

Public Notice of Proposed Rulemaking

RHODE ISLAND GOVERNMENT REGISTER PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Division of Public Utilities and Carriers

RULE IDENTIFIER: ERLID 7921 Proposed as 815-RICR-40-05-1

REGULATION TITLE: Rules Applicable to Nonregulated Power Producers

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Amendment

This notice is the second notice of public comment period in Docket D-16-113 and is necessitated by provisions of R.I. Gen Laws § 42-35-4 which establishes a 180 day period after the close of public comment within which the final rules must be filed with the Secretary of State. Since the final rules were not filed with the Secretary of State within the 180 days following May 1, 2017, the law requires that this rulemaking be re-initiated.

DATES: Public Notice Date: Wednesday November 8 2017

End of Comment Period: Friday, December 8, 2017

In this filing, the Division is taking Administrative Notice of all prior submitted comments and testimony from the April 20, 2017 hearing in this docket.

SUMMARY OF PROPOSED RULE: In 2016, the General Assembly approved legislation to amend RIGL 39-1-27.1 - Retail electric licensing commission plan requirements and nonregulated power producer registration requirements - to include a requirement that nonregulated power producers which are Obligated Entities (as defined in RIGL 39-26-2) provide the Division with evidence of financial security. The Division is directed by statute to set the level of financial security between \$25,000 and \$500,000 with this proposed regulation setting that requirement at \$250,000. In the event of an obligated entity's bankruptcy, the securities would be available to pay any unmade Alternative Compliance Payments to Commerce Corporation, or any fines or consumer rebates ordered by the Division.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by December 8, 2017, to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

Division Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Email Address:

luly.massaro@puc.ri.gov

FOR FURTHER INFORMATION CONTACT:

Thomas Kogut

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RI Division of Public Utilities and Carriers

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Warwick RI, 02888
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SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

The Division was directed by statutory changes to RIGL 39-1-27.1 - Retail electric licensing commission plan requirements and nonregulated power producer registration requirements to promulgate regulations establishing the level of financial security Obligated Entities must maintain.

For full regulatory analysis or supporting documentation see agency contact person above. A Cost Benefit analysis, hearing transcript, link to hearing video, written comments and other documents related to this rulemaking docket may also be accessed at:

http://www.ripuc.ri.gov/eventsactions/docket/D_16_113.html

Authority for This Rulemaking:

Chapter 39-1-27.1 as amended in 2016.

Regulatory Findings:

In the development of the proposed amendment, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

The Division of Public Utilities and carriers proposes to amend ERLID 7921 as follows:

815-RICR-40-05-1

TITLE – 815 DIVISION OF PUBLIC UTILITIES AND CARRIERS

CHAPTER 40 – ELECTRIC UTILITIES

SUBCHAPTER 05 – NONREGULATED POWER PRODUCERS

Part 1 – Rules Applicable to Nonregulated Power Producers

1.1 Authority

- A. Nonregulated Power Producers ("NPPs") have been permitted to sell to or aggregate electricity for eligible Rhode Island customers since July 1, 1997. As defined by the Utility Restructuring Act of 1996 ("URA"), R.I. Gen. Laws § 39-1-27.1, NPP means a company engaging in the business of producing, manufacturing, generating, buying, aggregating, marketing or brokering electricity for sale at wholesale or for retail sale to the public. Companies which negotiate the purchase of electric generation services on behalf of customers and do not engage in the purchase and resale of electric generation services are not NPPs within the meaning of the URA. The Division of Public Utilities and Carriers ("Division") has been authorized by R.I. Gen. Laws § 39-1-3(b) and 39-1-27.1(c) and (d) to exercise certain regulatory authority over NPPs. These regulations are adopted pursuant to that authority.
- B. In addition to ~~the instant Division rules~~ [this Part and Part 2 of this Subchapter](#), the Rhode Island Public Utilities Commission ("Commission") has also promulgated rules governing the regulation of NPPs. ~~The Commission's Rules are entitled: "Reliability Responsibility Regulations for Nonregulated Power Producers", effective on January 1, 1997; and "Consumer Protection Requirements for Nonregulated Power Producers," effective October 20, 2014. The Commission's "Reliability Responsibility Regulations For Nonregulated Power Producers" are set out in 810-RICR-40-10-2.~~ Interested persons should examine all NPP-related rules for a comprehensive understanding of the regulatory requirements attached to NPPs doing business in Rhode Island.

1.2 Definitions

- A. "Obligated entity" shall have the same meaning as that which is contained in R.I. Gen. Laws § 39-26-2.

1.3 Prerequisites for Rhode Island Operations

- A. All NPPs seeking to do business in Rhode Island must file with the Division a notarized registration application that includes the following
1. Legal name;

2. Business Address;
3. The name of the state where organized; the date of organization; a copy of the articles of incorporation, association, partnership agreement, or other similar document regarding legal organization;
4. Name and business address of all officers and directors, partners; or other similar officials;
5. Name, title, and telephone number of customer service contact person;
6. Name, title, and telephone number of regulatory contact person;
7. Name, title and address of registered agent for service of process;
8. Brief description of the nature of the business being conducted;
9. ~~Brief description of~~ Evidence of financial soundness:

- a. Evidence of financial soundness such as surety bonds, a recent financial statement, or other mechanism as specified by the Division, ~~except those nonregulated power producers who may be obligated entities shall provide financial security showing evidence of liquid funds, such as:~~

(1) a surety bond;

(2) a certificate of deposit

(3) an irrevocable standby letter of credit from an ISO New England Eligible Letter of Credit Bank, a New York Mercantile Exchange (“NYMEX”) or a Chicago Mercantile Exchange (“CME”) approved letter of credit bank, or,

(4) a corporate guarantee from an investment-grade entity with a Tangible Net Worth of at least ten million dollars (\$10,000,000.00).

The financial security shall be in an amount of not less than two hundred fifty thousand dollars (\$250,000.00). All financial security provided in satisfaction of this provision shall name the Commission and the Division as obligees;

- b. Financial security shall be reviewed each year at the time a nonregulated power producer makes its annual filing. The above notwithstanding, each obligated entity is responsible for informing the Division in writing within five (5) business days of any material adverse change in its financial status. The financial security shall

be available to satisfy penalties assessed by the Division for violations of any consumer protection rules or laws related to nonregulated power producers, refunds ordered by the Division, or failure to comply with the provisions of R.I. Gen. Laws Chapter 39-26 as determined by the Public Utilities Commission. Payments made pursuant to this subsection for violation of the provisions of R.I. Gen. Laws § 39-26-4 shall be forfeited, and shall be remitted to the renewable energy development fund established in R.I. Gen. Laws § 39-26-7, or any successor funds, and all other forfeitures will be remitted to the state's general fund;

c. All financial security provided in satisfaction of this provision, in addition to naming both the Commission and the Division as obligees, shall meet the language and form requirements of the Commission and Division as such direction may be provided from time to time;

10. Affirmation that the applicant will comply with the Rhode Island General Laws and all rules and regulations promulgated by the Division and the Public Utilities Commission ("Commission");
 11. Evidence that, in accordance with the Commission's Reliability Responsibility Regulations, the applicant is either (a) a NEPOOL participant or (b) has a written agreement with a NEPOOL member through which such member agrees to include the load served by the NPP in its load. A copy of this agreement (with any pricing or unrelated commercial terms redacted) should be included with the applicant's filing;
 12. Evidence of authorization from the Rhode Island Secretary of State to do business in Rhode Island.
- B. Copies of all filings made pursuant to § 1.3(A) of this Part, shall be served on the Commission and all electric distribution companies. Updated information shall be filed within ten (10) days of any change to the information included in a registration application, as filed or previously updated.
- C. Unless rejected within thirty (30) days, registration applications filed in accordance with these rules shall become effective thirty (30) days after filing. If the Division rejects the application, it shall specify the applicable reasons in writing and, if practicable, identify alternative ways to overcome the noted deficiencies. NPPs are authorized to do business in this state after their registration becomes effective and while ~~they remain~~ their registration remains in good standing.
- D. A filing fee of one hundred dollars (\$100.00) shall accompany all registration applications filed pursuant to § 1.3(A) of this Part. Nonregulated power producers shall thereafter renew their registrations with the Division on an annual basis.

Applications for renewal shall be filed before the close of business on December 31 of each calendar year. Applications for renewal shall specify any changes in previously filed registration information. A filing fee of one hundred dollars (\$100.00) shall accompany all applications for renewal of NPP status.

- E. Any person who has exhausted all administrative remedies available to them within the Division, and is aggrieved by a final order or decision of the Division, is entitled to judicial review in accordance with the Administrative Procedures Act (R.I.G.L. Sec. 42-35-1 et seq.).

1.4 Rescission of NPP's Registration

- A. A NPP may voluntarily surrender its registration and therefore, its right to conduct business in Rhode Island. Such voluntary surrender does not affect the rights or liabilities of any persons or entities with whom the NPP did business in Rhode Island.
- B. The Division may rescind a NPP's registration as follows:
 - 1. A proceeding to rescind may, in the Division's discretion, be instituted either by the filing of a consumer complaint or as the result of a *sua sponte* Division investigation.
 - 2. A proceeding shall be instituted if the Division determines that the NPP no longer complies with any of the requirements of § 1.3(A) of this Part.
 - 3. The NPP will be given notice and the hearing will be conducted in accordance with the provisions of the Division's Rules of Practice and Procedure.
 - 4. Rescission does not affect the rights or liabilities of any persons or entities with whom the NPP did business in Rhode Island.
- C. Any person who has exhausted all administrative remedies available to them within the Division, and is aggrieved by a final order or decision of the Division, is entitled to judicial review in accordance with the Administrative Procedures Act (R.I Gen. Laws § 42-35-15).
- D. [Financial security shall remain in place for the greater of six months or the discharge of all obligations following the final date of rescission subject to Division receipt and investigation of complaints that may be filed.](#)

1.5 Dispute Resolution Regulations Relating to NPP's

- A. Breach of contract claims or billing disputes between NPPs and customers that cannot be privately resolved should be resolved through appropriate legal action.

- B. Disputes between NPPs, customers, or other aggrieved parties relating to violations of the Commission's Consumer Protection Regulations and/or these regulations are subject to the following:
1. Any party who believes they have been or will be aggrieved by a violation of the ~~Commission's Consumer Protection Regulations~~ [Division's Nonregulated Power Producer \("NPP"\) Consumer Bill of Rights \(Part 2 of this Subchapter\)](#) and/or these regulations may file a complaint with the Division.
 2. The Attorney General, as a matter of right, may file a complaint with the Division against any NPP to seek enforcement of the ~~Commission's Consumer Protection Regulations~~ [Division's Nonregulated Power Producer \("NPP"\) Consumer Bill of Rights \(Part 2 of this Subchapter\)](#) and/or these regulations.
 3. The form of the complaint should clearly set forth:
 - a. The facts at issue;
 - b. The position of the petitioner;
 - c. A statement of why the petitioner is aggrieved and what rules or requirements were violated; and
 - d. The relief being sought.
 4. A copy of the complaint must be provided to the NPP or opposing party. However, if a customer files a complaint with the Division, it will not be dismissed as to form, nor will it be dismissed for failure to serve a copy on the NPP.
 5. The NPP or opposing party that is the subject of a complaint will have ten business days to respond. If the NPP was not served a copy of the complaint, the NPP will have ten business days from receipt of a copy from the Division. However, if the Division determines that the nature of the complaint requires expeditious action, the Division reserves the right to require a shorter response period and/or take whatever action is reasonably necessary to protect the public while the hearing is pending.
 6. Any person or entity whose interests will be substantially and significantly affected by the outcome of proceedings under this rule may file a motion to intervene. The motion must clearly set forth the interests of the party seeking intervenor status.
 - a. The Division shall grant such motion if:

- (1) The person's or entity's interests will be substantially and significantly affected by the outcome of the proceedings under this rule; and
- (2) The interests cannot be adequately represented by other parties to the proceeding.

b. Alternatively, the Division can grant a party or entity limited intervenor status which would allow that intervenor the right to submit written comments.

7. Written Decision

a. Within ten business days of the close of the hearing or receipt of briefs (if required by the Division), a written decision will be rendered, unless the Division notifies the parties that an extension of time, not to exceed fifteen additional business days, will be required.

8. Appeals

a. Any decision of the Division issued in conformance with these Rules shall be final and binding upon the parties unless appealed under the Rhode Island Administrative Procedures Act (R.I.G.L. secs 42-35-1 et seq.).