

Rules Applicable to Non-Regulated Power Producers

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DIVISION OF PUBLIC UTILITIES AND CARRIERS

RULES APPLICABLE TO NONREGULATED POWER PRODUCERS

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Effective Date: February 15, 1999

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I. INTRODUCTION

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.G.L. Sec. 39-1-2(7.1), 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.G.L. Secs. 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.

In addition to the instant Division rules, the Rhode Island Public Utilities Commission ("Commission") has also promulgated rules governing the regulation of NPPs. The Commission rules are entitled: "Reliability Responsibility Regulations for Nonregulated Power Producers", effective on January 1, 1997; and "Consumer Protection Requirements for Nonregulated Power Producers," effective December 31, 1997. Interested persons should examine all NPP-related rules for a comprehensive understanding of the regulatory requirements attached to NPPs doing business in Rhode Island.

Commission Rule II, of the Commission's "Consumer Protection Requirements for Non-regulated Power Producers," provides predicate and related NPP requirements which ought to be examined in concert with the Division's instant rules. For convenience purposes, Commission Rule II has been attached to these rules as an Appendix.

II. 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 financial soundness such as surety bonds, a recent financial statement, or other mechanism as specified by the Division;
9. 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");
10. 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;
11. Evidence of authorization from the Rhode Island Secretary of State to do business in Rhode Island.

B. Copies of all filings shall be served on the Commission and all electric distribution companies.

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 in good standing.

D. Updated information shall be filed within ten (10) days of any change to the information included in the registration application as filed or amended.

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. 42-35-15).

III. RESCISSION OF NPPs 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 Section II A of these Rules;
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.G.L. Sec. 42-35-15).

IV. DISPUTE RESOLUTION REGULATIONS RELATING TO NONREGULATED POWER PRODUCERS

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 or these regulations may file a complaint with the Division. A copy of the complaint shall also be served on the Commission.

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 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. The Division shall grant such motion if:

a) The person's or entity's interests will be substantially and significantly affected by the outcome of the proceedings under this rule; and

b) The interests cannot be adequately represented by other parties to the proceeding.

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

7. When the Division is delegated the responsibility to initially hear a complaint under the Commission's Consumer Protection Regulations, the Division will hear the complaint and file a decision and findings with the Commission at the close of the case.

8. Written Decision and Remedies

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.

b) The Division reserves the right to exercise its authority, subject to the right of appeal to the Commission, to issue any order reasonably necessary to enforce these regulations, resolve any disputes, or otherwise protect the public interest.

9. Right of Appeal to the Commission

a) Any party to the Division's proceeding may, as a matter of right, appeal the decision of the Division to the Commission by filing a notice of appeal within five business days of the issuance of the Division's written decision. The notice of appeal must include a copy of the Division's written decision, and set forth clearly and concisely the basis for the petitioner's disagreement with the decision. A copy of the notice of appeal must be served on all other parties to the proceeding. Any decision of the Commission is directly appealable to the Supreme Court pursuant to R.I.G.L. Sec. 39-5-1.

b) If a timely appeal of the decision is not made, and the Division reasonably believes that a party or parties to its decision are not complying or have not complied with the directives in the decision, the Division may request the Commission to issue an order and provide such other relief as may be in the public interest.

10. Any decision of the Division issued in conformance with these Regulations shall be final and binding upon the parties, as if the Commission issued the decision, unless a timely notice of appeal has been filed with the Commission.

The foregoing requirements, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State this 21st day of January, 1999, to become effective on February 15, 1999, in accordance with the provisions of R.I.G.L. 1956 (1988 Reenactment) Sec. 42-35-2(a)(2) and Sec. 42-35-3

1/21/99
Date

Thomas F. Ahern, Administrator

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Appendix

II. PREREQUISITES FOR RHODE ISLAND OPERATIONS

A. All NPPs seeking to do business in Rhode Island must be registered in good standing with the Division of Public Utilities and Carriers ("Division"), in accordance with R.I.G.L. Sec.39-1-27.1(c) and (d).

B. In addition, and NPP must file with the Division evidence of authorization to do business in Rhode Island from the Rhode Island of Secretary of State.

C. Dissemination of information regarding a customer's usage is governed by the electric distribution company's Terms and Conditions. Where there is no provision for dissemination of customer usage information, such information will be provided at the customer's request by the electric distribution company to the customer at no charge, for dissemination by the customer to NPPs of the customer's choice. There may be direct transfer of data from the electric distribution company directly to the supplier upon request of the customer.

D. Contracts between NPPs and customers must be written in plain English, and include the following information:

1. Specific pricing information, including all charges (see Rule II E);
2. Term of service;
3. Rights and limitations of each party to terminate the contract, including notification rules for termination by either signatory. This section of the contract must clearly state that the NPP may not physically cut off electric service to consumers;
4. Amount of any fees or penalties that may be imposed, e.g., for late payments, bad checks, or early contract terminations;

5. Any deposits that may be required (including amount, interest rate, recovery, conditions for forfeiture);
6. Budget plan availability, if any;
7. Dispute resolution process;
8. Customer service contact telephone number; and
9. Any additional service options or additional information.

For uniformity of presentation to residential customers, the information shall be presented in the above numerical order. Upon request by a residential customer, the contract must be made available in Spanish and Portuguese.

E. Price information should include pricing elements, price change formulas, and the potential for price volatility through variable rates or other mechanisms. Upon adoption by the Commission of a format for such disclosure, NPPs shall present information using the prescribed format.

F. Fuel and environmental impacts of the NPP's source or sources of generation must be provided to customers in the format prescribed by the Commission upon its adoption of such a format. Prior to such adoption:

1. NPPs that make representations about generation sources, emissions or other environmental claims about their product must do so in a manner that is factually accurate and not misleading.
2. Any NPP making such a claim must file a copy of the claim and substantiation thereof with the Commission for its information within ten (10) business days after making it public.
3. The filing must include a description of the contracts and/or entitlements that are being relied upon by the NPP to support its claim.

G. NPP customer bills must contain, at a minimum, the billing period (dates and number of days in the period); an indication of whether the bill is rendered on an "actual read" or estimated basis; the demand and energy levels being billed; the current month's billing amount, shown separately from the total amount due; payment due date; late payment penalties, interest rate, and charges; and a toll-free contact number for questions regarding the bill.

H. Physical cut-off of electric service shall be controlled solely by the electric distribution company under its current termination rules.