

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

**REGULATIONS REGARDING
PERFECTION OF SECURITY INTEREST IN
INTANGIBLE TRANSITION PROPERTY**

Date of Public Notice: November 5, 1997

Date of Public Hearing: November 18, 1997

Effective Date: January 1, 1998

Section 1. Purpose.

These regulations implement the ministerial requirements of Title 39, Section 39-1-56 of the Rhode Island General Laws, concerning the establishment of a filing system to facilitate the perfection of a Security Interest in Intangible Transition Property and the filing of notice of transfer to an Assignee of an interest in Intangible Transition Property. These regulations establish the record-keeping regulations and requirements and provide technical rules of administration concerning the perfection of such Security Interests and the filing of such notices of transfer to an Assignee. These regulations also establish how an Intangible Transition Property Notice is filed, what a Filing must contain, and what mandatory record retention requirements are imposed on the Commission. Finally, these regulations govern notice, amendment, effectiveness, and termination of the perfection of a Security Interest and notice of transfer to an Assignee.

Section 2. Definitions.

The following words and terms, when used in these regulations, have the following meanings:

(a) *Act*: 1997 Rhode Island Public Laws, Chapter 142 (97-H 7003), which amended the Utility Restructuring Act contained in Title 39 of the General Laws by adding provisions for a more efficient financing mechanism to facilitate the transition to a competitive retail electric market.

(b) *Assignee*: an Assignee as defined in R.I.G.L. Sec. 39-1-44(1).

(c) *Assignor*: an electric utility or other person who transfers an interest in Intangible Transition Property to an Assignee.

(d) *Certificate*: a document establishing, based upon the File Number and Securitization Order Docket Number, whether there is on file with the Commission on the date and time stated a presently effective Intangible Transition Property Notice.

(e) *Commission*: the Rhode Island Public Utilities Commission, including a duly appointed successor entity.

(f) *Continuation Notice*: a notice submitted to extend the effectiveness of an Intangible Transition Property Notice.

(g) *File Number*: a numerical sequence assigned by the Commission to identify a specific filing made pursuant to these Regulations.

(h) *Filing*: the submission of a completed Intangible Transition Property Notice or other document described in these regulations to the Filing Officer, and the acceptance

thereof by the Filing Officer, as evidenced by the indication of a File Number and Filing Date thereon.

(i) *Filing Date*: the date and time at which a Filing is accepted by the Commission as described in these regulations.

(j) *Filing Officer*: an authorized person in the office of the Clerk of the Commission, including an appointed successor entity or office.

(k) *Filing Party*: a person who makes a filing pursuant to these regulations. The term does not include the Commission.

(l) *Financing Party*: a Financing Party as defined by R.I.G.L. Sec. 39-1-44(5).

(m) *Grantor*: an electric distribution company or other person who grants a Security Interest in Intangible Transition Property to another person. The term does not include the Commission.

(n) *Information Request*: a request from a person to the Commission concerning a Filing.

(o) *Intangible Transition Property*: Intangible Transition Property as defined in R.I.G.L. Sec. 39-1-44(6).

(p) *Intangible Transition Property Notice*: a notice of a Security Interest in, or of a transfer to an Assignee of an interest in, Intangible Transition Property, complying with the requirements of Section 5 of these regulations, and all properly filed amendments to such notice.

(q) *Lapse*: the expiration of the period of effectiveness of an Intangible Transition Property Notice.

(r) *Person*: a human being, partnership, corporation, public authority or trust (including a business trust), unincorporated association, limited liability company, joint stock company or any other legal entity, whether public or private, existing under the laws of the State of Rhode Island, another state, the United States, or a foreign country.

(s) *Release*: an action taken by a Financing Party to alter a right, duty, or obligation concerning the perfection of a Security Interest.

(t) *Retransfer*: an action taken by an Assignee to return to an Assignor all or a portion of the interest of the Assignee in Intangible Transition Property.

(u) *Security Interest*: an interest in Intangible Transition Property securing the payment or performance of an obligation.

(v) *Securitization Order*: an order as defined in R.I.G.L. Sec. 39-1-44(3).

(w) *Securitization Order Docket Number*: the established Commission File Number for a Securitization Order.

(x) *Termination Notice*: the notice submitted to terminate perfection of a Security Interest.

Section 3. Information, Filing and Hours

(a) Information on the procedures and forms for filing under these regulations, submittals, requests, and other information or instructions supplementing these regulations in special instances can be obtained upon request directed to the Clerk, Rhode Island Public Utilities Commission, 89 Jefferson Boulevard, Warwick, Rhode Island 02888. The Commission is open from 8:30 AM to 4:00 PM on normal business days.

(b) A Filing, Information Request concerning the procedures and forms for filing under these regulations, submittals, requests, and other information or instructions supplementing these regulations in special instances should be sent to the attention of the Filing Officer.

Section 4. Place of Filing.

(a) An Intangible Transition Property Notice shall be filed with the Filing Officer of the Commission by the Filing Party and be accompanied by the payment of any required filing fees.

(b) An effective Intangible Transition Property Notice continues in force and effect even though the Grantor or Assignor whose Intangible Transition Property Notice is (or originally was) the subject of a filing merges, consolidates or otherwise reorganizes.

Section 5. Intangible Transition Property Notice Requirements; Amendment; Forms; Error; Recharacterization.

(a) General Rule. An Intangible Transition Property Notice will be deemed sufficient if it provides the following:

1. The name of the Grantor or Assignor;
2. The address of the Grantor or Assignor;

3. A signature of an authorized person acting on behalf of the Grantor or Assignor;
4. The name of the Financing Party or Assignee;
5. The address of the Financing Party or Assignee from which information concerning the Security Interest or transfer of an interest in Intangible Transition Property may be obtained;
6. The signature of an authorized person acting on behalf of the Financing Party or Assignee;
7. A statement setting forth whether all or a portion of the recovery permitted under the Securitization Order (from which the Intangible Transition Property is derived) is covered by the Intangible Transition Property Notice. If the portion covered by an Intangible Transition Property Notice relates to less than all of the Securitization Order, the portion or the amount thereof to which the Intangible Transition Property Notice relates shall be stated;
8. A statement (subject to the provisions of paragraph (h) of this section) of whether the Intangible Transition Property Notice is intended to be filed to perfect a Security Interest in Intangible Transition Property or to give notice of a transfer of an interest in Intangible Transition Property to an Assignee;
9. The Securitization Order Docket Number from which the Intangible Transition Property is derived;

(b) Filing Sequence. An Intangible Transition Property Notice may be filed before a security agreement is made or a Security Interest otherwise attaches or before a transfer of an interest in Intangible Transition Property to an Assignee becomes effective.

(c) Effect of Partial Completion. An Intangible Transition Property Notice which otherwise complies with this section will be deemed sufficient when it is signed by the Financing Party or Assignee instead of the Grantor or Assignor, if it is submitted to perfect a Security Interest in or record a transfer to an Assignee of:

1. (In connection with the perfection of a Security Interest) Intangible Transition Property as to which the Filing of an Intangible Transition Property Notice has lapsed;
2. Intangible Transition Property under a security agreement or an agreement effecting a transfer to an Assignee signed by the Grantor or Assignor and authorizing the Financing Party or the Assignee to file an Intangible Transition Property Notice. The Intangible Transition Property Notice shall state that it is being submitted in accordance with a security agreement or an agreement

effecting a transfer signed by the Grantor or Assignor that authorizes the filing of an Intangible Transition Property Notice by the Financing Party or the Assignee.

(d) Form. A Filing Party shall submit Form A to comply with paragraph (a) of this section.

(e) Amendments. Except where only one signature is expressly required by a provision of these regulations, an Intangible Transition Property Notice may be amended only with a written document signed by both the Grantor or Assignor and the Financing Party or Assignee. An amendment does not extend the period of effectiveness of an Intangible Transition Property Notice unless a Continuation Notice is filed. If any amendment adds Intangible Transition Property, it is effective as to the added Intangible Transition Property only from the Filing Date of the amendment.

(f) Amendment Form. A Filing Party shall submit Form B to comply with paragraph (e) of this section.

(g) Sufficiency of Name. An Intangible Transition Property Notice sufficiently shows the name of the Grantor or Assignor who is not an individual only if it gives the partnership, corporate, trust or entity name of the Grantor or Assignor, as such name is shown on the public records in the jurisdiction of organization in the case of Persons who are required to register in the public records in order to organize or as such name is shown on the organizational documents of the Person in the case of other Persons formed under written agreements that are not required to register in the public records in order to organize. An Intangible Transition Property Notice that sufficiently shows the name of the Grantor or Assignor is not rendered ineffective by the absence of trade names or other names or names of partners, members, or associates. A filed Intangible Transition Property Notice remains effective with respect to Intangible Transition Property transferred by the Grantor or Assignor even though the Financing Party or the Assignee knows of or consents to the transfer. No amendment to an Intangible Transition Property Notice shall be required to reflect a change in the name, identity or corporate structure of a Grantor or Assignor.

(h) Effect of minor errors; recharacterization. An Intangible Transition Property Notice substantially complying with these regulations will be sufficient even if it contains minor errors which are not seriously misleading. If an Intangible Transition Property Notice is filed to give notice of a transfer to an Assignee of an interest in Intangible Transition Property under these regulations, and the transfer is thereafter held for any reason or purpose to constitute the grant of a Security Interest in such Intangible Transition Property, the Intangible Transition Property Notice will be deemed to constitute a Filing with respect to a Security Interest under these regulations, from and as of the Filing Date of the original Intangible Transition Property Notice, without the necessity of any amendment of (or other action by the parties with respect to) the originally filed Intangible Transition Property Notice.

Section 6. Intangible Transition Property Notice Filing; Duration; Lapses; Filing Officer.

(a) What Constitutes a Filing. A Filing under this Act and these regulations shall be made by presentation of an Intangible Transition Property Notice, tender of any required filing or processing fee, and acceptance of the Intangible Transition Property Notice by the Filing Officer. Acceptance of the Intangible Transition Property Notice by the Filing Officer, as indicated by the stamp of a File Number and Filing Date on the Intangible Transition Property Notice, will constitute evidence of a Filing under the Act and these regulations. Nothing in the Act or these regulations will preclude the Filing Officer from refusing to accept for Filing an Intangible Transition Property Notice not complying with the requirements of these regulations.

(b) Purposes of Filing. An Intangible Transition Property Notice shall be filed to perfect the Security Interest of a Financing Party in Intangible Transition Property. An Intangible Transition Property Notice shall also be filed to perfect a transfer to an Assignee of an interest in Intangible Transition Property.

(c) Duration of Effectiveness of Filing in General. An Intangible Transition Property Notice filed to perfect the Security Interest of a Financing Party will be effective for twelve (12) years from the Filing Date. An Intangible Transition Property Notice filed to perfect the Security Interest of a Financing Party lapses on the expiration of the twelve-year period unless a Continuation Notice is filed prior to the Lapse. An Intangible Transition Property Notice filed to perfect the transfer to an Assignee of Intangible Transition Property is continuously effective.

(d) Lapse. Upon Lapse, the Security Interest becomes unperfected and is deemed to have been unperfected as against a Person who became a purchaser or lien creditor before the Lapse.

(e) Continuation Notice. A Continuation Notice shall be filed by a Financing Party no earlier than six (6) months prior to the expiration of the twelve-year period specified in subsection (c). A Continuation Notice must be signed by the Financing Party, identify the original notice by File Number and state that the original Intangible Transition Property Notice is still effective. A Continuation Notice signed by a Person other than the Financing Party of record shall be accompanied by a separate written statement of assignment of the Security Interest signed by the Financing Party of record and comply with these regulations, including payment of any required fees. Upon timely Filing of the Continuation Notice, the effectiveness of the original notice is continued for twelve years after the last date to which the Filing was effective, whereupon it lapses in the same manner as provided in subsection (d), unless another Continuation Notice is filed prior to a Lapse. Succeeding Continuation Notices may be filed in the same manner to continue the effectiveness of the original notice.

(1) Unless a statute on disposition of public records provides otherwise, the Filing Officer may remove a lapsed notice from the files and destroy it if a

microfilm or other photographic record has been retained, or, in other cases, one (1) year after the Lapse.

(2) The Filing Officer will manage the Intangible Transition Property Notice filings to retain a Filing that is continued beyond the twelve-year limitation.

(f) Establishment and Duties of Filing Officer.

(1) The Commission will establish and appoint a Filing Officer to maintain the records and to take other necessary action. The Filing Officer will place copies of Filings made under these regulations in the appropriate dockets for future reference and manage the Filings.

(2) The Filing Officer will also mark each Intangible Transition Property Notice and each subsequent related Filing with a consecutive File Number and with the date and time of Filing and will hold the Intangible Transition Property Notice and each subsequent related Filing or microfilm or other photographic or electronic copy thereof for public inspection. Consecutive File Numbers for Intangible Transition Property Notices and subsequent related notices filed in each calendar year will begin with the number one preceded by the last two digits of the calendar year in which the Filing occurs. In addition, the Filing Officer will index the Intangible Transition Property Notices according to the name of the Grantor or Assignor and will mark in the index the File Number and the address of the Grantor or Assignor.

(g) Legible Papers. The duties of the Filing Officer prescribed in these regulations relate only to clearly legible papers submitted to the Filing Officer. The Filing Officer will accept only clearly legible papers. No Intangible Transition Property Notice or other related notice will be accepted unless it is typed or printed in black ink and, in the determination of the Filing Officer, can be interpreted or reproduced using the technology employed by the Commission.

Section 7. Termination Notice; Filing Officer

(a) General Rule. Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the Financing Party shall, on written demand by the Grantor, send the Grantor a Termination Notice to the effect that it no longer claims a Security Interest under the applicable Intangible Transition Property Notice, which shall be identified by its File Number. A Termination Notice signed by a Person other than the Financing Party of record shall be accompanied by a separate written notice of assignment of the Security Interest signed by the Financing Party of record and complying with these regulations, including payment of any required fee. If the affected Financing Party fails to file a Termination Notice or send a Termination Notice within thirty (30) days after proper demand therefor, the

Financing Party shall be liable for the loss caused to the Grantor by reason of the failure.

(b) Duties of Filing Officer. On presentation to the Filing Officer of a Termination Notice, the Filing Officer shall mark the date and time of Filing on the Termination Notice. If the Filing Officer has received the Termination Notice in duplicate, the Filing Officer will return one copy of the Termination Notice to the Financing Party marked to show the date and time of Filing thereof. The Filing Officer may remove the original, microfilm, or other photographic record from the File no sooner than one (1) year after receipt of the Termination Notice.

Section 8. Assignment of Security Interest or Interest of an Assignee; Filing Officer.

(a) Assignment Disclosed in Intangible Transition Property Notice. An Intangible Transition Property Notice may disclose an assignment of a Security Interest of a Financing Party or of the interest of an Assignee in the Intangible Transition Property described in a filed Intangible Transition Property Notice by indication in the notice of the name and address of the transferee. Either the original Financing Party or Assignee or the transferee may sign this statement as the Financing Party or Assignee. On presentation to the Filing Officer of an Intangible Transition Property Notice, the Filing Officer will mark it as provided for in these regulations.

(b) Separate Notice of Assignment. A Financing Party or Assignee of record may assign all or a part of its rights under an Intangible Transition Property Notice by submitting a separate written notice of assignment signed by the Financing Party or Assignee of record and setting forth the name of the Financing Party or Assignee of record, the Grantor or Assignor, the File Number and the Filing Date of the Intangible Transition Property Notice and the name and address of the transferee, a description of the interest in the Intangible Transition Property assigned, and the Securitization Order Docket Number for the Securitization Order from which the Intangible Transition Property is derived. A copy of the assignment is sufficient as a separate notice if it complies with the preceding sentence. On presentation to the Filing Officer of a separate notice which complies with this section, the Filing Officer will mark the separate notice with the date and time of the Filing. The Filing Officer will mark the assignment on the indices of the Intangible Transition Property Notice.

(c) Status of Transferee. After the Filing of an assignment under this section, the transferee becomes the Financing Party or Assignee of record as to the interest assigned.

Section 9. Release or Retransfer; Filing Officer.

(a) A Financing Party or Assignee of record may by its signed notice Release or Retransfer all or a part of its interest in Intangible Transition Property described in a filed Intangible Transition Property Notice.

(b) The notice of a Release or Retransfer is sufficient if it contains the following:

- (1) A description of the Intangible Transition Property being Released or Retransferred;
- (2) The name and address of the Grantor or Assignor;
- (3) The name and address of the Financing Party or Assignee;
- (4) The File Number of the Intangible Transition Property Notice; and
- (5) The Securitization Order Docket Number for the Securitization Order from which the intangible Transition Property is derived;

(c) A notice of Release or Retransfer signed by a Person other than the Financing Party or Assignee of record must be accompanied by a separate written statement of assignment of the interest in Intangible Transition Property signed by the Financing Party or Assignee of record and comply with these regulations.

(d) Upon presentation of a notice of Release or Retransfer to the Filing Officer, and payment of any required fees, the Filing Officer will mark the notice with the date and time of Filing and will mark the same on the indices of the intangible Transition Property Notice.

Section 10. Information Requests; Filing Officer.

(a) Marking Copy of Intangible Transition Property Notice Filed. If the Filing Party submitting an Intangible Transition Property Notice, Continuation Notice, Termination Notice, notice of assignment, notice of Release, or notice of Retransfer, furnishes the Filing Officer with a copy, the Filing Officer will upon request mark upon the copy the File Number and date and time of the Filing of the original and deliver or send the copy to the Filing Party.

(b) Furnishing Certificates and Copies. Upon request of a Person, the Filing Officer will issue a Certificate showing whether there is on file on the date and time stated therein, a presently effective Intangible Transition Property Notice naming a particular Grantor or Assignor and a notice of assignment and, if there is, giving the date and time of Filing of each notice and the names and addresses of each Financing Party or Assignee named therein. A Certificate will also show whether there is on file on the date and time stated therein, a notice affecting Intangible Transition Property of the Grantor or Assignor, and if there is, giving the date and time of Filing of each notice. Upon request, the Filing Officer will furnish, upon payment of any requisite fees, a copy of a filed Intangible Transition Property Notice, or notice affecting Intangible Transition Property of a Grantor or Assignor, or a Continuation Notice, Termination Notice, Notice of

Assignment, Notice of Release or Notice of Retransfer respecting an Intangible Transition Property Notice.

Section 11. Fees.

Each filing must be accompanied by payment of any required filing fee which is then applicable to a filing on Form A, Form B, or an Information Request, respectively, for any of the purposes specified in these regulations. In addition, if any fee must be paid by the Commission in connection with the informational filing described in Section 13(b), the Filing must also be accompanied by a payment reimbursing the Commission for such fee.

Section 12. Forms Officer.

The Filing Officer shall also be the forms officer responsible for providing forms to the public. The forms will include, at a minimum, the following:

- (a) Form A for Intangible Transition Property Notice;
- (b) Form B for any amendment, assignment, continuation, Release, Retransfer, or Termination of interest in an Intangible Transition Property Notice;
- (c) Any established fee schedule;
- (d) Other forms, if any, as may be necessary to effectuate the perfection of a Security Interest, or the Transfer to an Assignee of an interest in Intangible Transition Property, under the Act and these regulations.

Section 13. Additional Commission Filings; Commission Informational Filing.

(a) Commission Filing. The Filing Officer may place a copy of any Filing in the Securitization Order Docket related to the Intangible Transition Property covered by any Intangible Transition Property Notice.

(b) Informational Filing. The Filing Officer will forward to the Secretary of State, for informational purposes only, a copy of any Filing in accordance with the procedures and fees, if any, as determined to be necessary by the Secretary of State. Any failure of the Commission to make such an informational filing shall have no effect whatsoever on the perfection of a Security Interest in or Transfer of an interest in Intangible Transition Property under R.I.G.L. Secs. 39-1-55 and 39-1-57, nor shall the Commission be liable in law or equity for failure to make such informational filing.

The foregoing requirements, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State this 1st day of December, 1997, to become effective December 31, 1997, thirty (30) days after filing, in accordance with the provisions of R.I.G.L. 1956 (1988 Reenactment) Sec.42-35-2(a)(2) and Sec.42-35-3.

Appendices

For filing Officer Only
File Number:
Filing Date:

APPENDIX A

Form A

Intangible Transition Property Notice

Name of Grantor or Assignor:

Address of Grantor or Assignor:

Name of Financing Party or Assignee:

Address of Financing Party or Assignee from which information concerning the Security Interest or Transfer in Interest Intangible Transition Property may be obtained:

This Intangible Transition Property Notice covers the Intangible Transition Property arising from the following Securitization Order:

Commission Docket Number:

Date of Entry:

State whether the Intangible Transition Property Notice relates to all the above Securitization Order and the amount of Intangible Transition Property arising therefrom, or only to a portion of such Order or Amount:

All:

Portion:

If "Portion" is checked, state either:

For filing Officer Only
File Number:
Filing Date:

The document(s) in which a description of the portion may be found:

OR

The portion of the Securitization Order to which this Notice relates (by reference to the applicable section(s) or paragraphs(s) of the Order):

OR

The amount of the Intangible Transition Property to which this Notice relates (in comparison to the total amount of such property):

\$_____ of a Total of \$_____

Check one:

This Form A is filed to perfect a Security Interest in Intangible Transition Property.

This Form A is filed to perfect a Transfer of an interest in Intangible Transition Property to an Assignee.

Signature of Grantor
or Assignor

Signature of Financing
Party or Assignee

For filing Officer Only
File Number:
Filing Date:

APPENDIX B

Form B

Intangible Transition Property Notice Changes

This Intangible Transition Property Notice filing relates to an Intangible Transition Property Notice originally filed at _____ (File Number). The Securitization Order Docket Number relating to such filing is _____ (Docket Number).

Name of Grantor or Assignor:

Address:

Name of Financing Party or Assignee of Record:

Address:

The following change in the Intangible Transition Property Notice is contemplated by this Filing (check one):

- Amendment: The original Intangible Transition Property Notice identified above is amended as set forth below. (To be signed by Grantor or Assignor, and Financing Party or Assignee.)
- Assignment: The Financing Party or Assignee of record has assigned to the transferee, whose name and address is set forth below, rights in the Intangible Transition Property described above under the original Intangible Transition Property Notice identified above. (To be signed by Financing Party[*] or Assignee[*], and Transferee.)
- Certificate: Request showing whether there is on file on the date and hour stated therein, a presently effective Intangible Transition Property Notice based on information provided to the Filing Officer. (To be signed by party requesting Certificate.)
- Continuation: The original Intangible Property Notice identified above is still effective. (To be signed by Financing Party.[*])
- Release: The Financing Party of record has Released the Intangible

Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above. (To be signed by Financing Party.[*])

___ Retransfer: The Assignee of record has Retransferred the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above. (To be signed by Assignee.[*])

___ Termination: The Financing Party of record is no longer claiming a Security Interest in the Intangible Transition Property described in the original Intangible Transition Property Notice identified above. (To be signed by Financing Party.[*])

* Reference is to Financing Party of record or Assignee of record, except as otherwise provided in the Regulations Regarding Perfection of Security Interest in Intangible Transition Property.

Description

The following describes the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Transferee Name:

Transferee Address:

For filing Officer Only
File Number:
Filing Date:

Description of the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Signature of Financing Party
or Assignee

Signature of Grantor or Assignor
or Requestor