

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: PETITION OF TOWN OF MIDDLETOWN :
FOR THE APPROVAL OF THE PROPOSED :
COMMUNITY ELECTRICITY AGGREGATION : **DOCKET NO. 23-36-EL**
PLAN PURSUANT TO R.I. GEN. LAWS § 39-3-1.2 :

REPORT AND ORDER

I. Background

Rhode Island’s electric utilities operate in a restructured electricity market which means that the electric distribution company does not own the generation which supplies the electrical energy to the power grid. Rather, the supply of electrical energy is either procured by the electric distribution company from wholesale electric suppliers for resale to its customers with no profit to the electric distribution company or can be purchased by customers directly from competitive energy suppliers.^{1,2} In 2002, the Rhode Island General Assembly passed a law allowing municipalities to contract for electrical energy supply for the residents of their communities from competitive suppliers (community electricity aggregation).³

The law provides a procedural framework the municipality must follow and includes certain minimum consumer protections, including equitable access for all customers and advance notice of the plan, pricing, eligibility, and any affirmative action a customer may or must take. A community aggregation plan can either be designed as an opt-out program whereby residents are automatically enrolled into the aggregation if they do not affirmatively opt out by a date certain, or opt-in whereby residents must affirmatively choose to join the aggregation. A community electricity aggregation plan must also be reviewed by the Public Utilities Commission

¹ The legal designation in Rhode Island is nonregulated power producer (R.I. Gen. Laws § 39-1-2(19)).

² R.I. Gen. Laws §§ 39-1-27, 39-1-27.3.

³ R.I. Gen. Laws § 39-3-1.2 (The law was amended in 2017 to streamline the process through which a municipality may exercise that authority).

(Commission) prior to solicitation of electric energy supply by a municipality on behalf of its residents. The Commission retains limited oversight of the plan after approval, but the governmental aggregator remains subject to supervision and regulation by the Commission to the extent of the retail electric service it provides and Commission authority.⁴

II. Middletown’s Filing

On October 13, 2023, the Town of Middletown (Municipality or Middletown), Good Energy, L.P. (Good Energy) its municipal aggregator, filed a Petition for Approval of Community Aggregation Plan (Plan) which was attached to the Petition.⁵ The Municipality also submitted written testimony of Shawn Brown, Town Administrator, and Patrick Roche, Good Energy’s Director of Innovation for New England. The Petition provided that the goals of the Plan are “to bring the benefits of competitive choice of electric supplier, including longer-term price stability than provided by the electric distribution company, lower cost of electricity, and more renewable energy options, to the residents and businesses of the Municipality.”⁶ Several of the pricing plans to be offered to electric customers residing in the Municipality included a voluntary renewable energy supply product intended to exceed the State minimum requirements.⁷

The Plan outlined the process followed by the Municipality prior to filing with the Commission and also outlined the implementation process to be followed after Commission approval of the Plan. R.I. Gen. Laws § 39-3-1.2 (Act) requires a municipality to follow certain procedural steps prior to filing a plan with the Commission. First, a municipality initiates the process through a majority vote of the council. As part of the Plan, the Municipality provided a

⁴ R.I. Gen. Laws § 39-3-1.2(f).

⁵ All filings can be found on the Commission’s website at: <https://ripuc.ri.gov/Docket-23-36-EL> or reviewed at the Commission’s office at 89 Jefferson Blvd., Warwick, RI 02888.

⁶ Petition at 1.

⁷ Plan at 5; The State mandated minimum renewable energy supply obligation can be found at R.I. Gen. Laws § 39-26-1 to 10 (Renewable Energy Standard or RES).

copy of the Resolution Authorizing the Research and Development of a Community Choice Aggregation Program.⁸ The next step in the process under the law is the development of a plan of operation and governance for the aggregation. For this, the Municipality chose Good Energy as its aggregation consultant to assist in the development and implementation of the community electricity aggregation plan that is now before the Commission.⁹ Good Energy assisted in the drafting of an aggregation plan for review by the public. The draft plan was available commencing on April 9, 2023, and was subject to a hearing on May 24, 2023, at which the public was invited to comment. Minutes of that meeting show that the public was able to provide input and ask questions, responses to which were provided by Town officials and their consultant.¹⁰ The Municipality published notice of the public hearing in the Newport Daily News on September 8 and 15, 2023.¹¹ On September 18, 2023, the Town Council voted to approve the Plan as submitted.¹²

There are certain minimum components that a Plan must include. For example, the Act provides generally that:

The legislative authority of a municipality may adopt an ordinance or resolution, under which it may aggregate in accordance with this section one or more classes of the retail electrical loads located, respectively, within the municipality or town and, for that purpose, may enter into service agreements to facilitate for those loads the sale and purchase of electricity....¹³

⁸ Plan at 12; (Resolution Mar. 7, 2022); Middletown Town Council Minutes of August 24, 2022; <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\Minutes\4494\2022\439988.pdf>.

⁹ Brown Test. at 2.

¹⁰ *Id.* Middletown Council Minutes of Jan. 17, 2023.

¹¹ The Act requires two notices to be published in a newspaper of general circulation in the municipality at least one time for each of two weeks prior to the hearing.

¹² Brown Test. at 3.

¹³ R.I. Gen. Laws § 39-3-1.2(a)(1). This law appears to limit a municipality's authority to the aggregation of electrical load for sale by a competitive supplier, including the development of an optional energy product that a customer can choose to purchase. For example, as in this case, a municipality can authorize the development of an aggregation plan that offers an optional renewable product, but also offers a product that complies with minimum state law requirements. Regardless, the optional product must be directly related to the energy being procured and delivered to the customer. In this plan, a customer purchasing a renewable energy product in excess of the State minimum is paying to purchase renewable energy certificates to match a certain percentage of their usage. The customer will be able to see those purchases through their energy source disclosure label.

No legislative authority pursuant to an ordinance or resolution under this section that provides for automatic aggregation as described in this section, shall aggregate the electrical load of any electric load center located within its jurisdiction unless it in advance clearly discloses to the person owning, occupying, controlling, or using the load center that the person will be enrolled automatically in the aggregation program and will remain so enrolled unless the person affirmatively elects by a stated procedure not to be so enrolled. The disclosure shall state prominently the rates, charges, and other terms and conditions of enrollment. The stated procedure shall allow any person enrolled in the aggregation program the opportunity, at a minimum, to opt-out of the program every two (2) years, without paying a switching fee. Any person who leaves the aggregation program pursuant to the stated procedure shall default to the last-resort service until the person chooses an alternative supplier.¹⁴

More specifically, the Act requires that the Plan include (1) the identification of the classes of customers that may participate; (2) the provision of universal access to all applicable customers and equitable treatment of applicable classes of customers (3) an organizational structure of the program, its operations, and its funding;¹⁵ (4) the process for establishing rates and allocating costs among participants; (5) the methods for entering and terminating agreements with other entities; (6) the rights and responsibilities of program participants; and (7) termination of the program. The plan is also required to set forth the terms and conditions under which retail electric customers who have chosen to opt out of the aggregation may later opt into the aggregation.¹⁶ Under no circumstance may an aggregation plan deny a customer the right to take retail energy supply from the electric distribution company or another competitive supplier, subject to any opt-out

¹⁴ R.I. Gen. Laws § 39-3-1.2(a)(2).

¹⁵ This appears to be the only place where administrative costs directly related to the aggregation can be identified and funded. This is the only manner set forth by the statute where non-customer specific costs that are not directly related to the delivery of energy to the retail customer can be recovered. As the Plan sets forth:

All of the costs of the Program will be funded through the ESA. The primary cost will be the charges of the competitive supplier for the power supply. These charges will be established through the competitive solicitation for a supplier. The administrative costs of the Program will be funded through a per kilowatt-hour aggregation fee that will be paid by the competitive supplier to the Aggregation Consultant, as specified in the ESA. *This aggregation fee will cover the services of the Aggregation Consultant, including developing the aggregation plan, managing the Commission's approval process, managing the supply procurement, developing and implementing the public education plan, providing consumer support, interacting with National Grid, monitoring the supply contract, and providing ongoing reports.* This charge has been set at \$0.001 per kilowatt-hour. (Plan at 8, emphasis added).

¹⁶ R.I. Gen. Laws § 39-3-1.2(d).

provision.¹⁷ Customers who are receiving service from competitive supply at the time the aggregation commences will not be automatically transferred to the aggregation.¹⁸ The Municipality's supplier needs to comply with the Energy Source Disclosure requirements set forth in statute and tariff. The Municipality requested authority to provide the disclosure label through an alternative process rather than by mailing hard copies to all customers and committed to using the Energy Source Disclosure Label approved by the Commission in prior Orders for use by energy suppliers in community aggregations.¹⁹

Mr. Roche's testimony set forth the sections of the Plan that address each of the above-referenced items.²⁰ Addressing "universal access," he explained that the Plan anticipates all eligible customers in the Municipality will be enrolled in the aggregation unless they have already contracted with a competitive supplier or affirmatively opt out during the opt-out period. New customers to the Municipality will initially be placed on the electric distribution company's Last Resort Service rate and will then be included in a list of newly eligible customers provided by the utility to Good Energy. Those customers will then receive a notice that they will be automatically transferred to the aggregation energy supplier unless they opt out. The Plan allows customers in the aggregation to opt out at any time to either return to Last Resort Service or to choose an alternative competitive supplier.²¹

Turning to the requirement that there be "equitable treatment" of the classes of customers who participate in the program, Mr. Roche explained that each class of customers will have the opportunity to participate in the aggregation. He distinguished between equity and equality in

¹⁷ R.I. Gen. Laws § 39-3-1.2(e).

¹⁸ *Id.*

¹⁹ Petition at 2, referencing prior community aggregation dockets. The Energy Source Disclosure law is codified at R.I. Gen. Laws § 39-26-9(c) and the Commission's Energy Source Disclosure Rules can be found at 810-RICR-40-05.

²⁰ Roche Test. at 8.

²¹ *Id.* at 6-7.

terms of pricing. He explained that “[e]quitable treatment of all customer classes does not mean that all customer classes must be treated equally but that customer classes that are similarly situated must be treated equitably.” The Plan, according to Mr. Roche, allows for varied pricing and terms and conditions for different customer classes to take into account the fact that they have different characteristics.²² All customers within a customer class will receive the same initial pricing, but each customer class may have different pricing. The customer classes will follow the rate classes of the electric distribution company. All customers within a class will have the same product offerings through the aggregation but some may choose an option with more or less renewable energy than the standard option. All initial customers of the aggregation and all customers who join as new consumers in the Municipality (or who are ineligible at the commencement but later become eligible) will receive the same pricing within their class. Customers who opt out and later opt into the aggregation may receive different pricing from the other members of the class.²³

Mr. Roche then explained the competitive bid process by which the Municipality would ultimately choose a competitive supplier. The process would be conducted by Good Energy on behalf of the Municipality and the Municipality will select the supplier. Following the receipt of bids from competitive suppliers, the Municipality will file with the Commission a report on the results of the solicitation. The report will include whether the solicitation was successful, and in that case, it will identify the name of the winning supplier, the dates electric service will commence and terminate, the prices for each product to be offered to customers, and the specific renewable energy quantity for each.²⁴

²² *Id.* at 8.

²³ Plan at 3-4.

²⁴ Roche Test. at 10-11.

Attachment 2 to the Plan the education and outreach strategy associated with the aggregation. The Plan explained that there would be broad based efforts designed to promote awareness to all residents and business in the Municipality including a Municipality-specific website, traditional media outreach, social media engagement, in-person presentations,²⁵ distribution of direct marketing materials,²⁶ and the establishment of a consumer help line. He indicated that these communications will explain the purpose of this program and provide information on how to opt out of the program at no cost. Following commencement of the aggregation, he explained that all participants will have the right to opt out of the Program at any time without charge.²⁷

Mr. Roche noted that during the aggregation, participants will continue to be responsible for paying their bills and for providing access to metering and other equipment necessary to carry out utility operations. Participants are responsible for requesting any exemption from the collection of any applicable taxes and must provide appropriate documentation of such exemption to the chosen supplier.²⁸

III. Division's Position

On October 3, 2023, legal counsel for the Division submitted a letter positing that the Municipality's plan met the requirements of the statute. The Division, therefore, recommended approval.²⁹

²⁵ Attachment 2, pages 14-18 of the Plan. The Plan identified the following local groups Good Energy planned to target for in-person presentations including Conexion Latina; Concerned Middletown Taxpayers; Senior Center Board of Directors; The Conservation Commission; Middletown Planning Board; Roads & Utilities Advisory Committee; Economic Development Advisory Committee; and the Town Library. (Plan at 17).

²⁶ The Plan identified for distribution of marketing materials, in addition to the above-referenced local groups, the library and municipal offices and Middletown Community Center. (Plan at 17).

²⁷ Roche Test. at 11.

²⁸ *Id.* at 11-12.

²⁹ Wold Letter (July 26, 2022); https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-07/22-10-EL-DIV-Recommendation_7-25-22.pdf.

IV. Hearing

The Act requires the Commission to conduct a public hearing as part of its review of a community electricity aggregation plan. On November 28, 2023 the Commission held a public hearing to solicit public comment and elicit testimony from Good Energy's witness. The hearing was held in the evening and members of the public had the option of participating remotely. No members of the public participated.

V. Commission Findings

At an Open Meeting held on December 19, 2023, the Commission considered the record in this matter. Finding that the Plan, as revised, met all components of the Act, the Commission approved the Municipality's Plan. Although not required by the Act, the Commission notes that the Plan commits the Municipality's chosen energy supplier to use the Energy Source Disclosure Label template filed in this matter reflecting that which was previously approved by the Commission. The Energy Source Disclosure Label may be posted to the program website and at municipal buildings in lieu of providing it to the customer directly.

Within two years from approval of the Plan, the Municipality shall provide written notice to the Commission and Division that the Plan has been implemented, describing with particularity all parts of the Plan that have not been implemented. Middletown shall also comply with the reporting requirements adopted by the Commission at its November 5, 2021 Open Meeting.

Accordingly, it is hereby,

(24890) ORDERED:

1. The Town of Middletown's Petition for Approval of Community Aggregation Plan is hereby approved.

2. Within two years from approval of the Community Aggregation Plan, the Town of Middletown and/or Good Energy, L.P., shall provide written notice to the Commission and Division of Public Utilities and Carriers that the Plan has been implemented, describing with particularity all parts of the Plan that have not been implemented.
3. All filings made to the Public Utilities Commission pertaining to this matter shall be filed with reference to the instant docket number with a copy to all parties to the service list then on file with the Clerk of the Public Utilities Commission.
4. The Town of Middletown is directed to comply with the reporting requirements proposed by Good Energy on August 6, 2021 and adopted by the Public Utilities Commission on November 5, 2021.
5. The first Annual Report shall be due thirteen months following the implementation of the respective municipality's aggregation plan.
6. The Town of Middletown and Good Energy, L.P., shall comply with all other orders and requirements of this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING
DECISION ON DECEMBER 19, 2023. WRITTEN ORDER ISSUED DECEMBER 21, 2023.

PUBLIC UTILITIES COMMISSION



Ronald T. Gerwatowski, Chairman



Abigail Anthony, Commissioner



John C. Revens, Jr., Commissioner



NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven (7) days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.