

ORDER NO. 76241

IN THE MATTER OF THE COMMISSION'S INQUIRY INTO THE PROVISION AND REGULATION OF ELECTRIC SERVICE	* * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND <hr/>
(Emissions and Fuel Mix Disclosure)	*	CASE NO. 8738 <hr/>

I. INTRODUCTION

Section 7-505(b)(4) of the Public Utility Companies Article of the *Annotated Code of Maryland*¹ provides that the Public Service Commission (“Commission”) shall by regulation or order, require each electric company and electricity supplier to provide adequate and accurate information to each customer on the available electric services of the electric company or electricity supplier. Section 7-505(b)(4) further mandates that the information provided to customers shall include disclosure, every six months of a uniform, common set of information about the fuel mix of the electricity purchased by customers and the emissions on a pound per megawatt-hour basis of pollutants identified by the Commission, or disclosure of regional average data.

A prominent feature of the Electric Customer Choice and Competition Act of 1999 is the interest given to and the recognition of the environmental impacts associated with electricity generation. As part of the General Assembly’s mandates regarding electric restructuring, the Commission is required to ensure compliance with federal and State environmental regulations.² Additionally, § 7-516(d) of the Act states that “[i]n

¹ The Electric Customer Choice and Competition Act (hereinafter “the Act”).

² Section 7-505(a).

recognition of the potential environmental impacts of restructuring the electric industry, it is the intent of the General Assembly to minimize the effects of electric restructuring on the environment.” Section 7-516 further requires electric companies to track shifts in generation and emissions as a result of restructuring and provides that:

If, after review of the study . . . the Department of the Environment determines that emissions levels impose a higher emissions burden in Maryland, the Department of the Environment, in consultation with the Commission shall study the appropriateness, constitutionality, and feasibility of establishing an air quality surcharge or other mechanism to protect Maryland’s environment in connection with the implementation of customer choice of electricity suppliers. (§7-516(d)(2)).

On January 31, 2000, the Commission’s Staff (“Staff”) filed the report of the Emissions Disclosure Working Group (“EDWG”).³ By Letter Order, dated February 10, 2000 the Commission invited the parties to file initial and reply comments on the EDWG report. On February 16, 2000, Staff filed proposed Environmental Information Disclosure Rules and Comments. On February 22, 2000, Baltimore Gas and Electric Company, Allegheny Energy, Conectiv, and Potomac Electric Power Company (referred to herein as “the Companies”), Bethlehem Steel Corporation (“Bethlehem Steel”), Mid-Atlantic Power Supply Association (“MAPSA”), the Office of People’s Counsel (“OPC”), and the Maryland Energy Administration and Power Plant Research Project (“MEA/PPRP”) filed

³ The EDWG is a staff initiated working group which was formed to explore appropriate means of disclosing the fuel mix and emissions associated with electric power purchased by Maryland consumers. Its participants include: Allegheny Energy, Inc.; Baltimore Gas and Electric Company; Bethlehem Steel Corporation; Delmarva Power and Light Company; Greenmountain.com; Mid-Atlantic Power Supply Association; Maryland Department of Natural Resources – Power Plant Research Program; Maryland Department of the Environment – Air Resource Management Agency; Maryland Energy Administration; Maryland Public Interest Research Group; Montgomery County Government; Natural Resources Defense Council; Maryland Office of People’s Counsel; Commission Staff.

initial comments addressing Staff's proposal. These parties, as well as Staff and the Maryland Public Interest Research Group ("MaryPIRG")⁴ filed reply comments on March 7, 2000. GreenMountain.Com ("GreenMountain") filed comments on March 9, 2000. A hearing was held on this matter on February 16, 2000.

A. Emissions Disclosure Working Group Report

According to its report, the EDWG relied on a number of different resources for discussion purposes, including emissions and fuel mix disclosure requirements in other jurisdictions, data from the PJM, data from the Information Administration of the United States Department of Energy, and data from the Environmental Protection Agency.⁵ As a result of their discussions, the EDWG made the following consensus recommendations:

- That the Commission coordinate with other states in the region to promote a single regional approach to emissions and fuel mix disclosures;
- That the Commission promptly adopt an order to govern emissions and fuel mix disclosures;
- That sulfur dioxide (or "SO₂"), nitrogen oxides (or "NO_x") and carbon dioxide (or "CO₂") emissions be disclosed at this time; and
- That emissions and fuel mix disclosures should not be included on customers' bills at this time.

The group was unable to reach consensus with regard to:

1. Whether actual historic, regional average or prospective fuel mix and emissions information should be reported by electric companies and electricity suppliers;
2. Whether emissions and fuel mix disclosures should begin on April 1, 2000 or after July 1, 2000;
3. What circumstances warrant the use of prospective information regarding fuel mix and emissions disclosures by electric companies and electricity suppliers;

⁴ OPC, MEA/PPRP and MaryPIRG are referred to herein as "the Joint Commenters."

⁵ PJM is an independent system operator ("ISO") that dispatches electricity generated by utility and non-utility generation sources in Pennsylvania, New Jersey, Maryland, Delaware and the District of Columbia.

4. Whether the PJM regional data can be used by electric companies and electricity suppliers providing service in the Allegheny Power System ("APS") region;
5. Whether the Commission should require a benchmark for emissions disclosures;
6. Whether emissions and fuel mix information should be disclosed in a uniform manner using a standard label format.

These and other issues were addressed in the comments and reply comments of the parties, and in their statements and responses during the hearing.

B. Environmental Information Disclosure Rules

In its February 16, 2000 filing, Staff proposed a set of rules to govern emissions and fuel mix disclosures.⁶ Staff's proposed rules include, among other things, requirements for standardized disclosure, provisions for the use of historical, prospective and regional average data, and provisions for updating emissions and fuel mix information. Also included are proposed labels that describe the energy source(s) (fuel mix) of electricity suppliers and their emissions in relation to a benchmark. Staff proposed an implementation schedule that required disclosure beginning April 1, 2000.

The Commission finds the standardized procedures and provisions proposed by Staff to be reasonable and appropriate. With certain modifications, as discussed below, the Commission adopts the environmental information disclosure rules proposed by Staff.

II. DISCUSSION

Based on the EDWG Report and the comments of the parties in this matter, the Commission finds that a uniform regional approach to fuel mix and emissions disclosure is

⁶ Staff Comments, Attachment A.

desirable. Therefore, the EDWG shall coordinate with other states in the region to promote a single regional approach to fuel mix and emissions disclosures. In the interim, the Commission finds that the Environmental Information Disclosure Rules proposed by Staff, with appropriate modifications, meet the important objectives of ensuring that adequate and accurate fuel mix and emissions disclosures are made to electricity consumers, and that disclosure may encourage the development and/or procurement of more renewable energy generation for distribution to Maryland's electricity consumers.

A. Uniform Disclosure

The Act requires electric companies and electricity suppliers to provide “adequate and accurate information to each customer on the available electric services of the electric company or electricity supplier”⁷ In its comments, Staff identified three components that in its view satisfy this requirement: (1) disclosure should provide common information in a uniform way by all electric companies and electricity suppliers; (2) disclosure should include emissions information for SO₂, NO_x and CO₂; and (3) disclosure should include information explaining the environmental impacts of the emissions identified. Staff proposed that the adequate and uniform disclosure mandate would best be achieved by requiring standard labels for emissions and fuel mix disclosures.⁸ The Joint Commenters and GreenMountain agreed. The Companies, on the other hand, argued that the electric companies and suppliers should determine the form of disclosure. MAPSA did not take a definitive position.

⁷ Section 7-505(b)(4).

⁸ *Id.* at 8.

According to OPC, “the institution of a standard label is critical to providing useful information to customers.”⁹ OPC argued that without a standard disclosure label, disclosure would be chaotic and confusing both for customers and for the Commission. Further, OPC argued that the Act’s mandate requiring the disclosure of a “uniform common set of information,” means that “all suppliers must disclose the same types of data [and] data must be presented in a uniform manner by all suppliers.”¹⁰

The Commission believes that Staff and the Joint Commenters, including OPC, are correct and that common and uniformly presented information is in the public interest and is the appropriate way to communicate emissions and fuel mix information. With the advent of competition, customers will be bombarded with a great deal of unfamiliar information, including new bill information, electric choice educational information and marketing information, often from several different electricity suppliers. Under such circumstances, it is imperative that emissions and fuel mix information be provided in an easy to understand and consistent format.

⁹ OPC Comments at 6.

¹⁰ OPC Comments at 7.

The content and the format should simply convey adequate and accurate information with regard to each supplier's fuel mix and emissions. The label format proposed by Staff, applied uniformly to all suppliers, serves that purpose.

B. Disclosure Requirements

Section 7-505(b)(4) of the Act requires disclosure of either the actual or regional average information regarding emissions and fuel mix related to the production of electricity purchased by customers. The Companies argued that this provision of the Act allows suppliers and electric companies the discretion to choose to report only the regional average fuel mix to customers if they so desire.¹¹ OPC, Staff and the Joint Commenters disagreed with the Companies' position. They argued that the Act requires disclosure of actual emissions and fuel mix information whenever such information is available, and that disclosure of regional average data should be limited to circumstances when actual information is unavailable.

The Commission agrees with Staff, OPC and the Joint Commenters on this matter. Contrary to the Companies' position, the Commission finds that the Act confers the authority upon the Commission to determine the circumstances under which regional average or actual emissions and fuel mix data shall be disclosed. The Commission sets forth below the rules governing disclosure.

¹¹ The Companies' Comments at 2. The Companies also asserted that in many instances regional average data is the most accurate information available. Bethlehem Steel agreed with the Companies' assertion.

C. Historical, Regional Average, and Prospective Data

Staff noted, there are at least three types of data that could be used to develop fuel mix and emissions disclosures; namely, historical, prospective and regional data.

1. Historical Data

Historical data represents data gathered and collected based upon actual generation and use and can serve as a reasonable proxy for actual emissions. When updated, historical data would provide customers with the most accurate information about electric company and electricity supplier emissions and fuel mix. As such, historical data shall form the basis for the fuel mix and emissions disclosures required under §7-505(b)(4) of the Act, unless an exception is allowed and noted within this Order. To be adequate and accurate, Staff recommended that emissions and fuel mix disclosures be updated every 6 months based on a rolling average. GreenMountain opposed semi-annual updates and instead advocates reporting calendar year data every six months.

While the Commission recognizes the importance of providing actual information to consumers, six-month updates may be overly burdensome. Therefore, the Commission adopts the position suggested by GreenMountain and finds that emissions and fuel mix data should be disclosed to customers every six months on the basis of annually updated data.¹²

2. Regional Average Data

The Commission also recognizes that there are circumstances when historical data

¹² During future EDWG meetings, the parties should attempt to fine-tune the reporting frequencies that would be appropriate for disclosure of historical and prospective data.

is unavailable. Such would be the case when electricity is purchased from the power pool (on the spot market) or when the electricity supplier is a new entrant in the Maryland electricity market. In either instance, the Commission will permit the disclosure of regional average fuel mix and emissions data.¹³

Regional average (or default) data is generic information that is a composite of the generation distributed by the regional power pools such as PJM and the Allegheny Power Supply (“APS”) pools.¹⁴ This includes electricity generated by coal, oil, natural gas, nuclear, as well as renewable sources. According to the EDWG Report, over 90 percent of the electricity distributed to the PJM region is produced in the PJM region.¹⁵ The Report also indicated that PJM collects and publishes fuel mix and emissions data on a regional basis. Therefore, PJM regional average data can be made available to electricity suppliers at little or no cost.¹⁶ This should also be the case with APS. Thus, when regional average data is used, the Commission will require electricity suppliers to utilize region specific data. Accordingly, when supplying electricity in the PJM region, PJM regional average data is appropriate. Likewise, when supplying electricity in the APS region, APS regional data must be used.¹⁷

The Commission recognizes that on July 1, 2000 (the customer choice implementation date), historic data will not be available to be provided to customers. Electricity suppliers will be operating in Maryland for the first time and will have no

¹³ As discussed later in this Order, the Commission will permit use of prospective data in place of actual or regional average data in those circumstances where electric companies or marketers are making specific environmental claims.

¹⁴ Electric companies and electricity suppliers providing service in the APS region who use regional default data shall use APS regional data only.

¹⁵ EDWG Report at 8

¹⁶ *Id.*

¹⁷ Although neither the EDWG Report nor the comments of the parties indicated whether APS collected and published information comparable to that collected and published by PJM, the Commission expects that

historic fuel mix and emissions data to report. Moreover, as a result of electric restructuring, electric companies may purchase or procure their electricity differently than before. As such, electric companies' prior emissions and fuel mix information may not provide customers with an accurate depiction of the emissions and fuel mix associated with the electricity purchased and procured after the implementation of electric restructuring. Therefore, electric companies and new entrants shall report regional average data until they have operated within the State for six months.¹⁸ After electric companies and suppliers have operated within the State for six months, they will have sufficient actual emissions and fuel mix data to report. At that time, such suppliers shall disclose their first six months of actual data to customers.¹⁹ Therefore, electric companies and suppliers shall be required to report their actual historic fuel mix and emissions information after their initial six months of operation in their first disclosure to customers and in their report due to the Commission.

3. Prospective Data

Prospective data may be used only when neither historical data is available and regional default data is inappropriate, such as when an electric company or electricity supplier markets using environmental claims. When prospective data is used, however, providers will be expected to true-up such claims annually with actual data and in accordance with the disclosure frequency requirements set forth in Section E below.

similar information will be available for suppliers needing to disclose regional average data in the APS region.

¹⁸ Any disclosure of regional average data must also contain a disclaimer that the information disclosed is regional average and not actual company/supplier specific emissions and fuel mix data.

¹⁹ The Commission will allow suppliers up to three months, following six months of operation, to collate and prepare their actual data for reporting.

C. Emissions to be Disclosed

With the exception of Bethlehem Steel, all parties agreed that emissions disclosures should include sulfur dioxide, nitrogen oxides and carbon dioxide disclosure.²⁰ As noted by Staff, currently SO₂, NO_x and CO₂ are emissions that are tracked by the Maryland Department of the Environment and the U.S. Environmental Protection Agency. Also, electric companies and electricity suppliers are required to disclose these emissions in New Jersey, New York and Massachusetts.²¹

Given the environmental impacts of SO₂, NO_x and CO₂ emissions, the Commission will require that these emissions be disclosed by electric companies and electricity suppliers as recommended by the EDWG and Staff. The Commission also will require that explanatory environmental information be provided with respect to these emissions.

D. Product-Based Disclosure

All parties, except Bethlehem Steel, who did not address this issue, agreed that disclosure of emissions and fuel mix should be product-based. Staff pointed out that the alternative, company-based disclosure, could be deceptive and could be detrimental to some SOS providers who may secure a substantial amount of generation from affiliated generation sources.²² In such cases, the generation source could include a large portion of coal as compared with renewable resources. Likewise, while other suppliers may own substantial renewable resources in other states, such supply might not be used to serve customers in Maryland. The Commission believes that these are reasonable concerns. Therefore, the Commission adopts a product-based disclosure requirement. Electric

²⁰ Bethlehem Steel emphasized that the Commission should not require emissions disclosures that exceed the environmental standards adopted by the federal government and State agencies. *See* Bethlehem Steel Comments at 2.

²¹ Staff Comments at 9.

companies and electricity suppliers shall disclose emissions and fuel mix information based on the generation actually procured and supplied to customers in Maryland.

E. Frequency of Disclosure

Section 7-505(b)(4)(i) provides that supplier disclosure should occur “every 6 months.” Staff proposed that disclosure be made every six months, on or about April 1 and October 1. The Companies acknowledged the six-month statutory reporting requirement. However, the Companies took the position that the six-month reporting requirement should occur after July 1, 2000.²³

OPC and the Joint Commenters argued that disclosure should begin on April 1, 2000.²⁴ OPC also urged the use of 12 months of data on a rolling basis, recalculated every six months for disclosure every six months.²⁵ The Commission finds that the statutory requirement for disclosure, every 6 months, of a uniform common set of information, is clear and unambiguous. The only issue is whether the six-month reporting interval should be April and October, as proposed by Staff, or January and July as suggested by the Companies. Staff, OPC and the Joint Commenters asserted that disclosure should begin on April 1, 2000 when competitive marketing is allowed to begin and licensed electricity suppliers can begin signing up customers for service to be provided beginning July 1, 2000. OPC emphasized that this is important because “[c]ustomer demand is expressed to the market at the time of the purchase decision, not some time after.”²⁶ OPC argued that

²² See Staff Comments at 12.

²³ Tr. at 482.

²⁴ OPC Comments at 5.

²⁵ Tr. at 540.

²⁶ OPC Comments at 5.

“environmental disclosure . . . will be most effective if it is provided starting April 1, 2000 when customers can begin making purchasing decisions.”²⁷ According to OPC, disclosure after the purchasing decision will have a greatly reduced effect on the market.”²⁸ Other Joint Commenters, particularly MEA/PPRP, echoed OPC’s views on this matter.²⁹ GreenMountain stated that “customers should receive basic disclosure information at least once before they make their initial selection of an electricity product . . .”³⁰

After considering the arguments of the parties, the Commission concludes that emissions and fuel mix disclosure should begin on July 1, 2000, or at the first instance when contract terms and conditions are provided to customers.³¹ Electric companies and electricity suppliers that operated in Maryland as of July 1, 2000 shall provide their first updated actual emissions and fuel mix information to customers and to the Commission on April 1, 2001. When prospective data is used, providers will be expected to true-up such claims with annually collected actual data. Thereafter, disclosure information should be reported on October 1 and April 1.

As electricity suppliers enter the Maryland electricity market, Staff shall direct an emissions and fuel mix reporting schedule for such suppliers that brings those suppliers into compliance with the October 1 and April 1 reporting schedule in a manner consistent with this Order. Disclosure should be made in the form of labels, approved by the

²⁷ *Id.* at 6.

²⁸ *Id.*, Tr. 540.

²⁹ MEA/PPRP Comments at 1.

³⁰ GreenMountain Comments, Disclosure: A Vital Tool for Consumers, at 11.

³¹ Electricity suppliers who began marketing to consumers prior to July 1, 2000, and who have entered into contracts with customers, shall provide appropriate emissions and fuel mix data to such customers as soon as practicable after the issuance of this Order.

Commission, that are disseminated by mail along with customer bills.³² In the case of electricity suppliers offering contract terms and conditions to customers before July 1, 2000, disclosure labels should be included along with the contract terms and conditions. Emissions and fuel mix disclosure information should not be included on customer bills.³³ Electric companies and suppliers are required to disclose emissions and fuel mix data to customers every six months. They are required to report updated data to the Commission annually.

F. National Benchmark

A benchmark provides a basis from which customers can compare the emissions disclosure provided by an electric company or electricity supplier with a larger group. In its proposed Environmental Information Disclosure Rules, Staff proposed the use of a U.S. or national benchmark that compared Maryland electric companies and electricity suppliers with a national group of utilities. The comparison is that of the PJM regional fuel mix and average emissions with the national average. Section 7-505(b)(4)(i)(2) provides for emissions disclosure “on a pound per megawatt-hour basis.” While the Commission agrees that a benchmark is useful, a graph or chart comparing electric company and electricity supplier emissions on a pound per megawatt-hour basis, rather than on a percentage basis with the national average should be developed and utilized. Therefore, once actual data becomes available, electric companies and electricity supplier labels shall include the comparison of the emissions of the electric company and electricity supplier

³² Disclosure made by electricity suppliers before July 1, 2000 need not be included in marketing materials. However, emissions and fuel mix information must be included along with the issuance of all materials containing contract terms and conditions distributed to customers.

³³ This was a consensus recommendation of the EDWG and was supported by all Parties in their Comments.

with the regional average on the pound per megawatt-hour basis and fuel mix data in comparison to the regional average.³⁴

G. Verification of Disclosures

Section 7-505(b)(4)(ii) of the Act provides that the Commission may require documentation supporting the disclosures made by electric companies and electricity suppliers. Staff proposed that electricity suppliers who make prospective claims should be required to submit semi-annual reports demonstrating the progress made toward meeting the claim or, after 12 months, that the electricity provided meets the environmental claims made.³⁵ The Rules proposed by Staff would require that demonstrations that support compliance be reviewed, verified and certified by an independent CPA.³⁶ The Joint Companies, Bethlehem Steel and MAPSA suggested that Staff's position exceeds the statutory requirement for verification. During the hearing, Staff and OPC indicated that an audit of the nature outlined in the proposed rules is not necessary. The Commission agrees.

Although the Commission is within its statutory discretion not to require an independent CPA audit for verification of specific environmental claims made by electricity suppliers, the Commission believes that it is important that some degree of verification takes place. If a supplier makes specific environmental claims, prospective data shall be used and reporting requirements shall be based on a 12-month calendar year with an annual report. The annual report shall contain data relating to actual performance and

³⁴ When regional average data is used no benchmarking is expected.

³⁵ Proposed Rules at 19.

³⁶ In its Comments, Staff suggested that something less than a full audit would be appropriate. *See* Staff Comments at 14. OPC supported this position. *See* Tr. at 559-560.

the prospective claims of emissions and fuel mix. The process by which the verification is achieved is delegated to the working group to resolve.

H. Label Requirements

OPC suggested that the label associated with “new energy products,” for which regional average data can be used (“Exhibit C”), should be modified to delete the word “guarantee.”³⁷ This is consistent with OPC’s suggestion that the word “guarantee” be deleted from “Exhibit B,” Staff’s proposed label for use by suppliers who market using environmental claims.³⁸ OPC argued that the term guarantee, in either label, is not entirely accurate. The Commission agrees. Staff’s “Exhibits B and C” labels should be modified accordingly. The Commission also finds that the terms “default information” and “default values,” used in “Exhibit C” should be simplified. Rather than “default information” and “default values,” the terms “regional average information” and “regional average values” should be used.

III. CONCLUSION

The Commission has reviewed and considered the proceedings in this matter, including the report of the Emissions Disclosure Working Group, Staff’s proposed Environmental Information Disclosure Rules and Comments, the Comments and Reply Comments of the parties and their statements and positions expressed during the hearing on this matter. The Commission finds that the Environmental Information Disclosure Rules

³⁷ OPC Comments at 11.

³⁸ *Id.* at 10.

proposed by Staff, with the modifications set forth herein, meet the requirement for establishing adequate and accurate emissions and fuel mix reporting by electric companies and electricity suppliers provided for by the Act.

IT IS THEREFORE, this 15th day of June, in the year Two Thousand, by the Public Service Commission of Maryland,

ORDERED: (1) That the proposed Environmental Information Disclosure Rules, subject to the modifications, directives, and findings herein, are adopted;

(2) That the Emissions Disclosure Working Group shall continue to meet and shall coordinate with other states in the region to promote a single regional approach to emissions and fuel mix disclosure;

(3) That the Emissions Disclosure Working Group shall report to the Commission on or before October 1, 2000: (i) its progress toward resolving a verification process for emissions and fuel mix disclosure; (ii) its efforts toward promoting a regional approach to emissions and fuel mix disclosure; and (iii) its efforts towards fine-tuning historical and prospective data reporting frequencies;

(4) That electric companies and electricity suppliers shall comply with the directives set forth in the Environmental Information Disclosure Rules as adopted herein;

(5) That the Environmental Information Disclosure Rules adopted herein be published in the Maryland Register.

/s/ GLENN F. IVEY

/s/ CLAUDE M. LIGON

/s/ SUSANNE BROGAN

/s/ CATHERINE I. RILEY

/s/ J. JOSEPH CURRAN, III

COMMISSIONERS