

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: PETITION OF TOWN OF PORTSMOUTH :
FOR THE APPROVAL OF THE PROPOSED :
COMMUNITY ELECTRICITY AGGREGATION : **DOCKET NO. 5169**
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. Portsmouth's Filing

On July 21, 2021, the Town of Portsmouth (Municipality or Portsmouth), 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 Richard Talipsky, Portsmouth's Director of Business Development, 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 town initiates the process

⁴ R.I. Gen. Laws § 39-3-1.2(f).

⁵ Portsmouth's Filing; <http://www.ripuc.ri.gov/eventsactions/docket/5169-Portsmouth-Petition-CEAPlan%207-22-21.pdf>.

⁶ Petition at 1.

⁷ Plan at 4-5; 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).

through a majority vote of the council. As part of the Plan, the Municipality provided a copy of a Resolution passed by the Portsmouth Town Council on June 22, 2021 authorizing and directing the Town Administrator to develop an aggregation plan.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, following a review of the competitive solicitation led by the City of Providence, on June 23, 2020, 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 July 27, 2020 and was subject to a hearing on August 11, 2020, 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 Portsmouth Times on July 30, 2020 and August 6, 2020.¹¹ At the conclusion of the hearing, 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,

⁸ Plan at 11; Portsmouth Town Council Agenda (June 22, 2020); <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\Notices\4204\2020\366836.pdf>; Portsmouth Town Council Minutes of June 22, 2020; <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\Minutes\4204\2020\369467.pdf>.

⁹ Plan at 12.

¹⁰ Portsmouth Town Council Minutes of August 11, 2020; <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\Minutes\4204\2021\387743.pdf>.

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. Portsmouth also posted its notice on the Rhode Island Secretary of State's website in accordance with the Open Meetings Act; <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\Notices\4204\2020\370255.pdf> (Aug. 6, 2020).

¹² Plan at 12; Portsmouth Town Council Minutes of August 11, 2020.

may enter into service agreements to facilitate for those loads the sale and purchase of electricity....¹³

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

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.

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).

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 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

¹⁶ R.I. Gen. Laws § 39-3-1.2(d).

¹⁷ R.I. Gen. Laws § 39-3-1.2(e).

¹⁸ *Id.*

¹⁹ Petition at 2, referencing prior community aggregation dockets [5042, 5047, 5061, and 5062]. 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 2.

the aggregation to opt out at any time to either return to Last Resort Service or to choose an alternative competitive supplier.²¹

Addressing an issue specific to low-income customers, Mr. Roche explained that eligible customers on the low income distribution rate who do not opt out of the aggregation will continue to receive their low income discount. Whether or not these customers will be eligible for an arrearage management plan, however, will depend on the Commission's decision on whether to allow a purchase of receivables program.²² Good Energy subsequently filed its Electricity Services Agreement which governs supplier behavior related to collections activities under either scenario.²³

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 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.²⁴ 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

²¹ *Id.*

²² Roche Test. at 7.

²³ Electricity Services Agreement Template; [http://www.ripuc.ri.gov/eventsactions/docket/5169-Portsmouth%20ESA%20Addendum%20\(8-2-21\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/5169-Portsmouth%20ESA%20Addendum%20(8-2-21).pdf). Shortly following the instant filing, the Commission approved a Purchase of Receivables program with the requirement that National Grid file updated terms and conditions. At the time of the open meeting decision in this matter, the new terms and conditions were under review in Docket No. 5073.

²⁴ Roche Test. at 8.

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.²⁵

Mr. Carr 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. Within five (5) business days 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.²⁶

Finally, Mr. Roche discussed the education and outreach strategy associated with the aggregation. He 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,²⁷ distribution of direct marketing materials,²⁸ 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

²⁵ Plan at 2-5.

²⁶ Roche Test. at 10-11.

²⁷ Roche Test. at 11-12. The Plan identified the following local groups Good Energy planned to target for in-person presentations: Portsmouth Senior Center; Portsmouth High School Parents Helping Students Association; Portsmouth-Tiverton Rotary Club; Aquidneck Island Planning Commission; and Portsmouth Economic Development Committee. (Plan at 16).

²⁸ The Plan identified for distribution of marketing materials, in addition to the above-referenced local groups, the libraries and municipal offices and local faith groups will be considered. (Plan at 16).

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.²⁹ Responding to Division of Public Utilities and Carriers' (Division) recommendations in prior matters, Mr. Roche indicated that Good Energy had already met with the community organizations George Wiley Center and Center for Justice to discuss the plan.

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.³⁰

III. Hearing

The Act requires the Commission to conduct a public hearing as part of its review of a community electricity aggregation plan. On August 11, 2021, the Commission held a public hearing to solicit public comment in this matter. Members of the public had the option of appearing in person or remotely through Zoom conferencing.³¹ No members of the public participated.

IV. Division's Position

On September 19, 2021, legal counsel for the Division submitted a letter positing that the Municipality's plan met the requirements of the statute. The Division noted that although the Commission has approved a purchase of receivables plan, it has not yet approved terms and conditions for implementation, nor is implementation expected until 2022. Therefore, the Division recommended the Commission require Portsmouth to conduct at least one workshop with the local

²⁹ Roche Test. at 12.

³⁰ *Id.*

³¹ The Commission had previously held a technical session on September 17, 2020 to gain a better understanding of the details of the proposals from Central Falls, Barrington, Providence, and South Kingstown.

Community Action Program, the George Wiley Center, and Center for Justice. The Division also requested an order that all filings made to the Commission in accordance with the statute or plan also be made with the Division.³²

V. Commission Findings

At an Open Meeting held on September 23, 2021, the Commission considered the record in this matter. Finding that the Plan 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.

The Electricity Services Agreement filed in this docket includes provisions for implementation with and without finalization of Purchase of Receivables Terms and Conditions. It was in this context, the Division recommended that the Municipality's Outreach and Education Plan include at least one workshop with the relevant local agencies, which may be the local CAP agency. The Division had identified specific agencies and the Municipality had listed others. The Commission notes that each community has their trusted local partners which may differ from those identified by the Division and finds that such outreach is important regardless of the status of a Purchase of Receivables plan. This will continue to be an important component to future aggregation filings.

³² Wold Letter (Sept. 9, 2021); [http://www.ripuc.ri.gov/eventsactions/docket/5169-DIV-Recommendation%20\(9-9-21\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/5169-DIV-Recommendation%20(9-9-21).pdf).

Also, 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

Finally, the issue of ongoing reporting requirements was still outstanding in September. On August 6, 2021, Good Energy submitted proposed reporting requirements in the prior community aggregation matters and those comments are under review. Following the decision in this matter, the Commission solicited comments on Good Energy's proposal from the parties. Those comments were due October 21, 2021 and none were received. After reviewing Good Energy's proposal at an Open Meeting held on November 5, 2021, the Commission adopted the reporting requirements applicable to the aggregations approved prior to that date, finding them to be reasonable. Portsmouth shall comply with the reporting requirements adopted by the Commission.

Accordingly, it is hereby,

(24261) ORDERED:

1. The Town of Portsmouth's Petition for Approval of Community Aggregation Plan is hereby approved.
2. The Town of Portsmouth and Good Energy, L.P., shall conduct at least one workshop with a relevant local agency which may be the local Community Action Program.
3. Within two years from approval of the Community Aggregation Plan, the Town of Portsmouth 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.

4. 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.
5. The Town of Portsmouth 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.
6. The first Annual Report shall be due thirteen months following the implementation of the respective municipality's aggregation plan.
7. The Town of Portsmouth 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 DECISIONS ON SEPTEMBER 23, 2021 AND NOVEMBER 5, 2021. WRITTEN ORDER ISSUED NOVEMBER 12, 2021.

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.