

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

RULES APPLICABLE TO NONREGULATED POWER PRODUCERS

Date of Public Notice: **October 8, 2014**

Deadline for Submitting Data, Views or Arguments: **November 12, 2014**

Effective Date: **January 1, 2015**

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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 October 20, 2014. Interested persons should examine all NPP-related rules for a comprehensive understanding of the regulatory requirements attached to NPPs doing business in Rhode Island.

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. 42-35-1

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.
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. Written Decision

- 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.

8. Appeals

- a) Any decision of the Division issued in conformance with these Rules shall be final and binding upon the parties unless appealed under the Rhode Island Administrative Procedures Act.