Cost Benefit Analysis for proposed amendments to 815 RICR-40-05-1 – Rules Applicable to Nonregulated Power Producers

Problem Definition and Statement of Need

In 2016, the General Assembly approved legislation to amend RIGL 39-1-27.1- Retail electric licensing commission plan requirements and nonregulated power producer registration requirements - to include a requirement that Nonregulated power producers which are Obligated Entities (As defined in RIGL 39-26-2) provide the Division with evidence of financial security. The Division is directed by statute to set the level of financial security between $25,000 and $500,000.

The aim is to a reasonable extent, help keep the state and/or consumers whole in the event that an obligated entity files for bankruptcy. The securities would be available to pay any unmade ACP payments to Commerce Corporation, or any fines or consumer rebates ordered by the Division.

Regulatory Goal

The goal is to comply with the statutory directive, protect the state's interests, protect the interests of consumers, while at the same time not creating unreasonable market entry barriers to entities that will be required to comply with these provisions.

Scope of Analysis

Until such time as the General Assembly were to amend or repeal this provision, a form of these rules should remain in effect. The discretion provision for the Division is the amount of the instrument of financial security. Should, at some time in the future, the proposed level prove to be insufficient in protecting the interest of the state and consumers the Division would likely open a proceeding to adjust that figure. Additionally, should the Division become aware of any unreasonable market entry barriers posed by the proposed level, the Division may adjust that figure downward.

Baseline, Proposal Alternatives

First, it should be noted that the establishment of financial security between $25,000 and $500,000 is a requirement of law. In the event the regulation were not promulgated, the state could be exposed to unmade compliance payments to Commerce Corporation. One such occurrence is referenced in Rhode Island Renewable Energy Standard Annual RES Compliance Report for Compliance Year 2014. (The report may be examined at: http://www.ripuc.ri.gov/utilityinfo/RES-2014-AnnualReport.pdf)

It notes:
"One Obligated Entity had an outstanding obligation of 4,196 New RECs. On July 30, 2014, the Company indicated in its RES compliance filing to the PUC that it had filed for Chapter 11 Bankruptcy protection effective April 11, 2014. The PUC informed the RI Commerce Corporation of the outstanding ACP payment, and in September 2015 began procedures for

non-compliance described in Section 9 of the RES rules. Their portion of the total Rhode Island load (4,196 MWh) was not met through ACP or REC procurement." [1]

"The PUC is aware of the same non-compliance in Massachusetts associated with the same company, and that Massachusetts has begun executing its non-compliance procedures."[2]

The report goes on to monetize the impact of the bankruptcy:

"In addition, one Obligated Entity, Glacial Energy of New England, Inc., filed for Chapter 11 bankruptcy protection, and left an outstanding obligation of 4,196 New RECs with an ACP value of approximately $277,607."[3]

The 2014 report provides a real world example of the failure of a moderately sized obligated entity. While it is difficult to predict the frequency of these bankruptcies one could presume that a similar occurrence could happen in the next five years.

The absence of financial security filings could also impact consumers. The Division is also directed by statute to promulgate comprehensive consumer protection rules. Those rules will allow the Division to assess civil penalties and order rebates when warranted. In the event of the bankruptcy of an obligated entities, consumers due refunds would not be made whole.

Proposed Action

One recommendation from the Division's consultant was that we propose to require the statutory maximum. The thought process was that we already had exposure to one bankruptcy with sizable financial implications. The Division is opting however to choose the mid-range. The $250,000 figure would have substantially protected the state's interest in the Glacial Energy case, and might afford reasonable protection to consumers in the event of an ordered rebate. The lower level might also limit the impact of additional cost to obligated entities and thus limit any undue barriers to market entry.

There is another factor to consider. The state's (and consumers') exposure to unmade obligations is generally in inverse proportion to the size of the obligated entities. Larger entities that have opted to leave the state have simply sold their contacts to other obligated entities. Many of these firms have a significant national presence, and in some cases, an offshore parent. Smaller entities may operate with more risk.

[1] Rhode Island Renewable Energy Standard Annual RES Compliance Report for Compliance Year 2014. See footnote 22 at page 3.
[2] Ibid.
[3] Rhode Island Renewable Energy Standard Annual RES Compliance Report for Compliance Year 2014 at Page 5.

Stakeholders

The primary stakeholders impacted by the security filing requirements are Obligated Entities, that is, NPP's which procure and sell retail energy to end use consumers. These entities must meet certain NEPOOL requirements and are obligated to make REC payments or ACP's under the terms of the renewable energy standard. It is important to note that the law and regulation do not impose the security requirement on brokers or aggregators who are simply facilitating power sales transactions.

Currently, there are 10 (ten) firms listed on the Division's Empower RI web site which are selling to residential customers and 4 (four) with offerings for commercial customers. There are several more who have chosen not to enroll product on our site and others which are strictly selling to larger load customers.

There is no apparent direct local government impact. The State government impact rests primarily with Commerce Corporation which could seek to obtain any unmade ACP obligations through the securities on file at the Division.

The financial security filings would be a benefit to individuals and consumers who may have rebates due them based on a complaint filed with the Division involving an insolvent obligated entity.

Cost Benefit Discussion

The cost will be borne by obligated entities. That cost has been difficult to quantify, and would apparently be dependent on the financial resources of the individual obligated entity. To date the Division has been unable to acquire much information from the industry on the range of these costs. It is our presumption that the feedback received in the rulemaking proceeding will fully vet this issue, and we will respond accordingly.

In proposing the $250,000 figure the Division considered the benefit of protecting the state from the recurrence of the Glacial Energy bankruptcy scenario, while not seeking the maximum, and more costly protection allowed by statute. The figures also represents what other states have used (which employ fixed levels), among them New Jersey and Connecticut.

While some states employ a sliding scale based on customers or sales volume, it should be noted that Rhode Island does not require NPP's to report customer totals to the Division directly. While this data might be captured indirectly through a National Grid quarterly compliance filing, the Division asserts that the flat fee would allow Division staff to manage the program with existing resources. By employing a sliding scale the Division would clearly make a significant addition to its administrative burden in addressing NPP's in general, and potential additional cost.

The primary beneficiaries are the state in general, specifically Commerce Corporation, which administers renewable energy programs through the ACP's, and individuals.

Transfers/ Benefits

The basic fee for All NPP's to file and renew annually is proposed to remain at $100, as established in statute.

Cost Benefit Schedule

Based on the presumption of one Obligated Entity bankruptcy in four years similar to that in the 2014 RES report

Benefit schedule

State – Commerce Corp.	Year 0	Year 1	Year 2	Year 3	Year 4
					$250,000

Cost Schedule

Assumes an average of $1,500 in cost of security per Obligated Entity. This assumes some of the larger entities can simply produce proof of resources. This also assume 20 obligated entities active in a given year.

Obligated Entities	Year 0	Year 1	Year 2	Year 3	Year 4
	$30,000	$30,000	$30,000	$30,000	$30,000
Net Benefit	-$30,000	-$30,000	-$30,000	$-30,000	$220,000

..or a 5 year net benefit of $100,00 in this scenario.

To employ a different scenario, one in which two firms go bankrupt, but one owes rebates to RI consumers. The other has substantially made REC payments at the time of bankruptcy filing.

Benefit Schedule

	Year 0	Year 1	Year 2	Year 3	Year 4
State – Commerce Corp.		$175,000			
Consumers					$95,000

… or a net $120,000 net benefit over 5 years, assuming the same costs totaling $150,000.

These scenarios are highly speculative, but serve to illustrate possible impacts.

Conclusion

Unless the rulemaking comments and testimony prove otherwise, the requirement that companies post financial security in the level proposed does not appear to be an undue burden that will restrict market entry.

The legislation that directs this rulemaking was in response to an actual event where the state was left with unmade ACP payments in the wake of an Obligated Entity bankruptcy.

The Division response was not to go to the maximum amount, but rather to the mid-range allowed by law in an effort to protect the interest of the state and consumers while imposing the lowest reasonable requirement on obligated entities. In addition the employment of a flat fee will not have a significant impact on the Division's administrative burden in addressing NPP regulation.