BEFORE THE STATE OF RHODE ISLAND

PUBLIC UTILITIES COMMISSION

AND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

Rule Identifier ERLID 8539 - Division Case Docket No. D-16-112

Proposed Rulemaking: Nonregulated Power Producer Consumer Bill of Rights

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COMMENTS ON PROPOSED RULEMAKING BY ARCHER ENERGY, LLC.

INTRODUCTION:

These comments, now respectfully submitted by Archer Energy, LLC ("Archer"), are intended to forward the progress and further development of the retail electric shopping market in Rhode Island to protect Rhode Island utility customers and their shopping choices. The Rhode Island Division of Public Utilities and Carriers ("Division"), as directed by statute (RI Gen. Laws 39-26.7), seeks comments from interested parties on the proposed Nonregulated Power Producer Consumer Protection rules it intends to adopt.

Archer participated in the public hearing held on April 20, 2017. Archer appreciates the invitation from the Division for interested parties to provide comments on these proposed rules. Archer respectfully requests that the Division consider and adopt the additions and modifications as proposed by Archer in the comments below.

RHODE ISLAND GENERAL LAWS:

Effective in 2009, Rhode Island encouraged retail access by non-regulated power producers to utility customers:

> To promote economic development and the creation and preservation of employment opportunities within the state, each electric distribution company, except Pascoag utility district, a quasi-municipal corporation, district, and subdivision of the state ("electric distribution company"), shall offer retail access from nonregulated power producers to all customers.[1]

The law also required the Electric Distribution Companies ("EDCs") to provide power in the event that a customer needed to return to receiving generation directly from the utility. Archer offers its comments as a way to not only ensure retail customers are protected but also to protect the choices customers make in Rhode Island's retail electric marketplace. Archer will first offer comment on the proposed rules, followed by recommendations for additions to the proposed rules, in order to ensure the continuing development of a robust retail market place.

COMMENT ON RULES AS PROPOSED:

2.4.B.3.b: Archer proposes that the commodity costs be eliminated as proposed in this rule. Otherwise, each NRPP would be required to breakout all of its component costs in its total supply costs. Archer believes this would just confuse customers because it would add many terms foreign to most utility customers. For easy and accessible comparison, customers should be able to compare prices without becoming confused by the underlying detail. Further, if this rule is implemented, then the LDC would need to break their charges out in order to make a meaningful comparison. This requirement

[1] **RIGL 39-1-27.3(a).**

would cause additional programing for the LDCs billing system to handle these types of detailed charges. Therefore, Archer recommends that the breakout of components and costs should be eliminated.

2.4.B.4: The rule as proposed provides the choice of dual billing only to the customer. As such, the default is for NRPPs to bill through the utility. While we believe utility consolidated billing provides the best prospect for growth in the retail market and is most convenient for the customer, there are changes to National Grid's payment priority structure that need to be addressed in order to make the playing field level for both NRPPs and the LDC – and most importantly, to protect and encourage the customer's choice to shop. Without making needed changes to this structure, NRPPs are at a disadvantage to the LDC; the current priority structure is hindering the growth of the competitive marketplace. In order to ensure shopping continues and NRPPs collect their portion of the bill in a timely manner, Archer recommends the following changes:

1. **Payment plan prioritization:**

When National Grid allows a customer to enter into a payment arrangement, they are allowing the customer to repay a specific amount of arrearage charges over a set period of time. In addition to the payment arrangement, the customer continues to be responsible for paying their current utility distribution and generation charge. However, the current structure does not provide the full time frame allocated in the payment agreement. Instead, when a customer makes a payment that is intended to cover the payment arrangement amount, the current distribution amount and the current generation amount, the full amount of the payment is allocated to the payment plan balance. This is disingenuous to the customer. They were promised a longer period of time to repay the obligation, while still being able to keep current on their ongoing obligations, but instead National Grid applies the entire amount paid to the payment arrangement balance. This is an illogical, confusing practice that disadvantages the customer. A payment plan customer believes they are paying their full bill, when in actuality, all they are

doing is speeding up the payment plan cycle. This, is in our opinion, is a deceptive billing practice applied by the LDC where they indicate payment is for the full amount due, when it is really just truing up LDC arrearages. This is exactly what proposed rule 2R is trying to prevent with respect to NRPPs. The same standard should be applied at this time to the LDC as well.

In order to correct this issue, Archer respectfully recommends the following: Once a payment plan is consummated, it becomes a "current" amount due. When a customer makes a payment, it is first utilized to satisfy the payment arrangement up to the amount due for that month, or any other payment plan arrearages to date. After those amounts have been satisfied, the remaining funds are applied against utility distribution charges and then NRPP generation charges proportionately. An NRPP should be notified by the LDC when a customer is enrolled in a payment plan. The NRPP should subsequently be provided with simple reports on the customer's progress towards meeting their obligations so that the NRPP is knowledgeable when answering questions from customers. If this information isn't passed along, the NRPP is in the dark regarding the customer's payments and will fall behind on their generation payments.

2. <u>Budget payment issues:</u>

A similar issue occurs when a customer enters into budget arrangements with the LDC. The budget amounts are applied ahead of all supplier charges, including arrearage charges. This is counterintuitive as the LDC is securing its future obligations ahead of supplier's current or overdue charges.

The payment priority structure needs to be addressed and approved by the commission as part of the development of the choice program, in order to safeguard customer shopping choices. The LDC cannot be allowed to determine the rules governing payment to suppliers without oversight by the commission and comments from the NRPPs.

2.4.D: Archer recommends that the internet website for shopping should be updated to allow for additional products such as guaranteed savings, variable rates or other products NRPPs are willing to offer.

2.5.E: The LDC should be required to supply, for the NRPPs to review, information regarding a potential customer's account, in order to assess risk and allow the NRPP to better serve the customer. This should information should include:

- Whether the Customer is on budget billing;
- Whether the Customer is current on their bill
- Whether the Customer is participating in a payment plan;
- The length and terms of any payment agreements;
- Whether the Customer is acting in accordance with the payment agreement;
- Utility should provide weekly updates on NRPP customers that show changes in customer payment plans, budgets etc.

NRPPs should have access to the above information from LDC so long as they have received the customer's consent in a form that can be provided to the LDC. These forms should include a written authorization, customer consent via a NRPP's terms and conditions or audio recording verified by a third party where the customer grants consent. Not allowing NRPPs access to this information stifles competition because NRPPs cannot quantify a customer's ability pay. It also limits the ability of the NRPP to service their customer as they cannot view the customer's full obligation in order to advise them accordingly.

2.5.G: In this section Archer recommends changing the phrase in the third line of "being signed by the customer" to "being affirmed by the customer". In the instance where a customer is enrolled via telemarketing, there will not be a physical signature but rather an audio recording authorizing the switch. This change will allow more customers to shop and explore choice by different methods.

2.5.G.4: Archer recommends that this section be modified to allow NRPPs to advise customers that in order to avoid being automatically renewed, the customer must contact the NRPP at least 30 days but not more than 60 days in advance of their contract expiration. By requiring NRPP's to set a specific date, it hinders mass marketing efforts. Furthermore, changes in meter read cycles could also impact the timeline of the exact date. As such, by providing a window for notification, this concern is eliminated.

2.5.G.8: The requirement for written confirmation of a customer drop request is burdensome. For marketers engaged in mass marketing, this could cause significant amount of additional work in an area that is not needed – and more importantly – will work to discourage competition. The NRPP should simply be required to send written notice of the cancellation upon request of the customer.

2.5.G.10: The Market Adjustment Charge language should be removed. It was eliminated in mid-2015. Elimination of this language will clear up any potential customer confusion.

2.5.G.19: Archer believes this section would be appropriate for large commercial deals where there is more than one customer interaction. However, it should be removed in its entirety for mass marketing. Maintaining different versions of the contract to send to residential customers with the information referenced in this section would be burdensome for the NRPP. It would require that all agreements are adjusted to the specific seller and would be difficult for mass marketing campaigns. Instead, for mass marketing we would suggest that the supplier be required to provide the information to the commission within two business days upon request by the commission.

2.5.H: This section should be modified so it takes effect 30 days after implementation of the new rules by the commission.

2.5.K.4: The LDC needs to be able to rescind enrollments within the timeframe referenced in the section so that a switch will not occur, even for one month, if the customer changes their mind. To the best of our knowledge, we do not believe National Grid has this capability at this point in time. This again will protect a customer's choice to shop.

2.5.N: The proposed cap increasing variable rates may be problematic in the event a supplier offers guaranteed savings off the LDC's posted rates. There have been several instances over the last few years where the LDC's rate increased by more than 25% from month to month for small commercial customer. As such, an NRPP that is offering a guaranteed savings off the LDC's rate would also see the rates it charges increase by more than 25%. Archer would recommend instead language that states that a variable rate cannot increase more than 25% unless it is part of a guaranteed savings contract where it is tied to the LDC's rate.

2.5.Q: This section should be limited to apply to door-to-door sales and not business-to-business transactions. Business-to-business transactions are done on a much more professional level and the branding and identification cards are unnecessary and burdensome.

2.6.A: Archer believes this section should be amended to remove the language requiring the term fee to be the lesser of $50 and twice the average monthly bill. Residential customers may enter multi-year fixed price agreements with suppliers that can cost suppliers well in excess of $50, if the customer decides to terminate the agreement early. We believe any capping of the term fee should be at $100 and should not include any stipulation that it is based upon the customer's usage. It would be onerous to calculate the termination fee for each customer and difficult to track. Furthermore, the requirement to estimate the customer's average monthly bill at sign up would be nearly impossible

since the utility currently does not provide pre-enrollment data for residential customers. As such, Archer believes it is reasonable for these changes to be implemented.

2.6.F.1.b: Archer is in agreement with this section and only would like to ensure that any rescission made by a customer within the three day timeline would void the switch in suppliers instantly and allow the customer to remain with their current supplier.

RULE ADDITIONS:

In addition to the above modifications to the proposed rules, Archer recommends some additions to the proposed rules. These additions are designed to align with Rhode Island's statutory encouragement of its retail electricity market, as well as protecting customers that choose to switch from misleading or confusing bill presentations.

1. **Payment priority structure** Rules should be drafted and adopted by the Commission as discussed in Section2.4.B.4. In section 2.5.R of the proposed rules, the Commission is states that the NRPP be prohibited from engaging in conduct that misleads the customer into thinking that the NRPP portion of the bill is the entire bill. Archer has already experienced *the opposite*, whereby a customer is on a payment plan, and the plan is not addressing, nor covering any portion of the NRPP portion of the bill. This misleads the customer into believing they are paying the full amount of their bill. If the Commission is going to regulate this practice as deceptive, then the rule should also apply to all LDCs.

2. **Bill Presentation:** Currently, customers are being misled that the payment plan is covering their entire bill proportionately, and is stifling the NRPP's ability to continue to offer their product to that customer. The commission should use this opportunity to direct a bill presentation that is less

confusing, understandable by the customer and provides a clear indication of the entire amount owed to both entities.

Without these changes, the shopping market for electricity customers in Rhode Island will continue to struggle. Archer is respectfully asking the Commission and its Division to consider these changes. In summary we are asking, as an NRPP, for greater access to customer information, a defined payment priority structure, and a change that includes greater detail how bills are presented so they do not misrepresent total customer charges.

3. **Financial Security Comments:** Archer reviewed the proposed rule changes as they relate to financial soundness. We have also reviewed the cost benefit analysis and consultant report.

Archer believes that is important for suppliers to maintain reasonable levels of security to secure its obligations to the State. We believe the level of security should be commensurate with the NRPPs activity level and the risk they bring to the marketplace. It is our understanding that the risk that is being secured relates to the REC requirements and any potential unpaid fines levied by the Commission and any refunds owed to customers.

There are currently 13 active states that offer electricity choice. Of these locations, 53% require less collateral than is being requested under this proposed rule. The two locations that are similar in size to Rhode Island as far as customer base, Washington DC and Delaware, both require less collateral than what is being proposed here.

- In Delaware, the initial requirement is $50,000 or 150% of the anticipated deposits.
- In Washington D.C., the deposit is set at a fixed amount of $50,000. The commission in Washington D.C. went as far as to say in its ruling making that a bond amount greater than this would be a potential barrier to entry.

Much of the rationale used for the proposal of the flat $250,000 centers around the burden it would place on the commission to monitor and follow up on a NRPP's load size. The LDC has this information readily available to it and could easily pass this information on to the commission. In fact, the LDC already reports this information by NRPP to the commission in Docket 2515 on a quarterly basis. We believe this data could be easily used to enact a sliding scale that NRPPs are required to follow. Here is our proposed scale:

Sales	Security Amount
0-50,000 MWH	$50,000
50,001-100,000 MWH	$100,000
100,001-200,000 MWH	$200,000
>200,001 MWH	$250,000

Enforcing this scale should be an easy endeavor since the information is already reported to the commission by the LDC. It should not necessitate a new FTE as the administrative burden should be minimal.

This above proposed scale is more protective of the State's interest than its two most similarly sized counterparts. This structure reduces the potential barrier to entry and facilitates greater participation by NRPPs. In addition, our proposed structure allows the State to receive more security as the NRPP grows.

The other primary factor referenced in the consultant agreement and the cost benefit analysis is the bankruptcy by Glacial Energy of New England. When Glacial declared bankruptcy, it had not purchased all of its necessary RECs for compliance with the States' program. Glacial Energy left 4,196 New REC unfulfilled. This equates to a MW base of approximately 65,000, the commission indicated that the value of this default amounted to $277,607 based off the ACP value. However, this may not be

the most appropriate way to look at the value of the loss. We believe replacement cost at the time of the bankruptcy would be the most applicable method. By using the ACP value the amount is overstated since the market value of the REC's were significantly less than the ACP during the course of the year. Any damage calculation should be based off of the replacement cost at the time of the bankruptcy not the ACP.

Security for the States' obligations is important to developing a vibrant marketplace. Security requirements can be expensive depending on the form and can limit a company's growth or decision to enter into a market. The commission needs to balance the potential for barriers to entry with the need for security. We believe our scale accomplishes this and is more conservative than some of Rhode Island closest counterparts when it comes to size of the market.

CONCLUSION:

Archer Energy, LLC, appreciates the Division's consideration of the above recommendations. Like the state of Rhode Island, Archer is fully committed to expanding shopping and choice for Rhode Island utility customers, in order for customers to fully realize the potential benefits of the marketplace. Archer respectfully requests that the Division consider and adopt the additions and modifications as proposed by Archer.

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Respectfully Submitted,

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