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December 8, 2020

*VIA ELECTRONIC SERVICE*

Luly E. Massaro, Commission Clerk  
State of Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

**Re: Docket 5058 – Comments on Data Sharing**

Dear Ms. Massaro and Members of the Commission:

Thank you for this opportunity to provide additional comments with respect to National Grid's proposal to share customer data with municipal aggregators. I am submitting these comments on behalf of Good Energy, a leading municipal aggregation consultant in New England and the United States, which is currently working with a number of Rhode Island communities including the Cities of Central Falls and Providence. As noted in its filing, National Grid is proposing to share customer information sufficient for a municipal aggregation program to develop a bid for electricity supply that has the greatest chance of yielding favorable terms for the program, and, subsequently, to enroll residents into the aggregation program consistent with RI Gen. Laws §39-3-1.2.

Good Energy believes that allowing this data to be shared with a municipal aggregator, without prior consent from individual consumers, is legally required in order for the Commission's precedent and policy to be consistent with the terms of the authorizing statute. The applicable statute states, *inter alia*:

...[a]n ordinance or resolution under this section shall specify whether the aggregation will occur only with the prior consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated or will occur automatically for all persons pursuant to the opt-out requirements of this section.

Good Energy's clients, thus far, have authorized and developed opt-out programs consistent with this statute. The subsequent aggregation plans, as developed by staff and community members, and then discussed at public hearings and Council meetings, were entirely predicated on this being possible. Requiring individual consent to share consumer data with a municipal aggregator is, in all practical terms, eliminating the opt-out program. It is currently the expectation of the community not to need to obtain individual consent with each eligible customer in order to enroll them in the program, and such a requirement would undermine the purpose of the statute and frustrate the communities who have taken significant action towards the development of an aggregation program.

It is noteworthy that in Massachusetts, under a similar statutory framework for municipal aggregations, the Department of Public Utilities has allowed the sharing of customer information with municipal aggregators even though the Department's regulations generally prohibit the enrollment of customers by, or the sharing of certain customer account information with, a competitive supplier without a customer's explicit authorization. The Department has found that under the regulatory structure for municipal aggregations, "(t)he opt-out provision applicable to municipal aggregators replaces the authorization requirements in the Department's regulations." See D.P.U. 19-83, City of Waltham, p.7 (Nov. 24, 2020).

Second, Good Energy believes that there is a significant distinction to be made between sharing consumer information with an aggregator and with a non-regulated power producer. Thus, the Commission's concerns that generated the initial policy is not at play in the current proposal. The Municipal government, through the authorization of the aggregation program, has taken on the responsibility of ensuring that only eligible customers are enrolled in the program. Should there be a breakdown in this responsibility, consumers and citizens have greater recourse with their local officials than with a business entity with only commercial ties to the community, specifically the power to vote out officials that need to be held accountable.

Additionally, for a non-regulated power producer allowing the sharing of consumer data raises the risk of unauthorized enrollment and questionable marketing tactics. This concern is mitigated in form and function of the program as authorized by the General Assembly. Specifically, after the municipality takes the required steps, they have been authorized to enroll consumers with a new supplier without individual consent. The prior responsibility of the program to inform consumers of the opportunity to opt-out of the program means there is substantial action taken by the program to inform consumers of the upcoming shift. Thus, sharing of the data is necessary to effectuate otherwise authorized enrollment and to facilitate even greater communication with residents and customers as to the availability of multiple electricity supply options. The risk of questionable and potentially deceptive marketing is mitigated by both the provisions of the authorizing statute and the interest of local government to provide accurate information to its residents, where they have a built-in accountability system in the form of local elections.

The Massachusetts Department of Public Utilities has also recognized certain key differences between a competitive supplier and a municipal aggregator. D.P.U. 16-10, Order on Eligible Customers, pp.13-14 (August 23, 2017). One important distinction is that "a municipal aggregation program is implemented at the direction of, and under supervision of, the municipal government, including a vote and approval of the legislative arm of the municipality prior to seeking approval of a municipal aggregation plan. M.G.L. c.164, sec.134(a). Local governments are directly accountable to their constituents." Id.

Finally, the Commission already has before it, in this docket, a number of options to protect consumers that would not substantially burden the development and operations of an aggregation program. Thus far, there has been specific inquiry into what data use limitations may exist within the Electricity Supply Agreements between the aggregation program and their chosen supplier. The model contracts provided by

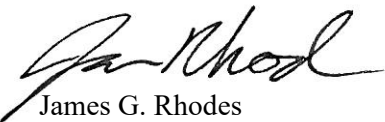
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both Good Energy and Colonial Power indicate limits on suppliers using customer data for any marketing or solicitation purposes outside the existing aggregation program. These limitations have become industry standard, though they take a slightly different form for each community and each supplier for aggregation programs across the country. The Commission would likely be within its authority to mandate a minimum set of consumer protections and data use limitations within these agreements to create a level playing field and predictability for both aggregators and suppliers.

For these reasons, we encourage the Commission to approve the sharing of customer data with municipal aggregators in furtherance of the development and implementation of aggregation programs.

Thank you for your time and consideration of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Ja Rhodes".

James G. Rhodes  
Counsel for Good Energy, L.P.