

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: RULES GOVERNING ENERGY :
SOURCE DISCLOSURE : DOCKET NO. 3642

REPORT ON FINAL RULES

I. Introduction

On June 29, 2004, Governor Carcieri signed into law an Act Relating to Public Utilities and Carriers – Renewable Energy Standard, codified at R.I. Gen. Laws §§ 39-26-1 et seq. In accordance with R.I. Gen. Laws §§ 42-35-1 et seq. and § 39-26-9, the Public Utilities Commission (“Commission”) promulgated Rules to establish and enforce right-to-know regulations to require any Obligated entity, as defined by law, to distribute Energy source disclosures to all customers of each electrical energy product offered. On January 25, 2005, the Commission reviewed the comments received from the parties, both at the hearing and in writing. The Commission approved Rules Governing Energy Source Disclosure. However, the Commission sought further comment regarding the appropriate period(s) of time that should be included on an Energy source disclosure. Following another public meeting on the matter, the Commission reaffirmed its decision of January 25, 2005. This Report discusses the Comments received during that process and the Commission’s rationale for adopting changes pursuant to comments received or for declining to do so.

II. Hearing

On December 15, 2004, pursuant to a Notice of Proposed Rulemaking, published in the Providence Journal on November 15, 2004, the Commission conducted a hearing to accept public comments regarding the Proposed Rules Governing Energy Source

Disclosure (“Rules”). Representatives from the Division of Public Utilities and Carriers (“Division”), Narragansett Electric Company (“Narragansett”) and People’s Power & Light (“PP&L”) attended the hearing. At the hearing, Mr. Erich Stephens, Executive Director of PP&L provided the Commission with written comments. He discussed the points in his written submission and answered questions from the Commission. Mr. John Warshaw, Principal Analyst for Distribution Finance Energy of National Grid, provided comment in response to the discussion with Mr. Stephens. Laura Olton, General Counsel to Narragansett indicated that she would be filing written comments before the deadline of December 17, 2004. The Division’s attorney, Paul Roberti, Assistant Attorney General, pointed out certain typographical errors and addressed the issues the Division thought the Commission should focus on in finalizing the Rules.

III. Written Comments

Written Comments were timely filed by PP&L, Narragansett and Clean Water Action. No other comments were received regarding the Rules. PP&L and Clean Water Action suggested the Commission require specific power sources and air emissions to be disclosed in the quarterly Energy source disclosure. Narragansett suggested that the Commission require the Obligated entities to report the same power sources and air emissions that are tracked by the NEPOOL Generation Information System (“NE-GIS”). The Commission notes that the energy sources and air emissions tracked by the NE-GIS include each of the energy sources and air emissions that PP&L and Clean Water Action request be included. The Commission believes that requiring reporting of only specific energy sources and air emissions would be less informative than simply following Narragansett’s suggestion. Therefore, in addition to the energy sources and air emissions

required by the statute, the Commission has decided to simply require the Obligated entities to report all power sources and emissions that are tracked by the NE-GIS. There appear to be eighteen (18) energy sources and eight (8) air emissions that are reported.¹ This does not appear to be an overwhelming amount of information for people to digest. This method also addresses PP&L's concern that the energy sources add up to 100 percent and renders unnecessary the determination of what constitutes a significant amount of energy for purposes of reporting. Any deviation will be due to rounding or truncating results to the nearest one tenth. Because it is reported by the NE-GIS, the term "residual mix" will be allowed to be reported where the NE-GIS does not provide the Obligated entity with any other identifiable source for those certificates.

Narragansett and PP&L both expressed concern that the Rules appeared to require disclosure of information prior to its being made available by the NE-GIS. With regard to the time frame for reporting, in response to the comments, the Commission has provided that Obligated entities must provide information for the most recent four quarters available as settled by the NE-GIS and shall be on a rolling basis. Because of the timing of implementation, the information will be phased in so that by the time End-users receive their fourth Energy source disclosure, they will have four quarters of information. Similarly any new energy sources reported by the NE-GIS will be phased in.

In response to a PP&L concern, the Commission believes that the Rules do require the Energy source disclosure to be distributed in written form. The Commission also agrees with PP&L that the Energy source disclosures shall be written in "plain English." Although the Commission will not mandate the format at this time, it will be

¹ Narragansett Ex. 2 (Disclosure Label for Illustrative Purposes).

reviewing each Energy source disclosure that is required to be filed with the Commission and will address the formatting on a case-by-case basis. In response to PP&L's concerns regarding reporting, compliance and costs, the Commission believes that those concerns have been addressed by the Rules.

Narragansett suggested a change to clarify that costs associated with compliance with preparation and distribution of the Energy source disclosure label will be reflected in the energy portion of the bill rather than the distribution portion. The Commission agrees that for an electric distribution company, this cost should be treated as an energy cost upon which no profit is made and should be paid for by those customers receiving the energy from Narragansett's power contracts rather than a distribution cost assessed on all customers.

The statute requires that the Energy source disclosure presented to a particular end-use customer take into account any voluntary purchases of renewable energy made by that customer. Narragansett suggests that the electric distribution company cannot prepare Energy source disclosure labels for customers involved in a voluntary program such as Green-Up. However, Narragansett can identify these customers in their billing system. Therefore, the Commission has revised the language of the Rules to make it clear that Green-Up suppliers must prepare labels for their customers. Narragansett shall identify the accounts of those enrolled in the Green-Up program and not send Energy source disclosure labels to those customers. This treatment is similar to that of a customer receiving his or her energy from competitive supply.

Finally, with regard to the oversight of the Electric distribution company, the Commission believes that its original language provides Narragansett with the very

protections it seeks, namely the opportunity for a hearing prior to a determination of non-compliance and penalty, if any.

IV. Second Comment Period and Technical Session

On February 18, 2005, following notice, the Commission held a Technical Record Session to discuss whether there should be additional periods of information provided on the Energy source disclosure label. Narragansett, PP&L, and the Division participated. Clean Water Action provided written comments prior to the Technical Session. The commenters were unanimous in their belief that requiring additional periods of time would confuse rather than educate consumers. The commenters noted that the purpose of the Energy source disclosure is to provide materials to suppliers of cleaner energy with information useful in promoting their products. Additionally, the purpose is to provide consumers with the information they need to make an informed decision when reviewing offers made by marketers of cleaner energy supply. Additionally, customers should have information regarding the current energy mix from Narragansett so that it can be compared to current portfolios offered by marketers. Therefore, the consensus was that the Energy source disclosure should be as simple and straight forward as possible.

V. Conclusion

The Commission regrets that more Obligated entities did not choose to file comments with the Commission. However, the Commission believes that it received thoughtful and constructive comments through this process. Despite the fact that so few comments were received, all Obligated entities will be required to comply with the Commission's Rules. Should technical difficulties arise during the course of the next year regarding compliance, affected parties should file with the Commission a Petition to

Review the Rules. The Commission will review the concern raised and determine after comment whether or not any changes need to be made. However, Obligated entities are cautioned that this route will not be looked upon favorably if it appears the concern was reasonably foreseeable and should have been raised during the official comment period. In other words, a Petition to Review the Rules should not be used as a means to end-run the Administrative Procedures Act or to delay implementation.

Finally, the Commission will review the Energy source disclosure on the third anniversary of the distribution of the first Energy source disclosure to customers to determine their effectiveness. In the event it appears the additional costs associated with providing Energy source disclosures significantly outweigh the benefits, the Commission has the option of advising the General Assembly of its opinion. This review will take place in July 2008.

(18163)

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO OPEN MEETING DECISIONS ON JANUARY 25, 2005.² WRITTEN ORDER ISSUED ON MARCH 1, 2005.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner

² The Commission reaffirmed its decision at a publicly noticed meeting on February 18, 2005. Rules become effective 20 days after filing with the Rhode Island Secretary of State's Office.