CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, Section §42-35-2.6 of the General Laws of Rhode Island, following is a concise explanatory statement:

AGENCY: Division of Public Utilities and Carriers
RULE IDENTIFIER: **815-RICR-30-05-2**
RULE TITLE: Nonregulated Power Producer Consumer Bill of Rights
REASON FOR RULEMAKING:
The Division is directed by statute (RI Gen. Laws 39-26.7) to adopt NPP Consumer Protection rules in accordance with the chapter.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:
(See Above)

TESTIMONY AND COMMENTS: Note: A second notice of public comment period in this docket (Docket D-16-112) was necessitated by provisions of R.I. Gen Laws § 42-35-4 which establishes a 180 day period after the close of public comment within which the final rules must be filed with the Secretary of State. Since the final rules were not filed with the Secretary of State within the 180 days following May 1, 2017, the law requires that this rulemaking be re-initiated. **The testimony includes that made at the initial hearing, and public comment period as well as the comments filed in response to the second notice.**

The following attorneys entered appearances at the hearing:
Appearances: For the Advocacy Section: Christy Hetherington, Esq. Special Assistant Attorney General For the Retail Energy Supply Association ("RESA"): Robert J. Munnelly, Jr., Esq. Davis Malm & D'Agostine, P.C. Also present at the formal hearing were Mr. Thomas Kogut, Division Rulemaking Coordinator/Legislative Liaison; Mr. Marc Hanks, Direct Energy (Member of RESA); Mr. Andy Mitrey, Archer Energy; Ms. Miriam Cohen, Energy Auction House; and, Mr. Wayne E. Gardner, Genie Retail Energy, Inc. Not all of those present at the hearing chose to offer public comment or enter a formal appearance

A. Division Rationale For The Proposed Rule

Mr. Thomas Kogut, Associate Administrator for Cable/Chief of Information for the Division of Public Utilities and Carriers, appearing in his role as Rulemaking Coordinator and Legislative Liaison for the Division, testified in support of the proposed rules. Mr. Kogut began his remarks with a brief discussion of the travel of this rulemaking proceeding. He noted that the legislative initiative that led to these proposed rules actually began in 2015 when then House Corporations Committee Chairman Kennedy introduced a bill patterned after existing Connecticut legislation. Both the Division and members of the retail competitive supply industry testified before Chairman Kennedy's committee that the 2015 version of the bill was too prescriptive in nature and far too broad in some areas. At least one member of the industry testified that the legislation as written at that time would present a significant barrier to market entry in Rhode Island.

Mr. Kogut then testified that the initial committee hearing then led to some very frank discussions between senior Commission counsel, Division staff, members of the competitive supply industry, and representatives of the Narragansett Electric Company d/b/a National Grid—Electric, that resulted in preparation of an amended version of the 2015 House bill. This new version of the bill was ultimately approved by the House in 2015, but failed to get a Senate companion.

In 2016, however, the House bill was reintroduced, picked up a Senate companion, and was eventually enacted into legislation. Mr. Kogut went on to testify that this new version of the bill directed the Division to address a number of very specific topics into a new set of Division rules regarding a Consumer Bill of Rights applicable to NPPs' customers. The legislation also directed the Division to incorporate generally some provisions of the Commission's existing rules with respect to NPP Consumers' basic rights when dealing with competitive suppliers. The Commission rules were to be rescinded coincident with the actual promulgation of the Division's new NPP Consumer Bill of Rights rules.

Mr. Kogut then noted that the statutory language enacted in 2016 actually envisioned the Division initially doing two separate rulemakings. In the interests of administrative efficiency, the Division elected to consolidate the entire process into a single rulemaking proceeding, and approach that was approved in advance by the Office of Regulatory Reform.
Finally, Mr. Kogut testified that the overall goal of the Division in this proceeding was to simply address the statutory provisions with respect to creating an NPP Consumer Bill of Rights while incorporating the Commission's existing consumer protection provisions into the new Division rules as directed by the statute.

B. Public Comments On Rules

In summarizing the public comments, we are only going to address those points where a member of the public advocated for a change to the proposed rules. We see no need to reiterate comments that agreed with the proposed text as currently written. Our discussion of the public comment will be organized by section number of the proposed rules. That is, we will summarize all comments on a given section or subsection received by all interested parties before proceeding on to the next proposed section and a discussion of all of the comments offered on that section. We will organize our discussions and findings section in this Report and Order in a similar fashion.

Retail Energy Supply Association ("RESA")
Prefatory Remarks

The first public comments offered at the hearing were from Robert J. Munnelly, Jr., Esq, and Mr. Marc Hanks, jointly, on behalf of RESA.[1] In their prefatory remarks, they suggested that it would be well to keep in mind that one of the primary goals of these rules should be to avoid unnecessary regulatory burdens that would serve as a potential barrier to competition. They believed that there were places in the rules where there should be alternative formulations that would meet the public interest standards and goals of both the statute and the rules, but which would not unnecessarily cause trouble for competitive suppliers. They also suggested that perhaps a non-final draft of these rules should be circulated after all public comment has been received and addressed, with a solicitation of additional comments and some type of additional hearing or technical session to further iron out the new suggestions.

Section 2.2. Purpose.

With respect to section 2.2 of the proposed rules, Mr. Munnelly and Mr. Hanks suggested in their public comments that it might be worthwhile to add a sentence that talks about a goal of avoiding imposing unnecessary regulatory burdens on competitive suppliers. They reiterated this suggestion in their later written submission.

Proposed "Applicability" Section

Mr. Munnelly and Mr. Hanks also suggested, somewhat later in their public comments, that perhaps there should be a new section termed "Applicability" that would be intended to identify which of the proposed rules apply only to suppliers of residential customers, which apply only to commercial and industrial customers, and which of the proposed rules apply to all customers. Rather than create a rule without a clear statutory basis, the Division interprets this suggestion as urging us to further amplify the "Purpose" section of the enactment (R.I.G.L. § 39-26.7-2) and of the proposed rules (Section 2.2).
The RESA representatives also pointed out that these rules should:
… address the meaning of individual rules made applicable "… on or after January 1, 2017." … Since it would be both unfair and in violation of ex post facto law principles to deem compliance required as of four months ago for regulatory requirements that have not yet been defined or made effective to date, this "on or after" provision should be construed in the Applicability or Definitions section of the final Consumer Rules to mean sixty (60) days after the Division issues its Order approving the final Consumer Rules.

It has been Division practice to spell out the date on which a set of rules becomes effective in the final Report and Order approving and promulgating those rules, and to reiterate that effective date on the title

[1] These comments were largely repeated in their subsequent written submission. We will not differentiate between the in-hearing and post-hearing comments in this discussion.

sheet of the rules rather than in the body of the rules themselves as suggested by RESA. In this case, these proposed rules will become effective sixty (60) days after the date on which the Report and Order is signed and the rules filed with the Office of the Secretary of State.

Section 2.3. Definitions

In their public comments Mr. Munnelly and Mr. Hanks suggested that additional definitions should be included. They pointed out, for example, that a term that was used several times throughout the proposed rules was "clear and conspicuous," but this term was undefined and left open to multiple interpretations. They believed that a definition of "clear and conspicuous" should be added to the proposed rules so that NPPs are not "guessing what 'clear and conspicuous' means and don't get into a situation where a supplier does something that they think is clear and conspicuous and there's a disagreement by other parties or the Division." They did not propose how the term should be defined.
Mr. Munnelly and Mr. Hanks then went on to suggest that there should be a definition of "incidental residential accounts" in the proposed rules. The example they gave was of a university that negotiated a contract with an NPP for electric service supply that included the supply to the university president's residence. That residence would, under the tariffs, be classified as residential, but they did not believe that, from a policy standpoint, there should be any need for the NPP to have to deal with that one portion of the contract as a residential account even if the university president was getting – and paying – a separate bill, when in fact it was just a portion of the overall commercial contract between the NPP and the university as a whole. The billing account for the president's residence might be inappropriately flagged as "noncompliant" when in fact it was included in the overarching commercial account. It was their position that such "incidental" residential accounts should be exempt from these proposed rules, and that the proposed rules should not only define "incidental residential accounts" but explicitly exempt such accounts from the rules.

Section 2.4. Consumer Information Requirements.

Mr. Munnelly and Mr. Hanks also pointed out in their public comments at the hearing that, while subsection 2.4.A of the proposed rules specifically limits itself to mandating a new standard billing format for residential consumers only, subsections 2.4.B through 2.4.F contain no such express limitation. While they acknowledge that one might infer such a limitation to residential consumers only throughout Section 2.4, they recommend adding some introductory language making this limitation express.
Mr. Munnelly then went on to suggest that the burden of preparing bills with this standard information rested with the distribution company, though NPPs should be allowed to coordinate efforts with the distribution company in revising its billing format to comport with the proposed rules and the new law. The Division infers that what is really intended by that comment is that RESA would like to ensure that there is sufficient coordination between the NPPs and the distribution company that the NPPs billing data can simply be folded seamlessly into the electric bill sent out by the distribution company.
With respect to Section 2.4.B.3.b of the proposed rules, Mr. Munnelly and Mr. Hanks express reservations about the requirement that NPPs must list all of the component parts of its supply and commodity cost. They believe that the second sentence, which states "[t]he nonregulated power producer shall also list all of the component costs of its total supply/commodity cost" may involve highly sensitive information with regards to the NPP's own cost of electricity, ancillary charges being paid by the NPP, ISO related charges, etc., that may "raise antitrust issues because the suppliers shouldn't be knowing what everyone's costs are, and it creates opportunities for mischief on that." They believe this information simply not of interest or use to consumers. The consumer needs to know what the standard offer price of the distribution company is, and what the supplier prices is, so that the consumer can compare apples to apples; everything that goes into making up those two prices should be of little interest or benefit to the consumer. Accordingly, they ask that the second sentence of this subsection be removed if possible.
Mr. Munnelly and Mr. Hanks were also concerned about the third and final sentence of Section 2.4.B.3.b of the proposed rules, pointing out that it was going to be very difficult from a programming perspective to create a bill that contains all of the required data in a practical format. They requested that the Division attempt to simplify that provision.
With respect to Section 2.4.B.3.c of the proposed rules, Mr. Munnelly and Mr. Hanks were confused by the requirement that anything other than an NPP's variable rate (if applicable) should be on the bill. In this case they felt that the purpose of the section was unclear and should be addressed.

Finally, with respect to Section 2.4.B.4, the RESA representatives noted that giving the customer a right to demand a supply-side bill from its NPP separate from the distribution-side bill from its distribution company would create a significant programming problem for NPPs. They suggested that the proposed rule be modified to say the customer could request such a separate bill "when available" (that is, when the NPP already had an existing capability to provide such a bill). RESA believed that this requirement as written in the proposed rules might be a significant disincentive to NPPs considering entering the Rhode Island market.

RESA also expressed concerns about Section 2.4.F, suggesting that as written it might appear that NPPs are required to participate on the Division's internet website for comparing NPP pricing policies and charges. The suggestion was made to add the word "participating" to the second line of the section to make it clear that only those NPPs voluntarily participating on the website are required to keep the Division provided with updates as to changes in the NPPs information on the website.

Section 2.5. Certain Customer Rights

RESA's representatives expressed some concern about the wording of subsections 2.5.C, suggesting that the word "notification" is ambiguous and that the term "customer information" should be defined in Section 2.2 of the Rules to "have the same meaning as that which is contained in approved distribution company terms and conditions for Nonregulated Power Producers, and which currently refer to twelve (12) months of a customer's historical usage information."

RESA also expressed a number of reservations regarding other subsections in Section 2.5. Most of those suggestions involved changes in the wording that would be construed as inconsistent with that in the underlying statutory language. The Division believes it is preferable to adhere to the General Assembly's language.

With respect to subsection 2.5.K.1, RESA suggested that the following sentence be added to "prevent the duplicative and wasteful requirement of restating a lengthy term of service document in the body of the contract: **"The contract may incorporate by reference the terms of service."**

R.I.G.L. § 39-26.7-5(l) requires, in part, that NPPs provide written notice to customers prior to the expiration of a fixed-price term contract of any change to that customer's electric-generation price. That residential customer, in turn, is required to select the method of written notice "at the time the contract is signed or verified through third-party verification…" The statute goes on to require the Division to specify the manner by which the residential customer is to make his choice of written notice method known to the NPP. In the draft Rules, the Division did this as follows:

… Such residential customer shall select the method of written notice at the time the contract is signed or verified through third-party verification, as described in this section, *by either indicating his or her choice in writing on a form provided for that purpose by the nonregulated power producer or, if the agreement is made orally with third-party verification, by indicating to the third-party verifier the method of written notice to be used by the nonregulated power producer*….

(Section 2.5.L, second sentence, *emphasis* supplied.) RESA objected to the "manner approved by the Division" for the customer notifying the NPP of the customer's election, by arguing that "the Division goes beyond the statutory text to require a complex set of procedures to manage this required written notice selection process as applied to the required third-party verification … call to confirm a lawful enrollment." (*See* RESA's written comments at 22-23.) RESA argued further that it should be the NPP that is allowed to determine whether to offer the required written election by the residential customer before the customer is switched to the third party verifier for processing or during the third party verification process itself.

While RESA supports reasonable requirements for badging and branding obligations on the part of NPP representatives approaching residential customers in the context of door-to-door sales, it believes that such requirements should not apply to the interactions between NPP representatives and commercial customers; accordingly, it recommends that subsection 2.5.Q be amended to limit the requirements set out therein only to NPP representatives dealing with residential customers.

Section 2.6. Nonregulated Power Producer Obligations

With respect to subsection 2.6.B of the proposed Rules, RESA objects to both the requirement that each NPP make an annual filing "on December 31" of aggregators or agents working on its behalf, and to the requirement that it update that filing within five (5) business days after it either removes or adds an aggregator or agent. RESA suggests that subsection be amended to make the annual reporting

requirement due sometime in March to allow the NPP to close its books for the calendar year, be able to take some time reviewing its engagements or aggregators and agents in the preceding year, and submit an accurate and complete list to the Division. RESA also points out that the requirement to update those filings within five (5) business days goes beyond the statutory obligation both by requiring more than the statutorily required annual filing and by mandating that such filings be done within five days; RESA suggests this requirement be deleted or, if the Division insists on updates that the updates be required at most on a quarterly basis.

Archer Energy
Prefatory Remarks

Mr. Andy Mitrey, President of Archer Energy, LLC ("Archer"), appeared at the public hearing on April 20, 2017, to offer comments on behalf of Archer Energy; Archer Energy submitted timely written comments as well following the hearing. Mr. Mitrey started his testimony by saying that Archer was supportive of the Division's efforts to improve the shopping process, and that it believed it was important to have rules that protected consumers. He then went on to address Archer's concerns with some of the proposed rules after stating that he would supplement his testimony on behalf of Archer later with written comments all while trying to avoid repeating any of the comments offered earlier by RESA.
Some of Archer's recommendations, in either its live testimony or written comments, have duplicated those of RESA. The Division will not address those duplicative recommendations or suggestions here.

Section 2.4. Consumer Information Requirements
With respect to subsection 2.4.B.4, Archer suggested that this section should be expanded to address payment plan prioritization[2] by ensuring that the payments made under the payment plan be allocated between the distribution and supply components of the arrearage from the first payment. Archer argued that this would level the playing field between the distribution company and the NPP. Archer suggested that a similar adjustment should be made for budget plans.
Archer also suggested that subsection 2.4.D should allow the Division's internet website be updated to allow for additional products such as guaranteed savings, variable rates or other products NPPs are willing to offer.

Section 2.5. Certain Customer Rights
Subsection 2.5.E of the proposed rules requires that the distribution company include in its Terms and Conditions of Service (part of the distribution company's Commission-approved tariff) conditions for the release of customer information to NPPs. As part of the tariff, such conditions must first be approved by the Public Utilities Commission. Archer suggests that proposed subsection 2.5.E requirement be amended to require the distribution company to supply an NPP with significant information regarding a potential customer's account in order to allow the NPP to assess its risk in agreeing to provide services to that customer. The proposal goes on to say that the NPP should be given all of the enumerated types of information so long as the potential customer has signed a consent form authorizing the distribution company to release that information to the NPP.
With respect to subsection 2.5.G of the proposed rules, Archer "recommends changing the phrase in the third line of 'being signed by the customer' to 'being affirmed by the customer'." Archer points out that there will be many instances where customers are enrolled via telemarketing where there are no physical signatures on the contract because verification is carried out by other means.
Archer had additional suggestions with respect to several of the specific enumerated requirements set out in subsection 2.5.G. With respect to subsection 2.5.G.4, Archer suggests that the Division authorize NPPs to tell customers that they must contact the NPP at least 30 days, but not more than 60 days, in advance of their contract expiration date to notify the NPP that the customer does not wish to have the contract renew automatically. Archer proposes that the requirement in subsection 2.5.G.8 that the NPP

[2] At present, when a customer in arrears enters into a payment plan with the distribution company to address those arrears – some for distribution, and some for supply – the distribution company (to whom the payments are typically sent) applies all of the payment to the distribution arrears first, and only begins to assign payments to the supply component when the distribution arrearage has been eliminated.

send a customer written confirmation that it has processed the customer's request to return to the distribution be deleted as too burdensome on the NPP; instead, Archer proposes that the NPP should only be required to send such written confirmation if the customer specifically requests it. Archer also suggests that subsection 2.5.G.10 should be deleted, arguing that the Market Adjustment Charge was eliminated in mid-2015, and that the reference to it in these rules should also be eliminated to clear up any potential customer confusion. Finally, Archer believes that subsection 2.5.G.19, which requires that the "name, business phone number, business address, and email address of the person at the nonregulated power producer that agreed on the service contract terms with the customer," should be deleted because it is simply too cumbersome for NPPs dealing with customers in the mass-market arena.

Section 2.6. Nonregulated Power Producer Obligations

Archer believes that the limitations set out in proposed section 2.6.A with respect to early termination fees are too low and too cumbersome. It recommends that any capping of termination fees should be set at $100.00 rather than the current $50.00, and should be divorces from any consideration of the customer's average usage in assessing the termination fee.

Archer is also concerned with proposed subsection 2.6.F.1.b, but only to the extent that Archer "would like to ensure that any rescission made by a customer within the three day timeline would void the switch in suppliers instantly and allow the customer to remain with their current supplier." Archer was concerned that National Grid would not be able to actually accomplish the rescission promptly.

Discussion And Findings

A. On RESA Comments

Prefatory Remarks

While the Division believes that Mr. Munnelly and Mr. Hanks raised interesting points in their opening remarks, we believe that those points were, if you will, off-point. While the Division does not intend to impose unnecessary regulatory burdens that would serve as a potential barrier to competition, it is charged with implementing the statutory provisions as they have been enacted into law. Those provisions do not suggest that the General Assembly wished to provide competitive suppliers with a smorgasbord of choices in how to interact with their customers. Rather it is clear that the General Assembly's intention was to establish a set of common requirements for all competitive suppliers (that the Division is required to promulgate as rules) intended to allow consumers to be able to easily evaluate the pros and cons of choosing which competitive supplier was offering the best deal – and, more importantly perhaps, whether to go with a competitive supplier at all or to stick with the distribution company's standard offer. In other words, the General Assembly was clearly more concerned with safeguarding the interests of the consumer than the business models of competitive suppliers.

For that reason, the Division has elected in all cases to hew as closely as possible to the statutory language in this set of rules as the best way to ensure that it is carrying out the General Assembly's intent. The appropriate forum for arguing in favor of language more favorable to competitive suppliers was before the General Assembly prior to passage of the legislation, not the Division now. The Division must enforce the law as written; it may not change the intent of that law through regulatory fiat.

In arriving at this conclusion, we gave due consideration to R.I.G.L. § 42-35.1-4, concerning regulatory flexibility. We note specifically that the General Assembly made liberal use of the verbs "shall" and "will" throughout the legislation adopting the Nonregulated Power Producer Consumer Bill of Rights, R.I.G.L. §§ 39-26.7-1, *et seq*. "Shall" means "has a duty to" or "is required to" under strict standards of drafting. Black's Law Dictionary 1379 (7th ed. 1999). "Will" appears to be used by the General Assembly interchangeably with "shall" in directing specific actions. "Will" in that context is a verb defined as "am (is, are, etc.) expected or required to" take a specific action. Random House Webster's Unabridged Dictionary 2175 (2nd ed. 2001). Accordingly, we have tried to follow the statutory language used by the General Assembly whenever possible in preparing these rules, and have not chosen to impose requirements any more stringent toward the NPPs than those required by the legislation.

The Division does not believe that R.I.G.L. § 42-35.1-4 gives it *carte blanch* to negate, ignore or rewrite clear statutory directions in the interests of easing the regulatory burden on small businesses. What it does do is allow an agency to choose among options available to it – if any – consistent with the existing

statutory language in formulating the regulations intended to implement that statutory language. We cannot rewrite the law, we can only strive to implement the clear intent of the law. If the statute provides options, or is sufficiently general or ambiguous to allow freedom of interpretation, we may take advantage of that freedom in the interests of limiting regulatory burdens. In this case, we have found the law to be clear and directive in nature, and sufficiently free of unnecessary regulatory burdens (consistent with its stated purpose of protecting consumers), that there has been little need to add regulatory gloss to the statutory language.

With respect to the second suggestion, that we solicit additional comments and hold additional proceedings to further refine the proposed rules, the Division concurs that would be appropriate if we were making significant substantive revisions to the proposed rules as they were originally published in the hearing notice. We are not. Under the circumstances, the Division finds that there is no need to take additional comments and provide additional rounds of review at this point.

Section 2.2. Purpose.

The Division must reject the recommendation of Mr. Munnelly and Mr. Hanks that we add a sentence to this section that talks about a goal of avoiding imposing unnecessary regulatory burdens on competitive suppliers. The General Assembly stated the sole purpose of the underlying legislation as follows: "The purpose of this act is to assist consumers in making an informed choice of a nonregulated power producer." R.I.G.L. § 39-26.7.2. It seems clear that the purpose of the act is to ensure that nonregulated power producers provide all consumers with the information necessary to make informed choices with regards to any decisions concerning purchasing electricity from competitive suppliers. The remaining sentence added to this section by the proposed rule simply summarizes how the General Assembly proposed to accomplish this purpose in the remaining portions of its Act – largely, by imposing certain necessary administrative requirements upon nonregulated power producers. The proposed rules do not go beyond the language of the Act – which can hardly be termed imposing "unnecessary regulatory burdens" on the nonregulated power producers as the only "regulatory burdens" are those which the General Assembly found necessary to protect consumers from their energy suppliers.

Proposed "Applicability" Section

With respect to the recommendation of Mr. Munnelly and Mr. Hanks that the a new "Accountability" section be added to the proposed rules to identify which of the subsequent sections of the proposed rules applied only to residential consumers, which applied only to industrial and commercial consumers, and which applied to all consumers, the Division finds that such language would be redundant. The General Assembly makes it quite clear that their purpose in passing the underlying legislation was "to assist consumers in making an informed choice of a nonregulated power producer." R.I.G.L. § 39-26.7-2. There is nothing in that provision to suggest that the General Assembly intended to protect only residential consumers from NPPs, or to protect only commercial and industrial consumers from NPPs, rather than to protect all "consumers" equally.

It is true that some of the subsequent sections of the enactment explicitly contain limitations applicable only to the dealings between residential consumers and NPPs, but those statutes expressly state that they are so limited. The proposed rules implementing those specific statutory provisions contain similar express language. Any section of the enactment, or of the proposed rules, that is not expressly and explicitly limited in its applicability to only one type of consumer (i.e., only to residential or only to commercial and industrial) must, as is made clear by the stated purpose of the enactment as set out in R.I.G.L. § 39-26.7-2, apply to all consumers and their dealings with all NPPs.

The RESA representatives also made reference to the status of so-called "incidental residential accounts," suggesting that the rules should address such accounts. The example used was where an NPP had a commercial/industrial account with a customer such as a university, and one of the buildings covered by that account was the university president's house. The Division does not see how this creates a problem that needs to be specifically addressed. If the university president (in the example given) is being billed for the electricity at his residence directly and is paying it out of his or her own pocket, this is nothing more than the typical residential account with the president as the customer; the president would have to enter into a separate agreement with the NPP. If the electrical consumption at the president's residence is being aggregated into an overarching energy contract with the university, and the university is paying for the energy costs under that contract, the bill for energy consumption at the president's residence is simply part of the overall commercial/industrial account, and the electric rate

being billed would be determined by the contract between the university and the NPP (the result might be somewhat different for distribution rates). In other words, the president's residence is either a residential account billed to the tenant (president) under a separate residential supply contract between the president and the NPP, or it is part of the university's commercial/industrial energy supply contract with the NPP. There is no "incidental residential account."
Accordingly, there is no need to add a new section (or subsection) addressing "Applicability."

Section 2.3. Definitions.

In reviewing the public comments regarding this section, the Hearing Officer noted that one of the proposed definitions, the definition of "obligated entity," required a technical correction. R.I.G.L. 39-26.7-4(d) states, in pertinent part, that "the cost … shall be funded through an assessment on any obligated entity, as such term is defined in § 39-26-2, *but excluding distribution companies*…" (*Emphasis* supplied.) The phrase "excluding distribution companies" for the purpose of R.I.G.L. § 39-26.7-4(d) was inadvertently omitted from the proposed rules. Accordingly, **the definition of Obligated Entity set out in Section 2.3.6 has been amended to read as follows: "Obligated entity shall have the same meaning as that which is contained in R.I. Gen. Laws § 39-26-2 except that electric-distribution companies shall be excluded from the definition for the purposes of this Part only as required by R.I. Gen. Laws § 39-26.7-4(d)." This technical correction makes the definition of "Obligated Entity" consistent with the requirements of R.I.G.L. § 39-26.7-4(d) and R.I.G.L. § 39-26-2.**
With respect to Mr. Munnelly's and Mr. Hanks' recommendation that the proposed rules contain a definition of the term "clear and conspicuous," the Division notes that the terms already defined were adopted from statutory definitions of what might be called "terms of art" that would have a specific meaning unique to the context of the enactment (or, more generally, to Title 39 of the General Laws). For example, the General Assembly has established a number of "Commissions" and "Divisions" in the law. However, on the Public Utilities "Commission" and the "Division" of Public Utilities and Carriers are intended to be referred to in R.I.G.L. §§ 39-26.7-1 *et seq.*, so the General Assembly defined those terms, as used in that chapter, in a way to make it crystal clear which of the many "Commissions" and "Divisions" were being referred to.
There is no need to so limit the definition of "clear and conspicuous" in the same way. Both of the words so used are common terms with a commonly understood meanings in the context of communicating information to another party (which is the sense in which the two terms are used throughout the statute). For example, "clear" is defined as "…. **8.** easily understood; without ambiguity: *clear, concise answers.* **9.** entirely comprehensible; completely understood: *The ultimate causes of inflation may never be clear.* …" (Random House Webster's *unabridged dictionary* 383 (2nd ed. 2001), or as "… **2.** Free from doubt; sure. **3.** Unambiguous." (Black's Law Dictionary 244 (7th ed. 1999). "Conspicuous" is defined as **1.** easily seen or noticed; readily visible or observable: *a conspicuous error.* **2.** attracting special attention, as by outstanding qualities or eccentricities: *He was conspicuous by his booming laughter…*" (Random House Webster's *unabridged dictionary* 435 (2nd ed. 2001), "(Of a term or clause) clearly visible or obvious. ● Whether a printed clause is conspicuous as a matter of law usu. Depends on the size and style of the typeface. Under the UCC, a term or clause is conspicuous if it is written in a way that a reasonable person against whom it is to operate ought to notice it. UCC § 1-201(10). See FINE PRINT." (Black's Law Dictionary 305 (7th ed. 1999). (**All** *emphasis* in originals.)
Thus, whether you look to common usage or usage in the law, "clear" and "conspicuous" language have the same common universally understood meanings: language that is written in a manner that can have only one meaning and is easily understood by the intended audience, and so presented to that audience that it cannot reasonably be overlooked. If an NPP is not sure that the language they wish to use is "clear and conspicuous" it probably is not and should be rewritten until the NPP is sure that it is capable of only one interpretation, will be understood by its intended audience (the consumer), and cannot be overlooked by any reasonable member of its intended audience of consumers. There is no need to include definitions of commonly understood terms used in their general sense rather than as terms of art in the proposed rules.
The Division must reject Mr. Munnelly's and Mr. Hanks' suggestions with regard to defining "incidental residential accounts" in the proposed rules and making such accounts exempt from the proposed rules. If

the university (or some other entity) has negotiated a supply contract for all of its buildings, and pays the electric supply charges for all of those buildings out of university funds that is a commercial agreement with respect to all such metered accounts. The president of the university does not have a residential account at all.

If the university president – to use their example – is expected to pay for the electric supply charges for all electricity consumed at the president's residence out of the president's own pocket directly to the NPP and distribution company, the university president is the actual consumer of record for that account, and the president has a right to choose the electric supplier for that residence, not the university. In short, the president's residential electric account is not an "incidental residential account" at all; the president of the university would be, if you will, holder of a "primary residential account" just like any other residential account holder renting or owning their own residence. And just like any other residential account holder in this state (i.e., electric supply customer[3]), his dealings with NPPs and the electric distribution company are subject to these proposed rules – as the General Assembly intended.

Section 2.4. Consumer Information Requirements.

The Division disagrees with the recommendation of Mr. Munnelly and Mr. Hanks with respect to adding some introductory language making it clear that all of Section 2.4 applies only to information to be provided to residential consumers. Subsections 2.4.B.1 and 2.4.B.2 incorporate by reference R.I.G.L. §§ 39-3-37.2 and 39-3-37.3, respectively. Those statutes expressly apply to all electric accounts (supply and distribution, respectively) concerning electricity furnished to "any house, building, tenement or estate." (Emphasis supplied.) While "house, …, tenement or estate" clearly refer to residential accounts, the words "any … building" just as clearly evinces a legislative intent to expand beyond simply residential service accounts to those embracing services to buildings serving other than mere residential purposes. Thus, by incorporating these statutes by reference, it is clear that the General Assembly intended to require NPPs as well as distribution companies to provide certain standard data to all accounts wherein electricity is being supplied and distributed to any building whatsoever. As Mr. Munnelly noted elsewhere in his comments at the hearing, R.I.G.L. § 39-3-37.2 has been in effect since 1991[4]; all NPPs should already be complying with that statute, and nothing done by the proposed rules in restating that statutory language should increase the burden already placed on NPPs in that regard.

The Division agrees that cooperation and coordination between the NPPs and, in this case, The Narragansett Electric Company d/b/a National Grid—Electric is necessary. However, R.I.G.L. § 39-3-37.3(b) has given consumers the right to insist on separate bills from NPPs and the distribution company since at least 1997, although that same subsection specifies that the default practice (in the absence of a consumer specifically requesting separate bills) would be for the distribution company to issue a single bill for electric service to all customers in its service territory. The draft rules address this by requiring that the information mandated by the statute be presented on all bills in the same order to facilitate comparisons between NPP-provided bills and distribution company-provided bills. This approach appears to be consistent with the legislative intent of the underlying statutes.

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[3] "'Customer' means a company taking service from an electric distribution company at a single point of delivery or meter location. R.I.G.L. § 39-1-2(9)." "'Company' means and includes a person … " R.I.G.L. § 39-1-2(8). If there is a discrete meter on the university president's house that measures only the electricity delivered to that residence, and the university president is expected to pay the electric bill, the university president is, by definition, an electric utility customer.

[4] Mr. Munnelly referred to R.I.G.L. § 39-3-37.2 as a "precompetition vintage statute that includes a whole bunch of things that aren't going to show up on a supplier's bill in any event." We are not sure that is a completely fair characterization of the statute. This section of the law clearly looked forward to the competitive supplier environment that would evolve from deregulation of the industry in Rhode Island, though Mr. Munnelly is correct that some of the specified charges might not be imposed on an NPP's supply bill [subsections (3), (4), (5), and (7), for example], though just as clearly the NPP's bill could show a charge of "zero ($0.00)" for each of the specified items. That might, in fact, be useful information to the consumer as it would allow the consumer to determine whether going with an NPP would allow it to avoid some of these additional charges.

With respect to Mr. Munnelly's and Mr. Hanks' reservations concerning the second sentence of Section 2.4.B.3.b of the proposed rules, which states "[t]he nonregulated power producer shall also list all of the component costs of its total supply/commodity cost," and their recommendation that sentence be deleted from the proposed rules, the Division, upon further consideration, concurs. The underlying statutes do not explicitly require that the various components that go into an NPP's commodity price, or for that matter the distribution company's standard offer price, are largely irrelevant to consumers. Consumers are really interested in comparing equivalent prices between NPPs and distribution companies, not the various components of that price that help a company determine which price to choose to offer. Accordingly, **the Division has deleted the second sentence of Section 2.4.B.3.b of the proposed rules from the final version of those rules. (The specific data required by R.I.G.L. §§ 39-3-37.2 and 39-3-37.3, shall, to the extent that they are applicable to NPPs and/or distribution companies, appear on the bills presented to consumers.)**

Upon review of Mr. Munnelly's and Mr. Hanks' suggestion with respect to the third sentence of Section 2.4.B.3.b, the Division concludes **that because the third sentence of Section 2.4.B.3.b of the proposed rules is not explicitly required by the statutes, and because the goals of that sentence as originally proposed with respect to informing the consumer of the consumer's rights regarding a change in the agreed-upon rate is satisfied by Section 2.5.G of the proposed rules, the third sentence of Section 2.4.B.3.b of the proposed rules shall be deleted from the final rules.**

With respect to Mr. Munnelly's and Mr. Hanks concerns that Section 2.4.B.3.c was unclear with respect to its impact on NPPs, we believe that the confusion was caused by the subsection heading in the published draft which suggested that the entire subsection applied only to variable or time-of-use standard-offer service rates. **We have addressed that problem in the final version of the rules by breaking Section 2.4.B.3.c into two separate subsections as follows:**

c. Standard-offer service price to compare. Variable or time-of-use standard-offer service rate. Each bill provided to the customer, whether by a distribution company or by a nonregulated power producer, shall include the distribution company's standard-offer service price for providing electricity to compare with the date of the next expected standard-offer rate change and the date by which a customer's nonregulated power producer must initiate the transfer of service in order for the transfer to be complete by the next meter read date.

d. Variable or time-of-use standard-offer service rate. Standard-offer service rates shall not be variable or time-of-use rates.

This should make it clear that Section 2.4.B.3.c, which concerns informing the customer what the standard-offer price to compare is, has very little impact on an NPP other than requiring that their bills (if the NPP is billing separately from the distribution company) include somewhere on them the current standard offer rate of the distribution company. The section requires three things:

(a) Each bill, whether the distribution company's or NPP's, shall include the distribution company's standard-offer service rate.
(b) Each bill, whether the distribution company's or NPP's, shall include the date of the distribution company's next expected-standard offer rate change.
(c) Each bill, whether the distribution company's or NPP's, shall include the date by which a customer's NPP must initiate the transfer of service in order for the transfer to be complete by the distribution company's next meter read date.

Each of these three requirements is mandated ("shall include") by R.I.G.L. § 39-26.7-4(b); in those cases where the distribution company is providing a consolidated bill to the customer reflecting both its own and the NPP's bill (which is the general practice), these requirements will have no impact on the NPP.

As amended, the new Section 2.4.B.3.d implements the second sentence of R.I.G.L. § 39-26.7-4: "If the standard-offer service rate is ever a variable or time-of-use rate, the division will prescribe the manner in which the price to compare will be represented." Only distribution companies provide "standard-offer" service in Rhode Island; the standard-offer rate offered by the distribution company is never a variable rate or a time-of-use rate (though the distribution companies may offer such rates under their tariff if approved by the Commission; they are just not "standard-offer service" rates. Ever.) Accordingly, this provision has no impact on NPPs.

With respect to RESA's suggestion regarding Section 2.4.B.4, the Division notes that the section as drafted quotes R.I.G.L. § 39-3-37.3(b) with respect to the obligation of NPPs: "… customers may request the nonregulated power producers to provide separate bills for electricity supply." Since that language

does not mandate that NPPs grant the request, the Division does not believe that adding "when available" or similar language to the provision serves any purpose. **However, to reduce the possibility of confusion on the part of consumers and NPPs regarding what is required by this provision, the first sentence of Section 2.4.B.4 shall be modified by adding the word "request" following the word "to" so that the first sentence reads: "Customer right to request separate bills from nonregulated power producers."**

The Division concurs with RESA's recommendation with respect to Section 2.4.F of the proposed rules. **The Division has amended that section of the proposed rules by adding the word "Participating" to the beginning of the first two sentences of the rule so that it now reads: "Participating nonregulated power producer obligation to provide the Division with updates for the internet website. Participating nonregulated power producers shall provide the Division information regarding any changes to the nonregulated power producers' pricing policies …"**

Section 2.5. Certain Customer Rights

Generally speaking, the Division has simply restated R.I.G.L. § 39-26.7-5 in drafting Section 2.5 of these Rules, and is not inclined to modify or reword the statutory language in promulgating this section, particularly with respect to requests to eliminate or water down requirements explicitly enacted by the General Assembly.

The one slight variance from the language adopted by the General Assembly comes in Section 2.6.G, where rather than creating a separate form in a separate rule-making proceeding, as the statutory language seems to expect, the Division elected to use this rule-making to direct NPPs to set out the information required by the statute in the order specified by Section 2.6.G of the Rules. In addition to the information required by the underlying statute, however, the Division also incorporated some of the requirements set out in Section II.D.2 of the Commission's existing *Consumer Protection Requirements For Nonregulated Power Producers* (those rules have been in effect since 1997, so all NPPs should be very familiar with them and already providing the information required by the Commission). So long as the required information is presented to the consumer by all NPPs in the same order, the consumers should be able to compare the offerings of various NPPs, thus satisfying the statutory intent (which is to be able to compare offerings easily).

With respect to RESA's concerns regarding Section 2.5.C, the Division notes that proposed Section 2.5.C restates R.I.G.L. § 39-26.7-5.C, and does not believe that RESA's suggestions would add clarity to the statutory language. Indeed, adopting a definition of "customer information" which makes reference to a specific provision in the current (as of the date of the hearing) Commission-approved National Grid tariff, has the potential to make these Rules more confusing in the event that the Commission subsequently approves a modification of that provision in National Grid's tariff so that the tariff language and the Rules would no longer be consistent with each other. Accordingly, we will not be adopting these suggestions.

With respect to RESA's concerns regarding a number of the specific requirements imposed on NPPs by Section 2.5.G, the Division believes that the statutory language for the new requirements is sufficiently clear that further modification is not required. Those requirements brought over from the Commission's existing *Consumer Protection* rules have been in place for nearly 20 years and should be very familiar to all NPPs by this time. We see no need to amend those provisions either.

RESA has requested that the Division construe R.I.G.L. 39-26.7-5(h) and Section 2.5.H.2 of the proposed Rules in a manner that would "require only a brief summary of the commercial contract rate structure and/or a cross-reference to the rate sections in the applicable commercial agreement" as well as certain other limitations. However, this heart of this provision is to refer the NPP to the Commission's *Rules Governing Energy Source Disclosure*, which is actually the governing document. That is the document that actually controls here, and it is one which the Commission – not the Division – controls. In enforcing those Commission rules, the Division will strive to construe them in a manner consistent with the Commission's stated intent at the time of the enforcement action, an intent which may change as the rules themselves change over time. It would not be appropriate for the Division to address in this set of Rules how it might have to construe another agency's rules in the future, rules which may be very different than the Commission's current formulation.

With respect to subsection 2.5.K.1, the Division does not concur with RESA's suggestion that the following sentence be added to "prevent the duplicative and wasteful requirement of restating a lengthy term of service document in the body of the contract: "The contract may incorporate by reference the terms of service." The Division believes it is preferable to adhere to the General Assembly's language.

With respect to subsection 2.5.L of the Rules, RESA's argument that it should be the NPP that is allowed to determine whether to offer the required written election by the residential customer before the customer is switched to the third party verifier for processing or during the third party verification process itself must be rejected. The R.I.G.L. 39-26.7-5(l) – and the Division's Rule, Section 2.5.L – clearly states that the "residential customer shall select the method of written notice at the time the contract is signed or verified through third party verification …" Thus, in those circumstances when a contract is not being signed immediately (e.g., the sale is being conducted over the phone), the law requires that the residential customer election of notification method must be made at the time the sales agreement is verified through third party verification. Allowing the NPP to require the customer in those circumstances to make his or her notice election prior to third party verification is contrary to the law. Further, neither having the residential customer make a written election at the time the contract is signed on a form provided by the NPP, nor allowing the customer to make an election by telling the third party verifier as part of the verification process, can be considered a "complex set of procedures" as RESA describes them. They are, in fact, the least intrusive approach the Division could take in carrying out its statutory mandate to prescribe the manner in which a residential customer may make this very important election.
The Division must reject RESA's recommendation that subsection 2.5.Q be amended to limit the requirements set out therein only to NPP representatives dealing with residential customers. First of all, R.I.G.L. § 39-26.7-5(q) is not so limited, and we have no reason to believe that the General Assembly intended for these requirements to apply only to contacts with residential customers. Indeed, the Division's personnel have had to deal with complaints from commercial electric customers (not all of whom, by any means, are large and sophisticated consumers of utility products) who stated that NPP representatives (who may well have been independent contractors of the NPP, or employees of independent contractors) had misrepresented themselves as, among other things, employees of the distribution company, and had misrepresented the terms of the electric supply contracts that were being offered. Subsection 2.5.Q of the Rules (and the underlying statute) are intended to help the Division put an end to such deceptive practices and protect all electric supply customers – residential and commercial/industrial – from such deceptive practices.

Section 2.6. Nonregulated Power Producer Obligations

With respect to RESA's objections to proposed subsection 2.6.B of the Rules, the Division acknowledges that the underlying statute [R.I.G.L. § 39-26.7-6(b)] does not establish a filing date, merely requires that each NPP file "annually", and does not require updates of that annual filing at all. Nevertheless, the Division finds that the proposed language should be retained for the following reasons.
If the Division did not require a date certain on which all NPPs should make this annual filing it would become extraordinarily difficult for the Division to be sure that any particular NPP has made an appropriate filing at all. There are more than 100 NPPs currently registered with the Commission to do business in Rhode Island; the total number fluctuates frequently depending on whether new NPPs are entering, or old NPPs leaving, this market. Each of those NPPs may have a unique financial year around which they regulate their own business activities. Any date we might choose for submitting an annual report will be more or less convenient for some of those companies, and the March reporting date suggested by RESA may be very inconvenient for some of those NPPs (and December 31 may be very convenient for some). Selecting a date by which these annual reports are due is the best way for the Division to be sure that this statutory reporting requirement is being met by all NPPs doing business here. All public utilities licensed by the Division are already required to renew their certificates of public convenience and necessity annually by December 31, so the Division is already set up to handle an influx of annual filings on that date; adding a few more to the mix will not be a problem. Selecting December 31 thus works well for the Division in carrying out its statutory responsibilities, and it should allow all NPPs to plan for submitting the report – and to ensure that any subcontractors they use provide them with the necessary information in a timely fashion.
Another consideration, of course, is the purpose of this requirement. The Division has regularly received customer complaints that involved whether or not a particular sales person was or was not an agent of an NPP. We cannot address those types of complaint in a timely fashion, and thus protect both consumers and the competitive suppliers in this state, from personnel engaged in conducting fraudulent or deceptive sales practices unless we have a reasonable chance of knowing who is, and who is not, actually representing an NPP. We have already seen that there can be significant turnover in sales personnel in very short periods of time, making it very difficult for the NPPs and the Division to keep up with who is

actually working for whom, and equally difficult for the NPPs to ensure that sales personnel are appropriately trained as to the law in Rhode Island. Receiving an annual report from all NPPs at the same time will at least allow the Division to have a baseline for keeping track of this.
Keeping track of changes in authorized and trained NPP sales representatives, particularly third party contractors working for NPPs, is also very important to the Division. Most consumer complaints we receive involve such third party contractors, and many of those complaints appear to have resulted from the sales representatives not being adequately trained as to what is expected of them under Rhode Island law. The best way the Division can see to get a handle on this issue is for it to be advised promptly when there are personnel changes, so that the Division knows whether or not the person purporting to represent a particular NPP is, in fact, authorized to do so (and has been engaged long enough to be properly trained as to the governing consumer protection rules).
For this reason, section 2.6.B of the proposed Rules requires NPPs to provide us with changes to the list of authorized sales representatives within five (5) days of when a sales representative is hired or fired. While R.I.G.L. § 39-26.7-6(b) does not address these supplemental reports, the Division finds them necessary to carry out its assigned responsibilities and is authorized to add that requirement by R.I.G.L. § 39-1-38 under the Division's incidental powers.

B. On Archer Energy Comments

Prefatory Remarks

Some of Archer's recommendations, in either its live testimony or written comments, have duplicated those of RESA. The Division will not address those duplicative recommendations or suggestions here.

Section 2.4. Consumer Information Requirements

Concerning Archer's recommendation regarding subsection 2.4.B.4, the Division notes that the issues of payment plan prioritization and budget payment issues bear no relationship to these rules focus on consumer protection; rather, they are concerned solely with the relationship between the distribution company and an NPP. More to the point, perhaps, this relationship is addressed in National Grid's (the relevant distribution company) Commission-approved tariff, specifically, the Narragansett Electric Company Terms And Conditions For Distribution Service, R.I.P.U.C. No. 2130, effective February 1, 2013, paragraph no. 13, lines 9-11, Sheet 4. The Division does not control the contents of any electric distribution company's tariff; questions regarding the contents of a tariff must be addressed to the Public Utilities Commission. Accordingly, we must reject this recommendation.
The Division must reject Archer's recommendation as to subsection 2.4.D with respect to allowing NPPs to post information on products other than fixed rate offerings on the Division's website at this time. In enacting the underlying statutory provision [R.I.G.L. § 39-26.7-4(d)], the General Assembly articulated a goal of providing "information necessary for a consumer to obtain service and compare pricing policies and charges among nonregulated power producers." R.I.G.L. § 39-16.7-4(d). The existing website provides the information necessary to assist consumers in contacting any of the participating NPPs with respect to obtaining services. By limiting the products offered on the website to fixed rate products that can be compared to the distribution company's standard offer service rate (which is always fixed, not variable), the website makes meaningful baseline comparisons by consumers possible. Opening the website to any and all products would, in fact, make it very confusing to consumers at this point in time, and would make meaningful comparison shopping far harder. This is a point that might, however, be worth revisiting in the future, as the general body of consumers become more familiar with the competitive energy market and its various participants, and less subject to being confused by dissimilar offerings from a variety of providers.

Section 2.5. Certain Customer Rights

Subsection 2.5.E of the proposed rules restates R.I.G.L. § 39-26.7-5(e). The underlying statute establishes two requirements with regards to the distribution releasing consumer information to NPPs. First, it requires the distribution company include in its terms and conditions of service "conditions for release of customer information to a nonregulated power producer," leaving it to the distribution company, not the Division, to decide what those conditions should be. Second, it requires that the distribution company submit those conditions to the Public Utilities Commission (not the Division of Public Utilities and Carriers) for "review and approval." This statutory structure clearly does not contemplate the Division stepping in to direct what those "conditions" must be, much less usurping the Commission's authority to

review and approve those conditions before they become effective. Thus, the Division does not have the authority to adopt Archer's recommendation with respect to proposed rule 2.5.E.

The Division also notes that Archer's suggestion is aimed directly at protecting the rights of the NPP to the potential detriment of the consumer by getting as much personal information about the consumer's current account status as possible before entering into a contract with that consumer. This is hardly consistent with the intent of a section titled "Certain Consumer Rights." It could even be viewed as allowing the NPP to "cherry-pick" only the best, most credit-worthy, consumers leaving all others to fall back on the distribution company standard offer service (potentially to the ultimate detriment of all of the distribution company's other consumers). Affording one type of service provider a competitive advantage over other types of providers does not really seem to be leveling the playing field. Making it easier to deny financially challenged consumers looking for a more affordable electric service rate does not seem to be consistent with protecting consumer rights, either.

With respect to subsection 2.5.G of the proposed rules, the Division agrees that the phrase in the third line of "being signed by the customer" should be amended to take into account verification methods other than physical signatures on a contract. This fact is explicitly addressed in subsection 2.5.I of the proposed rules, which establishes four methods in addition to physically signing a written contract for establishing that a contract has been entered into. Therefore, the Division shall modify the first sentence of subsection 2.5.G of the proposed rules to read as follows:

Nonregulated power producers shall explain to residential customers in writing the material terms and conditions of the contract for electric generation services being signed consented to by the customer (consent to a contract for electric generation services shall be established as set out in subsection H, below).

The Division does not believe that Archer's suggested modification of proposed subsection 2.5.G.4 is necessary. Archer suggests that notice "at least 30 days in advance" of the contract's end date should be sufficient to allow the NPP to process the request. The subsection as written would already allow NPPs to require that customers notify the NPP "at least 30 days in advance" of the contract's ending date that they did not wish to have the contract automatically renewed.

The Division believes that customers are entitled to some assurance that their request to terminate a service agreement has been received and honored, and thus does not agree with Archer's recommendation with respect to subsection 2.5.G.8. A timely confirmation that the customer's request to terminate the service agreement has been received and effected will ensure that the customer does not find himself or herself locked into a service agreement they do not want, as the customer will know when a follow-up is needed. If this confirmation is treated as a matter of routine – rather than being done on a case-by-case basis, it can perhaps be automated, and the impact on the NPP – in the long run – may be less than having to respond to individual requests from customers. Such confirmation is, in any event, a significant protection to consumers and entirely consistent with the purpose of these rules.

With respect to Archer's suggestion that proposed subsection 2.5.G.10 should be deleted because the Market Adjustment Charge/Credit was eliminated in mid-2015, and that the reference to it in these rules should also be eliminated to clear up any potential customer confusion, the Division notes that subsection 2.5.G.10 reads as follows:

A statement that there may be a market adjustment charged or credited to the customer by [name of electric distribution company].

(Emphasis supplied.) This language is drawn from the existing Public Utilities Commission's *Consumer Protection Requirements For Nonregulated Power Producers*, Section II.D.11, approved by *In Re Consumer Protection Requirements For Nonregulated Power Producers*, Commission Report number 21811 in Commission Docket number 4503, effective October 20, 2014, pursuant to Open Meeting decisions on June 24, 2014, and September 19, 2014, final rules filed with Secretary of State's Office September 30, 2014, Commission Report issued February 4, 2015. The Commission rule (which is still in effect at this writing) contains additional language when compared to the proposed Division rule:

A statement that there may be a market adjustment charged or credited to the customer by [name of electric distribution company] *on his or her last utility bill for which the customer is enrolled in standard offer service*.

(Emphasis supplied; *additional language* in existing Commission rule.) The practice of making a "market adjustment charged or credited" was largely discontinued sometime after the Commission *Consumer Protection Requirements* report was issued in 2015, but the Division is unaware of any statutory bar to reinitiating this practice in the future. Therefore, in view of the fact that the proposed rule (like the existing Commission requirement) does no more than state that there may be a market adjustment credit or charge imposed on the final standard offer bill (which could still be true sometime in the future), and because the Division does not see how that statement could cause consumer confusion now, the Division must disagree with Archer's recommendation. However, the Division will amend the proposed language of subsection 2.5.G.10 by adding the additional language currently found in the Commission's *Consumer Protection Requirements* to further reduce the possibility of consumer confusion. The amended subsection shall read as follows:

A statement that there may be a market adjustment charged or credited to the customer by [name of electric distribution company] on his or her last utility bill for which the customer is enrolled in standard offer service.

One of the most difficult aspects in dealing with consumer complaints concerning NPPs has been the difficulty the Division has experienced in determining who spoke to the customer, when, and about what. Proposed subsection 2.5.G.19, which requires that the "name, business phone number, business address, and email address of the person at the nonregulated power producer that agreed on the service contract terms with the customer," requires that the customer be provided with the name and contact information of one person – the person with whom the spoke when entering into the service agreement with the NPP. That person may, of course, be an agent of the NPP rather than an employee. That is the person the Division wants to speak to if there are allegations that an NPP failed to comply with all of its obligations under these Rules. The Division must, therefore, decline to adopt Archer's recommendation with regard to proposed subsection 2.5.G.19

Archer ended its discussion of proposed section 2.5 by suggesting changes to subsections 2.5.K.4, 2.5.N, and 2.5.Q. However, all of these subsections simply restate the underlying statutory language. Changes inconsistent with that language, and which reduce rather than enhance consumer protections, cannot be adopted by the Division.

Section 2.6. Nonregulated Power Producer Obligations

Archer believes that the limitations set out in proposed section 2.6.A with respect to early termination fees are too low and too cumbersome. However, the limits on early termination fees, and the method by which the maximum fee shall be calculated, are mandated by the underlying legislation, R.I.G.L. § 39-26.7-6(a). Proposed section 2.6.A simply restates the underlying statutory language. Changes inconsistent with that language, and which reduce rather than enhance consumer protections, cannot be adopted by the Division.

With respect to Archer's concern that proposed subsection 2.6.F.1.b "would like to ensure that any rescission made by a customer within the three day timeline would void the switch in suppliers instantly and allow the customer to remain with their current supplier," we would only note that if a customer "rescinds" its decision to change to a new supplier the customer would automatically revert to its existing supplier – unless it then chose to immediately enter into a contract with yet another supplier. This rule is aimed directly at addressing abusive switching practices, and ensuring that the customer has the benefit of making a fully informed decision.

Additional Rules Proposed

Archer, like RESA, expressed frustration over the payment priority structure approved for National Grid by the Public Utilities Commission (i.e., that when a payment is made to National Grid (whether a regular monthly payment or as part of a payment plan), it pays itself first, and only sends that portion of the customer payment that exceeds the distribution costs along to the NPP supplier. That is a matter that is not governed by the Division as it is established solely in National Grid's Commission-approved tariff; we cannot appropriately address those recommendations in a Division rule-making as they do not fall under the Division's jurisdiction.

C. RESA Supplemental Comments

Initially, RESA recommended that all of the proposed rules become effective sixty (60) days after they were approved and published. In RESA's supplemental filing, it amended that recommendation to ninety (90) days for all rules except those concerned with billing, and one (1) year for all rules concerned with billing. The Division cannot agree with extending the effective date out to one year (and it would have to be one year for all rules; having two different effective dates just creates confusion as to whether or not a rule concerns billing or billing format, or whether it does not).

It is important to keep in mind that the General Assembly enacted Pub. Law 2016, ch. 453, §1, and Pub Law 2016, ch. 454, §1,24 creating R.I.G.L. §§ 39-24 The two Public Laws are identical versions of Title 39, ch. 26.7, enacted by the House and Senate of the Rhode Island General Assembly. 26.7-1 *et seq.*, known as the Rhode Island "Nonregulated Power Producer Consumer Bill of Rights" in 2016, well over a year prior to the issuance of this Report and Order, and that the majority of the rules promulgated herein simply restate the law. In drafting this law, the General Assembly made liberal use of the word "shall," clearly indicating that NPPs, the distribution company, and the Division were required to do certain things. Thus, all three of those entities have been on notice for more than a year already as to what would be required of them, and should already have begun working toward complying with the requirements of the law.

These proposed rules, as directed by the statute, also incorporate the Public Utilities Commission's *Consumer Protection Requirements For Nonregulated Power Producers*, a set of rules that have been in effect since October 20, 2014, a period of over three years. Again, there should be little need for NPPs to be granted a full year to ensure they can comply with rules to which they have already be subject for three years. More specifically, the Division notes that the General Assembly authorized the Division to specify the bill formats to be used by all NPPs. Had we taken that rather intrusively prescriptive approach, NPPs might well have required more time to adjust their current bills to meet our format. We did not do so. Instead, we chose to allow NPPs to continue using their own formats, with minimal modifications to require with the new law. Many of the changes required on the bills themselves are largely informational in nature, and are prescriptive as to the contents of the information provided and the order in which that information is provided. We do not believe it should take these companies a year to implement the statutorily mandated consumer protections, particularly when the law was enacted more than one year ago, and the original notice in this docket – with an annotated draft of the proposed rules that made it clear that the Division's intent was to simply implement the statutory language – was published on March 28, 2017, some nine months ago. For the foregoing reasons, we must reject RESA's request that NPPs be given a full year from the date these rules are adopted in which to implement them. We do not consider that reasonable. We note RESA's argument that many NPPs apparently had difficulty implementing Connecticut's NPP Consumer Bill of Rights rules, but from what we can tell from the description provided, those rules, and the underlying statutes, were significantly more detailed, burdensome and prescriptive than their Rhode Island counterparts. We are not convinced that the same problems will hold true in this state. It has been Division practice to spell out the date on which a set of rules becomes effective in the final Report and Order approving and promulgating those rules, particularly when it believes the statutory time of 20 days is too short, and to reiterate that effective date on the title sheet of the rules rather than in the body of the rules themselves as suggested by RESA. In this case, these proposed rules will become effective ninety (90) days after the date on which the Report and Order is signed and the rules filed with the Office of the Secretary of State.

CHANGE TO TEXT OF THE RULE:
2.3 - clarified definition of "obligated entity" to exclude electric distribution companies
2.4 B (3)(b)- Removes a contested requirement that non-regulated power producers (NPP's) list supply component and signal when anticipated price changes will occur.
2.4 B (3)(c) and (d)- clarify that standard offer is not a varying time of use rate

2.4 B (4) eases an earlier absolute requirement for separate billing on demand, but that a customer may request separate billing.
2.4 F clarifies that the provisions apply only to NPP's participating in the shopping web site.
2.5 G clarifies inserts "consented" instead of "signed, reflecting the fact that customers can enter into contracts with NPP's through electronic means, or over the phone with a third-party verifier.
2.5 (G) (10) reflects a practicality related to changes coinciding with billing cycle.

An additional technical revision:

1.1 B - To reflect that he Commission has yet to place the referenced in Commission rules into RICR format, the Division has reinstated the original rule's reference to the Commission rule titles and deleted the reference to the RICR number.

REGULATORY ANALYSIS:
In the development of the proposed adoption, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. This regulation has been reviewed by the Office of Regulatory Reform.

DATE THE FINAL RULE WAS SIGNED BY THE AGENCY HEAD:
DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON January 12, 2018