

## STATE OF RHODE ISLAND

### DIVISION OF PUBLIC UTILITIES & CARRIERS

#### Legal Section

89 Jefferson Boulevard

Warwick, Rhode Island 02888

(401) 941-4500

(401) 941-9207 – Fax

September 24, 2020

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

#### **Re: Docket No. 5042**

Dear Ms. Massaro,

The Division of Public Utilities and Carriers (“Division”) writes to provide the Public Utilities Commission (“Commission”) with its recommendation regarding the Petition of the City of Central Falls (“Central Falls” or “Petitioner”) for Approval of Community Electricity Aggregation Plan (“Petition”) pursuant to R.I. Gen. Laws § 39-3-1.2. The Division’s recommendation is the product of a review that focused principally on the following three areas: (i) the compliance of the Central Falls’ Community Electricity Aggregation Plan (“Plan” or “Program”) with the requirements of R.I. Gen. Laws § 39-3-1.2, (ii) the Petitioner’s request for alternative energy disclosure requirements, and (iii) the potential impact that the Plan may have on Protected Status Customers<sup>1</sup> and Very Low-Income Customers.<sup>2</sup>

---

<sup>1</sup> Rule 1.2(A)(5) of Commission’s Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service 810-RICR-10-00-1 (“Termination Rules”) provides that a “Protected Status Customer” means a residential customer about whom the public utility has evidence that the customer is:

- a. unemployed as demonstrated through verification by DLT that the person is currently receiving unemployment compensation;
- b. elderly or handicapped, as defined by § 1.4(K)(1)(a) of this Part;
- c. recipients of Low-Income Heating Assistance Program (LIHEAP);
- d. seriously ill, as defined by § 1.2(A)(8) of this Part; or
- e. living in a residence where there is domiciled a person under the age of two (2) years and there is a financial hardship.

<sup>2</sup> A “Very Low-Income Customer” is a customer receiving benefits through Medicaid, General Public Assistance and/or the Family Independence Program. See Amended Settlement Agreement, Dkt. 4770 at 25.

To arrive at its recommendations, the Division reviewed the Petition, the Plan and the Direct Testimony of Thomas Deller and Philip Carr; held discussions with representatives of the Petitioner's consultant, Good Energy, and National Grid on August 19, 2020 and August 25, 2020, respectively; and attended the technical conference that the Commission held on September 17, 2020. Subject to compliance with the terms as further set forth herein, the Division recommends that the Commission grant the Petition and approve the Plan.

## **I. Plan Compliance with R.I. Gen. Laws § 39-3-1.2**

The Division will not belabor its analysis of the Plan's legal compliance with R.I. Gen. Laws § 39-3-1.2. In the Division's opinion, the Plan satisfies the requirements of the statute.

The Plan appropriately authorizes aggregation, identifying the majority vote of the Central Falls City Council<sup>3</sup> with the approval of the Mayor.<sup>4</sup>

The Plan also properly provides for its own development<sup>5</sup>, as well as the operation and governance of the aggregation program. That is, the Plan identifies the classes of customers that may participate in the aggregation Program;<sup>6</sup> contains a statement of universal access and equitable treatment for all applicable customers<sup>7</sup>; identifies the organizational structure of the Program;<sup>8</sup> identifies the Program's operations<sup>9</sup>; identifies the Program's funding and sets forth a process for establishing rates<sup>10</sup>; identifies the process of allocating costs among Plan participants<sup>11</sup>; sets out the methods of entering and terminating agreements with other entities<sup>12</sup>; establishes the rights and responsibilities of the participants<sup>13</sup>; provides the method for entering and terminating the

---

<sup>3</sup> Plan at 11-12.

<sup>4</sup> Direct Testimony of Thomas Deller at 1-2.

<sup>5</sup> Plan at 12 (identifies that notice of a public hearing on the Plan was published once a week for two consecutive weeks in The Pawtucket Times on May 2 and May 9, 2020 and that a public hearing on the Plan took place on May 11, 2020).

<sup>6</sup> Plan at 2 (identifies the residential class, A-16 and A-60; commercial class, C-06, G-02, S-05, S-06, S-10 and S-14; and the industrial class, B-12 and G-32).

<sup>7</sup> Plan at 2 (states the Plan provides universal access to consumers by guaranteeing that all consumers in the Applicable Classes will be included in the Program under equitable terms).

<sup>8</sup> Plan at 3-4 (identifies entities that have a specific role in the development, implementation, operation and oversight of Plan).

<sup>9</sup> Plan at 5 (identifies the key operational steps for the Plan following its approval by the Commission).

<sup>10</sup> Plan at 8 (identifies that power supply charges will be set through a competitive bidding process).

<sup>11</sup> Plan at 8 (provides that prices, terms and conditions may differ among consumer classes).

<sup>12</sup> Plan at 9 (provides the process for terminating agreements must comply with the municipal charter and ordinances, federal and state law and regulations).

<sup>13</sup> Plan at 9 (establishes, among other things, the right of all participants to opt-out of the Plan without charge).

agreements with other entities<sup>14</sup>; designates the method for terminating the Program<sup>15</sup>; identifies the terms and conditions under which retail customers who have chosen to opt-out may take service from the aggregated entity<sup>16</sup>; and reserves for the City the right to terminate the Plan by placing customers on Standard Offer Service (“SOS”).<sup>17</sup>

Lastly, the Plan appropriately describes customers’ rights once the Plan is approved. More specifically, the Plan identifies that customers may elect to receive retail supply from another licensed Supplier or the electric distribution company.<sup>18</sup> The Plan also provides that 30 days after the aggregated entity is operational, ratepayers who have not elected an alternative supplier will be transferred to the aggregated entity, subject to an opt-out provision.<sup>19</sup> Following adoption of the Program, the Plan provides that any retail customer may opt out and choose any supplier or provider the retail customer wishes.<sup>20</sup> The Plan requires that the aggregated entity must fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and have the right to opt out.<sup>21</sup> Lastly, the Plan provides that participating ratepayers must be informed of all the charges that are to be made<sup>22</sup>, provides for full disclosure of the SOS rate<sup>23</sup>, identifies how customers may access SOS<sup>24</sup>, and requires that the Plan must be made available to ratepayers without penalty if they were previously on SOS.<sup>25</sup>

## **II. Petitioner’s Request for Alternative Energy Disclosure Requirements**

In addition to contending that the Plan satisfies the legal requirements of R.I. Gen. Laws § 39-3-1.2, Petitioner has also requested that the Commission approve an “alternative process for complying with energy disclosure requirements”. Petition at 2.

---

<sup>14</sup> Plan at 9 (provides the manner for the Municipality to solicit bids for a new supply agreement and plans to continue the Program with the same or a new supplier).

<sup>15</sup> Plan at 9-10 (identifies the manner for terminating Program).

<sup>16</sup> Plan at 3 (describes the rights of consumers to join the Program after having opted out).

<sup>17</sup> Plan at 10 (provides that in the event of termination, consumers return to SOS).

<sup>18</sup> Plan at 9 (provides Plan participants may opt-out of the Program at any time by enrolling with another competitive supplier).

<sup>19</sup> Plan at 7 (after completion of opt-out period, the competitive supplier will enroll into the Program all Applicable Consumers on SOS who did not opt-out).

<sup>20</sup> Plan at 9 (discussing the opt-out process).

<sup>21</sup> Plan at 7 (describing the initial outreach, consumer notification letter and opt-out card that will be forwarded to consumers).

<sup>22</sup> Plan at 7 (provides that the notice prominently states all program charges and the price and primary terms of the Municipality’s competitive supply and compare the price and terms to the current SOS).

<sup>23</sup> Plan at 7 (provides for disclosure of the SOS rate).

<sup>24</sup> Plan at 20 (provides a link to access SOS information though the link does appear to function).

<sup>25</sup> Plan at 20 (provides there is no penalty for leaving SOS).

R.I. Gen. Laws § 39-26-9(c) and 810-RICR-40-05-3.4(B) provide that “energy source disclosures shall be distributed to consumers on a quarterly basis...” Petitioner seeks to satisfy this disclosure requirement by employing “public service announcements, posting at Municipality buildings and postings on the program website.” Petition at 2. Petitioner opines that any requirement for “quarterly direct mailings would be burdensome and expensive, raising the supply price for customers.” Petition at 2.

The Division believes that the term “distributed” contained in R.I. Gen. Laws § 39-26-9(c) and 810-RICR-40-05-3.4(B) is broad enough to include posting the program on a dedicated website as a means of providing customers with relevant information regarding the sources of their energy supply. *See Greater Los Angeles Agency on Deafness, Inc. v. Krikorian Premiere Theatres, LLC*, 2015 WL 12656271 (C.D. Cal. 2015) (posting on website was reasonable method of informing class of information and notice of settlement deadlines). Moreover, the information to be disclosed is for informational purposes and does not implicate the type of notice that would trigger due process concerns. Accordingly, the Division recommends the Commission grant Petitioner’s request to approve an alternative process for complying with energy disclosure requirements through posting on the program’s website.

### **III. The Impact of the Plan On Protected Status Customers and Very Low-Income Customers**

Even though the Plan satisfies the legal requirements of R.I. Gen. Laws § 39-3-1.2<sup>26</sup>, the Division is concerned that the Plan may adversely impact Protected Status Customers and Very Low-Income Customers. When The Narragansett Electric Company, d/b/a National Grid (“NGrid”) receives a payment on behalf of customers, the payments are applied first to delivery service obligations and then to supply service obligations. For Protected Status Customers who elect to remain with NGrid no issue should arise. However, Protected Status Customers who are transferred to a competitive supplier under the Plan (either knowingly or unknowingly) and then fall behind on their obligations, could be subject to the collection activities of the supplier (telephone calls, collection letters, *etc.*) for the supply service portion of their bill without the protections afforded to them by the Termination Rules. At the same time, because the payment of customer delivery service obligations is given priority over the payment of customer supply service obligations, the delivery service component of the customer’s bill may be reduced or discharged, while the supply service component remains due and owing. Protected Status customers’ recourse will be to opt-out of the Plan and return to NGrid for both delivery and supply services. In the Division’s experience, however, it can take as many as 45-60 days for a customer to return to NGrid from a competitive supplier. For the period that a Protected Status Customer receives competitive supply plus perhaps as many as 45-60 days after any opt-out has been exercised, the Protected Status Customer will accrue supply service obligations that will not be subject to Termination Rules protections.

Similarly, it is the Division’s understanding that Very Low-Income Customers who have been scheduled for shut-off and are transferred to a competitive supplier under the Plan are ineligible to enter into an arrearage management payment (“AMP”) plan pursuant to R.I. Gen. Laws 39-2-1(d)(1). Again, these customers’ recourse will be to exercise their opt-out right and return to NGrid for supply and delivery service. However, they may remain on competitive supply for as many as

---

<sup>26</sup> The link provided in the filing to provide consumers access to SOS rate information (Plan at 20) does not function. This deficiency should be remedied prior to approval of the Plan.

45-60 days after exercising their opt-out right, and the obligations incurred to competitive suppliers by Very Low-Income Customers, in all probability, will not be subject to AMP plan terms, conditions and forgiveness. These obligations may be material in view of such customers' financial wherewithal.

NGrid provides customers a "Budget Billing Plan" that is designed to smooth out customers' energy bills during the course of the year. In Rhode Island, it is the Division's understanding that customers who use another company for their supply only have NGrid delivery charges included in their Budget Plans. In Massachusetts, it is the Division's understanding that customers who use another supplier have both their delivery and supply charges included in their Budget Plans. Customers who are transferred to a supplier under the Plan and desire or require a Budget Billing Plan will not have the benefit of an effective plan unless they opt-out of the Plan and return to NGrid for both supply and delivery services.

Pursuant to R.I. Gen. Laws § 39-1-27.13, the "Commission may implement a purchase of receivables program where the electric distribution company purchases the receivables of a nonregulated power producer at a discount rate that is then offset from the monthly payments the electric distribution company makes to the nonregulated power producer if the commission finds that the benefits of the program to ratepayers would exceed the costs to ratepayers." The Company has implemented a purchase of receivables program in Massachusetts. Customer complaints about collection activities from suppliers and the absence of termination protections, *etc.*, at least anecdotally, do not appear to be prevalent in Massachusetts.

#### **IV. Conclusion**

Based on the foregoing, the Division recommends that the Commission grant the Petition and approve the Plan, subject to the following requirements:

- i) Within two (2) years from approval of the Plan (or such other time as the Commission allows), Central Falls must 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<sup>27</sup>; and
- ii) Central Falls must report the results of the Plan solicitation and proposed agreement awards to the Commission and Division.<sup>28</sup>
- iii) Petitioner should promptly forward a copy of the Petition, Plan, Testimony and Procedural Schedule for Dkt. 5042 by e-mail and by regular mail to the George Wiley Center, The Center for Justice and the Blackstone Valley Community Action Program ("CAP") and/or other appropriate CAP agency; and
- iv) As part of its Outreach and Education Plan see Plan at 13-17, Petitioner should conduct at least one workshop with the Blackstone Valley Community Action

---

<sup>27</sup> R.I. Gen. Laws § 39-3-1.2(a).

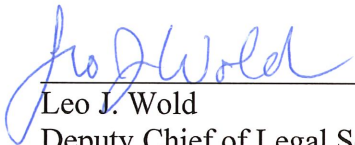
<sup>28</sup> Id.

Program (“CAP”) and/or other applicable CAP agency, the George Wiley Center and the Center for Justice to educate these groups regarding the terms of the Plan and the impact that the Plan may have on Protected Status and Very Low-Income Customers, including but not limited to: a) the availability or unavailability of the Termination Rules and the AMP plan for Protected Status and Very Low-Income Customers both during and after they have been transferred to a competitive supplier, b) the various electricity supply products that are available under the Plan by choice or by default and how the price of each product may compare to each other and SOS, and c) the actions that Protected Status and Very Low Income Customers must take to elect to remain with NGrid or to opt-out of the Plan.

The Commission should also expeditiously explore the merits of any purchase of receivables program pursuant to R.I. Gen. Laws § 39-1-27.13 and review NGrid’s Budget Billing Plan for customers who use another company for their supply.

Respectfully submitted,

Division of Public Utilities and Carriers



---

Leo J. Wold  
Deputy Chief of Legal Services

cc: Service List