

**In The Matter Of:**

*Rhode Island Division of Public Utilities & Carriers Hearing*

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*Nonregulated Power Producer Consumer*  
*April 20, 2017*

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

ORIGINAL

PROCEEDINGS IN RE:

DOCKET NO: D-16-112

RULEMAKING TO ESTABLISH NONREGULATED POWER  
PRODUCER CONSUMER PROTECTION RULES PURSUANT  
TO R.I.G.L. 39-26.7-1, ET SEQ.

HEARING ON UTILITY PETITION

DIVISION OF PUC & CARRIERS  
89 JEFFERSON BOULEVARD  
RHODE ISLAND, 02888  
APRIL 20, 2017  
1:30 P.M.

BEFORE: HEARING OFFICER WILLIAM LUEKER

APPEARANCES:

FOR THE ADVOCACY SECTION:  
OFFICE OF THE ATTORNEY GENERAL  
BY: CHRISTY L. HETHERINGTON, SPECIAL ASSISTANT  
ATTORNEY GENERAL

FOR THE RETAIL ENERGY SUPPLY ASSOCIATION:  
DAVIS MALM & D'AGOSTINE, P.C.  
BY: ROBERT J. MUNNELLY, JR., ESQUIRE

ALSO PRESENT:  
THOMAS KOGUT, LEGISLATIVE LIAISON  
MARC HANKS, DIRECT ENERGY  
ANDY MITREY, ARCHER ENERGY  
MIRIAM COHEN, ENERGY AUCTION HOUSE  
WAYNE E. GARDNER, GENIE RETAIL ENERGY, INC.

1 (HEARING COMMENCED AT 1:30 P.M.)

2 HEARING OFFICER LUEKER: Let's go on  
3 the record. My name is William Lueker. I'm the  
4 Hearing Officer appointed by the Division to hear  
5 this matter. This is Division Docket No.  
6 D-16-112 concerning recent amendments to Rhode  
7 Island General Laws Title 39, Chapter 26.7, which,  
8 among other things, amended the existing law with  
9 respect to nonregulated power producer consumer  
10 protection rules, including charging the Division  
11 of Public Utilities and Carriers rather than the  
12 Public Utilities Commission with promulgating  
13 rules to carry out the statutory intent.

14 The proposed rules at issue today essentially  
15 restate the provisions of Rhode Island General  
16 Laws Title 39, Chapter 26.27 as amended. The  
17 hearing itself is governed by the Rhode Island  
18 Administrative Procedures Act as amended and  
19 codified at Rhode Island General Laws Title 42,  
20 Chapter 35.

21 Notice of today's hearing on this petition  
22 was published on the Rhode Island Secretary of  
23 State's website and the Public Utilities  
24 Commission/Division of Public Utilities and  
25 Carriers public website on March 28, 2017. The

1 public comment period ends on May 1, 2017. The  
2 Division will continue to accept written comment  
3 on this proposed rule until close of business,  
4 that is, 4 P.M. on May 1, 2017.

5 Written comments received prior to this  
6 morning are available for review on the Division's  
7 website in this matter. Written material received  
8 during this hearing or at any time prior to the  
9 close of the public comment period on May 1, 2017,  
10 shall similarly be made available on the  
11 Division's website as soon as practicable.

12 Since this is a rulemaking proceeding and not  
13 a contested matter, no person or entity has party  
14 status. I will, however, take appearances from  
15 the counsel present who wish to enter an  
16 appearance. All persons wishing to comment on  
17 proposed rules or offer arguments for or against  
18 their adoption, in whole or in part, shall be  
19 allowed to do so. Following the close of today's  
20 hearings, all persons wishing to supplement their  
21 comments or arguments may do so in writing until  
22 the end of the public comment period on May 1,  
23 2017.

24 I will now take appearances for the record of  
25 any counsel who wish to enter an appearance.

1 MS. HETHERINGTON: Good afternoon.  
2 Christy Hetherington for the Advocacy Section of  
3 the Division of Public Utilities and Carriers.  
4 Thank you.

5 MR. MUNNELLY: Robert Munnelly of the  
6 law firm Davis Malm & D'Agostine here on behalf of  
7 the Retail Energy Supply Association, and with me  
8 today is Mr. Marc Hanks from Direct Energy, which  
9 is a RESA member company.

10 HEARING OFFICER LUEKER: Thank you.  
11 I propose to invite individuals to offer comment  
12 one at a time starting with the Advocacy Section  
13 of the Division and then working my way from the  
14 front of the hearing room to the back. Those who  
15 are seated behind the bar may use the microphone  
16 placed near the center of the bar. Anything we  
17 need to address before I start taking comment?  
18 Miss Hetherington. Oh, I'm sorry.

19 MR. MUNNELLY: I was going to say one  
20 minor thing is that, and I could have addressed  
21 this when I actually started speaking, but Mr.  
22 Hanks and I discussed our presentation before the  
23 hearing today, and we thought that it may be more  
24 efficient, because of the length of the rules,  
25 that instead of myself doing all the commentary on

1 all the rules and having him follow up afterwards,  
2 it may be easier for me to, as I finish a chunk,  
3 pause and give him an opportunity to say if  
4 there's anything else that would supplement that  
5 at that point. We just thought that may be more  
6 efficient when it gets to our turn.

7 HEARING OFFICER LUEKER: That would  
8 be perfectly fine. Of course it might be even  
9 more efficient if you just simply submitted most  
10 of the comments in writing one step at a time.

11 MR. MUNNELLY: Yes.

12 HEARING OFFICER LUEKER: That way  
13 we're sure of not missing anything.

14 MR. MUNNELLY: Yes.

15 HEARING OFFICER LUEKER: But, yeah,  
16 we will proceed that way.

17 MR. MUNNELLY: Thank you.

18 HEARING OFFICER LUEKER: Anything  
19 else from anybody? Miss Hetherington.

20 MS. HETHERINGTON: Thank you. Again,  
21 like this morning, Mr. Tom Kogut of the Division  
22 is here with me. He's been involved in the  
23 process from the get-go, and I'm going to defer to  
24 him to give the public a general overview, a  
25 procedural history, and so forth, and an

1 explanation, if you will, so I will pass it to  
2 him. Thanks.

3 HEARING OFFICER LUEKER: Thank you.  
4 Mr. Kogut.

5 MR. KOGUT: Thank you. Good  
6 afternoon, I'm Thomas Kogut, Associate  
7 Administrator for the Division of Public Utilities  
8 and Carriers, appearing in my role as Rulemaking  
9 Coordinator and also Legislative Liaison for the  
10 Division.

11 Just a quick discussion of the travel of how  
12 we got here first with the legislation, which  
13 actually starts in 2015. The version that was  
14 introduced at that time by the then House  
15 Corporations Committee Chairman was largely  
16 patterned after existing Connecticut legislation.  
17 Both the Division, and based on their testimony at  
18 the Committee hearings, members of the retail  
19 competitive supply industry, saw that version as  
20 being overly prescriptive and far too broad in  
21 some areas. As I recall from the hearing back in  
22 2015, at least one member of the competitive  
23 supply industry said that it would be a  
24 significant barrier as written to market entry.

25 What ensued was some very frank discussion,

1 some of which happened in this room, that was put  
2 together by senior counsel for the Commission,  
3 Division staff, members of the competitive supply  
4 industry, National Grid was also involved in those  
5 discussions, and we produced an amended version of  
6 the bill that ultimately would be approved in the  
7 House in 2015 and failed to get a Senate  
8 companion.

9 Basically the same bill was reintroduced in  
10 2016, did pick up a Senate companion, and was  
11 enacted. The Division, of course, took a look at  
12 these provisions and is directed by the statute to  
13 put in particular mentions in the rules for these  
14 various and sundry items that are addressed in the  
15 statute.

16 In addition, the statute directs the Division  
17 to incorporate provisions of the Commission's  
18 existing rules. Those rules will sunset with the  
19 actual promulgation of the final version of these  
20 rules.

21 One other very quick point, you might notice  
22 on a very close reading of the rule -- the  
23 statutory language, rather, indicates that we've  
24 been directed to do this in two separate  
25 rulemakings. We thought it was far more efficient

1 to take up the two general blocks of provisions in  
2 a single rulemaking rather than opening up a whole  
3 another rulemaking proceeding on July 1st of this  
4 year. So we basically began both by the 1st of  
5 January of 2017. This was approved, by the way,  
6 by the Office of Regulatory Review to go ahead and  
7 publish it as -- publish the hearing notice, and  
8 as you noted Mr. Lueker, that was on the 28th of  
9 March.

10 I think, because I gather there are going to  
11 be very specific comments about specific portions  
12 of the rule, that's about really all I have to say  
13 about the process and the proceedings except to  
14 note that the overall goal here was to simply  
15 address the statutory provisions and to  
16 incorporate the Commission's existent consumer  
17 protection provisions as directed by statute.

18 HEARING OFFICER LUEKER: Thank you.  
19 Any other comments?

20 MR. KOGUT: Not at this time.

21 HEARING OFFICER LUEKER:

22 Mr. Munnelly?

23 MR. MUNNELLY: Sure. Thank you very  
24 much. As noted, I'm going to try to at certain  
25 points pause and give Mr. Hanks a chance to say if

1 he has anything to add so that we can move along  
2 from where we're going.

3 Again, almost similar to what we said this  
4 morning at the earlier rulemaking that we had,  
5 just again commending the Division for a  
6 thoughtful process in this. We certainly  
7 acknowledge that there has been an awful lot of  
8 hard work done both in setting up this particular  
9 set of rules and also through the legislative  
10 process that preceded it.

11 Most of the comments that I think I'm going  
12 to have today are more in the nature of technical  
13 or administrative changes that should be made to  
14 make the rules workable; but there are some of  
15 them which we'll get to, which just keeping in  
16 mind should be the third goal of the rules  
17 perhaps, to say that just avoiding unnecessary  
18 regulatory burdens that would serve as a potential  
19 barrier to competition. It's something that there  
20 should be certain opportunities where we can have  
21 alternative formulations that would meet the  
22 public interest standards and goals of both the  
23 statute and the rules but don't unnecessarily  
24 cause trouble for suppliers, and that's certainly  
25 one of the goals we're going to try to have as we

1 work through the individual sections.

2 Just one other process point to make before  
3 we dive into the merits is that I don't know  
4 whether it's even feasible or possible, but  
5 depending on the nature of the detailed changes as  
6 you make them, it may be a good idea to circulate  
7 a nonfinal next draft of the rules that perhaps  
8 you either could solicit comment on or have some  
9 type of informational or technical session to kind  
10 of iron out the level of detail in these rules.  
11 It may be a good idea. Again, I don't know if  
12 it's even feasible or possible, but given the  
13 length of what we have, it's something we think is  
14 a good idea.

15 HEARING OFFICER LUEKER: Typically on  
16 a rulemaking like this if following the public  
17 hearing we find ourselves making substantive  
18 changes certainly, as opposed to happy to glad,  
19 you know, technical changes, we would probably not  
20 only circulate a set of rules for additional --  
21 the new set of rules for additional comments, but  
22 we might have to establish a second hearing in  
23 order to discuss all those changes or give the  
24 rest of the public a chance to discuss them or  
25 register an objection or support, whatever it may

1 be.

2 MR. MUNNELLY: That's fully  
3 understood, and that's something, whether we have  
4 to iron out technical things that can be handled  
5 on a less formal basis or whether there's some  
6 substance that needs to be re-noticed, it's  
7 something, again, to keep that in mind as an  
8 option, as we proceed on this, that would be  
9 helpful.

10 I'm not going to try to categorize the  
11 different suggestions. I'm just going to go right  
12 through the rules. That's probably the easiest  
13 way to proceed with something of this length.  
14 Section 2.2, Purpose, is pretty self-explanatory.  
15 Again, it may be worth it to add a sentence that  
16 talks about a goal of avoiding unnecessary burden  
17 might be worthwhile to add, but, again, certainly  
18 not a mandatory change.

19 On the issue of definitions, the definitions  
20 as they stand are fine. Obviously they're almost  
21 all direct statutory definitions. As we go  
22 through this, we want to probably keep in mind the  
23 possibility of adding additional definitions for  
24 clarification or to avoid confusion. One of them  
25 would be the term clear and conspicuous, which is

1 a statutory term and it shows up several times in  
2 some individual rules. That may be worthwhile to  
3 define that here so that we're not guessing what  
4 clear and conspicuous means and don't get into a  
5 situation where a supplier does something that  
6 they think is clear and conspicuous and there's a  
7 disagreement by other parties or the Division.

8 The same could be true with respect to --  
9 there's some other stuff I'll mention along the  
10 way but the cross-reference may be something to  
11 keep in mind as we go. Do you have anything to  
12 say before I start the next one, Marc? Actually,  
13 let me do one more before I hand it off to Marc to  
14 consider weighing in on it.

15 We're also supportive of adding a new section  
16 which would be applicability. The vast majority  
17 of these rules apply to residential -- suppliers  
18 who serve residential customers only; and it may  
19 make sense to state that upfront and then make  
20 clear that, perhaps even defined by section which  
21 of the ones that are, you know, suppliers serving  
22 commercial customers. That certainly would be I  
23 think helpful so that we're not guessing which of  
24 the handful that would apply to the commercial  
25 customers.

1           The other part of that is, and it's an issue  
2 that's arisen in some other states but I figure we  
3 may as well put it on the table now, which is the  
4 issue of incidental residential accounts. And the  
5 concern on that -- the classic situation on that  
6 is a supplier has a commercial contract with a  
7 university and within that contract you have the  
8 president's house of the university, which is a  
9 home. And so from the supplier's standpoint it's  
10 all commercial, it's a negotiated contract with  
11 terms. You know, they don't need to -- it's just  
12 it is what it is, complicated terms, it's done,  
13 but the problem is if you look at the utility  
14 tariffs, the home of the president would be  
15 classified as residential. And so from a policy  
16 standpoint, especially like the bill detail  
17 provisions, there's no need to have billing  
18 details for that one house when the contract is  
19 dealt with at a commercial level. And so just  
20 keep that concept in mind, you know, with respect  
21 to some of this because, for example, you might  
22 have particular ones that are flagged as being  
23 noncompliant but they actually may very well be  
24 incidental residential accounts in the middle of a  
25 commercial account.

1           So that's going back to the definition  
2 section on the applicability side, we may want to  
3 define commercial and residential for scope  
4 purposes, and we probably should consider defining  
5 an incidental residential account and think about  
6 it if it triggers particular issues as we go  
7 forward on the rules.

8           So before I get to the next one, do you have  
9 anything you want to add, Marc?

10           MR. HANKS: Marc Hanks with Direct  
11 Energy. I just want to reinforce that last point.  
12 It is a critical piece that we've addressed in  
13 other state markets as well; and so in our  
14 comments, and we do intend to file comments on  
15 behalf of RESA, I think we can propose language  
16 that I think would be very helpful as it relates  
17 to so-called incidental residential accounts.

18           As Mr. Munnelly had mentioned, that if an  
19 incidental residential account rolls up to a  
20 commercial counterparty, our view is that these  
21 regulations, to the extent that it's not mentioned  
22 as being applicable to commercial/industrial  
23 customers or nonresidential customers, should be  
24 exempt from the requirements of these regulations.  
25 So we believe that's an important consideration.

1           You have commercial customers that are energy  
2           savvy, are typically quite sophisticated in their  
3           understanding of energy and of contracts; and  
4           having participated in the legislative process in  
5           2015 and 2016, it's my view at least that the  
6           Legislature and the General Assembly was focused  
7           on transparency and disclosure as relates to the  
8           residential consumer in the State of Rhode Island.  
9           So I just wanted to make those points. Thank you.

10           MR. MUNNELLY: Thank you. Again, we  
11           will try to keep the flow moving here on that.  
12           I'm going to start talking about Section 2.4,  
13           which is the consumer information requirements  
14           piece. I just want to note, just again to  
15           reinforce a point said earlier, that this whole  
16           section is by its term is only supposed to apply  
17           to residential customers, but if you note in  
18           Subsection B below, it talks about -- it mentions  
19           a billing format adopted herein, but it doesn't in  
20           that section again carve out commercial customers  
21           from this, although it's probably implied. Just  
22           from a standpoint of being clear, some type of  
23           intro section is probably going to be helpful so  
24           you don't have to keep referencing what the scope  
25           of this is on that.

1           Just as a general point on the whole issue of  
2 bills, and, again, I understand we're constrained  
3 by statute and we're going to have to work within  
4 those parameters, but one thing to keep in mind is  
5 that for residential rules most suppliers will  
6 rely on the utility joint bill, a consolidated  
7 bill; that very few suppliers with residential  
8 customers will be generating their own bills. So  
9 a lot of what we have here is going to be  
10 something where National Grid is going to be  
11 involved in having to figure out how to change  
12 their I.T. systems to meet whatever requirements  
13 are here. And in other states this type of  
14 similar efforts has involved a lot of I.T.  
15 changes. And, again, I don't know what format  
16 that would take place in. I don't know whether  
17 it's a Division or a Commission issue to help  
18 figure out what those changes would need to be.  
19 But one point on that, it would be a good idea to  
20 have suppliers have an opportunity to be part of  
21 the I.T. change process, so that we make sure that  
22 everything works together to meet the applicable  
23 requirements, and so that the bills are accurately  
24 done and consumers get the information they need,  
25 and suppliers aren't disadvantaged inadvertently

1 in that process.

2 Moving on down a little bit more, I don't  
3 know whether this is, again, this is going to be a  
4 statutory constraint issue that will be hard to  
5 manage, but Subparagraph 2 under B -- well,  
6 actually Subparagraph 1 under B is the issue of  
7 what you have to display on a bill if you're a  
8 company who charges for the use of electricity,  
9 which I guess includes the supplier.

10 It talks about all of the information  
11 required by Section 39-3-37.2. The only problem  
12 with that is that that's a -- I looked at the  
13 statute, that's a 1991 precompetition vintage  
14 statute that includes a whole bunch of things that  
15 aren't going to show up on a supplier's bill in  
16 any event. It includes, for example, outside  
17 plant charges and things like that. I don't know  
18 whether it's going to be possible to say all  
19 applicable information required, or something like  
20 that; otherwise, you're going to end up having  
21 spaces with blanks on it that wouldn't be, I  
22 think, of interest to consumers or anybody else.  
23 To the extent you have flexibility on that, that's  
24 something to keep in mind.

25 Moving on down to Section B, 3b, that is the

1 NPP requirement dealing with comparisons with  
2 standard service, I think, and also again it ties  
3 to the same issue of what has to be on the bills.  
4 There are several really problematic provisions in  
5 here. Again, we may have to deal with the  
6 statutory language and what it requires, but for  
7 one part it focuses on that the supplier has to  
8 provide a single supply and commodity cost for the  
9 customer compared directly to a single standard  
10 offer service price, which I think in general is  
11 fine.

12 But the next line is that the NPP will also  
13 list all the component parts of its supply and  
14 commodity cost. That particular sentence is  
15 hugely problematic from a supplier's standpoint.  
16 It's something that involves highly sensitive  
17 information of their -- you know, for example, how  
18 much they pay for their electricity, how much  
19 their ancillary charges are, and other related ISO  
20 charges, what their overhead is, what they pay for  
21 regulatory and legal, whether there's some market  
22 factors involved. And, again, I don't think they  
23 mind in terms of service documents disclosing  
24 generally what's in their price, but to the extent  
25 that they have to list all the component costs is

1 something that involves very sensitive  
2 information. It might even raise antitrust issues  
3 because the suppliers shouldn't be knowing what  
4 everyone's costs are, and it creates opportunities  
5 for mischief on that.

6 And the other part on this is that it is  
7 just unnecessary as well from the view of RESA.  
8 Again, the customer is interested in what their  
9 price is. They're not interested in all the piece  
10 parts that go into that price.

11 I'd also note that on the standard service  
12 side, my understanding is that a lot of the  
13 information of the specifics that go into the  
14 price are already subject to protective order as  
15 well, so it's not like there's an apples to apples  
16 issue there. It's really, the interesting point  
17 is the standard service price is X, the supplier  
18 price is Y, and I don't know that we need to look  
19 at whatever sausage making happens behind the  
20 price on that. So that's one part that I would,  
21 to the extent you can delete that sentence about  
22 listing the component costs --

23 HEARING OFFICER LUEKER: Which  
24 sentence is it exactly?

25 MR. MUNNELLY: It's in b, it's like

1 the 7th or so line down, and it reads --

2 HEARING OFFICER LUEKER: In what  
3 subsection?

4 MR. MUNNELLY: It's in B, so it's 3b,  
5 so it's 2.4, B, Number 3, small b, and the 7th or  
6 so line down that reads, "The nonregulated power  
7 producers shall also list all of the component  
8 costs of its total supply/commodity cost." That's  
9 the first part.

10 The second part is that there's additional  
11 information farther down in "b" dealing with what  
12 should be on the bill and there's a lot of  
13 information there. It's the, you have to include  
14 the price that -- you have to give information on  
15 when there's going to be a rate increase or  
16 change. You have to identify I think the amount  
17 of the change. You have to include the manner in  
18 which a customer can either sign on to keep  
19 getting the new rate or opting out to do something  
20 else. You have to give the date by which the  
21 customer has to act to either keep it or move on.  
22 Again, those are all useful bits of information,  
23 but that's really going to be hard to program onto  
24 a bill in a way that's workable. I would guess  
25 that's going to end up being a fairly major I.T.

1 project, especially on the utility side for their  
2 bill. So it's one of those where we may have to  
3 -- we'll look back at it on our written comments,  
4 and certainly the Division can look at it as you  
5 make final decisions, but that type of information  
6 we want to see if you can curtail some of that.

7 HEARING OFFICER LUEKER: I'd have to  
8 go back and look and see what the statute language  
9 is, because for the most part we were just  
10 restating the statute here.

11 MR. MUNNELLY: Understood on that. I  
12 think there's, in the commentary annotated piece  
13 of that, I think the statement in the commentary  
14 was that it expanded on some of this in light of  
15 another one of the statutes, so we'll all have to  
16 look back at it to see what can be done. Again,  
17 if it's there and it is what it is, then we'll  
18 have to deal with that, but it's something that we  
19 probably should try to see if we can find ways to  
20 minimize that if we can; otherwise, it's going to  
21 be a very difficult project operationally for  
22 everyone involved.

23 And then moving on to 3c, within that same  
24 Section 2.4, B, it's a section dealing with  
25 variable and time-of-use rates. We had a lot of

1 trouble understanding what exactly was being  
2 required here because variable rates of course are  
3 something that many suppliers use; and it's  
4 something that ordinarily I would think that that  
5 would fold into be that you would just be having  
6 whatever the variable rate would be would be on  
7 the bill, and it would compare to whatever else is  
8 supposed to be. So we were unclear why that was  
9 being broken out separately.

10 And the same with time of use, which is a --  
11 in the time-of-use standard offer service rates,  
12 we didn't know whether are you talking about  
13 variable rates that compare to the standard offer  
14 rates, or are you talking about only variable  
15 standard offer rates or time-of-use rates? It  
16 just was one of those where I don't know whether  
17 it's us on our side, but we had a lot of trouble  
18 understanding what that was intended to mean.

19 HEARING OFFICER LUEKER: Well, the  
20 rule says, of course, that standard offer service  
21 rates, which are the distribution companies rates.

22 MR. MUNNELLY: Yes.

23 HEARING OFFICER LUEKER: Are not  
24 going to be variable or time of use, so it would  
25 almost have to be the NPP side.

1 MR. MUNNELLY: Yeah, yeah, it just  
2 was the --

3 MR. HANKS: Construct.

4 MR. MUNNELLY: Yeah, it's just --  
5 part of it is perhaps a drafting issue, it needs  
6 to be clearer. We were having trouble trying to  
7 figure out why that didn't fit within the  
8 construct of "b" that we just talked about. I  
9 don't know, we probably will have to amplify it as  
10 we get to the written comments, but whatever it  
11 is, we had difficulty understanding what the scope  
12 of that was and what was intended for that one.

13 HEARING OFFICER LUEKER: Don't feel  
14 bad, we've had difficulty exactly understanding  
15 what the General Assembly wanted in some sections  
16 here.

17 MR. MUNNELLY: Okay. Then the  
18 separate bill issue is another one of these which  
19 we may have to grapple with the statute a bit.  
20 Again, keeping in mind that the great likelihood  
21 is that suppliers serving residential customers  
22 are likely to rely on the utility joint bill.  
23 They're going to have no interest in creating an  
24 entirely separate billing superstructure that's  
25 needed to provide their own unique bills. And

1 that's the danger under this rule as stated, you  
2 create the situation where, you know, the company  
3 has all of its I.T. set up to support the utility  
4 joint bill, and they've had to work in this  
5 quality control and it's expensive and they've  
6 done whatever they need to do, and if one customer  
7 says they want a single bill, they have to then go  
8 ahead and spend tens of thousands of dollars on an  
9 entirely separate billing infrastructure. I would  
10 say if that stands in place, that's likely to be a  
11 barrier for suppliers because all it would take is  
12 one customer to suddenly impose a lot of costs on  
13 them.

14 There may be ways of dealing with it from a  
15 wording standpoint about -- it says that they can  
16 request. You can maybe say request if available,  
17 because maybe some suppliers will be able to do  
18 both. And, again, we'll have to see how the  
19 statute works and is it going to be constrained,  
20 but that's one in particular that could be a very  
21 large entry barrier for a supplier, if one  
22 customer by opting in could put a huge burden on  
23 them.

24 Before I continue, Marc, do you have other  
25 stuff that you wanted to say about this Section

1 2.4, 1 through 3 issues?

2 MR. HANKS: Yes. So, again, I just  
3 want to reinforce a couple of points with respect  
4 to the information that's being highlighted in 2.4  
5 4 in general. I think to the extent that there's  
6 a symbiotic or interplay between the distribution  
7 utility and the retail supplier or the NPP, it's  
8 critically important that when we look at the  
9 invoice or the billing statement, as Mr. Munnelly  
10 mentioned, most retail suppliers utilize the  
11 consolidated utility bill format, which is  
12 essentially using the National Grid billing  
13 platform and their billing invoice. We appear on  
14 that with respect to a line item as relates to  
15 generation supply services.

16 To move forward with some of the information  
17 that's being depicted or required either by  
18 legislation or by statute and/or by regulation  
19 could result in a lot of reprogramming by National  
20 Grid on their bill. I know their bill, portions  
21 of that bill are very valuable real estate to look  
22 at that reprogramming. So it is something that I  
23 would hope that National Grid at some point would  
24 also comment on that with respect to the impact  
25 with respect to bill changes as relates to utility

1 consolidated billing.

2 And one other final point, as Mr. Munnelly  
3 mentioned, the ability to disclose the NPP, the  
4 list of actual cost components as relates to the  
5 total supply, that is really the secret sauce, if  
6 you will, of commercial entities like Direct  
7 Energy and other companies. It's highly  
8 commercially sensitive information. We really  
9 don't have an issue with disclosing broadly the  
10 categories, but to break out actual cost is,  
11 again, we believe highly problematical.

12 So we just wanted to reinforce those few  
13 points before we move on. Thank you.

14 MR. MUNNELLY: Thank you very much.  
15 I will pick back up. I don't have much to say  
16 with respect to C, which is that there's a  
17 periodic review of the billing format. Again,  
18 we're supportive, and I guess the only thing I  
19 would say about that is that there is a concept  
20 that is being considered in many states these  
21 days, which is supplier consolidated billing.  
22 It's an opportunity for, instead of having utility  
23 consolidated billing, it would allow a supplier to  
24 be able to meet requirements that would allow it  
25 to not only offer its own services but actually

1 would offer the utility services. I don't know  
2 that we're ready for that in Rhode Island, but it  
3 is something that could be handled and considered  
4 in the context of one of these billing review  
5 documents. It's one of the reasons why that's  
6 actually a very good idea, and, again, it's a  
7 thoughtful addition to the statutory scheme and  
8 the regulatory scheme.

9 MR. HANKS: Just to add to what  
10 Mr. Munnelly just mentioned, Direct Energy was a  
11 participant in Docket 4600, which is looking at  
12 the distribution grid and ways to enhance the  
13 distribution grid. This issue of supplier  
14 consolidated billing was integrated in the final  
15 report of the Docket 4600 proceeding. It is  
16 something that is an additional add-on.

17 So today you have the utility consolidated  
18 bill, which is the one bill issued by the  
19 distribution utility; and then you have a dual  
20 bill option, one that would be issued by the  
21 distribution utility for their services, the  
22 so-called transmission and distribution charges,  
23 and another bill by retail suppliers that would  
24 reflect the generation bill.

25 What we're suggesting is a third option,

1 which again was integrated in Docket 4600, which  
2 is looking at a supplier consolidated billing  
3 option. That option would be discretionary for  
4 those retail suppliers that chose to participate  
5 in that. The information that is provided through  
6 that is very illuminating. It could be detailed  
7 right down to the appliance level. We believe  
8 that it would help innovate and offer products and  
9 services here in Rhode Island that I believe is  
10 the promise of market restructuring. So we would  
11 encourage the Division and the Commission to  
12 consider that in the context of this section of  
13 the regulations. Thank you.

14 MR. MUNNELLY: Thank you, Mr. Hanks.  
15 Moving on, on D and E there's some provisions  
16 dealing with the internet website, and we don't  
17 have much to say other than we commend the  
18 Division and the Legislature both for proactively  
19 moving towards a shopping website. To have one  
20 that's voluntary, that is a consumer resource is a  
21 great thing, and it's something that is helpful  
22 for everybody, and we just want to make sure that  
23 that commendation to all the parties involved is  
24 noted on that.

25 Again, the same thing with the biannual

1 review of the website that's called for here. The  
2 idea of continuous improvement on those types of  
3 websites is really important because sometimes you  
4 get the website working but it doesn't meet all  
5 the needs, and then you keep thinking through how  
6 you can make it better. Again, that's a great  
7 process and, again, forward looking and helpful to  
8 everybody, and we support that strongly.

9 One minor point, I guess technical or  
10 otherwise, on Subsection F, which is dealing with  
11 the updates for the website. I'm a little unclear  
12 of exactly what that actually meant because,  
13 again, as noted in the earlier paragraph, the  
14 website is voluntary; and on F there's a lot of  
15 talking about obligations and shall provide and  
16 that type of thing and then compliance with a set  
17 of rules dealing with digital filings.

18 You may be able to deal with that in the  
19 second line of the proposed text, something like  
20 add the word participating before the NPP  
21 reference or NPP power producers participating in  
22 the website shall, or something like that, just to  
23 be clear that there's not an issue that somebody  
24 would say, oh, we have to do this even if we don't  
25 want to, might be helpful on that.

1 I was going to move next to the Section 2.5  
2 issues dealing with customer rights. One moment.  
3 Okay, again, the first few of these are not a  
4 problem at all as far as I'm aware, the subsection  
5 A dealing with utility transfers of customers to  
6 standard offer service in A. In B that the  
7 distribution company is not liable for contract  
8 termination fees that a customer incurs, not a  
9 problem.

10 There's a wording issue on C that we would  
11 like attended to a little bit, which is that it  
12 has -- this is the obligation of the distribution  
13 company to transfer a residential customer to the  
14 NPP; and it, I think reasonable says that that  
15 happens not later than the next billing cycle  
16 after the distribution company receives the  
17 successful enrollment. That's great. That makes  
18 perfect sense to us on that.

19 But then it says, "unless the notification is  
20 not received by the electric distribution  
21 company," and I guess I was not aware that there's  
22 a separate notification that goes beyond an  
23 enrollment transaction. My understanding is that  
24 ordinarily there's an electronic -- there's an EDI  
25 transaction that happens with an enrollment. It

1 happens, the process gets to move on. I wasn't  
2 aware that there is a separate notification  
3 provision that would operate in addition to, or is  
4 it a prerequisite for a successful switch? So I  
5 guess that's one we probably will have to clarify  
6 because I would have thought that the sentence  
7 would have ended after, "successful enrollment of  
8 such residential customer," period, is what I  
9 would have expected there.

10 HEARING OFFICER LUEKER: I believe  
11 the concern there is that there may be a  
12 requirement in the Commission to approve tariffs;  
13 and the Commission controls the tariffs, we don't.

14 MR. MUNNELLY: Yeah.

15 HEARING OFFICER LUEKER: That certain  
16 actions be taken at least a minimum number of days  
17 in advance of the beginning of the next billing  
18 cycle.

19 MR. MUNNELLY: Yeah.

20 HEARING OFFICER LUEKER: So if the  
21 Commission tariff says if you get a request to  
22 transfer two days before the end of that  
23 particular billing cycle, you don't have to  
24 transfer the next billing cycle because you don't  
25 have enough time to complete the process. That's

1 really what it's getting at.

2 MR. MUNNELLY: Yeah, I think the word  
3 notification may be ambiguous or maybe there's  
4 something more general that you can say. You can  
5 say successful enrollment of such residential  
6 customers under the applicable tariffs or  
7 something. I'm just worried that you're adding  
8 the potential for confusion by being too specific  
9 after you've talked about a successful enrollment.

10 HEARING OFFICER LUEKER: How about if  
11 it said notification of enrollment is not received  
12 by the electric distribution company?

13 MR. MUNNELLY: But I'm not even sure  
14 it's notification. I mean, that's the thing I  
15 guess we have to -- I would just delete the word  
16 notification to say that it's a successful  
17 enrollment in accordance with the Commission  
18 approved terms and conditions or something like  
19 that.

20 HEARING OFFICER LUEKER: Well, I  
21 think the key factor is when the utility company,  
22 the distribution company finds out that there has  
23 been an enrollment. So they have to be notified  
24 of the enrollment. I mean, that really is all  
25 that term means. You might have a customer you've

1 been dealing with and they fill out the right  
2 process to enroll in buying your products. That  
3 doesn't help anybody unless the distribution  
4 company or whoever currently has got the contract,  
5 the service contract with them, is notified that  
6 they're shifting over to somebody else. And  
7 that's really all that's talking about, you have  
8 to tell the utility company they need to shift  
9 everything over to you, and it has to be done  
10 under the tariff for the distribution company  
11 within a certain period of time so they can  
12 actually accomplish it in a timely fashion.

13 MR. MUNNELLY: Yeah, but I think  
14 there's two processes in the way it's worded right  
15 now. The first process is that it's already  
16 conditioned on the fact, in the third line down,  
17 that it has to happen -- that it tells that the  
18 switch happens after the distribution company  
19 receives from the NPP a successful enrollment. So  
20 they've already received a successful enrollment,  
21 so that means by definition it's a done deal. And  
22 the reference to notification of the same thing, I  
23 would think is duplicative. So, Marc, do you want  
24 to add something? Sorry about that.

25 MR. HANKS: To pick up on

1 Mr. Munnelly's point, it may be helpful here that  
2 at the end of the sentence where it says, "...the  
3 nonregulated power producer a successful  
4 enrollment of such residential customer," and just  
5 before it says "unless the notification," and pick  
6 up on, "in accordance with its Commission-approved  
7 terms and conditions on file with the Division and  
8 Commission," and just delete "unless the  
9 notification is not received." What we're talking  
10 about is there are, by both the Division and the  
11 Commission, certain protocols that are in place  
12 relative to the enrollment procedures, and I think  
13 it does address that. I think the other line, I  
14 think is rather confusing, so we could put that in  
15 our comments but that's by way of suggestion. We  
16 think that might clear it up and be a little more  
17 enlightening to the interpretation of the rules.

18 HEARING OFFICER LUEKER: Okay.

19 MR. HANKS: Thank you.

20 MR. MUNNELLY: Thank you on that. I  
21 appreciate that, Mr. Hanks. Moving on to D, I  
22 think D is substantively fine. It just has odd  
23 wording in the sense that it mentions that nothing  
24 shall prohibit a residential customer from moving  
25 from one dwelling to another and keeping the same

1 supplier. I don't know if there's a way to frame  
2 that more affirmatively, such as the customer  
3 shall be entitled. You know, notwithstanding  
4 blah, blah, blah, the customer shall be entitled,  
5 or something like that. The double negative is  
6 something that we'd love to be able to avoid that  
7 if we can avoid that.

8 On Section E, I don't know whether this is a  
9 definition or not, but it's talking about the  
10 electric distribution company that has to include  
11 in its tariffs customer information, and I guess  
12 I'm unclear what that means. Is that just talking  
13 about load information and usage information or is  
14 it something that sweeps more broadly? I think  
15 there may be, whether you work it into the  
16 definition and define what that term is, or maybe  
17 it's already existing in the current terms and  
18 conditions that are at the tariffs, but that was  
19 something that seemed to be ambiguous to us.

20 HEARING OFFICER LUEKER: Subject to  
21 check, I suspect there's already a discussion of  
22 it in the terms and conditions that the Commission  
23 has approved.

24 MR. MUNNELLY: Yeah, it may be  
25 something that may be worked back in and added

1 into the definitions section just to be clear what  
2 that is so that everyone knows and doesn't have to  
3 do a deep dive on that side of it.

4 Okay, and the same I think is true for F,  
5 which is the same type of issue except it's,  
6 again, something in the tariffs or in their terms  
7 and conditions. Like I said, it's the same thing,  
8 dealing with release of customer information.  
9 Again, I think that's another one where the  
10 definition I think would be helpful as a drafting  
11 matter for the rules so we know what we're talking  
12 about.

13 Okay, on G, G is a big one which deals with  
14 all the different parts of the terms of service.  
15 Mr. Hanks, did you have something to say before we  
16 do that deep dive?

17 MR. HANKS: No, I think you covered  
18 that.

19 MR. MUNNELLY: Okay. Just generally  
20 it jumps off in G3, which is the provision that  
21 the terms -- again, the whole terms-of-service  
22 provision has the Rhode Island, the kind of  
23 unusual Rhode Island specific requirement in terms  
24 of service for essential customers has to include  
25 required elements and keep them in the same order.

1 Again, I don't think that's something that the  
2 suppliers are opposed to. They've learned how to  
3 work with that, and that's something that they can  
4 do.

5 But in terms of some of the specifics here,  
6 starting with 3, we talk about the -- that section  
7 talks about you have to include the terms and the  
8 expiration date of such rate. Now, there's going  
9 to be a general theme that I'm going to end up  
10 talking about a fair amount as we go forward,  
11 which is dealing with the meter reading stuff we  
12 just talked about. That, as a general matter, you  
13 know, when you're at the end of a term, the EDI  
14 transaction has happened, whether they keep the  
15 customer on or having somebody switch, and they  
16 send that transaction into the utility, and  
17 whether it happens immediately or whether it has  
18 to wait for a month to the next meter read depends  
19 on a series of rules. And in many cases suppliers  
20 can generally try to schedule that so that they  
21 get them timely in and are able to meet things,  
22 but every once in a while something goes wrong,  
23 that there's a transposed digit which fails the  
24 process, you have to start it again; or maybe the  
25 utility has something happen on their end, if

1 something that you expect to happen doesn't  
2 happen, and so that gets into some of the things  
3 farther down mostly where you start talking about  
4 guarantees, specific guarantee-type language which  
5 makes suppliers very uncomfortable because in  
6 those types of transition provisions there's  
7 liability issues. Because, for example, a  
8 customer is on a high rate and wants to switch to  
9 a lower rate, and they're expecting that to  
10 happen, and for some reason it doesn't happen, and  
11 they look at their bill and say, Wait a minute, I  
12 was supposed to be paying X and now I'm paying X  
13 plus, you know, my old rate, and I'm really mad  
14 and I'm going to cause trouble. And that type of  
15 situation is fairly common, so it's an  
16 understanding that meter reading is not perfect.

17 It's something that people have to work with  
18 and it's hard, and we really want to try to avoid  
19 the words guarantee or specific meter read dates  
20 worked into these rules. What's going to end up  
21 happening is technically there's some language,  
22 for example, in the one we just talked about, the  
23 Point 3 one dealing with terms and expiration  
24 dates, the next expiration date may be, you know,  
25 the next meter read after June or something like

1 that. That's a fine way of putting that in the  
2 terms and conditions, that's okay. If you have to  
3 give a date certain, I think suppliers would  
4 generally have a problem with that. I just wanted  
5 to flag that issue for you as something as we move  
6 forward.

7 And I think the same thing is true on the  
8 Subsection 4 which is right after that. It's the  
9 automatic renewal provision, and you want to have  
10 something that specifies the date so that the  
11 customer can take action to either keep the rate  
12 or move to another option; and you have to put it  
13 in in sufficient time to make the customer switch  
14 into the next billing cycle. And, again, that's  
15 fine as long as it doesn't mean that if something  
16 goes wrong, that there's some type of -- there'll  
17 need to be some wiggle room in the supplier's  
18 terms of service that will allow it to be the next  
19 billing cycle. So you're aware that that issue is  
20 out there. One moment.

21 MR. HANKS: While Mr. Munnelly is  
22 looking, I just wanted to add to that last point  
23 to the extent that, as you mentioned, the NPPs, we  
24 don't manage or oversee the meter reading  
25 component. That's obviously within the domain of

1 the distribution utility. As Mr. Munnelly  
2 mentioned, the ability to get an accurate read,  
3 generally they do a great job; however, there are  
4 instances, whether it's technical or otherwise,  
5 where meter read dates have been missed, and it  
6 does present a contract liability issue for NPPs  
7 that is very concerning, particularly around  
8 larger commercial industry customers that could be  
9 adversely affected if their contract is not  
10 enrolled timely and rolls to the next month or  
11 possibly the following month. So there are  
12 concerns associated with that.

13 MR. MUNNELLY: Okay, thank you.  
14 Picking back up, Section 5 is fine.

15 Section 6 is fine with one exception. 6 is  
16 dealing with the issue of the method by which a  
17 consumer is able to cancel service from the NPP,  
18 and it properly and reasonably states that it can  
19 be done a bunch of ways, whether by e-mail or by  
20 electronic ways, but at a minimum it has to have  
21 some route that you don't need internet service to  
22 accomplish. In some cases that's going to be  
23 written notice to the customer. Again, nothing  
24 wrong with that at all.

25 The concern we have is the last line where

1 it's the issue of you can use a telephone call to  
2 cancel service, and it adds, "with third-party  
3 verification." Now, we're having trouble seeing  
4 the necessity of a requirement of third-party  
5 verification for a call to cancel service as  
6 opposed to the TPV that's always in place when you  
7 accept service. I would think the route is you  
8 can send a notice, you can send an e-mail, you can  
9 send whatever the customer opts into, and they can  
10 do it by telephone as well. I just don't see the  
11 need for a TPV in that context. That's a whole  
12 other separate set of process that confirms the  
13 agreement. It's not needed in the context of  
14 you're saying bye-bye to the supplier.

15 7 deals with that issue we just talked about,  
16 the specific guarantee language. We'd really like  
17 to avoid that in terms of an enrollment in a  
18 service or a termination in a service prior to a  
19 billing read. I don't know whether that's  
20 reasonable efforts or something like that, or some  
21 type of standard would be fine.

22 MR. HANKS: Commercial and  
23 reasonable.

24 MR. MUNNELLY: Commercial and  
25 reasonable efforts or something. Maybe that's the

1 best one of all, commercial and reasonable efforts  
2 to meet these things would work well. We just  
3 would like to avoid the specific guarantee text on  
4 that.

5 Again 8 has the same issue in terms of  
6 specific guarantee. There's a separate issue in 8  
7 that we want to talk about as well, which is  
8 that -- that whole issue is what happens when the  
9 customer is leaving. And at the end of it it  
10 talks about that the supplier has to, in addition  
11 to meeting its meter reading obligations or  
12 meeting its submission obligations, has to provide  
13 the consumer with a written confirmation that it  
14 has received word that the customer wants to  
15 cancel and that it has processed the request.

16 We're having a lot of trouble understanding  
17 why you would need to have an initial detailed  
18 person-intensive process to create a written  
19 confirmation that the customer doesn't want to use  
20 the supplier anymore. So we would ask that that  
21 be taken out.

22 Number 10 is the famed fixed variable true-up  
23 language that was in place in Rhode Island for a  
24 long time and was eliminated a year or two ago at  
25 least for residential customers. Again, this is

1 the portion of the rules applicable to residential  
2 customers. It doesn't exist anymore, so I would  
3 say that Number 10 probably should be deleted. If  
4 this were a provision that was applicable also to  
5 commercial customers, it may be something that I  
6 think you would want to keep it in, but in this  
7 case where it's residential only, unless there's  
8 an intention to bring that back in the very, very  
9 near future, I would say it probably shouldn't be  
10 in here.

11 Again, Number 14 is the next one. Again, I  
12 don't know whether this is something that's  
13 statutory or whatever it is, but 14 is dealing  
14 with the kind of information on air emissions and  
15 resource mixes for generation facilities that are  
16 either operated by or under long-term contract  
17 from the NPP. Usually those types of provisions  
18 are addressed elsewhere in the packet that goes to  
19 the customer, such as in a label, like an  
20 environmental fax label or something like that.

21 I'm just not sure, and, again, I don't think  
22 it's that big of a deal in terms of service to add  
23 some information on that, but it seemed a bit out  
24 of place. And, again, I don't know, maybe it is  
25 something that's tied to the statute, but if it's

1 something that can be -- if it's going to be in  
2 another part of the customer experience, then it  
3 may be better there than in the terms of service.

4 The final one I have in this section under G  
5 on the terms of the service is Number 19. 19  
6 requires at the end of the terms of service you  
7 include contact information on an individual at  
8 the NPP that agreed on the service contract with  
9 the customer. That's something that takes a  
10 generic terms-of-service document out of play and  
11 requires an awful lot of work to figure out who is  
12 exactly the person who reached the deal with the  
13 residential consumer; and keeping in mind that in  
14 the context of an electronic enrollment, there  
15 won't be a person. And it's one of those ones  
16 where we're just having trouble seeing what's the  
17 need for that.

18 First of all, it does make the terms of  
19 service less generic because you have to have  
20 terms of service for every single sales person you  
21 have; and you have to go through a process of  
22 saying, oh, it's this salesperson and this is  
23 their contact information. And I don't know,  
24 maybe there's a workaround somehow to deal with  
25 that, but that's going to impose a lot of burdens

1 without a lot of value.

2 HEARING OFFICER LUEKER: I think that  
3 comes right out of the statute though, and I think  
4 it was designed to deal with perhaps a situation  
5 where we have less scrupulous people slamming  
6 customers. So they want to know if there's bad  
7 information being passed out, who's passing it  
8 along, so we can go back and address that directly  
9 either with the NPP or with the individual  
10 concerned.

11 You're right, however, of course on if  
12 there's some sort of an electronic enrollment  
13 where they actually come on to your website and  
14 sign up themselves without being personally  
15 solicited, it would be difficult to comply with.

16 MR. MUNNELLY: Yeah, this is going to  
17 be really hard to comply with, in any event. I  
18 guess we'll have to take that one back ourselves  
19 and see if we can find some alternative that fits  
20 within the statutory scheme, but it should be an  
21 effort that all of us should be thinking about.  
22 If there's a way to either make it more generic or  
23 delete it would be, I think, easier for all of us,  
24 I think.

25 HEARING OFFICER LUEKER: It's

1 possible, I suppose, that if the NPPs get the  
2 customers enrolled electronically or signing up  
3 electronically, that basically your system would  
4 then indicate that that's what happened, in lieu  
5 of having a personal contact information placed  
6 down there.

7 MR. HANKS: Exactly. Marc Hanks with  
8 Direct Energy. I just wanted to pick up on that  
9 point you just made. I think that's an excellent  
10 suggestion. Instead of being person specific, the  
11 idea of looking at perhaps categories that would  
12 designate by sales channel. So if it's an  
13 electronic enrollment by web or door-to-door sale  
14 or outbound telemarketing, perhaps there could be  
15 categories, and, again, we can reflect this in our  
16 comments that may be useful or enlightening to the  
17 Division and Commission. That would essentially  
18 get at the intent and spirit of where the  
19 Legislature wanted to go with this matter, which  
20 we agree. I mean, the idea of tracing back and  
21 providing some ownership if there are bad actors,  
22 how to account for it, but --

23 HEARING OFFICER LUEKER: I think  
24 that's exactly what this section was intended to  
25 look at, how do we identify -- and it could be a

1 third-party seller working for a number of NPPs,  
2 and we would like to be able to identify if that  
3 particular person is a source of a lot of bad  
4 information. If we get a lot of customer  
5 complaints in, all with respect to the same  
6 salesman, that tells us something.

7 Obviously if you go online and you're signing  
8 up yourself without contacting anybody and talking  
9 to anybody personally, it's a little different;  
10 but we need to know that too because that just  
11 explains that this customer didn't read all the  
12 paperwork the way they should have perhaps.

13 MR. MUNNELLY: Some of that is going  
14 to end up -- as a practical matter, if people want  
15 to hunt those things down, you have recordkeeping  
16 obligations elsewhere in here, so you should be  
17 able to track back to a large extent at least some  
18 of the information that we're talking about here;  
19 but I understand that is something we'll have to  
20 grapple with on our side to try to give you some  
21 suggestions how to work with the statutory  
22 provision on this one.

23 Moving on to H, the first part is fine, H1,  
24 just that it's providing a residential customer  
25 with a copy of the description of services, and

1 again it cross-references some discussion of  
2 2.5(G) of the plan. I hope that that -- actually,  
3 as I think about that, take a look at that again  
4 to see if you've given enough specific information  
5 with the reference to 2.5(G). I don't know  
6 whether it's 2.5(G) with a subsection, since G is  
7 so big. Is there a -- see if you can make it more  
8 clear. I don't know if it's the first paragraph  
9 of G or something, but you may want to be a little  
10 more specific of what in G we're targeting when we  
11 describe that provision.

12 But the second one is something that I think  
13 needs at least some attention or clarification,  
14 whatever. H-2 is one of those things that, again,  
15 one of the rare stat. provisions in here that  
16 applies to commercial customers. So this is one  
17 of them that needs attention on that.

18 It says that you have to provide a customer  
19 with a written notice describing the rates, giving  
20 some certain information that complies with the  
21 statute, and energy source disclosures. You have  
22 to give terms and conditions of service and a  
23 notice describing the customer's right to cancel  
24 the service. All is provided in this section. I  
25 think a commercially-oriented supplier is going to

1 have a lot of trouble with that, of knowing  
2 exactly what they have to give. I would think  
3 they probably could come up with some, because  
4 they're going to have their own specifically  
5 negotiated agreement in many cases; and so a  
6 summary isn't going to necessarily help very much  
7 because they have individually negotiated  
8 provisions, so there's only so much a notice can  
9 do.

10 I mean, maybe they can say, as described in  
11 section whatever. If that type of thing is okay,  
12 that they can meet these requirements by  
13 cross-referencing paragraphs in the agreement,  
14 then it's probably fine. But if it actually  
15 requires them to come up with written re-summaries  
16 of the specifically negotiated provisions that are  
17 in the contract in length, it's going to be hard  
18 because the answer is going to be, we negotiated  
19 this complex contract with all these provisions in  
20 here. And giving them a notice -- first of all,  
21 there's a question of does a commercial customer  
22 who's sophisticated, do they really need a  
23 summary? But putting aside that, it's going to  
24 end up having confusion of what that provision  
25 means. So I don't know, we may have to come up

1 with some suggestions from a drafting standpoint.  
2 I guess one of them is I didn't double check the  
3 statute if this is required by statute or not.  
4 One moment.

5 HEARING OFFICER LUEKER: I believe  
6 that restates the substance of the second sentence  
7 of 39-26.7.5H. I'm looking at the annotated copy  
8 of the draft rules.

9 MR. HANKS: If I may, Marc Hanks with  
10 Direct Energy, so just picking up on  
11 Mr. Munnelly's point, I think this is one of those  
12 areas where, with respect to the legislative  
13 construct, kind of spilled over into the  
14 commercial industrial side of things.

15 Our point is, you know, from an NPP  
16 perspective, these are discreet -- typically  
17 discreet contracts that are negotiated point by  
18 point, provision by provision. To restate it in a  
19 summary form, we believe would be certainly  
20 redundant in many respects. So we're asking, and  
21 we will reflect these points in our comments, that  
22 perhaps there's a statement or a subsection that  
23 would refer back to the agreement, which again  
24 would be less standardized in nature as you might  
25 find, for example, in a residential terms of

1 service contract and, again, highly negotiated on  
2 a point by point, provision by provision basis in  
3 a commercial industrial contract. So we would  
4 make that suggestion as being helpful from the  
5 standpoint of the differences in the various  
6 customer types.

7 MR. MUNNELLY: Thank you, Marc. I  
8 don't think I have anything with I. I think in  
9 terms of -- sorry, I don't have anything with J  
10 either.

11 On K, which is dealing with the contracts  
12 that have to be out there for the suppliers, again  
13 that's where the clear and conspicuous starts  
14 coming in; and, again, it would be helpful if  
15 that's a defined term earlier. Marc, you may want  
16 to comment on that one because -- let me just say  
17 there's a question of what does material terms  
18 mean. And we understand that, and this is talking  
19 about K1, that the contract has to include all  
20 material terms of the agreement. And in that  
21 respect you're saying that every item in --  
22 actually, I'm confused about this now. Sorry  
23 about that. Thank you for bringing that to my  
24 attention.

25 So we have the terms of service already,

1 which has at least 19 sections in it, and has to  
2 be provided to a customer; and then we have this  
3 provision in J that says we have to provide each  
4 customer with a contract, and then they have to  
5 keep records of that. And then K talks about what  
6 it shall contain, and it shall contain all  
7 material terms of the agreement, which includes  
8 everything in the terms of service. So I guess  
9 I'm trying to figure out how that's going to work.  
10 Is that going to be you need the terms of service  
11 in a contract that restates everything in the  
12 terms of service? Or I guess I'm just unclear  
13 what is intended for that.

14 HEARING OFFICER LUEKER: Good  
15 question, but I think what is intended is that the  
16 contracts that you put together will have  
17 something that addresses every one of those  
18 subparagraphs under G. And each one of those  
19 subparagraphs would be considered -- this is more  
20 of a definitional section really.

21 MR. MUNNELLY: Yeah.

22 HEARING OFFICER LUEKER: That all of  
23 those items under G would be viewed as a material  
24 term of your contract. You don't have to restate  
25 the material terms necessarily; but you might have

1 to say that, for instance, if in your contract you  
2 have all those terms stated but it's in like  
3 Paragraph 7 of your contract, then you might want  
4 to say, Everything in Paragraph 7 is considered to  
5 be a material term of this contract.

6 MR. MUNNELLY: Yeah, either that or  
7 what would happen is if it's okay to  
8 cross-reference the terms of service because that  
9 would make it --

10 HEARING OFFICER LUEKER: I think that  
11 would be okay.

12 MR. MUNNELLY: Okay. As long as  
13 that's workable, that probably should work.  
14 Again, it's talking about the material terms of  
15 the agreement, and an agreement can go beyond a  
16 contract, so that's the whole terms of the deal.

17 HEARING OFFICER LUEKER: And it's  
18 really just trying to make it clear that we think  
19 that the General Assembly intended that everything  
20 that was set out in its Subsection 5G is intended  
21 to be a material term and has to be in every  
22 contract. That has to be addressed somehow in  
23 every one of your contracts.

24 MR. MUNNELLY: Yes. Go ahead.

25 MR. HANKS: Thank you for that

1 clarification. Marc Hanks with Direct Energy. I  
2 just wanted to make sure, because clearly the  
3 focus on the terms of service is to have an  
4 enhanced customer experience, so that if you're  
5 creating a good deal of redundancy in the contract  
6 or the terms of service, you could get a clear  
7 sense, particularly as it relates to a residential  
8 consumer, how that could work adversely. At some  
9 point enough is enough, I'm just walking away,  
10 it's overburdensome to go through this. So having  
11 that level of clarification is very helpful, so  
12 thank you.

13 MR. MUNNELLY: Okay. Again, this is  
14 one of these other ones where I think it's more of  
15 the commentary. We'll have to think about whether  
16 there's anything that we need to suggest  
17 clarification on, but on Subparagraph 3 of that,  
18 of K, which talks about that the contract has to  
19 include a statement that provides "specific  
20 directions" to the customer as to how to compare  
21 the prices to the customer's existing electric  
22 generation service rate and also state how long  
23 those rates are guaranteed, I'm not sure -- I  
24 mean, "specific directions" is a little unclear to  
25 me, and it's also going to get tricky because

1 sometimes we don't know what the -- it talks about  
2 we have to explain back to the customer's existing  
3 charges and how long those charges are guaranteed,  
4 and we may not know that. If it's standard  
5 service, we can know that. If it's coming from  
6 another supplier, we may not know that.

7 HEARING OFFICER LUEKER: I think the  
8 idea of the rule though is to try to get all that  
9 sort of information set out in the same order in  
10 everybody's contracts so that it would be easy to  
11 tell people this is the section, generally  
12 speaking, that you need to look at in everybody's  
13 contract in order to compare our prices and our  
14 terms and conditions with theirs, and the same  
15 thing, the same order really for the distribution  
16 companies' bills, for example.

17 MR. HANKS: On this point that  
18 Mr. Munnelly raised -- Marc Hanks with Direct  
19 Energy -- we have addressed this issue in other  
20 state markets; and here it may be helpful that we  
21 could work and we can certainly start the process  
22 by suggesting language, but in this situation we  
23 believe having uniform language in terms of how  
24 this would be applied would be very helpful, so  
25 that in every NPP contract there's sort of a

1 generic or standard statement that would be put  
2 forward, as opposed to subject to interpretation  
3 by, if there are 15 or 20 NPPs, everyone having  
4 their own interpretation. So we would like to  
5 suggest that we come up with uniform or preferred  
6 language, working with the Division to find that  
7 language acceptable, and make sure that it would  
8 be integrated as a standard statement.

9 HEARING OFFICER LUEKER: Okay, I  
10 would welcome that.

11 MR. MUNNELLY: That's a good  
12 suggestion, Mr. Hanks. Thank you.

13 On L, the first part is not a problem. It's  
14 dealing with the issue of that before the end of a  
15 fixed price term, the supplier has to give a  
16 notice to the extent that a price is going to  
17 change. That's a practice common in many  
18 jurisdictions. I think it's fine.

19 But then you've combined into L a very  
20 separate concept, which is that -- it's the issue  
21 of how they receive the form of notice and whether  
22 it's something that's done through mail or through  
23 an e-mail or through some other format.

24 But putting the two together causes  
25 difficulties exactly from the provision that's in

1 there, which is, that somebody ends up calling and  
2 has the telephone transaction, it's concluded,  
3 they have a third-party verification call done by  
4 an independent third-party verification provider,  
5 and somewhere in the middle of the call you have  
6 to then stop and say, Oh, what type of notice do  
7 you want to give? It's not something that TPV  
8 companies are set up to do. It's going to make  
9 the transaction much harder.

10 This is the type of provision that it  
11 probably shouldn't be required of a supplier at  
12 all. Suppliers, it's in their interest to try to  
13 use nontraditional notice requirements. Right now  
14 the kind of default is written notice, but I think  
15 a lot of them, because of customer demand, use  
16 e-mail or other electronic formats, and that is  
17 something suppliers are doing as a matter of  
18 course these days.

19 So I'm concerned, first of all, that somehow  
20 working it into something that says that you have  
21 to do this at the time the contract is signed or  
22 verified is overly constrictive. Ordinarily what  
23 may end up happening is you'll make the deal,  
24 they'll get a welcome letter, and as part of the  
25 welcome letter package they'll say, If you'd like

1 something other than in writing, please opt in and  
2 then we'll be able to send it the way you like it.

3 So, first of all, I wouldn't put that second  
4 part as part of L. It should be in a separate  
5 section anyway because it causes problems when you  
6 conflate the two; but on top of that it is  
7 something that -- again, you can encourage it. I  
8 think suppliers are already amenable to it, but  
9 I'm worried about forcing a decision while you're  
10 trying to finalize a sale is going to be  
11 counterproductive. So maybe that's how, you can  
12 either take the rest of it out or keep the -- have  
13 the separate section that says that, you know,  
14 encourages options of notice and includes the last  
15 sentence that says that the customer retains the  
16 ability to change the option during the course of  
17 the contract. I don't think any suppliers will  
18 have a problem with that. So there's a little bit  
19 of work on that section that would be helpful.

20 On M, it's -- sorry we're into the weeds on  
21 the technicalities. I hope this is okay. It's  
22 taking a little bit of time but I think it's  
23 important time. M is the issue of when you give a  
24 45-day notice; and it's something that is prior to  
25 the commencement of a contract with month-to-month

1 variable rates. I want to clarify this a little  
2 bit. That right now this seems to apply to all  
3 contracts that are commencing with month-to-month  
4 variable rates. I would probably try to limit  
5 that to fixed contracts because that's the classic  
6 scenario, you're under a fixed contract for a  
7 certain period of time, and at the end of the  
8 contract the default provision switches you on to  
9 a short-term month-to-month rate until you have  
10 made another decision on that. And, yeah, I can  
11 understand at that point you want to have a notice  
12 that says, Hey, you need to understand the  
13 consequence of what you're doing. If you have  
14 inaction, you're not going to opt into a fixed  
15 rate, you're going to opt into a month-to-month  
16 variable rate, which can be a good rate, it can be  
17 a not-so-good rate depending on market conditions.

18 And that type of notice is fully appropriate  
19 in other places, but I don't know the need for  
20 that 45-day rate if the customer is already on a  
21 month-to-month rate. If they're already on a  
22 month-to-month rate, you shouldn't have to need a  
23 45-day notice saying that you're going to be  
24 placed on a month-to-month rate at the end of the  
25 period. So maybe that would be the easy fix for

1 that provision.

2 And, again, I think you have the same notice  
3 issue at the back of that; and, again, the prior  
4 to commencement issue is there too, so I would say  
5 that that may be the same type of logic that we  
6 just talked about with L should apply to M as  
7 well.

8 I'm going to skip by O. Again, skipping N,  
9 that's fine. Skipping O, that should be fine.

10 On P, this is one of these ones where we have  
11 to be very careful about -- one moment. On P this  
12 is one of these where you have to be very careful  
13 about, is this applied to commercial transactions  
14 or not. This general provision has unexceptional  
15 language about that if you have -- it's coming up  
16 on these P, G, and R, that they have to comply  
17 with applicable rules. That they, with respect to  
18 certain things, have to wear a badge. They have  
19 to not have misleading branding, that type of  
20 thing. All those are fine in a residential  
21 context because you're going to want to have those  
22 types of mandatory branding and anti-confusion  
23 rules in place.

24 But in a commercial context, those don't  
25 really happen. Ordinarily the commercial person

1 goes to the workplace of the business and sits  
2 down and talks to somebody; and they shouldn't  
3 necessarily have to wear branded merchandise or  
4 have a badge with them necessarily, because  
5 they're talking business to business with them.  
6 We'll have to look at -- that's something where  
7 there's probably carve-out language that's been  
8 used in other states; that it will be a definition  
9 issue that for purposes of a door-to-door selling  
10 queue, door-to-door shall not include, and then  
11 define it to include commercial transactions at  
12 the place of business and that type of thing. So  
13 we'll come up with some language on that, but  
14 that's what that concern is on that one.

15 HEARING OFFICER LUEKER: Okay.

16 MR. MUNNELLY: One thing, by the way,  
17 in terms of, it's in R, and actually it's a  
18 general issue I probably should have mentioned  
19 earlier, but in R, which in itself is fine in  
20 terms of that being an anti-misleading provision  
21 here, but it does have that language, and it comes  
22 out of the statute, about the provisions on or  
23 after January 1, 2017.

24 And the concern we have is that we need to  
25 figure out some way to deal with that from an

1 effective date standpoint. It would be  
2 disappointing if somebody is doing an  
3 advertisement now in February that didn't use  
4 10-point type, and the rule wasn't even in place,  
5 and then suddenly have them subject to liability  
6 for that.

7 I understand the statute was kind of  
8 awkwardly worded. It is something that presumably  
9 means that after January 1st, once the rules are  
10 in place, you shall not do it. So that may be  
11 something that -- I don't know if that's an  
12 applicability issue upfront or an effective date  
13 section upfront, but somewhere in there we should  
14 deal with what that language means about "on or  
15 after January 1st," so we don't end up having  
16 somebody be worried about liability for a rule  
17 that isn't even in place yet.

18 That's the end of 2.5. Mr. Hanks, did you  
19 have other things you wanted to say?

20 MR. HANKS: I'm fine with that.

21 MR. MUNNELLY: And we are getting  
22 towards the end here. I think this one is going  
23 to move a bit faster now. 2.6 are the NPP  
24 obligations. I don't think we have anything to  
25 say about termination fees because I believe

1 that's statutory.

2 On B we do have an issue, which is that  
3 you're supposed to be making the filing of your  
4 aggregators and agents on December 31st, which I  
5 don't remember if that's required by statute, but  
6 it's fine, in any event; but there is a separate  
7 provision that if you remove or add any agents  
8 during the year, you have to provide a filing  
9 within five business days. That's incredibly fast  
10 and not feasible for almost any supplier. They'll  
11 be in the business potentially, depending on the  
12 size of the provider, giving notices a couple  
13 times a month. It really should be 30 days or 15  
14 business days or something like that, which would  
15 allow you at least to bundle a person or two and  
16 not have to keep filing every time you bring  
17 somebody else on to your team or that somebody  
18 else moves off to go somewhere else.

19 MR. HANKS: Just to add to that  
20 point. I mean, we recognize with respect to the  
21 legislative intent here, it's to keep track of  
22 what's going on with respect to employees and,  
23 particularly, if there's bad actors. I think the  
24 premise of these regulations were to safeguard  
25 against that, but it's also, as I mentioned

1 earlier, striking that right balance between that  
2 element and typically what most NPPs are doing,  
3 and looking at the administrative burden. So I  
4 think the 15 business days may be the right  
5 balance, 30 days would be better, but I think it's  
6 something to consider with respect to the  
7 potential changes there. Thank you.

8 MR. MUNNELLY: And I think beyond  
9 that, you have at Section F the abusive switching  
10 practices that more or less restate many of the  
11 obligations that we've already discussed in the  
12 course of this case and make sure that people  
13 comply with them on that. I don't think -- I  
14 think that that's fine. There's going to be some  
15 cross-referencing that you may have to update  
16 depending on what changes you make to the rules,  
17 but I think for the most part we have no comments  
18 on those particular provisions, unless Mr. Hanks  
19 wants to add a thing or two about this last page  
20 or so of abusive marketing practices laid out.

21 MR. HANKS: No. As I mentioned at  
22 the House Corporations Committee with the General  
23 Assembly, we think these are important to keep the  
24 bar high with respect to consumer protections and  
25 the ability to provide good disclosure and

1 transparency to, particularly, residential  
2 consumers in the Rhode Island market, so we  
3 support this. We believe it's important, so we  
4 have no issues with this. Again, we believe it  
5 would be helpful with respect to safeguarding the  
6 protections and the needs of residential  
7 consumers.

8 MR. MUNNELLY: Okay. And then the  
9 final thing -- I think that ends the rules as  
10 included here. Just one other separate issue was  
11 just that, and it goes outside the rules, but I  
12 don't know whether there's any thought that Rhode  
13 Island is going to end up thinking about the  
14 purchase of receivables types of programs that  
15 have been adopted in many states and are viewed by  
16 many suppliers as being pro-competition. I think  
17 RESA would be supportive if there was some  
18 suggestion that that could happen at some point.

19 And the other thought is if that's not going  
20 to happen, then it may be worth it to take a look  
21 at the payment hierarchy rules in the state  
22 because in some states, and I haven't looked at  
23 Rhode Island's, the legacy rules are such that the  
24 supplier's portion of a joint bill gets paid very  
25 late. It may not get paid at all because the

1 utility ones by law are getting paid first, and  
2 even the current utility ones are being paid ahead  
3 of the old supplier rules, which means they never  
4 catch up. So, again, I may go beyond the rules  
5 here, but I just wanted to put on the table that's  
6 something that the Division should keep an eye on  
7 as they proceed.

8 HEARING OFFICER LUEKER: I think  
9 that's beyond the scope of what we can do here,  
10 but I'm aware of that issue certainly.

11 MS. HETHERINGTON: If I may,  
12 Mr. Kogut had a comment to that effect that I  
13 wanted to share, if that's okay to break in.

14 MR. MUNNELLY: That's fine. We're  
15 finished. That would be great, yes.

16 HEARING OFFICER LUEKER: A brief  
17 comment because I want to make sure everybody else  
18 has a chance to comment.

19 MR. KOGUT: An incredibly brief  
20 comment. The Division is aware of some discussion  
21 of legislation that would authorize the Commission  
22 to basically have some purchase of receivables,  
23 should they find it a cost benefit. So we're not  
24 sure where that's going to go but because of the  
25 point where we're at in this General Assembly

1 session, if it's to be filed, we might see it  
2 soon.

3 MR. MUNNELLY: Thank you. Again,  
4 thank you for the patience in going through all  
5 these points.

6 HEARING OFFICER LUEKER: Who would  
7 like to speak at the back table?

8 MR. MITREY: Andy Mitrey with Archer  
9 Energy, and, yeah, we have some comments too we  
10 would like to go over. I will try not to  
11 duplicate any of the comments the gentlemen made  
12 and stick to ours. We will also follow up with  
13 written comments as well just to have it all, but  
14 just to kind of summarize everything that we have,  
15 we're supportive of the Division's efforts to  
16 improve the shopping process. We believe that  
17 putting rules in place to protect the consumers  
18 are important. We think that by putting rules in  
19 place, it will promote shopping and help more  
20 Rhode Islanders take advantage of the market.

21 With that being said, we would like to start  
22 with some of the comments we have, I guess going  
23 back to 2.4, B, 4. In this section it states that  
24 customers again have the right to separate bills,  
25 and I know Direct and RESA have talked about this.

1 When we start talking about the ability of the  
2 customers to request a separate bill, it's  
3 presuming that all suppliers are going to want to  
4 use consolidated billing for residential and small  
5 commercial, which we would agree with completely,  
6 we would like to use that.

7 When you look at that, there's a lot of  
8 issues, and I think at the very end we just  
9 started talking about some of the payment priority  
10 issues that are associated with National Grid.  
11 The fact that they have never been -- the payment  
12 priorities have never really been vetted by the  
13 Commission, that the payment priorities allow for  
14 payment plans that are never fully taken advantage  
15 of by the customers, there's even instances in  
16 these payment priorities where future dated  
17 obligations to the utilities can supersede current  
18 NPP payments. So the 2.4, B, 4, where it allows  
19 just the consumer to do the bills, asking all then  
20 suppliers to use consolidated billing, these  
21 issues have to be worked out. These are  
22 competitive barriers to NPPs playing in the  
23 residential and small commercial market because if  
24 we would have known that none of this process had  
25 been overlooked by the Commission and approved by

1 the Commission, and as we've gotten into it, it's  
2 cost us hundreds of thousands of dollars in  
3 payments not being made by residential customers  
4 because of the priority structure, and us going to  
5 the bottom of the line all the time. So this is,  
6 you know, one of the critical issues we feel in  
7 this marketplace for the development of this  
8 market, is getting this issue.

9 Now, I have been working with the Lieutenant  
10 Governor's office on trying to push the purchase  
11 of receivables. My biggest concern is that it  
12 won't get into this session and we're going to  
13 push it out another year. In which case, we need  
14 to do something because this has stopped all of  
15 our marketing efforts to residential and small  
16 commercial customers because we cannot determine  
17 when we will be paid under the current structures.

18 Moving along, 2.5, E, this section deals with  
19 the release of customer information. We would  
20 like to see that National Grid, when a customer is  
21 enrolled with an NRPP, provide the supplier with  
22 whether or not the customer is on budget billing,  
23 whether or not they're on a payment plan, whether  
24 or not the customer is current on the bill. If  
25 the customer is on a payment plan, are they in

1 agreement or in accordance with a payment plan.  
2 There are other markets, specifically Ohio which  
3 we operate in, the utilities provide this  
4 information routinely to suppliers so suppliers  
5 can assess the risk of having a customer that  
6 they're serving, and knowing when and if they will  
7 be paid.

8 Most NRPPs put in their terms and conditions  
9 authorizing the release of this information.

10 National Grid requires a written statement from  
11 the customer, directly from the customer allowing  
12 the supplier to gain access to that type of  
13 information. We believe that this information  
14 should be provided to the NRPP upon enrollment of  
15 the customer.

16 Section 2.5, G, just a clarification in that  
17 first paragraph there. It states that, "the  
18 material terms and conditions of the contract for  
19 electric generation services being signed by the  
20 customer." We would just like to say, instead of  
21 being signed, being agreed to by the customer  
22 because in some instances where it's an enrollment  
23 via telemarketing, there may not be a signature.

24 Where RESA did discuss 2.5 -- hang on. 2.5,  
25 19, I know we discussed this a significant amount,

1 but I guess I just wanted to put on it, it would  
2 be difficult for a supplier to put the exact name  
3 and entity and phone number of the person who  
4 signed up every one of their customers on a  
5 contract that you send out. What we can do is  
6 upon the request of the Commissioner at issue, we  
7 can always gather that information. We collect  
8 all that information, but tying it directly to  
9 every contract we send out would be an  
10 administrative burden.

11 2.5, K, 4, we're talking about the right of a  
12 customer to rescind within three days. We agree  
13 with that. National Grid will have to have its  
14 system set up so they can process a rescission.  
15 Currently their systems, at least what we've  
16 experienced, they cannot process the rescission.  
17 It has to go back. That customer would be stuck  
18 with that initial choice for at least one month.

19 2.5, N, we're talking about increases in the  
20 electric generation rate to residential that is  
21 greater than 25 percent of the original contract  
22 price. We had contracts provided to residential  
23 customers that were guaranteed savings contracts  
24 that were based off of the utility's rates. If  
25 the utility's rates would move 25 percent or more,

1 then ours would move as well 25 percent or more.  
2 I don't know if there is any way we can account  
3 for that or adjust for that in this type of  
4 language. Sometimes the utility's rates aren't  
5 finalized more than 15 days in advance of the  
6 month, so it would be difficult for us to notify  
7 the customers. I guess I would say, you know, if  
8 it's a product that's being offered as a  
9 percentage off the utility's standard offer rate,  
10 this section wouldn't apply.

11 2.6, A, termination fees, I don't know, maybe  
12 we're the only one, but I think it's -- and this  
13 may be a statutory thing, and if it is, just stop  
14 me. The ability of us, the suppliers, to  
15 calculate for every residential customer a  
16 termination fee that's the lesser of \$50 or twice  
17 the estimated energy services for an average month  
18 seems onerous. I would just prefer the flat \$50.  
19 I think trying to calculate it on every customer  
20 as they're switching in and out, it becomes  
21 difficult, especially if you have contracts that  
22 could be multi-year agreements for customers as  
23 well.

24 2.6, F, 1, b, again, this is just when we  
25 talk about rescissions, we need to make sure that

1 National Grid can actually accomplish the  
2 rescissions.

3 We'll go ahead and make a lot of written  
4 comments. These are just kind of some of the  
5 ones -- you know, things that we would, you know,  
6 like I said a little earlier, we would like to see  
7 some changes in the information flow on the  
8 customer history. It's a big deal to suppliers  
9 trying to save customers money. We had customers  
10 that were all on guaranteed savings products  
11 through all of 2016, all residential customers,  
12 and we were surprised at the level of arrearage or  
13 defaults of those customers because of the payment  
14 plan structures, because of budget billing,  
15 because of the prioritization of payments.

16 We believe, I think in 2.5, R, of the  
17 proposed rules, the Commission is proposing that  
18 NRPPs be prohibited from engaging in conduct  
19 that's misleading the customer into thinking the  
20 NRPP portion of the bill is the entire bill. We  
21 agree. We also believe that National Grid should  
22 have the similar obligation. When they're setting  
23 up a payment plan for a customer, that payment  
24 plan should, if it's only covering their charges  
25 and none of the supplier's charges, needs to be

1 denoted to the customer so the customer can make  
2 arrangements directly with the NRPP. Right now  
3 the customers are paying their bill marked in  
4 full, and all those monies are going just to  
5 reduce payment plans, and none of those funds are  
6 going to suppliers. And what happens then is the  
7 customers then become in a hole with the  
8 suppliers. It's disingenuous to the customers and  
9 it's disingenuous to allow them to have a payment  
10 plan that's truly not allowing them to catch up.

11 Again, I think a lot of it goes back to  
12 National Grid's bills are, in some cases, very  
13 complex, very confusing, and very difficult for  
14 customers to follow on the residential level.  
15 We've seen examples where it's difficult for us to  
16 figure out what's going on with the customers'  
17 bills, let alone for a standard residential  
18 customer that just looks at their bill on a  
19 monthly basis to figure it out. We believe these  
20 bills need to be modified to make it simpler for  
21 the customers to understand what they're paying  
22 and who they're paying.

23 We think that these changes that we've  
24 outlined, as well as a lot of the ones RESA and  
25 Direct have outlined, will further promote

1 shopping and choice in the Rhode Island  
2 marketplace, and we will save the rest of our  
3 comments for later. Thank you.

4 HEARING OFFICER LUEKER: Thank you.  
5 Any comments from the back of the room?

6 MR. GARDNER: No, sir.

7 HEARING OFFICER LUEKER: Anybody else  
8 have anything to add?

9 MR. MUNNELLY: Just two brief  
10 follow-ons. In terms of that issue of payment  
11 priority, I'd just note for the record, and for  
12 the Division's benefit, that those issues were  
13 addressed in New Hampshire. I seem to recall the  
14 docket being 13-244, where it ended up in a  
15 settlement where they changed the payment priority  
16 mechanism in New Hampshire.

17 And then separately, and it may have been in  
18 the same docket or in a related docket, they ended  
19 up dealing with the other issue that the gentleman  
20 from Archer was saying, the issue of what to do in  
21 terms of communication about which certain  
22 customers were on budget billing or that type of  
23 thing. They ended up coming up with a concept of  
24 a sink list that would be made available  
25 periodically at the supplier's request that

1 included specified information, including exactly  
2 that, was the customer on a budget bill, was the  
3 customer on a payment plan, that type of stuff.  
4 Because that's pertinent information for a  
5 supplier to know kind of where they are with  
6 respect to that customer in terms of evaluating  
7 were they behind, were they -- you know, should  
8 they be receiving a letter saying, Please pay.  
9 You know, if they're on a payment plan and it  
10 includes the supplier portion, which in New  
11 Hampshire it would, they were able to make that.  
12 Again, I think this was just in the PSNH, Public  
13 Service Company of New Hampshire, but, again, I  
14 think they're both 13-244, but just to know that  
15 this is not the first time these types of issues  
16 have been raised by suppliers, and in some cases  
17 they have been addressed by Commissions. That's  
18 it. Thanks for the courtesy on that.

19 HEARING OFFICER LUEKER: Anybody  
20 else? Then thank you all for coming this  
21 afternoon, and we are now adjourned. I do look  
22 forward to getting comments from everybody with  
23 specific language.

24 (PROCEEDINGS CONCLUDED AT 3:07 P.M.)

25

## C E R T I F I C A T E

I, Jane M. Poore, hereby certify that the foregoing is a true, accurate, and complete transcript of my notes taken at the above entitled hearing.

IN WITNESS WHEREOF I have hereunto set my hand this 24th day of April, 2016.

Jane M. Poore  
Notary Public



JANE M. POORE, NOTARY PUBLIC/RPR  
My commission expires 9/11/17

DATE: April 20, 2017  
IN RE: Nonregulated power producer consumer bill  
of rights

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