

## MEMORANDUM

To: Chairperson Curran and Commissioner Gold  
From: Cindy Wilson-Frias and Todd Bianco  
Date: October 26, 2017  
Re: Docket 4600-A – Finalization of Guidance Document

A guidance document is a record of general applicability developed by an agency which lacks the force of law but states the agency's current approach to, or interpretation of, law or describes how and when the agency will exercise discretionary functions. It has also been defined as an agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue. Unlike regulations, while the PUC must rely on the guidance document, once finalized, the agency is not bound in the same way as regulations. The law allows the PUC to depart from a position expressed in the Guidance Document in a contested case, but it must provide a reasonable explanation for the variance and explain how the need for the departure outweighs an affected party's reliance on the Guidance.

A review of the comments to the draft Guidance Document suggests general acceptance of the PUC's direction. The comments were generally positive but touch on areas which need clarification, either through discussion at open meeting or by the addition of some language.

### **Rights & Obligations of the Parties**

The Division expresses concern that the Guidance creates new rights and obligations of intervenors by allowing them to advance rate design proposals with a concomitant burden of proof. According to the Division, no such right or obligation exists in RI General Laws. According to the Division, only a utility can propose a specific rate change or rate design.

- The Division is correct that a utility is the one that files tariffs and terms and conditions. It is the utility that, at the outset, files the initial proposal in most instances. That does not preclude a party from putting forth alternative proposals once the utility has opened its tariffs to review.
- Intervenors in rate cases have, in the past, proposed alternative cost of service studies and/or rate designs – the burden of proof shifts and always has – the Guidance clarifies that shift and what is needed to meet that burden.
- If an intervenor wishes to propose an alternative rate design, as has been done in the past, that intervenor will have to provide evidence in support of that proposal to advance it. By making this clear, the Guidance Document will hopefully avoid the problem from the past where intervenors submit comments or position statements in the hope that the PUC or another party will develop the record in support of the proposal.
- Any counterproposal will still need to be relevant to the matter before the PUC. Nothing in the Guidance suggests the PUC is abrogating its right to limit intervenor participation or otherwise manage the case.
- **This document is intended to neither expand nor detract from the current rights and obligations of parties before the PUC, but to provide clarity and a roadmap of sorts to presenting a case before the PUC.**

## **Burden of Proof**

Several Commenters express concern that the Guidance Document sets too high a bar on participants in cases before the PUC compared to what has traditionally existed. They complain that the Framework is too complicated and the goals and principles too broad.

Sunrun states that the Guidance sets an overly high bar for justifying program proposals, citing language requiring evidence that addresses how the proposal advances, detracts from, or is neutral to each of the stated goals of the electric system and that an opponent also needs to refer to the goals. Sunrun also cites the requirement to at least address the categories in the framework as being overly burdensome for stakeholders with limited resources.

The Lieutenant Governor states that principles, goals, and framework should not apply to all parties and that the rate design principles are vague and difficult to apply – would lead to challenges because it would be difficult to determine if the PUC decision was arbitrary and capricious

- If an intervenor is making an alternative proposal, that party already has the burden of proof shifted onto it and the Guidance may be viewed as a roadmap to developing a case in support of an alternative proposal.
- If an intervenor is opposing something, the guidance document lays out how to present that by providing a list of goals, principles, and costs/benefits to be considered.
- Policy statements or claims absent evidences is already given the appropriate weight.
- State policy already applies to all parties.
- The rate design principles, are, to a large extent, very like the current Bonbright principles.
- Principles, by definition, are statements of general applicability. Determination of whether those principles are met is based on the evidence presented to, and relied upon by the PUC. That is what determines whether the PUC decision is reasonable and not arbitrary and capricious.
- Public Comment will still be taken and given the appropriate weight.

Acadia Center seems to suggest that if there is a collaborative process, there would be no proponents to meet a burden of proof: “Proposals that result from collaborative processes may no longer have a ‘proponent’ in the traditional sense. These collaborative processes help level the playing field on both expertise and resources and should ensure that stakeholders have their input considered earlier in the process.”

- This seems to ignore the fact that even in a settlement, there is still a burden of proving that the settlement is in the public interests (will now need to meet the goals, principles, and C/B analysis).
- In a joint proposal based on a collaborative process, the signatories are still proponents and there may be opponents.
- In collaborative process, the stakeholders should understand the need to eventually show how a recommendation works with the goals, principles, and RI Test. A complete process would include that evidence or a plan to develop that evidence. For example, a stakeholder group may be working toward determining how to develop the evidence to move a proposal forward.

## **Application of the Goals and Rate Design Principles**

National Grid is seeking that the goals in the Guidance Document only apply to new rate proposals, new utility business models, and approval of related cost recovery.

- The goals will apply to all rate proposals and recovery mechanisms that are not statutorily prescribed.

National Grid requests that the PUC clarify that the rate design principles only apply to new or substantially redesigned rate structures.

- The Company should endeavor to apply the goals and principles to continuation of rate structures to show why they are still just and reasonable.

In particular, the Company requests that footnotes 5, 6, and 8 be revised to indicate that the design of the annual Infrastructure, Safety, and Reliability recovery factors would only be subject to the goals, principles, and Framework if the Company proposed significant changes to the current rate design based on previously approved methodology.

### **Application of Framework Generally**

A general observation may be that commenters are most concerned with the application of the Benefit-Cost Framework/RI Test in certain instances. Use of the Framework will be new but the evaluation of costs and benefits is not new. Any request made to the PUC has always had a cost and the proponent has always needed to provide evidence to show that the benefits justify the cost. That has not changed and where a proponent believes they can provide a quantification of benefits, they should present that as part of the evidence. The Framework now provides the categories of benefits the parties should be attempting to quantify through various cost proposals.

The PUC has consistently recognized in the Docket No. 4600 Order and Guidance Document that the Framework is a work in progress as it relates to development of methodologies for quantifying costs and benefits. Likewise, application of the Framework will be a work in progress for the parties and the success of such application will provide a learning process to all involved while also providing additional transparency into the deliberative ratemaking process. The PUC expects the parties to do their best.

Sunrun seeks clarification on how the PUC may act in circumstances where a cost or benefit appears to fall outside of the defined framework.

- **Categories will be added as necessary but new categories should be reasonably/reliably shown to exist and the category can reasonably be shown to be related to state policy.**

### **Application of the Framework to Which Proposals?**

National Grid requests clarification that the Benefit-Cost Framework will only serve as a starting point in making a business case for new proposals to be implemented in the future and not be required for continuation of existing programs with respect to which no significant changes are proposed. The Company is also seeking exemption from the Benefit-Cost Framework, any filing that represents a continuation of a current practice without a significant change to the specific program or cost recovery mechanism.

- The Benefit-Cost Framework needs to be applied to all filings, except for those from which the PUC has already provided exemption.
- However, if a specific measure within an annual plan has already been approved and spending has begun (i.e., South Street substation) the spending does not need to be reviewed in the next ISR through the Framework. Conversely, proposals that have previously been listed in the outer years with no spend in an approved budget-year, the RI Test should apply once funding is requested.

Similarly, if there is a project that has been deferred over multiple years, the RI Test should apply once funding is requested.

- Consistent with the law that requires all EE plans to meet the least cost procurement standards, any new EE Plan, even if it contains all of the same proposals as a prior year's plan, would need to be run through the RI Test.
- Even in cases where the PUC has provided an exemption, if one of those filings contains a significant change to the specific program or a significant departure from prior years' proposals and approvals, the parties should expect the PUC to apply the Framework through discovery.

National Grid requests confirmation of the Company's understanding that the Benefit-Cost Framework would not be applied to each element of the Company's revenue requirement but only to new programs or proposals that are not typically included in the Company's cost of service

- The Company definitely needs to apply the Framework to new programs or proposals in a rate case or other case.
- The Company should apply the Framework to categories within the cost of service, for example, if a request is being made to comply with state policy or there is an expansion of dollars or percentage increases within a category (ex: revenues needed to meet various interconnection requirements; customer service; low income policies).

National Grid is also seeking clarification of whether a suite of new proposals, such as a number of Power Sector Transformation-related proposals that the Company is currently considering for inclusion in its upcoming rate case or a future grid modernization proceeding before the PUC are to be evaluated as a whole or on an individual basis using the Benefit-Cost Framework

- A proposal can pass the benefit-cost test even if all the components are not beneficial, as long as the overall proposal is net beneficial. The components, however, all need to be integral to the overall proposal. If a component is not critically linked to other measures in the proposed program, funding for it can be denied separately from the overall proposal.
- Example: A proposed beneficial electrification proposal might include 90% of funding for an electric heating measure with a 2.0 benefit cost ratio and 10% of funding for an EV measure with a benefit cost ratio of 0.5. The proposal can combine those if there is some important connection or synergy between the two present a program with a benefit cost ratio of 1.85 (i.e.,  $2.0 \times 0.9 + 0.5 \times 0.1$ ). But, the PUC will review that overall proposal and the two measures to determine if they are critically linked to each other. If not, then funding for the combined EV and heating proposal may be denied, while funding for only to the heating measure may be provided.

### **Application of the Framework to Rate Design**

The Division, OER, and National Grid all suggest that rate design proposals should not be subject to the Framework or suggest that the principles be the primary measure with the Framework behind. The Division argue that the Framework cannot inform certain of the principles.

- The goals, principles, and Framework are all on par with one another. None is more important than the other, but all work together.
- R.I. Gen. Laws § 39-26.6-24(a)-(b) requires the PUC to apply the Framework factors to rate design. The new rate design contemplated in those sections specifically refers to the benefits of DER; the services being provided to the net metering customers; equitable allocations of costs; cost

causation principles; “general assembly’s legislative purposes in creating the distributed generation growth program” (REGrowth).

- Docket No. 4568 was a rate design docket where these issues were raised and the arguments were over whether National Grid had adequately accounted for benefits as well as costs. Docket 4600, the outgrowth of that docket was designed to identify the costs and benefits to the distribution system and how those might be measured such that the PUC could apply them in evaluating future rate design proposals.
- The entire section relates to rate design rather than capital investments. The Framework is intended to identify the costs and benefits to the distribution system. The rate design impact of, for example, fixed charges or minimum monthly bills, should be run through the Framework in order to see how they may affect the values.
- Rate design affects customer behavior which affects how the Company recovers its revenue requirement. It will affect how the Company acts. Thus, rate design affects state policy and the goals of the electric system.
- Example: Low income rate design will likely not have any capital investment but will necessarily shift costs onto other customers and depending on the design will have different impacts on policies/programs/benefits and costs in the Framework (energy efficiency, economic development, etc.).
- Sunrun is seeking clearer guidance on how the PUC will evaluate economic efficiency in rate structures. Rate designs that simply create a different set of winners and losers with no corresponding increase in the overall efficiency of the system should be avoided. In practice, improving system efficiency is only possible if consumers have the ability to respond to a given rate structure or price signal in a way that is consistent with what the signal seeks to accomplish. This is an example of why new rate design should be run through the RI Test.

## **Pilots**

Sunrun seeks to ensure pilot programs are designed so that participants get full value of their participation (not limit time in the pilot once enrolled if a long-term investment)

- There was no limit on scope, time, or spending intended. We are saying that to qualify for review as a pilot, the proposal must include a defined limit on scope, time, and spending. If it turns out it is worth continuing, the Company should have to come back in and provide evidence that it is worth continuing. This does not mean that participants in a pilot that requires a long-term repayment of investment that was included in the pilot would be kicked out if the pilot ends, but no new enrollees would be accepted if the pilot is not continued.
- There would be a limit on the pilot, but participants would be entitled to complete the pilot for the term for which they signed up.
- The PUC is not defining limits in the Guidance Document, the PUC is defining a requirement that proponents of pilots must provide clear limits so the PUC can review the proposal as a pilot. Proposals that are reviewed and approved without clear limits should be reviewed as full program proposals, and subject to the higher standards of conformance with the Goals, Principles, and RI Test.