

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: CONSUMER PROTECTION REQUIREMENTS :
FOR NONREGULATED POWER PRODUCERS : DOCKET NO. 4503

REPORT

I. Authority and Notice

R.I. Gen. Laws § 39-2-1(c) states that the Public Utilities Commission (Commission or PUC) is required to “promulgate such ... rules and regulations as are necessary to protect consumers following the introduction of competition in the electric industry.” In Rhode Island, competitive electric suppliers are referred to as nonregulated power producers (NPPs). In 1997, the Commission promulgated the initial Consumer Protection Requirements for Nonregulated Power Producers. Until 2012, very little electric supply competition occurred at the residential level.

In 2012 and 2013, more NPPs began marketing to residential customers and more customers switched to competitive supply. As a result of this increased participation in the competitive market, the Commission and the Division of Public Utilities and Carriers (Division) became aware of certain issues not considered in the 1997 version of the rules and regulations. Therefore, in response to an identified need, the Commission determined it should amend its Consumer Protection Requirements for Nonregulated Power Producers.

The proposed rules, which impose no additional regulatory burden on NPPs, require NPPs to include in customer disclosures/marketing materials additional information necessary for retail electricity customers to make an informed decision about whether or not to purchase the energy portion of their electricity from an NPP. There are

no additional filing requirements included in the revised rules. The proposed rules also incorporate a subsequent change to law regarding energy source disclosure that supersedes the language in the current rules.

The proposed rules streamline the dispute resolution process for customers and properly reflect the separate statutory jurisdictions of the PUC and the Division. The new language also reflects current practice for addressing customer complaints. Customer complaints regarding NPPs have historically been handled in the same manner as any other customer disputes; where there is a dispute regarding compliance with the rules, it has been addressed by the Division. The proposed rules reflect this reality.

Pursuant to R.I. Gen. Laws § 42-35-3(a)(1), the Commission posted a public Notice of Proposed Rulemaking on the Rhode Island Secretary of State's website on May 16, 2014. The Commission also notified, by electronic mail, all active Nonregulated Power Producers registered in Rhode Island using information provided to the Division.¹ The Notice of Proposed Rulemaking set forth a description of the proposed rules, a hearing date, and a deadline for filing written comments.

II. Public Hearing

On June 12, 2014, the Commission held a public hearing at its Offices at 89 Jefferson Boulevard, Warwick, Rhode Island for the purpose of taking oral comment on

¹ In the development of the proposed interpretation, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. One purpose of the proposed regulations is to eliminate overlap and duplication with statutes and rules within the jurisdiction of the Division, a separate state agency that has the statutory responsibility and personnel to address disputes between public utilities and their customers. The Commission found no other duplication with other state agencies' laws or regulations and identified no significant economic impact on small businesses as defined by R.I. Gen. Laws § 42-35.1-3. All required forms were filed with the Office of Management and Budget and the Department of Administration Budget Office.

its proposed rules. Elizabeth Morancy testified on behalf of the Ratepayers Advisory Board in favor of the rules. She also provided a written copy of her comments.²

III. Comments on the Proposed Rules and Commission Rationale

Written comments were also received from AARP, the Retail Energy Supply Association, and National Grid. At its subsequent Open Meeting held on June 30, 2014, the Commission discussed each of the comments and voted to finalize the proposed rules.

AARP, in its comments, recommended “that the Commission undertake more significant reforms and, where necessary, seek statutory authority to expand and conduct more responsible oversight of the retail electric supply market in Rhode Island.”³ It suggested, for example, limiting early termination fees allowed in contracts. This is the type of provision that would likely require a change in Rhode Island law.

AARP also recommended that suppliers be required to disclose their price in a uniform manner as part of their marketing materials and terms of service documents. AARP claimed that it is difficult to compare variable rates and understand how they were calculated. However, the proposed rules already require NPPs to provide the same information in their contracts so that customers can compare the relevant information.

AARP suggested that suppliers offering variable rates be required to provide an example of how their price would have changed in the last 12-24 months had the contract been in place with the methodology included in the supplier’s contract. It also contended that variable rate contracts should be required to identify the specific index, formula, or methodology used to govern their terms. The PUC declined to adopt the suggested changes because past performance does not necessarily suggest future performance of

² Comments of Ratepayers Advisory Board. http://www.ripuc.org/eventsactions/docket/4503-RABoard-Comments_6-12-14.pdf.

³ Comments of AARP, 4. <http://www.ripuc.org/eventsactions/docket/4503-AARP-Comments.pdf>.

contracts. Furthermore it was unclear that inclusion of indices in a contract would make the contract clearer to the average customer.

AARP proposed that moving customers from a fixed to variable rate should be prohibited, even after notice, if the customer has not affirmatively accepted the change. According to AARP, at the end of a contract, the NPP should be required to obtain affirmative acceptance by the customer before the contract is renewed if any of the price or terms will change. Furthermore, according to AARP, renewal of a contract should not be allowed if the customer has not affirmatively accepted the renewal. The PUC declined to adopt these proposals because it could result in customers being switched back to standard offer service with the electric distribution company without their knowledge or consent amounting to a kind of reverse slamming. Furthermore, an NPP should not be required to keep a contract in force because of customer non-responsiveness.

Finally, AARP sought additional protections for low income customers on the basis that the rates charged by NPPs may be higher than those charged by the electric distribution company. AARP states that:

[Low income] customers who enroll with retail suppliers under the impression that they will save money on their bills and who in fact end up paying more than the Standard Offer Service threaten not only their own ability to afford essential electric service, but cause additional costs from nonpayment and higher bills to be imposed on all ratepayers.⁴

However, this statement actually applies to all customers, not just those in taking service under the low income rate. It is unlikely that any customers would enter into a contract with a supplier if they were not under the impression they would save money. Nonetheless, unless specifically stated in a contract, there is never any guarantee that any customer receiving electricity from a competitive supplier will save money. The Utility

⁴ *Id.* at 7.

Restructuring Act does not require NPPs to offer lower rates. Rather, the Utility Restructuring Act allows competitive suppliers the right to compete with the electric distribution company's standard offer service rate for all rate classes. The act also places a significant responsibility on the consumer to conduct the appropriate due diligence before entering into a contract for a commodity. This is no different from purchasing any other commodity in any competitive market. Unless the legislature passes a law to either exempt certain classes of customers from the ability to enter the competitive market or grant the PUC jurisdiction to do so, the competitive market is open to all, and all have the responsibility to ensure they understand what they are agreeing to before they sign up. Any customer, whether high or low income, residential or non-residential, who does not pay his or her bill causes a burden to other customers.

AARP suggested the PUC regulate door-to-door and telemarketing sales in its proposed rules. The PUC declined to extend its consumer protection rules to regulation of door-to-door and telemarketing sales, finding there is inadequate information in the record suggesting a need to do so at this time.

The Retail Energy Supply Association (RESA) was supportive of the proposed amendments with two modifications to the contract provision section. One appears to be based on a misunderstanding of the PUC proposal. Referencing Part II.D.2 of the proposed rules, entitled Term of Service, RESA stated, “[t]he Commission proposes providing customers an opportunity to rescind their choice of NPP prior to beginning to take service from such NPP.”⁵ RESA misunderstood the purpose of the proposed rule, which is to ensure customers have notice of the time by which they must contact the NPP prior to the end of the term so that service with the NPP is not extended beyond the term

⁵ Comments of RESA, 3. http://www.ripuc.org/eventsactions/docket/4503-RESA-Comments_6-16-14.pdf.

of the contract. Referencing the same provision, RESA also contended that the timeframe needed by the electric distribution company to switch a customer should be published. But this information is currently contained in National Grid's terms of service for NPPs. National Grid states that it requires at least two business days and will transfer the customer on the next meter read date.

To address both of RESA's concerns, the PUC added language to the proposed rules to clarify its intent and to ensure NPPs are able to find the information. The added language, applicable to one of the required provisions that must be included in all contracts, is underlined in the following paragraph:

2. Term of service, including the date by which a customer must contact the NPP if he or she seeks to disenroll at the end of the term to avoid extending service with the NPP beyond the initial term, such date must allow the NPP to contact [name of electric distribution company] in sufficient time to switch the customer back prior to entry into the customer's next billing cycle, as set forth in the electric distribution company's tariffs on file with the PUC.

RESA also proposed a revision to the provision setting forth the methods by which a customer may cancel service. The proposed revision does appear to improve the provision. RESA's proposed change clarified that email and electronic means are acceptable, rather than "may be" acceptable. RESA also moved "mailing of a letter" closer to "third-party verification," to address communications with customers who lack an internet connection. RESA also requested the provision apply to only to residential customers as it has found business customers "typically have internet connections."⁶ The PUC declined to adopt RESA's proposal to the extent it would be limited to residential customers, but accepted the remainder. Part II.D.9 now states:

Method by which a customer may cancel service through the NPP. While sending an e-mail or by other electronic means may be acceptable, an additional method

⁶ Comments of RESA, 5.

by which a customer without internet access may cancel service must be provided, such as by mailing a letter or by a telephone call with third-party verification

National Grid proposed one change to the contract provision related to the notification of the market adjustment, to make that language more clear. The PUC agreed clarification was necessary.⁷ Accordingly, Part II.D.11 now states that the contract must contain the following: A statement that there may be a market adjustment charged or credited to the customer by [name of electric distribution company] on his or her last utility bill under which the customer is enrolled in standard offer service.

On July 16, 2014, the Division transmitted an email to the PUC noting an inconsistency in the PUC's adopted rules. According to the Division, Part III.H.2 could be read to require PUC review of Division decisions, in conflict with the intent to move away from such practice. At an Open Meeting held on July 17, 2014, the PUC agreed that there had been an oversight in not removing the language that could create confusion. Accordingly, on July 21, 2014, the PUC provided a notice to solicit further comments on additional proposed changes with a response date of August 20, 2014. No further comments were received.

At an Open Meeting held on September 19, 2014, the PUC voted unanimously to finalize the proposed rules as further amended on July 17, 2014. The PUC noted that the State of Connecticut has enacted comprehensive legislation designed to govern the activities of competitive electric suppliers in Connecticut and the PUC is closely monitoring the dockets opened by the Public Utilities Regulatory Authority in response to the laws. However, at this time, based on the number of customer complaints received by

⁷ Comments of National Grid, 2. [http://www.ripuc.org/eventsactions/docket/4503-NGrid-Comments\(6-16-14\).pdf](http://www.ripuc.org/eventsactions/docket/4503-NGrid-Comments(6-16-14).pdf).

the Division, the PUC believes that, while necessary to promulgate amendments to the Consumer Protection Requirements for Nonregulated Power Producers, further reforms are unnecessary at this time. If the situation in Rhode Island changes and it appears the rules are not adequately protecting customers, the PUC will conduct a further review and adopt any necessary protections for customers as required by the Utility Restructuring Act.

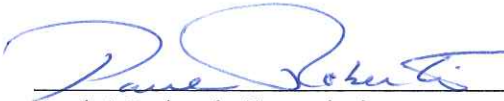
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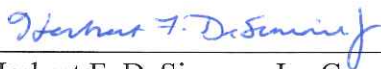
EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 20, 2014 PURSUANT TO OPEN MEETING DECISIONS ON JUNE 24, 2014 AND SEPTEMBER 19, 2014. FINAL RULES FILED WITH THE SECRETARY OF STATE'S OFFICE ON SEPTEMBER 30, 2014. REPORT ISSUED ON FEBRUARY 4, 2015.

PUBLIC UTILITIES COMMISSION




Margaret E. Curran, Chairperson


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