

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES & CARRIERS

Legal Section

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June 19, 2020

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Docket No. 5015

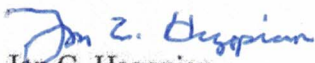
Dear Ms. Massaro,

Attached for filing with the Commission, please find two documents:

EXHIBIT A: Memorandum from the Division's expert consultants addressed to the Division dated June 15, 2020 detailing their substantive review and recommendations regarding the proposed LCP Standards; and

EXHIBIT B: Memorandum from the Division to the Commission dated June 16, 2020 addressing certain typographical errors and legal concerns with the propose LCP Standards.

Very truly yours,


Jon G. Hagopian

Deputy Chief of Legal Services, DPUC

EXHIBIT A

Memorandum

To: Rhode Island Division of Public Utilities and Carriers
Attention: Mr. Leo Wold
Mr. John Bell

From: Gregory L. Booth, PE; Gregory L. Booth, PLLC
Linda Kushner; L. Kushner Consulting, LLC

Date: June 15, 2020

Subject: **Docket No. 5015 – RIPUC Least Cost Procurement Standards**

Introduction

Pursuant to R.I. Gen. Laws § 39-1-27.7(a), the Public Utilities Commission (PUC) adopts standards and guidelines for System Reliability Procurement and Energy Efficiency and Conservation Procurement (LCP Standards). These LCP Standards are subject to periodic review and appropriate amendment by the PUC no less frequently than every three (3) years. In Docket 5015, the PUC conducted a review of LCP Standards through technical sessions and by soliciting comments from interested parties. Subsequently, the PUC further revised and amended the LCP Standards, filing a draft for public comment.

Mr. Booth and Ms. Kushner, consultants to the Division, reviewed the PUC draft LCP Standards with a focus on System Reliability Procurement and National Grid's broader distribution planning and utility service requirements. Our review resulted in several observations, suggested edits, and requests for clarification. This joint memorandum provides detailed comments for the Division's consideration and adoption in response to the PUC's request for public comment.

Comments on Draft LCP Standards

1. Section 1.1(E) states that *"(t)he PUC's guidance on rate design, goals for the electric system, and benefits and costs shall apply to both electric and natural gas System Reliability Procurement and Energy Efficiency and Conservation Procurement, as defined below and to the extent possible (emphasis added).¹"* This purpose statement is clarified by footnote (1) which states that *"(t)he application would not apply to instances in which realities and conditions in the gas utility are not reasonably analogous to the electric utility. Per the definition of System Reliability Procurement, the application would not apply to all gas system procurement proposals (for example the annual Gas Infrastructure, Safety, and Reliability Plans) or gas supply procurement, but would only apply to portions of those proposals that met the procurement definitions in Section 1.2."*

The footnote specifically addresses gas infrastructure as a type of project that would be excluded from the requirements, but per the definition of System Reliability Procurement ("SRP"), the application would not apply to all electric system procurement proposals, including those in the

annual Electric ISR Plan. For clarity, the Division recommends that the footnote be revised to reference electric system procurement proposals as follows:

Footnote (1) "The application would not apply to instances in which realities and conditions in the gas utility are not reasonably analogous to the electric utility. Per the definition of System Reliability Procurement, the application would not apply to all electric and gas system procurement proposals (for example the annual Electric and Gas Infrastructure, Safety, and Reliability Plans) or electric and gas supply procurement, but would only apply to portions of those proposals that met the procurement definitions in Section 1.2."

In addition, the last phrase in 1.1(E) states "to the extent possible." The phrase is ambiguous and is difficult to apply. The Division proposes the following alternative language to clarify when a project is subject to the PUC's guidance (e.g. meets the definition along with any additional requirements within the Standards), while removing ambiguity:

"The PUC's guidance on rate design, goals for the electric system, and benefits and costs shall apply to both electric and natural gas System Reliability Procurement and Energy Efficiency and Conservation Procurement that meet the definitions below and guidelines in these Standards."

See further discussion in 1.2 (C).

2. Section 1.2(C) provides a proposed definition of System Reliability Procurement as follows:
"Procurement to meet or mitigate a gas or electric distribution system need or optimization from a party other than the gas or electric utility² that provides the need or optimization by employing diverse energy resources, distributed generation, or demand response."³

For SRP projects, the Division interprets the application of the Standards through two distinct qualifiers. The proposed project must meet the definition in Section 1.2 and also meet the proposed screening criteria as part of Section 4.4. The distinction is important in cases such as Section 1.1(E), discussed above, that establishes guideline applicability based solely on the project definition. When viewing the SRP definition alone, and in particular the phrase "(p)rocurement to meet or mitigate a gas or electric distribution system need," it could be interpreted that any procurement is subject to the Standards regardless of the screening criteria in Section 4.4. Footnotes 2 and 3 attempt to clarify types of projects that could be considered SRP. However, to avoid confusion, the Division recommends a footnote revision or an additional footnote to the definition of SRP stating that the Standards apply only to those SRP projects meeting the screening criteria in Section 4.4.

The Division also observes that the phrase "(p)rocurement to meet or mitigate a gas or electric distribution system need or optimization from a party other than the gas or electric utility" can be read in two ways. One interpretation is that both procurement and optimization are from a party other than the gas or electric utility. The other interpretation is that procurement and optimization are separate activities, with optimization provided by a party other than the gas or electric utility. The Division seeks clarification.

3. Section 1.2(E)(i) provides a definition of Electric System Needs that includes customer requests. Considering this component in the context of the definition of SRP implies that projects subject to

the LCP Standards would include procurement to meet a customer request. The Division notes that customer requests are part of the utility's core business and non-delegable duty to provide or extend new services facilities in a timely manner when requested by any new customer, or customer requesting an upgrade. Due to their non-discretionary nature, the Division does not recommend that customer request projects be considered in the context of SRP.

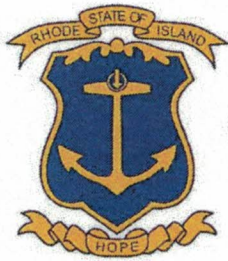
4. Section 1.3(F) provides a definition for Optimization of Distribution System Performance, yet the phrase is not used in the document.
5. Section 1.3(A) states that "(s)ystem Reliability Procurement shall be lower than the cost of the **best alternative Utility Reliability Procurement** (emphasis added)". The term "best" is undefined, highly subjective and could result in any number of alternatives depending on the viewpoint of the party that decides what is "best". The Division proposes replacing "**best alternative Utility Reliability Procurement**" with "distribution company's recommended alternative Utility Reliability Procurement." This aligns with distribution planning studies where the company identifies system issues, evaluates alternatives, and derives a recommended solution. In this context, the solution is considered the recommended alternative Utility Reliability Procurement.
6. Section 1.3(B) (v) proposes that "(a)nalyses of the impacts of investments shall be forward-looking, capturing the difference between costs and benefits that would occur over the life of the investments with those that would occur absent the investments." The guidance suggests that benefit cost analyses must consider a base case in which the distribution company makes no procurement investment, or a "do nothing" case. The Division seeks clarification, specifically for SRP projects, that the guidance requires benefit cost analysis under three scenarios: 1) no investment (a base case or "do nothing"), 2) recommended alternative Utility Reliability Procurement, and 3) proposed SRP. See further discussion in regarding 1.3(H) below.
7. Section 1.3(H) establishes guidance to determine the *Lower than the cost of the best alternative Utility Reliability Procurement*. Section 1.3(H)(i) requires the distribution company to compare the cost of SRP to the best alternative Utility Reliability Procurement. The guidance is silent on the need to compare the SRP and Utility Reliability Procurement to a base case, or "do nothing", which is implied in Section 1.3(B). The Division seeks clarification. Additionally, the Division reiterates the proposed revision from "**best alternative Utility Reliability Procurement**" to "distribution company's recommended alternative Utility Reliability Procurement" throughout Section 1.3(H) and the remaining document.
8. The last sentence of Section 1.3(H)(i) should be revised from (emphasis added):
"*The distribution company shall provide specific costs included in the **Cost of Energy Supply or and the Cost of Energy Efficiency or Conservation.***"
to:
"*The distribution company shall provide specific costs included in the Cost of System Reliability Procurement.*"
9. Section 1.3(H)(iii) references "*Total Resources Cost Test*" which is not defined or used elsewhere in the document.

10. Section 4.3(B) states that *"(t)he Three-Year SRP Plan should be integrated with the distribution company's distribution planning process and be designed, where possible, to complement the objectives of Rhode Island's energy policies and programs as described in Section 3.2.A."*

While the Division fully supports transparency and coordination between the distribution company's multiple regulatory requirements, there is concern with a requirement to integrate separate regulatory processes. As an example, the distribution company performs its distribution planning and produces an annual Infrastructure, Safety, and Reliability Plan ("ISR Plan") guided by a robust regulatory process that is separate and distinct from LCP Standards and SRP. Although certain SRP standards may influence distribution planning, such as establishing screening criteria for potential SRP projects, the Division does not consider it practical to *integrate* a Three-Year SRP Plan developed under the LCP guidelines with the annual distribution planning process that is directed under a separate regulatory proceeding. This Division supports the need for the distribution company to highlight where SRP influences distribution planning.

11. Section 4.4(A)(ii) references Section 4.4.C.i which does not exist.
12. Section 4.4(A)(iv) states that the distribution company shall provide the *"proposed general procurement processes used by the company to procure market-sourced System Reliability Procurement and Utility Reliability Procurement."* The Division requests clarification on what is meant by a market-sourced procurement, whether the guideline applies to any Utility Reliability Procurement or only the alternative Utility Reliability Procurement being compared to the System Reliability Procurement, and if the guideline is intended to apply to traditional Utility Reliability Procurement projects such as a substation expansion performed by an electric distribution company.
13. Section 6.3(E) states that *"(t)he distribution company shall submit draft Three-Year Plans to the Council and the Division of Public Utilities and Carriers for their review and comment **annually**"* (emphasis added). The Division requests clarification on why a draft three-year plan is required annually.

EXHIBIT B



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Memorandum

To: Rhode Island Public Utilities Commission
From: Rhode Island Division of Public Utilities and Carriers
Re: Docket No. 5015 - Proposed Least Cost Procurement Standards
Date: June 16, 2020

1.2(H) – Rhode Island Benefit Cost Test (RI Test)

Comment: Change “adopted” to “as guided by”. The document that was the product of Docket No. 4600A is a non-binding, advisory guidance document. Appendix B was “adopted” by the PUC in Order No. 22851 in Docket No. 4600, not in 4600A.

1.2(I) – Cost Test

Comment: Insert “are” before “relevant”. This is a typographical error.

1.2(N) – Annual Energy Efficiency and Conservation Procurement Plan

Comment: Insert “one year” after “spanning”. This is a typographical error.

1.3(C) – Cost-Effective

Comment: In subsection (i), add “, and subject to G.L. § 42-35-2.12, as amended” after “4600A.” Docket No. 4600A is a non-binding, guidance document. Referring to a guidance document in a standard does not render the guidance document legally binding. Reference to § 42-35-2.12 makes it clear that ratepayers retain all their rights under law when a standard incorporates or refers to a guidance document.

1.3(E) – Prudent

Comment:

- Change “may provide bill impacts” to “shall provide bill impacts” in 1.3(E)(ii). Understanding bill impacts is critical to assessing how an investment proposal affects ratepayers and ultimately the Commission’s statutory responsibility under Title 39 to approve “just and reasonable” rates. In discussions regarding the draft Standards, NGrid, OER and the DPUC agreed that NGrid would provide bill impacts of all proposed investments.
- Add as 1.3(E)(v) “In order to continue to monitor the application of the RI Test, the distribution company shall provide a comparison of its cost effectiveness analysis under the Total Resource Cost (TRC) Test, as approved by the PUC in Docket No. 4580, to the RI Test as part of its 2021-2023 Three-Year Plan and for each 2021, 2022 and 2023 Annual Plan filings.”

In Order No. 23446, the Commission recognized that “[t]he impacts of the new Rhode Island Test are not yet clear, but may result in higher budgets and higher system benefit charges. As EERMC candidly acknowledged, the Rhode Island Test may result in some programs that were marginally cost-effective being identified as more solidly cost effective.”

The Commission’s reasoning is still relevant for the upcoming Three-Year Plan. The Commission has adopted Targets that will, in all probability if embedded in the 2021-2023 Three-Year Plan, result in “higher budgets and higher system benefits charges.” At the same time, NGrid and EERMC have candidly acknowledged that efficiency gains from programs such as the Energy Star Lighting Program are declining. Indeed, the TRC cost comparison in the current 2020 Annual Plan shows that some programs could be viewed as “marginally cost-effective” when non-energy impact costs are excluded from the B/C analysis. See e.g., Income Eligible Multi-Family - Electric (B/C = 1.03), Residential New Construction – Gas (B/C=.60), Energy Star HVAC – Gas (B/C = .85).

In the proposed Standards, the Commission has required that “[t]he portfolio must be cost-effective and programs must be cost-effective.” Section 3.2(N). Providing a TRC cost comparison for the EE and SRP portfolio and programs will continue to provide insight as to which programs are marginal or “more solidly cost effective” in light of the higher targets and the changing efficiency gains of various EE and SRP programs.

In discussions regarding the draft Standards, NGrid, OER and the DPUC agreed that NGrid would provide a TRC Test Comparison for each program NGrid proposed.

1.4 – Performance Incentive Plan

Comment:

- In Section (A)(i), change "will propose" to "may propose". The Division can find no legal authority in the Rhode Island General Laws **requiring** the distribution company to propose performance incentives.
- Delete (A)(ii) "[t]he PI may be designed to promote other objectives that are consistent with other goals of the distribution system." G.L. § 39-1-27.7.1(e)(3) authorizes a PI for the electric distribution company that provides a "shared-savings mechanism" as a result of achieving the purposes of this section. G.L. § 39-1-27.7(e) authorizes "additional compensation" based on the level of success in "mitigating the cost and variability of electric and gas services through procurement portfolios." To the Division's knowledge, no legal authorization exists to support implementation of a broad-based PI that is designed to promote "other objectives that are consistent with other goals of the distribution system."
- In Section 1.4(A)(iii) add "subject to G.L. § 42-35-2.12, as amended" after "4943" based on similar reasoning to the Comment to 1.3(C)(i) *supra*.

2.2(A) – Purpose

Comment: Section "1.2K and J" should be changed to "1.2M and N". This is a typographical error.

3.2(N) – Cost-effectiveness

Comment: Subsection iii. and iv. should be changed to i. and ii. These are typographical errors.

3.3(B)(iv) – Testimony

Comment: Subsections (3), (4), (5), (6) and (7) need to be renumbered to (1), (2), (3), (4) and (5). These are typographical errors.

3.3(D) – Timing

Comment: Pursuant to G.L. § 39-1-27.7(c)(4), Three-Year EE Plans must be filed by "triennially on or before September 1 . . . through September 1, 2024." The Division does not believe the Commission possesses the legal authority to alter the statutory due date for the filing of the Three-Year EE Plan even if it includes an Annual EE Plan filing. Accordingly, in 3.3(D)(i), "October 15, 2020" should be amended to "September 1, 2020".

4.3 - General Plan Design Principles

Comment: Relative to Section (B), it is the Division's understanding that NGrid's distribution planning process is distinct from the SRP planning process. While the clause is not mandatory, integration of the two planning processes may not be feasible.

4.6 – Timing

Comment: Pursuant to G.L. § 39-1-27.7(c)(4), the Three-Year SRP Plan must be filed by NGrid "triennially on or before September 1 . . . through September 1, 2024." The Division does not believe the Commission possesses the legal authority to alter this due date to "on or before November 21, 2020 and triennially thereafter." Accordingly, in Section 4.6(A), "November 21, 2020" should be amended to "September 1, 2020".

Chapter 6 – Role of the Council in Plan Development and Approval

Comment: By and large, the provisions in Chapter 6 are mandatory, directing how EERMC and the distribution company should interact with one another relative the development and approval of the EE and SRP Plans. If accepted as "guidelines" only (as they are denominated in Chapter 6), the Division does not possess a concern with this approach so long as the guidelines, themselves, do not conflict with existing law.

In connection with this latter point, the Division again points out that pursuant to G.L. § 39-1-27.7(c)(4), the Three-Year EE and SRP Plans must be filed "triennially on or before September 1 . . . through September 1, 2024." Directing EERMC to vote on a combined EE Three-Year / Annual Plan by September 15 or a Three-Year SRP Plan by October 21 appears to conflict with this statutory mandate.

Additionally, G.L. § 39-1-27.7(c)(iv) provides: "In developing the plan, the distribution company **may** seek the advice of the commissioner and the council" (emphasis added). Guidelines that provide "the distribution company **shall** . . . propose a process for Council input and review of its EE [or SRP] Plans" or "**shall** submit a draft Annual Plan to the Council" (emphasis added) appear contrary to the statute's explicit direction.