

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888

In Re: Proposed Amendments To The Division's
"Rules - Applicable To Nonregulated
Power Producers" Pursuant To R.I.G.L.
§§ 39-1-27.1 *et seq.*

Docket D-16-113

APPENDIX 2

To Division

Report and Order number 22922

AMENDED "RULES APPLICABLE TO NONREGULATED POWER
PRODUCERS" AS ORIGINALLY NOTICED WITH EXPLANATORY
ANNOTATIONS ADDED

815-RICR-40-05-1

TITLE -815 DIVISION OF PUBLIC UTILITIES AND CARRIERS

CHAPTER 40 - ELECTRIC UTILITIES

SUBCHAPTER 05 - NONREGULATED POWER PRODUCERS

Part 1 - Rules Applicable to Nonregulated Power Producer

1.1 Authority

A. Nonregulated Power Producers ("NPPs") have been permitted to sell to or aggregate electricity for eligible Rhode Island customers since July 1, 1997. As defined by the Utility Restructuring Act of 1996 ("URA"), R.I. Gen. Laws § 39-1-27.1, NPP means a company engaging in the business of producing, manufacturing, generating, buying, aggregating, marketing or brokering electricity for sale at wholesale or for retail sale to the public. Companies which negotiate the purchase of electric generation services on behalf of customers and do not engage in the purchase and resale of electric generation services are not NPPs within the meaning of the URA. The Division of Public Utilities and Carriers ("Division") has been authorized by R.I. Gen. Laws § 39-1-3(b) and 39-1-27.1(c) and (d) to exercise certain regulatory authority over NPPs. These regulations are adopted pursuant to that authority.

B. In addition to the instant Division Rules this Part and Part 2 of this Subchapter, Rhode Island Public Utilities Commission ("Commission") has also promulgated rules governing the regulation of NPPs. The Commission's Rules are entitled: "Reliability Responsibility Regulations for Nonregulated Power Producers", effective on January 1, 1997; and "Consumer Protection Requirements for Nonregulated Power Producers," effective October 20, 2014. The Commission's "Reliability Responsibility Regulations For Nonregulated Power Producers" are set out in 810-RICR-40-10-2. Interested persons should examine all NPP-related rules for a comprehensive understanding of the regulatory requirements attached to NPPs doing business in Rhode Island.

1.2 Definitions!

A. "Obligated entity" shall have the same meaning as that which is contained in R.I. Gen. Laws § 39-26-Q1.

1.3 Prerequisites for Rhode Island Operations

A. All NPPs seeking to do business in Rhode Island must file with the Division a notarized registration application that includes the following:

Commented [LB(1)]: This Part is a reissuance of the Division's "Rules Applicable To Nonregulated Power Producers", effective date of January 12015. Minor amendments have been made to reflect the amendments to RIGL 39-1-27.1 made by the General Assembly in the January 2016 Session (*see* S2260, H8331) and for clarity. New language is indicated by underscoring, deleted language by strike-through. Format changes required by the new Administrative Code format are not indicated. Correction of typographical errors are not indicated.

Commented [LB(2)]: Change reflects the new Administrative code format.

Commented [LB(3)]: Change reflects the new Administrative Code format, and the fact that the Division's new NPP Consumer Bill of Rights (Part 2 of this Subchapter) will supplant the Commission's "Consumer Protection Requirements for Nonregulated Power Producers" as mandated by RIGL 39-26.7-1 *et seq.* Nevertheless, the PUC still has rules regarding certain aspects of NPP operations, and interested persons should be aware of that.

Commented [LB(4)]: Some definitions are required as a result of the recent amendment to RIGL 39-1-27. (c)(9)

Commented [LB(5)]: The recent amendment to RIGL 39-1-27. (c)(9) makes incorporation of this definition a logical necessity as the amendment specifically applies to "obligated entities." The definition adopted is the same definition used in Part 2 of this Sub-Chapter which was, in fact, mandated by RIGL 39-27.7(4)(d) and restates the statutory definition set out in RIGL 39-26-2.

Commented [LB(6)]: Implements RIGL 39-1-27. (c).

1. Legal name;
2. Business Address;
3. The name of the state where organized; the date of organization; a copy of the articles of incorporation, association, partnership agreement, or other similar document regarding legal organization;
4. Name and business address of all officers and directors, partners; or other similar officials;
5. Name, title, and telephone number of customer service contact person;
6. Name, title, and telephone number of regulatory contact person;
7. Name, title and address of registered agent for service of process;
8. Brief description of the nature of the business being Conducted:.....
9. Brief description of Evidence of financial soundness:.....

Commented [LB(7)]: Restates RIGL39-1-27. (c)(8), which was not explicitly included in the original regulation.
 Commented [LB(8)]: Implements RIGL39-1-27.I(c)(9).

a. Evidence of financial soundness such as surety bonds, a recent financial statement, or other mechanism as specified by the Division, except those nonregulated power producers who may be obligated entities shall provide financial security showing evidence of liquid funds, such as:

- (1) a surety bond;
- (2) a certificate of deposit
- (3) an irrevocable standby letter of credit from an ISO New England Eligible Letter of Credit Bank, a New York Mercantile Exchange "NYMEX" or a Chicago Mercantile Exchange ("CME") approved letter of credit bank. ri
- (4) a corporate guarantee from an investment-grade entity with a Tangible Net Worth of at least ten million dollars (\$10,000,000.00).

The financial security shall be in an amount of not less than two hundred fifty thousand dollars (\$250,000.00). All financial security provided in satisfaction of this provision shall name the Commission and the Division as obligees;

b. Financial security shall be reviewed each year at the time a nonregulated power producer makes its annual filing. The above notwithstanding, each obligated entity is responsible for informing

Commented [LB(9)]: It is important that the Letter of Credit come from a strong institution. ISO-NE, for example, has a process and set of requirements to vet letter of credit eligible banks. We believe it most efficient to adopt ISO-NE's list as reference, as well as that of NYMEX and CME.

Commented [LB(10)]: Other states requiring surety (MC, TX, PA, NJ) are set at \$250,000.00 for all Competitive Electricity Suppliers ("CES"), regardless of the size of their retail sales that market. CT requires \$250,000.00 or 5% of its estimated gross receipts, which is revisited very year and adjusted as needed. DE requires surety of 10% of the deposits, advance payments, prepayments, financial guarantees or the like from a CES' customers, or \$50,000.00, and requires demonstration of liquid assets of \$1,000,000.00 in order to be certified. We have chosen to go initially with a flat \$250,000.00, an amount comparable to CT, NJ and other states where our CESs are currently operating, as an amount reflective of an acceptable standard in the Northeast. We may choose to adjust the figure later after we have accumulated data under the new law.

the Division in writing within five (5) business days of any material adverse change in its financial status. The financial security shall be available to satisfy penalties assessed by the Division for violations of any consumer protection rules or laws related to nonregulated power producers, refunds ordered by the Division, or failure to comply with the provisions of R.I. Gen. Laws Chapter 39-26 as determined by the Public Utilities Commission. Payments made pursuant to this subsection for violation of the provisions of R.I. Gen. Laws § 39-26-4 shall be forfeited and shall be remitted to the renewable energy development fund established in R.I. Gen. Laws § 39-26-7 or any successor funds, and all other forfeitures will be remitted to the state's general fund;

c. All financial security provided in satisfaction of this provision in addition to naming both the Commission and the Division as obligees, shall meet the language and form requirements of the Commission and Division as such direction may be provided from time to time;

- 10. Affirmation that the applicant will comply with the Rhode Island General Laws and all rules and regulations promulgated by the Division and the Public Utilities Commission ("Commission");
- 11. Evidence that, in accordance with the Commission's Reliability Responsibility Regulations, the applicant is either (a) a NEPOOL participant or (b) has a written agreement with a NEPOOL member through which such member agrees to include the load served by the NPP in its load. A copy of this agreement (with any pricing or unrelated commercial terms redacted) should be included with the applicant's filing;
- 12. Evidence of authorization from the Rhode Island Secretary of State to do business in Rhode Island.

B. Copies of all filings made pursuant to § 1.3(A) of this Part, shall be served on the Commission and all electric distribution companies. Updated information shall be filed within ten (10) days of any change to the information included in a registration application, as filed Or previously updated.

C. Unless rejected within thirty (30) days, registration applications filed in accordance with these rules shall become effective thirty (30) days after filing. If the Division rejects the application, it shall specify the applicable reasons in writing and, if practicable, identify alternative ways to overcome the noted deficiencies. NPPs are authorized to do business in this state after their registration becomes effective and while they remain their registration remains in good standing.

Commented [LB(11)]: The Division received a suggestion from the industry early on in the drafting process that these rules incorporate exemplars of the acceptable language for each type of financial security document; an example of such a Security Agreement was also provided to the Division. The Division elected not to do that at this time, believing that initially, at least, the Division should allow as much flexibility as possible over form, while preserving the Division's right to specify such language if it later becomes clear that such prescriptive guidance to the industry is necessary.

Commented [LB(12)]: Implements first sentence of RIGL 39-127. (d) as amended.

Commented [LB(13)]: Technical correction to more accurately reflect the language used in the final sentence of RIGL 39-1-27. (d).

D. Updated information shall be filed within ten (10) days of any change to the information included in the registration application as filed or amended. A filing fee of one hundred dollars (\$100.00) shall accompany all registration applications filed pursuant to 1.3A of this Part. Nonrelated power reducers shall thereafter renew their registration within the Division. Applications for renewal shall be filed before the close of business on December 31 of each calendar year. Applications for renewal shall specify any changes in previously filed registration information. A filing fee of one hundred dollars (\$100.00) shall accompany all applications for renewal of NPP status.

Commented [LB(14): The deleted language is now incorporated in section 1.3.B, above, to more accurately reflect RIGL 39-1-27.1(d). The new language added here simply implements 39-1-27.1(e), establishing the annual registration fees and filing dates.

E. Any person who has exhausted all administrative remedies available to them within the Division, and is aggrieved by a final order or decision of the Division, is entitled to judicial review in accordance with the Administrative Procedures Act (R.I.G.L. Sec. 42-35-1 [et seq.](#)).

Commented [IB(15): "et seq." and the closing punctuation were added as a technical correction.

1.4 Rescission of NPP's Registration

A. A NPP may voluntarily surrender its registration and therefore, its right to conduct business in Rhode Island. Such voluntary surrender does not affect the rights or liabilities of any persons or entities with whom the NPP did business in Rhode Island.

B. The Division may rescind a NPP's registration as follows:

1. A proceeding to rescind may, in the Division's discretion, be instituted either by the filing of a consumer complaint or as the result of a *sua sponte* proceeding.
2. A proceeding shall be instituted if the Division determines that the NPP no longer complies with any of the requirements of [Section 1.3A of this Part](#).
3. The NPP will be given notice and the hearing will be conducted in accordance with the provisions of the Division's Rules of Practice and Procedure.
4. Rescission does not affect the rights or liabilities of any persons or entities with whom the NPP did business in Rhode Island.

Commented [IB(16): Technical correction only. Placed *'sua sponte'* in italics as it is a legal term in Latin, and the convention is to italicize foreign words when used in legal documents. Replaced semicolon with period as was done in the original with subparagraph 3. All 4 subparagraphs are complete sentences rather than subordinate clauses of a single sentence.

Commented [LB(17): Technical correction only. Changed reference from "section" to "Part" to reflect new Administrative Code format.

C. Any person who has exhausted all administrative remedies available to them within the Division, and is aggrieved by a final order or decision of the Division, is entitled to judicial review in accordance with the Administrative Procedures Act (R.I. Gen. Laws § 42-35-15).

D. [Financial security shall remain in place for the greater of six months or the discharge of all obligations following the final date of rescission subject to Division receipt and investigation of complaints that may be filed.](#)

Commented [LB(18): Language added upon recommendation of industry to ensure that the financial security documents would not be cancelled until the NPP had discharged all of its existing obligations in order to ensure that the financial security instruments would still be available to help satisfy those obligations up to the limits of the instrument (\$250,000.00 minimum). It is consistent with the legislative intent.

1.5 Dispute Resolution Regulations Relating to NPP's

- A. Breach of contract claims or billing disputes between NPPs and customers that cannot be privately resolved should be resolved through appropriate legal action.
- B. Disputes between NPPs, customers, or other aggrieved parties relating to violations of the Commission's Consumer Protection Regulations and/or these regulations are subject to the following:
1. Any party who believes they have been or will be aggrieved by a violation of the ~~Commission's Consumer Protection Regulations~~ Division's Nonregulated Power Producer ("NPP") Consumer Bill of Rights (Part 2 of this Subchapter) and/or these regulations may file a complaint with the Division.
 2. The Attorney General, as a matter of right, may file a complaint with the Division against any NPP to seek enforcement of the ~~Commission's Consumer Protection Regulations~~ Division's Nonregulated Power Producer ("NPP") Consumer Bill of Rights (Part 2 of this Subchapter) and/or these regulations.
 3. The form of the complaint should clearly set forth:
 - a. The facts at issue;
 - b. The position of the petitioner;
 - c. A statement of why the petitioner is aggrieved and what rules or requirements were violated; and
 - d. The relief being sought.
 4. A copy of the complaint must be provided to the NPP or opposing party. However, if a customer files a complaint with the Division, it will not be dismissed as to form, nor will it be dismissed for failure to serve a copy on the NPP.
 5. The NPP or opposing party that is the subject of a complaint will have ten business days to respond. If the NPP was not served a copy of the complaint, the NPP will have ten business days from receipt of a copy from the Division. However, if the Division determines that the nature of the complaint requires expeditious action, the Division reserves the right to require a shorter response period and/or take whatever action is reasonably necessary to protect the public while the hearing is pending.
 6. Any person or entity whose interests will be substantially and significantly affected by the outcome of proceedings under this rule may file a motion

Commented [18(19): Amended ~~to~~ to comply with RIGL 39-26.7-1 *et seq.*, which substitutes the Division for the Commission as the agency responsible for promulgating consumer protection rules and orders rescission of the Commission's existing rules.

Commented [18(20): Amended only to comply with RIGL 39-26.7-1 *et seq.* (see above comment).

to intervene. The motion must clearly set forth the interests of the party seeking intervenor status.

Commented [LB(21)]: This paragraph was reformatted for clarity only.

a. The Division shall grant such motion if:

a.i The person's or entity's interests will be substantially and significantly affected by the outcome of the proceedings under this rule; and

(2) The interests cannot be adequately represented by other parties to the proceeding.

b. Alternatively, the Division can grant a party or entity limited intervenor status which would allow that intervenor the right to submit written comments.

7. Written Decision

a. Within ten business days of the close of the hearing or receipt of briefs (if required by the Division), a written decision will be rendered, unless the Division notifies the parties that an extension of time, not to exceed fifteen additional business days, will be required.

8. Appeals

a. Any decision of the Division issued in conformance with these Rules shall be final and binding upon the parties unless appealed under the Rhode Island Administrative Procedures Act ([R.I.G.L. secs 42-35-1 etlsed.](#)).

Commented [LB(22)]: Statutory citation added for clarity and the convenience of those members of public, and the industry, seeking to apply this Part.
