, it fails to recognize the limited role that the label actually plays in the competitive electricity supply business. It is not now – and should not become – a shopping tool that paraphrases or summarizes important contract information. Including even limited price information on the label risks confusing customers who will be looking at as many as three different pricing sources: the label, the Department’s website and their proposed contract (which will set forth the definitive price).

When customers shop for an electricity supplier, they refer to websites of generally available offers like the one being developed by the Department for residential and small

² See NYSPSC “Power To Choose” website at <http://www.powertochoose.ny.com>.

³ Draft Decision, p. 4,

commercial and industrial (“C&I”) customers and review the marketing materials and draft contracts provided by competing suppliers. Once the customer selects an offering, its chosen supplier then sends an executed copy or confirmation of the electricity supply contract and the disclosure label to the customer prior to initiating service. The shopping phase is complete by the time the customer receives the label. Furthermore, a customer generally receives a label only from its selected supplier. The label therefore does nothing to foster meaningful customer shopping.

The only reason competitive suppliers send disclosure labels to their customers is to provide information on air emissions and power supply mix from which the customer’s electricity will be sourced in accordance with state statutes and regulations. For most non-green products the power supply mix is the New England system mix. All suppliers who participated in the technical sessions in this docket stated that customers generally have no interest in this data, and, consequently, most do not even read the label. In the event that customers are seeking a green product, they search for such offerings on websites and marketing materials and choose a product before they receive the label. At most, the label simply confirms that the supplier has purchased renewable energy certificates to source the green product in the manner described in the marketing materials and customer contract.

In short, the Department’s planned use of the label simply does not comport with the way it is used by competitive electricity suppliers and their customers. With that view in mind, RESA submits the following exceptions to the specific disclosure label requirements set forth in the Draft Decision.

II. SPECIFIC LABEL REQUIREMENTS

RESA agrees with and welcomes many of the changes that the Department has made to the disclosure label based on input from suppliers and the utilities. In particular, the revised chart on power sources and the shortened emissions section make the label more user-friendly. RESA continues to believe, however, that inclusion of price information on the label will not serve its intended purposes and may confuse customers. In the event that the Department disagrees and retains the approach described in the Draft, RESA requests that it: (1) appoint a working group to define small commercial and industrial (“C&I”) customers for the purpose of administering the label pricing requirements; (2) clarify or modify certain label price descriptions; (3) eliminate the suppliers’ obligation to post labels on their websites; and (4) allow suppliers to distribute labels through utility bill inserts for customers that are billed by the utility for their competitive generation service.

A. Price Information Should Not Be Included on the Label.

1. Overview of the Draft Decision’s Label Price Requirements

The Draft Decision requires two separate disclosure labels: one for residential and small C&I customers and a second for medium and large C&I customers. The labels are virtually identical except for the pricing disclosure. For products made generally available to residential and small C&I customers, the label must disclose the initial contract price per kilowatt-hour and state when that price will change.⁴ For the medium and large C&I customer label, the supplier must disclose whether the price quoted in the contract is “all-inclusive” or “not all-inclusive.”⁵

⁴ Draft Decision, p. 6 and Attachment B.

⁵ Draft Decision, p. 6.

Both labels refer the customer to the specific section and page of their contract where detailed pricing information can be found.⁶

The Draft Decision states that the purpose of including price information on the residential and small C&I customer label is to help customers compare offerings.⁷ The price disclosure on the medium and large C&I customer label appears to be aimed at reducing customer confusion and surprise that may arise from pass-through pricing arrangements. Both objectives are important and laudable, but the approach required by the Draft Decision is unlikely to achieve either objective.

2. The Website – Not the Label - Is The Best Shopping Tool for Small Customers.

As RESA notes in Part I above, the disclosure label does not help customers shop for electricity supplies because it typically is distributed only by the customer’s chosen supplier after the shopping phase is over. The best tool to foster smart shopping by residential customers is a “Power To Choose” website like that developed by the NYSPSC.⁸ RESA appreciates the Department’s efforts to develop a comparable website that will initially contain offers of general availability to residential customers and may later be expanded to include generally available offers to small C&I customers. Given the Department’s plans for this website, inclusion of price on the label is at best redundant and unnecessary and, at worst, is likely to confuse these customers rather than educate them.

The approach envisioned by the Draft Decision requires suppliers to disclose price information to residential and small C&I customers in three ways: (1) on the website; (2) on the

⁶ *Id.*

⁷ *Id.*

⁸ See <http://www.powertochooseny.com>.

disclosure label; and (3) in the customer contract. This is a clear example of “more” (data) really amounting to “less” (useful information). In the event that the offering calls for periodic changes in the price pursuant to the terms of the contract, the initial price set forth on the label will always diverge from the current price posted on the website. Thus, customers who read their label after the price has changed will likely be confused as to why the label price differs from the website price.⁹ Additionally, posting price information in three different places increases the risk of clerical errors on the part of the supplier, which would further spawn customer confusion and frustration in the marketplace.

3. The Price Disclosure on the Medium and Large C&I Customer Label is Unlikely to Eliminate Confusion.

RESA also does not believe that the disclosure on the medium and large C&I customer label will reduce customer confusion regarding pass-through arrangements for two reasons. First, the customer will already have agreed to the pass-through pricing scheme prior to its receipt of the label. Second, simply noting whether the price is “all-inclusive” or “not all-inclusive” is not particularly helpful to a customer that chooses pass-through pricing because, unlike the contract, the label does not disclose which components are excluded from the price.

The Draft properly recognizes that the “contract supplied to customers upon initiation provides the best notification of rates for commercial and industrial customers.”¹⁰ RESA agrees. If the Department believes that it must mandate a succinct statement as to whether the price is “all-inclusive” or “not all-inclusive” the statement presently included on the proposed label

⁹ While the contract price will, too, diverge from the website price, the contract explicitly describes the terms of the price change.

¹⁰ Draft Decision, p. 5.

(modified as recommended in Part II.B.3 below) should appear in the contracting documents, along with a detailed description of the pricing terms.

B. If the Department Retains The Price Disclosures It Should Clarify And Modify Certain Requirements.

In the event that the Department rejects RESA's recommendation to omit all price information on the label, the Final Decision should clarify or modify the label pricing requirements in the following respects.

1. Define Small C&I Customers.

The Final Decision should state that it will appoint a working group to define the customer classes that fall within the small C&I customer category for the purpose of administering the label price requirements.

2. Clarify That Price Need Not Be Disclosed For Residential And Small C&I Offerings That Are Not All-Inclusive.

The Draft Decision states: "Price will be required only for all-inclusive offerings, so consumers will be able to make an apples-to-apples comparison of the supplier price to the distribution company's Generation Service Charge (GSC) on a cents per kWh basis."¹¹ Yet, the label for residential and small C&I customers appended to the Draft Decision requires suppliers to disclose a price for both "all-inclusive" and "not all-inclusive" offerings. The label included in the Final Decision should be modified to exclude price for offerings that are "not all-inclusive."

3. Clarify That An All-Inclusive Price Does Not Include Taxes.

Electric suppliers add taxes to any price charged to a customer even if the price is "all-inclusive" of energy, capacity and ancillary services. Thus, the description of an "all-inclusive"

¹¹ Draft Decision, pp. 6-7.

price that appears on the label should be modified to make clear that the price does not include taxes.

4. Eliminate the Contract Section and Page References.

Suppliers often customize the terms of supply contracts for medium and large C&I customers and, therefore, the contract section and page references will not be consistent for all customers. Even absent contract modification, pagination can differ on customer contracts. To avoid the need to create individualized customer labels, RESA requests that the label simply refer the customer to the pricing section of the contract without requiring a specific section or page reference.

C. Suppliers Should Not Be Required to Post Labels On Their Websites.

The Draft Decision states that suppliers must “provide a permanent website where their label will reside.”¹² This requirement should be eliminated in the Final Decision as it is excessive and burdensome.

The Draft Decision already requires suppliers to: (1) distribute a label to their new customers upon enrollment;¹³ (2) send an updated label to existing customers annually;¹⁴ (3) post price information for generally available offers to residential and small C&I customers on a Department website;¹⁵ and (4) report power mix and air emissions information from the annual NEPOOL GIS reports to the Department for posting on the website.¹⁶ To require suppliers to also post labels on their own website is overkill.

¹² *Id.* at 7.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 9-11.

¹⁶ *Id.* at 4.

The Draft Decision fails to recognize that suppliers generate different labels for their various offerings, and the number of labels will further increase if price information is required. Attempting to post and keep current all of these labels on a dedicated website would be overly burdensome to suppliers and not particularly useful to consumers.

D. Suppliers Should Be Allowed To Distribute Labels Through Utility Bill Inserts For Certain Customers.

The Decision allows suppliers to distribute labels to their existing customers annually through email, direct billing insert or a separate mailing.¹⁷ RESA recommends that suppliers also be allowed to distribute labels through a utility bill insert to customers that are billed for their competitive generation service by the utility. This approach would be less confusing to such customers and could be accomplished at little or no extra cost to the utility if the labels were mailed in months where other utility bill inserts were light.

III. POSTING PRICE INFORMATION TO THE DEPARTMENT'S WEBSITE

RESA has reviewed the preliminary design of the Department's shopping website and believes that it is basically sound. RESA does recommend a change with regard to the price posting requirement described in the Draft Decision. Instead of requiring suppliers to post price changes three days in advance of the effective date of the change, the Department should adopt the price posting rules used by the NYSPSC for its "Power To Choose" site. Under those rules, suppliers are required to report, by the 5th day of the month, the price they would have charged for each service as of the 1st day of the month, and they also are permitted to post additional price updates during the month. The "Power To Choose" website contains a disclaimer that the prices are illustrative in order to alert customers that the website is only the starting point for price discovery, and they must contact suppliers to obtain an actual offer. Suppliers are well

¹⁷ *Id.*


accustomed to these rules and they have worked well for residential customers in New York. Additional information regarding these price posting requirements is set forth in the November 8, 2006 Order of the NYPSC in Case Nos. 06-M-0646 and 98-M-1343.

Conclusion

The Draft Decision takes several steps toward streamlining and making labeling information more useful to consumers. But layering price information onto the existing label disclosures introduces a third source of price data that the Draft acknowledges will be inconsistent with contract pricing (as even simple pricing offers can change over the course of a year). This cannot possibly aid any consumers and will certainly confuse some. While the limited nature of the price labeling required by the Draft Decision confines the scope of that confusion to residential and small C&I customers, this class is the most numerous and probably the most easily confused customer subgroup. The Final Decision should eliminate price entirely as an element of the label for all customer groups. If the Department declines to take this step, it should clarify or modify the price disclosure requirements in the Final Decision, as recommended herein.

Respectfully submitted,

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