Public Notice of Proposed Rulemaking

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Division of Public Utilities and Carriers

RULE IDENTIFIER: 815-RICR-40-05-2

REGULATION TITLE: Nonregulated Power Producer Consumer Bill of Rights

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Adoption

This notice is the second notice of public comment period in Docket D-16-112 and is 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.

Date of Notice: November 8, 2017
Public Comment Period Ends: December 8, 2017

SUMMARY OF PROPOSED RULE: The Division is directed by statute (RI Gen. Laws 39-26.7) to adopt Nonregulated Power Producer (NPP) Consumer Protection rules in accordance with the chapter.
The rule incorporates existing provisions of the Public Utilities Commission's consumer protection rules. It also addresses each of the statutory provisions for inclusion in rulemaking. The rule clarifies billing information requirements, minimum contract terms, switching provisions and consumer recourse to the Division to air complaints about abusive marketing practices. The Division also is empowered by the underlying statute to issue civil penalties against NPP's for violation of the rules.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by December 8, 2017, to the addresses listed below.
In this filing, the Division is taking Administrative Notice of all prior submitted written comments, and testimony from the April 20, 2017 hearing, received in this in this docket on or before May 1, 2017.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:
Mailing Address:

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

Email Address:
luly.massaro@puc.ri.gov

FOR FUTHER INFORMATION CONTACT:
Thomas Kogut
Rulemaking Coordinator
RI Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick RI, 02888
(401) 780-2105
Thomas.kogut@dpuc.ri.gov

SUPPLEMENTARY INFORMATION:
Regulatory Analysis Summary and Supporting Documentation:

The rule is designed to benefit consumer in their dealings with competitive electric suppliers. The industry also benefits by creating protections against abusive or misleading marketing. This, in turn, helps support consumer confidence in considering competitive supply purchases.
Documents related to this rulemaking docket may also be accessed at:
http://www.ripuc.ri.gov/eventsactions/docket/D_16_112.html

Authority for This Rulemaking:
RI Gen. Laws 39-26.7 as amended in 2016.

Regulatory Findings:
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.

The Proposed Rule:

The Division of Public Utilities and Carriers proposes to promulgate “Nonregulated Power Producer Consumer Bill of Rights” 815-RICR-40-05-2 as follows:
This proposal reflects changes incorporated in this proposed rule resulting from public hearing testimony and written comments already submitted in this docket.

815-RICR-40-05-2

TITLE – 815 DIVISION OF PUBLIC UTILITIES AND CARRIERS

CHAPTER 40 – ELECTRIC UTILITIES

SUBCHAPTER 05 – NONREGULATED POWER PRODUCERS

Part 2 – Nonregulated Power Producer Consumer Bill of Rights

2.1 Authority

This Part is promulgated pursuant to the authority conferred in R.I. Gen. Laws Chapter 39-26.7.

2.2 Purpose

The purpose of this Part is to assist consumers in making an informed choice of a nonregulated power producer. It does so by imposing a series of regulatory requirements upon the electrical generation and distribution industry for the protection of consumers, including specifying a variety of consumer information which the nonregulated power producers are required to give to consumers and setting our procedures for the sale and solicitation of electric generation services by nonregulated power producers.

2.3 Definitions

A. When used in this Part, the following terms shall have the following meanings:

1. "Commission" has the same meaning as in R.I. Gen. Laws § 39-1-2.

2. "Company" has the same meaning as in R.I. Gen. Laws § 39-1-2.

3. "Division" has the same meaning as in R.I. Gen. Laws § 39-1-2.

4. "Electric distribution company" has the same meaning as in R.I. Gen. Laws § 39-1-2.

5. "Nonregulated power producer" ("NPP") has the same meaning as in R.I. Gen. Laws § 39-1-2.

6. "Obligated entity" has the same meaning as 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).

2.4 Consumer Information Requirements

A. All nonregulated power producers and electric distribution companies shall adopt a standard billing format for residential customers to better enable such residential customers to compare pricing policies and charges of nonregulated power producers to the standard offer service rate approved by the Commission for the customer's electric distribution company. The standard billing format shall include all of the information set out §§ 2.4(B)(1) and/or (2) of this Part, below, as appropriate, in the order specified below.

B. The standard billing format adopted herein requires that all electrical distribution companies and nonregulated power producers include the following information upon the bill or statements they provide to their customers in the order specified below:

1. Charges for electricity supplied/used. Every company who shall charge for the use of electricity furnished to any house, building, tenement or estate shall conspicuously display upon the bill or statement for such electricity charges for any customer, all of the information required by R.I. Gen. Laws § 39-3-37.2, in the in the order specified therein.

2. Charges for distribution of electricity. Every electric distribution company which shall charge for the distribution of electricity to any house, building, tenement or estate shall conspicuously display upon the bill or statement for such electric distribution charges for any customer, all of the information required by R.I. Gen. Laws § 39-3-37.3, in the order specified therein.

3. Standard offer service price. In addition to the data set out above, the bill or statement must provide customers with basic information regarding the standard-offer service price for comparison purposes.

   a. Electric distribution company requirements. The electric distribution company shall provide a single standard offer service price for comparison purposes that sets out the total commodity charges which all of its supply/commodity customers would be expected to pay currently. The standard offer service price, expressed as a cost per kilowatt hour consumed, will be the sum of the base rate, capacity cost adjustment fuel adjustment cost conservation charges (including but not limited to any renewable energy charges, and all other costs, charges or fees, relating directly to the cost of procuring the commodity. The bill or statement shall list all of the component costs of the standard offer service price. The electric distribution company bill or statement shall also specify the date of the next expected standard offer service price rate change, the projected new standard offer service price following that 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.

b. Nonregulated power producer requirements. The nonregulated power producer shall provide a single service price calculated in a manner similar to that required above for the electric distribution company that provides the customer with a single supply/commodity cost for the customer to compare directly with the single standard offer service price provided by the electric distribution company.

c. Standard-offer service price to compare. 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.

4. Customer right to request separate bills from nonregulated power producers. The electric distribution company shall issue a single bill for electric service to all customers in its service territory. However, customers of nonregulated power producers may request the nonregulated power producers to provide separate bills for electricity supply.

C. Periodic review of billing format. The Division shall open a docket on or before September 1, 2021, to review the efficacy of the standard billing format approved by this Part to ensure that it continues to meet the requirements of this Part with respect to providing useful billing information to customers. Thereafter, the Division shall conduct periodic reviews of the billing format at least every five (5) years. Nothing in this section shall be construed to prohibit the Division from conducting periodic reviews of the billing format at more frequent intervals should the Division, in its sole discretion, determine that more frequent review would be beneficial to the consumer.

D. Internet website for comparing nonregulated power producer pricing policies and charges. The Division maintains an internet website for comparing nonregulated power producer pricing policies and charges at http://www.ri.gov/empowerri. Consumers and nonregulated power producers are encouraged to consult this web site frequently. There are no assessments for nonregulated power producers wishing to have their products listed on this site. Nonregulated power

producers interested in having their products listed on this site may obtain more information by contacting the Division's Chief of Information at (401) 780-2105.

E. Biannual review of internet website comparing nonregulated power producer pricing policies and charges. On or before July 1, 2019, and every two (2) years thereafter, the Division shall review the internet website discussed above and make any improvements needed to ensure that the website remains a useful tool for customers to compare pricing policies and charges among nonregulated power producers.

F. 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 and charges with respect to the terms of existing products, or termination fees for existing products, that would impact any existing customer of the nonregulated power producer consistent with the requirements of § 2.4(B) of this Part, above, to facilitate customer efforts to compare those changes with the standard-offer price. The nonregulated power producers shall provide this information to the Division for inclusion in the Division's web site in a manner consistent with the requirements of 815-RICR-01-00-3, "Rules and Regulations Governing Digital Filings and Website Information Pursuant to R.I. Gen. Laws § 39-1-18."

2.5 Certain Customer Rights

A. An electric distribution company shall transfer a residential customer to the standard offer service rate not later than the next billing cycle after receipt of a request from a residential customer eligible for the standard offer service.

B. The electric distribution company shall not be liable for any contract termination fees that may be assessed by the nonregulated power producer.

C. An electric distribution company shall transfer a residential customer to the electric generation service rate of a nonregulated power producer not later than the next billing cycle after the electric distribution company receives from the nonregulated power producer a successful enrollment of such residential customer unless the notification is not received by the electric distribution company in accordance with its Commission-approved terms and conditions on file with the Division and Commission.

D. Notwithstanding any other provision of the Rhode Island General Laws, nothing shall prohibit a residential customer who moves from one dwelling to another dwelling within Rhode Island from immediately receiving electric generation service from a nonregulated power producer, provided such customer was receiving such service from a nonregulated power producer immediately prior to such move.

E. The electric distribution company shall include in its terms and conditions, subject to review and approval by the Commission, conditions for release of customer information to a nonregulated power producer.

F. Customer shall be entitled to any available individual information about their loads or usage at no cost.

G. Nonregulated power producers shall explain to residential customers in writing the material terms and conditions of the contract for electric generation services being consented to by the customer [consent to a contract for electric generation services shall be established as set out in § 2.5(H), below]. This written explanation shall include each of the topics set out below in the order specified below; the topics shall be numbered as below and shall restate each topic description below, printed in boldface and underlined, as a heading. The written information provided by the nonregulated power producer may address additional topics if desired, but those additional topics shall follow the required topics set out below, and shall be numbered with appropriate topic headings. The specified information shall be provided to each customer or prospective customer.

1. A description of the rate the customer will be paying

2. Whether such rate is a fixed or variable rate.

3. The terms and expiration date of such rate.

4. Whether the contract will automatically renew. If the contract will renew automatically, the contract shall specify the date by which the customer must contact the nonregulated power producer if he or she seeks to disenroll at the end of the term to avoid extending service with the nonregulated power producer beyond the initial term of service. Such date must allow the nonregulated power producer to contact the applicable distribution company in sufficient time to switch the customer back prior to entry into the customer's next billing cycle, as set forth in the electric distribution company's tariff on file with the Division.

5. A notice describing the customer's right to cancel the service, including the right to schedule the cancellation of service on a date certain at any time during the contract period, as provided in this section. It shall also specify the conditions under which the nonregulated power producer may terminate the contract, and the notification rules for effecting such termination. Finally, this notice must advise the consumer that the nonregulated power producer may not physically cut off electric service to consumers.

6. Method by which a consumer may cancel service through the nonregulated power producer. While canceling by sending an email or by other electronic means may be acceptable, an additional method by which a consumer without internet access may cancel service must be provided,

such as by mailing a letter, sending a facsimile transmission (fax)of a letter; or by making a telephone call with third-party verification.

7. Advise the consumer that the contract shall specifically guarantee the consumer that the nonregulated power producer shall enroll the consumer in a new service agreement, or shall terminate an existing consumer's service agreement in accordance with the terms of that service agreement, as appropriate, prior to the consumer's next bill read date so long as the request to enroll or disenroll has been made at least seven (7) calendar days in advance of the next bill read date.

8. Advise the consumer that the contract shall specifically guarantee the consumer that the nonregulated power producer shall, in the event that the consumer opts to return to the distribution company's standard offer service upon expiration of a service agreement with the nonregulated power producer, provide the consumer with written confirmation that it has received word of the customer's cancellation decision and has processed the request.

9. Dispute resolution process.

10. 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.

11. Amount of any fees or penalties that may be imposed, e.g., for late payments, bad checks, or early contract terminations.

12. Any deposits that may be required (including amount, interest rate, recovery, conditions for forfeiture).

13. Budget plan availability, if any.

14. Information on air emissions and resource mix of generation facilities operate by and under long-term contract to the nonregulated power producer.

15. The trade name of the nonregulated power producer.

16. The toll-free telephone number for customer service of the nonregulated power producer.

17. The internet website of the nonregulated power producer.

18. The toll-free number for customer complaints at the Division [(401) 780-9700].

19. 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.

H. On or after January 1, 2017, each nonregulated power producer shall, prior to initiation of electric generation services:

1. Provide the potential residential customer with a copy of the written description of services as discussed in § 2.5(G) of this Part; and,

2. Provide the potential commercial or industrial customer with a written notice describing the rates, information that complies with R.I. Gen. Laws §39-26-9 and the Commission's rules governing energy source disclosure which may be amended from time to time, terms and conditions of the service, and a notice describing the customer's right to cancel the service, as provided in this section.

I. No nonregulated power producer shall provide electric services unless the customer has signed a service contract or consents to such services by one of the following:

1. An independent third-party telephone verification;

2. Receipt of a written confirmation received in the United States mail from the customer after the customer has received an information package confirming any telephone agreement;

3. The customer signs a contract that conforms with the provisions of this section; or,

4. The customer's consent is obtained through electronic means, including, but not limited to, a computer transaction.

J. Each nonregulated power producer shall provide each customer with a written contract, which contract may be provided in an electronic format, that conforms with the provisions of this section and maintain records of such signed service contract or consent to service for a period of not less than two (2) years from the date of expiration of such contract, which records shall be provided to the Division or the customer upon request.

K. Each contract for electric generation services shall contain:

1. All material terms of the agreement (each and every item set out in § 2.5(G) of this Part, above, is considered to be a "material term");

2. A clear and conspicuous statement explaining the rates that such customer will be paying, including the circumstances under which the rates may change;

3. A statement that provides specific directions to the customer as to how to compare the price terms in the contract to the customer's existing electric generation service charge on the electric bill and how long those rates are guaranteed;

4. Such contract shall also include a clear and conspicuous statement providing the customer's right to cancel such contract not later than three (3) days after signature or receipt in accordance with the provisions of this subsection, describing under what circumstances, if any, the supplier may terminate the contract and describing any penalty for early termination of such contract;

5. The method by which a customer may cancel service through the nonregulated power producer, including a method by which a customer without Internet access may cancel service; and,

6. Any other information which may hereafter be required by the Division.

L. Between thirty (30) and sixty (60) days, inclusive, prior to the expiration of a fixed price term for a residential customer, a nonregulated power producer shall provide a written notice to such customer of any change to the customer's electric generation price. 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. Such customer shall have the option to change the method of notification any time during the contract.

M. No nonregulated power producer shall charge a residential customer month-to-month variable rates for electric generation services following the expiration of a contract entered into after the effective date of this section without providing written notification to such residential customer forty-five (45) days prior to the commencement of such month-to-month variable rates. Such notice shall be made in writing and shall conform to the requirements set out above in this section for entering into the initial service contract. Such customer shall have the option to change the method of notification at any time during the contract.

N. No nonregulated power producer shall charge an electric generation service rate to a residential customer that is twenty-five percent (25%) more than the original contract price, or the last notification provided by the nonregulated power producer, without disclosing the rate change described in this section at least fifteen (15) days before it takes effect. Such disclosure shall be in writing and shall conform to the requirements set out above in this section for entering into the initial service contract.

O. No third-party agent may sell electric generation services on behalf of a nonregulated power producer unless the third-party agent is an employee or independent contractor of such nonregulated power producer, and the third-party agent has received appropriate training directly from such nonregulated power producer.

P. All sales and solicitations of electric generation services by a nonregulated power producer, aggregator, or agent of a nonregulated power producer or aggregator, to a customer conducted and consummated entirely by United States mail, door-to-door sale, telephone or other electronic means, during a scheduled appointment at the premises of a customer or at a fair, trade or business show, convention or exposition in addition to complying with the provisions of this section shall comply with all state and local laws and regulations.

Q. Any representative of a nonregulated power producer, aggregator, or agent of a nonregulated power producer or aggregator, shall prominently display or wear a photo identification badge stating the name of such person's employer or the nonregulated power producer the person represents and shall not wear apparel, carry equipment or distribute materials that includes the logo or emblem of an electric distribution company or contains any language suggesting a relationship that does not exist with an electric distribution company, government agency or other supplier.

R. No nonregulated power producer, aggregator, or agent of a nonregulated power producer or aggregator, shall advertise or disclose the price of electricity to mislead a reasonable person into believing that the electric generation services portion of the bill will be the total bill amount for the delivery of electricity to the customer's location, or make any statement, oral or written, suggesting a prospective customer is required to choose a supplier. When advertising or disclosing the price for electricity, the nonregulated power producer, aggregator, or agent of a nonregulated power producer, shall, on and after January 1, 2017, indicate, using at least a ten (10) point font size, in a conspicuous part of any advertisement or disclosure that includes an advertised price, the expiration of such advertised price, and any fixed or recurring charge, including, but not limited to, any minimum charge.

2.6 Nonregulated Power Producer Obligations

A. No contract for electric generation services by a nonregulated power producer shall require a residential customer to pay any fee for termination or early cancellation of a contract in excess of fifty dollars ($50.00), or twice the estimated bill for energy services for an average month, whichever is less, provided that when a nonregulated power producer offers a contract, it provides the residential customer an estimate of such customer's average monthly bill; and provided further, it shall not be considered a termination or early cancellation of a contract if a residential customer moves from one dwelling within the state to another dwelling within the state and remains with the same nonregulated power

producer. If a residential customer does not have a contract for electric generation services with a nonregulated power producer and is receiving a month-to-month variable rate from such supplier, there shall be no fee for termination or early cancellation.

B. Each nonregulated power producer shall file annually with the Division, on December 31, a list of any aggregator or agent working on behalf of such supplier; the nonregulated power producer shall also notify the Division within five (5) business days whenever it removes or adds any aggregator or agent from the list of those working on its behalf during the course of the year.

C. Each nonregulated power producer shall develop and implement standards and qualifications for employees and third-party agents who are engaged in the sale or solicitation of electric generation services by such supplier.

D. Each nonregulated power producer, aggregator, or agent of a nonregulated power producer or aggregator, shall comply with the provisions of the telemarketing regulations adopted pursuant to 15 U.S.C. § 6102.

E. Any violation or failure to comply with any provision of R.I. Gen. Laws §§ 39-26.7-1 *et seq*. or this Part shall be subject to civil penalties imposed by the Division including a penalty of not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00), and in the case of continuing violation of any of the provisions of R.I. Gen. Laws §§ 39-26.7-1 *et seq*. or this Part , every day's continuance shall be deemed to be a separate and distinct offense, an order of refund, and/or the suspension or revocation of a nonregulated power producer's certificate, or a prohibition on the nonregulated power producer accepting new customers following a hearing.

F. Abusive switching practices, solicitations and renewals by nonregulated power producers; hiring and training of sales representatives, door-to-door sales and telemarketing practices by nonregulated power producers by nonregulated power producers. The General Assembly has determined that it is critical for nonregulated power producers to take all reasonable steps necessary to ensure that consumers have all of the information necessary to make informed decisions with respect to determining whether to procure their power from nonregulated power producers rather than purchasing it from a distribution company.

1 Abusive switching practices, solicitations and renewals by nonregulated power producers.

a. No customer's electric service may be switched from its current electric service provider unless the nonregulated power producer has complied fully with § 2.5 of this Part, and specifically with §§ 2.5(G), (H), (I), (J), and (K) of this Part.

b. In order to further ensure that customers are protected from abusive switching practices, and have truly been afforded an

opportunity to make an informed decision regarding the source of their electric service, each customer signing a service contract or consenting to a change in service provider, as set out in § 2.5(I) of this Part, shall have a right to rescind their agreement or consent to receive services within three (3) business days of the date on which they signed the service contract or consented to a change in service provider. There shall be no penalty to the customer whatsoever for exercising this right of rescission.

2. Hiring and training of sales representatives, door-to-door sales, and telemarketing practices by nonregulated power producers.

a. All nonregulated power producers are responsible for ensuring that all sales representatives are thoroughly trained on the requirements of these rules, by the nonregulated power producer, prior to a sales representative contacting any consumer by any means, whether in writing, door-to-door, or through telemarketing. All sales representatives must be trained on, and respect, the rights of all consumers as set out in this Part generally, and specifically those rights as set out in § 2.5 of this Part, including especially §§ 2.5(G), (H), (I), (J), and (K) of this Part.

b. The nonregulated power producer shall document all training provided to its sales representatives, and make that documentation available to the Division for inspection upon request. No sales representative shall be allowed to approach any consumer about any of the nonregulated power producer's products unless the nonregulated power producers has documented the training of that sales representative.

c. The nonregulated power producer shall be held responsible for ensuring that all sales representatives clearly identify themselves as an employee or representative of the nonregulated power producer for whom they are working; no sales representative soliciting sales on behalf of a nonregulated power producer shall, under any circumstances, or in any manner, identify themselves, either explicitly or implicitly, as an employee or representative of the distribution company. Failure of a sales representative working for a nonregulated power producer to comply with this provision shall be considered a separate violation of this Part within the meaning of § 2.6(E) of this Part, above, each time the failure occurs.

2.7 Effective Date

This Part, the “Nonregulated Power Producer Consumer Bill of Rights”, shall take effect on December 30, 2017.