

VIA EMAIL (luly.massaro@puc.ri.gov) and
FEDERAL EXPRESS

December 7, 2017

Luly E. Massaro, Division Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: D-16-112 Rulemaking To Establish Nonregulated Power Producer Consumer Protection Rules
Additional Comments of Retail Energy Supply Association

Dear Ms. Massaro:

Enclosed please find Limited Additional Public Comments of the Retail Energy Supply Association ("RESA") on Proposed Nonregulated Power Producer Consumer Bill of Rights regarding the above-captioned Proposed Rulemaking.

If there are any questions regarding this matter, or if any additional information is required, please contact undersigned counsel.

Sincerely,


Robert J. Munnely, Jr.

RJM/jmc
Enclosure

cc: Service List

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

RULEMAKING TO ESTABLISH	:	
NONREGULATED POWER PRODUCER	:	
CONSUMER PROTECTION RULES	:	D-16-112
	:	
	:	
	:	

**LIMITED ADDITIONAL PUBLIC COMMENTS OF THE RETAIL ENERGY SUPPLY
ASSOCIATION ON PROPOSED NONREGULATED POWER PRODUCER
CONSUMER BILL OF RIGHTS**

The Retail Energy Supply Association (“RESA”)¹ has actively participated in this proceeding to review the proposed 815-RICR-40-05-2 Regulations establishing the “Nonregulated Power Producer Consumer Bill of Rights” (“Draft Consumer Rules”), including participating and offering detailed public comments in the April 20, 2017 hearing held at the offices of the Division of Public Utilities and Carriers (“Division”) and filing detailed initial public comments on May 1, 2017 (“RESA Comments”).² The RESA Comments acknowledged the Division’s efforts in the Draft Consumer Rules to implement directives in the Rhode Island General Assembly’s “Nonregulated Power Producer Consumer Bill of Rights,” signed into law

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² RESA also actively participated in the public hearing and written comment process relative to proposed revisions to the proposed 815-RICR-40-05-1 financial security rules. See Division Docket No. D-16-113 (referencing RESA Public Comments and participation in the April 20, 2017 public hearing).

by Governor Raimondo on July 12, 2016 (the “Act”)³ but sought clarification and offered suggested wording changes with respect to a number of provisions in the Draft Consumer Rules based on legal, policy and/or wording concerns.

One key concern expressed during the public hearing and RESA Comments with respect to potential impacts on Nonregulated Power Producers (“NPPs” or “suppliers”) is the need for a sufficient time period for the suppliers to implement the final Consumer Rules following enactment. See RESA Comments at pp. 2, 5-6 (proposing changes to “Applicability” or “Definitions” sections to change “on or after January 1, 2017” in the Draft Consumer Rules to reflect an effective date of not less than “sixty (60) days after the Division issues its Order approving the final Consumer Rules”). See *id.*, p. 5. As grounds for this recommendation, the RESA Comments stated the following:

The sixty-day period is consistent with the “on or after” phrasing of the Act and will afford time for new and existing NPPs and the distribution company to undertake steps post-Order to change policies and practices to comply fully with a host of new consumer protection requirements. To not otherwise remedy this inartful and ambiguous statutory language construction and retroactively impose new and unanticipated rules and related conditions on NPPs, it would have a significant chilling effect on the competitive market in Rhode Island.

Id. After additional consideration of the effective date issue subsequent to the May 1, 2017 filing of the RESA Comments, RESA respectfully supplements and modifies its recommendations in two respects: (1) to request a period of not less than one year to implement billing-related changes in Section 2.4(A) and (B) of the Draft Consumer Rules; and (2) to request an increase from the recommended sixty (60) days to not less than ninety (90) days to implement the other final Consumer Rules.

³ See 2016 House Bill 7040, codified principally at new Rhode Island General Laws (“RIGL”) chapter 39-26.7.

As grounds for its revised recommendations, RESA requests that the Division consider the following additional arguments supporting extended implementation periods.

First, regarding bill presentation changes required of utilities and NPPs in Section 2.4, the experience of utility and non-utility providers implementing similar statutory changes in Connecticut suggests strongly the need for a relatively lengthy implementation period to confirm the final changes to be made by all parties and then to ensure that required changes are implemented by all parties in a manner that does not adversely affect consumers. As discussed more below, billing changes usually require complex interactions between and among utility and NPP billing systems that are often not fully addressed in the final agency decision, and likely will require post-Decision work by all stakeholders. The Connecticut process involved the following steps:

- As a result of a June 2014 statutory requirement to change information on residential bills ordered in Section 1 of Connecticut Public Act 14-75, An Act Concerning Electric Customer Consumer Protection, the Connecticut Public Utilities Regulatory Authority (“PURA”) in July 2014 opened docket 14-07-19 (PURA Investigation into Redesign of the Residential Electric Billing Format.)
- Following preliminary proceedings, PURA issued a 15-page final Decision on January 21, 2015 in Docket 14-07-19 that ordered the two Connecticut utilities to implement a series of statutory changes to residential bills by July 1, 2015 – just under six months following issuance of the final Decision. In order to effectuate the necessary changes, PURA elected to re-instate an Electronic Business Transaction (“EBT”) Working Group to develop the processes necessary to exchange data between licensed electric suppliers and the Companies to implement the above noted

change, and imposed reporting obligations to ensure that changes were processed in a timely fashion. See *id. passim*.

- Almost immediately, the parties to EBT Working Group identified a host of issues that needed to be addressed to update the bills that had not been specifically included in PURA's January 21, 2015 final Decision.
- PURA thereafter reopened Docket 14-07-19 to clarify the final requirements and adopt revised deadlines for work completion. See Decision, Docket 14-07-19RE01 (March 18, 2015).
- Once it reopened the docket, PURA solicited written comments from the utilities, retail suppliers and other stakeholders, held a public hearing and issued a final Decision in August 2015 to clarify the billing requirements and setting late August 2015 and November 2015 deadlines for key utilities billing issues and a January 1, 2016 for completion of supplier billing-related implementation work. See Decision, Docket 14-07-19RE01 (August 12, 2015).
- PURA subsequently opened the proceeding two additional times to address specific application issues to residential and business customers.

Accordingly, as illustrated above, RESA requests that the Division's final Decision order an implementation period of substantially longer than two months to afford time for expected clarifications to be addressed by the stakeholders and the Division and for the utilities and NPPs to implement all required changes. Given the Connecticut experience, RESA anticipates that a year will be sufficient to make the required decisions and changes.

Second, with respect to other non-billing implementation-related issues, an increase from sixty to ninety days is warranted because of the expansive scope of changes that suppliers will

need to address if the Division adopts the Draft Consumer Rules substantially as proposed and even as amended in the manner recommended by RESA and the other public commenters. As highlighted in the RESA Comments, changes could include at least the following specific changes which can vary depending on whether the Division proposes to maintain the original proposal or adopt less burdensome changes suggested by RESA and other commenting parties:

- Investigation of which final Consumer Rules will apply to residential versus commercial accounts and implementation of legal, operational and operational support system/billing system changes required for each category (RESA Comments, pp. 4, 19-21);
- Determination of how the final Consumer Rules will apply to incidental residential accounts within commercial accounts and implementation of required legal, operational and operational support system/billing system changes (id., pp. 4-5);
- Identification of provisions requiring clear or conspicuous disclosure and implementation of required changes to terms of service and other documentation (id., p. 6);
- Required production, printing and dissemination of new customer-facing agreements and related documents associated with newly imposed disclosure requirements and other changes related to the Final Rules (id.);
- Identification and implementation (if applicable) of RESA recommended changes to door-to-door sales definitions (id.);
- Identification of what are certain to be significant changes in billing software for NPPs which issue their own bills regarding required billing obligations and elements and then make the required legal, operational and operational support system/billing system changes (id., pp. 7-8, 10-11);

- Identification of what are certain to be significant changes in billing software for NPPs which issue their own bills regarding required presentation of standard offer service pricing and then make the required legal, operational and operational support system/billing system changes (id., pp. 8-10);
- Review and implementation of website obligation changes to the extent applicable to all or a subset of NPPs (id., pp. 11-12);
- Required website design and content modifications associated with newly imposed disclosure requirements and other changes related to the final Consumer Rules (id.);
- Review of whether electronic data interface-related procedures will change for suppliers and implementation of same (id., at pp. 12-13);
- Determination of whether the final Consumer Rules create customer “guarantees” or “rights” to timely enrollment, above and beyond commercially reasonable efforts and, if implementing, implementation of significant changes to NPP enrollment processing practices and procedures (id., pp. 14-16);
- Review of whether final Consumer Rules will include requirement that the terms of service must include the name of the specific person at the NPP responsible for “the Service Contract Terms” and implementation of processes to develop potentially employee-specific and customer-specific terms of service obligation (id., pp. 17-19);
- Determination of the extent to which the final Consumer Rules will require NPPs to change third-party verification call and form of notice processes and implementation of same (id., pp. 22-24);
- Review of burdensome report filing dates in the final Consumer Rules and implementation of management and regulatory processes to meet requirements; and

- Review, training and verification of final Consumer Rules by NPPs, their vendors, agents or business partners to ensure comprehension and compliance.

These numerous and significant proposed changes are likely to be highly burdensome and, especially with respect to billing-related changes, require substantial vendor input and work orders that will take time to develop and implement. Given the breadth of changes, RESA has modified its recommendation to increase the recommended implementation period from sixty (60) days to ninety (90) days and would be warranted and in the public interest.

Additionally, subsequent to its May 1, 2017 public comments, the New Hampshire Public Utilities Commission (“NH PUC”) recently finalized and implemented new retail supplier rules. See generally, NH PUC Docket No. DRM 16-853. The NH PUC implementation process as it unfolded also supports the need for an implementation period longer than the previously-recommended sixty-day period, in several respects.⁴ Specifically, the NH PUC elected a period of somewhat more than sixty days to make changes required by the new rules (i.e., sixty-five days from the August 28, 2017 promulgation of new rules through November 1, 2017). Furthermore, RESA members active in the New Hampshire market viewed as both difficult and unfortunately rushed the process of developing new documentation, policies and processes to reflect a complex set of new rules during the sixty-plus day implementation period.⁵ RESA recommends that the Division avoid these types of implementation challenges by establishing a reasonable but somewhat extended 90-day implementation deadline.

⁴ Note that in contrast to Connecticut or Rhode Island revisions, the revised New Hampshire rules did not involve any substantial billing-related changes.

⁵ The difficulties are highlighted in the fact that several suppliers were forced to file formal pleadings or informal requests to seek clarification of new requirements so that they could properly implement them. See, e.g., NH PUC Docket No. DM 17-125 (October 26, 2017 request of North American Power and Gas, LLC for waiver of two separate new supplier rules due to operational and other implementation difficulties that, to date, have not yet been fully addressed); NH PUC Docket No. 17-126 (filings by Town Square Energy of both October 27, 2017 and November 2, 2017 versions of terms of service documents with the latter incorporating additional changes following discussions with NH PUC Staff over scope of several of the new supplier rules). These requests extended beyond the November 1, 2017 implementation deadline.

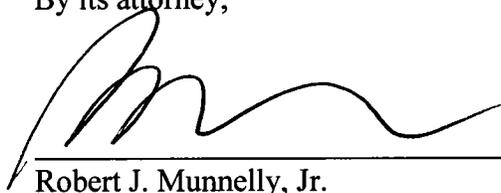
Finally, RESA notes that the Division is not under a statutory or other deadline that would require implementation to be limited to a sixty-day period. RESA respectfully requests that the non-billing time period be extended by 30 days to ensure full compliance and to help facilitate a smoother process for NPPs, customers and the Division itself, as all parties transition into the new Consumer Rules once the Division finalizes them.

Conclusion

RESA appreciates the opportunity to provide additional comments on these topics of importance to consumers, NPPs and the development of robust electric competition in the State of Rhode Island. For the reasons discussed above and in prior commentary in this proceeding, RESA maintains the same recommendations it offered in the April 20, 2017 public hearing and May 1, 2017 public comments except that it requests that the implementation period for billing changes be enlarged from 60 days to one year, and for other changes to be enlarged from 60 days to 90 days.

RETAIL ENERGY SUPPLY ASSOCIATION

By its attorney,



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