



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS

Legal Section
89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500
(401) 941-9207 - Fax

February 26, 2021

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket 5061 City of Providence Community Choice Electricity Aggregation Plan

Dear Ms. Massaro,

The Division of Public Utilities and Carriers (“Division”) writes to provide the Public Utilities Commission (“Commission”) with its recommendation regarding the Petition of the City of Providence (“Providence” or “Petitioner”) for approval of the City’s Community Electricity Aggregation Plan (“Petition”) pursuant to R.I. Gen. Laws § 39-3-1.2. The Division’s recommendation is the product of a review that focused principally on the following four areas: (i) compliance of the Providence Community Electricity Aggregation Plan (“Plan” or “Program”) with the requirements of R.I. Gen. Laws § 39-3-1.2, (ii) the Petitioner’s request for alternative energy disclosure requirements, (iii) the potential impact that the Plan may have on Protected Status Customers¹ and LIHEAP-Eligible Customers²; and (iv.) The Commission’s inquiry to the

¹ Rule 1.2(A)(5) of Commission’s Regulations Governing the Termination of Residential Electric, Gas and Water, Utility Service 810-RICR-10-00-01 (“Termination Rules”) provides that a “Protected Status Customer” means a residential customer about whom the public utility has evidence that the customer is:

- a. Unemployed as demonstrated through verification by DLT that the person is currently receiving unemployment compensation;
- b. Elderly or handicapped, as defined by § 1.4(K)(1)(a) of this Part;
- c. Recipients of Low -Income Heating Assistance Program (LIHEAP)
- d. Seriously ill, as defined by § 1.2(A)(8) of this Part; or
- e. Living in a residence where there is domiciled a person under the age of two (2) years and there is a financial hardship.

² A “LIHEAP-Eligible Customer” is a customer receiving benefits through Medicaid, General Public Assistance and/or the Family Independence Program. See Amended Settlement Agreement Dkt. 4770 at 25.

Division and National Grid during the February 1, 2021 scheduling conference, specifically: (1) “[Whether] the AMP law prohibit(s) customers from AMP eligibility if they are taking competitive supply?...”; and (2) “ If not legally prohibited, should the AMP tariff be amended to address the Division’s stated concerns about the loss of AMP benefit for customers who would otherwise be eligible but for the tariff provisions limiting enrollment to customers taking last resort service?”³

To arrive at its recommendations, the Division reviewed the Petition, the Plan, and the Direct Testimony of Leah Bamberger and Philip Carr; held discussions with representatives of Petitioner’s consultant, Good Energy, and National Grid on February1 , 2021, and February 8, 2021, respectively. Subject to compliance with the terms further set forth herein, the Division recommends that the Commission grant the Petition and approve the Plan.

I. Plan Compliance with R.I. Gen. Laws §39-3-1.2

The Division will not belabor its analysis of the Plan’s legal compliance with R.I. Gen. Laws §39-3-1.2. In the Division’s opinion, the Plan satisfies the requirements of the statute.

The Plan appropriately authorizes aggregation, identifying the majority vote of the Providence City Council⁴ with the approval of the Mayor.⁵

The Plan also properly provides for its own development⁶, as well as the operation and governance of the aggregation program. That is, the Plan identifies the classes of customers that may participate in the aggregation Program⁷; contains a statement of universal access and equitable treatment for all applicable customers⁸; identifies the organizational structure of the Program⁹;

⁴ Plan at 11. (identifies that, on September 5, 2019, the Providence City Council passed a resolution authorizing the initiation of an aggregation program)

⁵ Id. (a copy of the resolution submitted as part of the City’s plan contains an approval stamp with the Mayor’s signature dated September 9, 2019.)

⁶ Id. at 13. (identifies that a notice of public hearing on the Plan was published once a week for two consecutive weeks in the Providence Journal on July 9 and July 15, 2020 and that a public hearing on the Plan took place on July 15, 2020.)

⁷ Id. at 2. (identifies the residential class, A-16 (Basic Residential) and A-60 (Low Income); commercial class C-06 (Small Commercial), G-02 (General Commercial, S-05 (Street and Area Lighting, Customer Owned Equipment), S-06 (Decorative Street and Area Lighting), S-10 (Private Lighting), S-14 (General Street and Area Lighting); industrial class B-32 (Large Demand and Back-up Service, and G-32 (Large Demand).

⁸ Id. at 2. (states that the plan provides universal access to consumers by guaranteeing that all customers in Applicable Classes will be included in the program under equitable terms.); Carr Testimony at 2.

⁹ Id. at 3-5. (identifies entities that have a specific role in the development, implementation, operation, and oversight of the plan.); Carr Testimony at 2.

identifies the Program's operations¹⁰; identifies the Program's funding and sets forth a process for establishing rates¹¹; identifies the process of allocation costs among Plan participants¹²; sets out the methods of entering and terminating agreements with other entities¹³; establishes the rights and responsibilities of the participants¹⁴; provides the method for entering and terminating the agreements with other entities¹⁵; designates the method for terminating the Program¹⁶; identifies the terms and conditions under which retail customers who have chosen to opt-out may take service from the aggregated entity¹⁷; and reserves for the City the right to terminate the Plan by placing customers on Standard Offer Service ("SOS").¹⁸

Lastly, the plan appropriately describes customers' rights once the plan is approved. More specifically, the Plan identifies that customers may elect to receive retail supply from another licensed Supplier or the electric distribution company.¹⁹ The Plan also provides that, 30 days after the aggregated entity is operational, ratepayers who have not elected an alternative supplier will be transferred to the aggregated entity, subject to an opt out provision.²⁰ Following adoption of the Program, the Plan provides that any retail customer may opt-out and choose any supplier or provider the retail customer wishes.²¹ The Plan requires that the aggregated entity must fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and have the right to opt-out.²² The Plan provides that participating

¹⁰ *Id.* at 5-8 (identifies key operational steps following approval of the Plan by the Commission including issuance of a request for proposal for power supply, selection of a competitive supplier, implementation of public education campaigns, enrollment of consumers, and provision of service.); *Carr Testimony* at 3-4.

¹¹ *Id.* at 8-9 (identifies that power supply charges will be set through the competitive bidding process and will include the aggregation fee and applicable taxes.)

¹² *Id.* (provides that prices, terms, and conditions may differ among classes.)

¹³ *Id.* at 9 (provides the process for terminating agreements must comply with the Providence's municipal charter and ordinances, and federal and state law and regulations.)

¹⁴ *Id.* (establishes, among other things, the right of all participants to opt-out of the Plan without charge.)

¹⁵ *Id.* at 9-10 (provides the manner for the Municipality to solicit bids for a new supply agreement and plans to continue the Program with the same or new supplier.)

¹⁶ *Id.* (identifies the manner for terminating the Program.)

¹⁷ *Id.* at 3 (describes the rights of consumers to join the Program after having opted-out.)

¹⁸ *Id.* at 10. (provides that in the event of termination, consumers return to SOS.)

¹⁹ *Id.* at 9 (provides that Plan participants may opt-out of the Program at any time by enrolling with another competitive supplier.)

²⁰ *Id.* at 7. (after completion of opt-out period, competitive supplier will enroll into the Program all Applicable Consumers on SOS with National Grid who did not opt out.)

²¹ *Id.* at 9. (discussing the opt-out process.)

²² *Id.* at 7. (describing the initial outreach, consumer notification letter, and opt-out card that will be forwarded to the consumers.)

ratepayers must be informed of all changes that are to be made²³, provides for full disclosure of the SOS rate²⁴, identifies how customers may access SOS²⁵, and requires that the plan must be made available to ratepayers without penalty if they were previously on SOS.²⁶

II. Petitioner’s Request for Alternative Energy Disclosure Requirements

In addition to contending that the plan satisfies the legal requirements of R.I. Gen. Laws §39-3-1.2, Petitioner has also requested that the Commission approve an “alternative disclosure strategy” for complying with energy disclosure requirements. Petition at 2.

R.I. Gen. Laws §39-26-9(c) and 810-RICR-40-05-3.4(B) provide that “energy source disclosures shall be distributed to consumers on a quarterly basis...” Petitioner seeks to satisfy the disclosure requirement by employing “...public service announcements, posting at Municipality buildings and posting on the program website.” *Id.* Petitioner opines that “[a]ny requirement for quarterly direct mailings would be burdensome and expensive, raising the supply price for customers.” *Id.*

The Division believes that the term “distributed” contained in R.I. Gen. Laws §39-26-9(c) and 810-RICR-40-05-3.4(B) is broad enough to include posting the Program on a dedicated website as a means of providing customers with relevant information regarding the sources of their energy supply. *See Greater Los Angeles Agency on Deafness, Inc v. Krikorian Premier Theaters, LLC*, 205 WL 12656271 (C.D. Cal. 2015) (posting on the website was a reasonable method of informing class of information and notice of settlement deadlines). Moreover, the information to be disclosed is for informational purposes and does not implicate the type of notice that would trigger due process concerns. Accordingly, the Division recommends the Commission grant Petitioner’s request to approve alternative process for complying with energy disclosure requirements through posting on the program’s website.

III. The Impact of the Plan On Protected Status Customers and LIHEAP Eligible Customers

Even though the Plan satisfies the legal requirements of R.I. Gen. Laws § 39-3-1.2, the Division is concerned that the Plan may adversely impact Protected Status Customers and LIHEAP-Eligible Customers. When the Narragansett Electric Company d/b/a/ National Grid (“NGrid”) receives a payment on behalf of customers, the payments are applied first to delivery service obligations and then to supply service obligations. For Protected Status Customers who elect to remain with NGrid no issue should arise. However, Protected Status Customers who are transferred to a competitive

²³ *Id.* (provides that the notice prominently states all program charges and price and primary terms of the Municipality’s competitive supply and compare the price and terms to the current SOS.)

²⁴ *Id.* at 7. (provides for disclosure of the SOS rate.)

²⁵ *Id.* at 19-20 (provides that all information relating to the Program will be posted on the Programs website and that the Program will also maintain a toll-free number to address Applicable Consumer questions.)

²⁶ *Id.* at 2 (Sample consumer notification letter provides that there is no penalty for leaving the Program and that participants can leave the Program at any time.)

supplier under the plan (either knowingly or unknowingly) and then fall behind on their obligations, could be subject to collection activities of the supplier (telephone calls, collection letters, *etc.*) for the supply service portion of their bill without the protections afforded to them by the Termination Rules²⁷. At the same time, because the payment of customer service delivery obligations is given priority over the payment of customer service supply obligations, the delivery service component remains due and owing. Protected Status Customers' recourse will be to opt-out of the Plan and return to NGrid for both delivery and supply services. In the Division's experience, however, it can take as many as 45-60 days after any opt-out has been exercised, the Protected Status Customer will accrue supply service obligations that will be subject to Termination Rules protections.

Similarly, it is the Division's understanding that LIHEAP-Eligible Customers who have been scheduled for shut-off and are transferred to a competitive supplier under the Plan are ineligible to enter into an arrearage management payment ("AMP") plan pursuant to R.I. Gen. Laws § 39-2-1(d)(1).²⁸ Again, these customers' recourse will be to exercise their opt-out right and return to NGrid for supply and delivery service. However, they may remain on competitive supply for as many as 45-60 days after exercising their opt-out right, and the obligations incurred to competitive suppliers by LIHEAP Eligible Customers, in all probability, will not be subject to AMP plan terms, conditions, and forgiveness. These obligations may be material in view of such customers financial wherewithal.

NGrid provides customers a Budget Billing Plan ("Budget Plan") that is designed to smooth out customers' energy bills during the course of the year. In Rhode Island, it is the Division's understanding that customers who use another company for their supply only have NGrid delivery charges included in their Budget Plans. In Massachusetts, it is the Division's understanding that customers who use another supplier have both their delivery and supply charges included in their Budget Plans. Customers who are transferred to a supplier under the Plan and desire or require a Budget Plan will not have the benefit of an effective plan unless they opt-out of the Plan and return to NGrid for both supply and delivery service.

Pursuant to R.I. Gen Laws § 39-1-27.13:

[The] Commission may implement a purchase of receivables program where the electric distribution company purchases the receivables of a nonregulated power producer at a discount rate that is then offset from the monthly payments the electric distribution company makes to the nonregulated power producer if the Commission finds that the benefits of the program to the ratepayers would exceed the cost to the ratepayers.

The Company has implemented a purchase of receivables program in Massachusetts. Customer complaints about collection activities from suppliers and the absence of termination protections, etc., at least anecdotally, do not appear to be prevalent in Massachusetts.

²⁷ See Generally, 810-RICR-10-00-1 *Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service.*

²⁸ R.I. Gen. Laws § 39-2-1(d)(1) (Provides for the administration of rules and regulations facilitating the restoration of electric and/or gas service to low-income home energy assistance program (LIHEAP)-eligible households)

**IV. Public Utilities Commission’s Inquiry to the Division and National Grid
Regarding the Arrearage Management Plan and Tariff**

On February 1, 2021, a scheduling conference was held with counsel for NGrid, Good Energy, the Commission, and the Division, at which time the Commission directed the Division and NGrid to provide responses to the following inquires: (1) [Whether] the AMP law prohibit(s) customers from AMP eligibility if they are taking competitive supply?; and (2) If not legally prohibited, should the AMP tariff be amended to address the Division’s stated concerns about the loss of AMP benefit for customers who would otherwise be eligible but for the tariff provisions limiting enrollment to customers taking last resort service?

The Division participated in telephone conferences with “NGrid” on February 8, 2021, and Good Energy, L.P. (“Good”) on February 9, 2021, to discuss the impact of Central Falls’ and related aggregation petitions of the Town of Barrington, Town of South Kingstown, and City of Providence. The Division has concluded after conferring with the parties that its recommendations filed in each of those dockets remains unchanged.

Pursuant to R.I. Gen. Laws § 39-2-1, a LIHEAP-Eligible customer who seeks and receives an Arrearage Management Plan (“AMP”) to avoid termination of “utility service” and meets certain specified requirements is entitled to have his/her “outstanding account balance.... forgiven” up to a certain specified amount per year. Unless NGrid possesses a right to collect on a customer’s “outstanding account balance” (*i.e.*, a receivable to NGrid), the Division does not believe that NGrid can forgive the balance as the statute directs as some or all of the balance is owed to another entity.

The Revised Electric Service Agreement (“Revised ESA”) that was filed on December 22, 2020, in pertinent part, provides that if:

... a customer does not pay the bill by the due date; Supplier may terminate supply service after giving Customer a minimum of fourteen (14) days written notice. Upon termination of service, Customer will be returned to Last Resort Service, or they may choose another competitive supplier. Customer will remain responsible for all electricity used during participation in the program until such time as the Contract expires.

Revised ESA, Article 4.2. The revised ESA further provides that “[a]ny customer participating in the program at the A-60 rate class shall not be subject to collections activity either by Supplier or a Third-Party for arrears that may be due after supply has been terminated.” *Revised ESA 4.3.*

These provisions will eliminate the concern that LIHEAP customers may be subject to collection activities for supply service obligations after their return to Last Resort Service. Due to the particular language and interpretation of R.I. Gen. Laws § 39-2-1 discussed above, the ESA provisions, however, do not alleviate the concerns that such customers, while on competitive

supply service, will be unable to obtain an AMP Plan for the delivery portion of their account. The revised ESA, however, does not contain a provision that allows for separate billing of supply and delivery service, and Good has indicated to the Division that suppliers are unwilling to bill for supply service separately as they do not have the billing and collection infrastructure in place to undertake those activities.

V. Conclusions

Based on the forgoing, the Division recommends that the Commission grant the Petition and approve the Plan, subject to the following requirements:

- i) Within two (2) years from approval of the Plan (or such other time as the Commission allows), Providence must provide written notice to the Commission and the Division that the Plan has been implemented, describing with particularity all parts of the Plan that have not been implemented²⁹;
- ii) Providence must report the results of the Plan solicitation and proposed agreement awards to the Commission and the Division³⁰;
- iii) Petitioner should promptly forward a copy of the Petition, Plan, Testimony, and Procedural Schedule for Dkt. 5061 by e-mail and by regular mail to the George Wiley Center, The Center for Justice and the Community Action Partnership of Providence (“CAP”) and/or other appropriate CAP agency; and
- iv) As part of its Outreach and Education Plan (See Plan at 13-17), Petitioner should conduct at least one workshop with the Community Action Partnership of Providence (“CAP”) and/or other applicable CAP agency, the George Wiley Center and the Center for Justice to educate these groups regarding the terms of the Plan and the impact that the Plan may have on Protected Status and LIHEAP Eligible Customers, including but not limited to: a) the availability or unavailability of the Termination Rules and the AMP plan for Protected Status and LIHEAP Eligible Customers both during and after they have been transferred to a competitive supplier; b) The various electricity supply products that are available under the Plan by choice or by default and how the price of each product may compare to each other and SOS; and c) the actions that Protected Status and LIHEAP Eligible Customers must take to elect to remain with NGrid or to opt-out of the Plan.

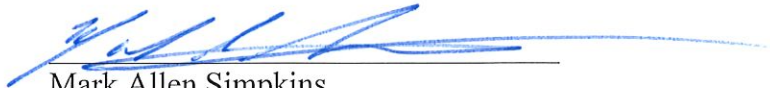
²⁹ R.I. Gen. Laws § 39-3-1.2(a)

³⁰ *Id.*

The Commission should also expeditiously explore the merits of any purchase of receivables program, pursuant to R.I. Gen. Laws § 39-1-27.13 and review NGrid's Budget Billing Plan for customers who use another company for their supply.

Respectfully submitted,

Division of Public Utilities and Carriers



Mark Allen Simpkins
Deputy Chief Legal Services

cc: Service List