

In The Matter Of:

Rhode Island Division of Public Utilities & Carriers Hearing

Nonregulated Power Producers D-16-113

April 20, 2017

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

PROCEEDINGS IN RE:

DOCKET NO: D-16-113

RULEMAKING TO AMEND RULES APPLICABLE TO
NONREGULATED POWER PRODUCERS -- REGARDING
SETTING THE REQUIRED LEVEL OF FINANCIAL
SECURITY CONSUMER PROTECTION RULES PURSUANT
TO R.I.G.L. 39-26.7-1, ET SEQ.

HEARING ON UTILITY PETITION

ORIGINAL

DIVISION OF PUC & CARRIERS
89 JEFFERSON BOULEVARD
RHODE ISLAND, 02888
APRIL 20, 2017
10:00 A.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 10:00 A.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. D-16-113
6 concerning recent amendments to Rhode Island
7 General Laws Section 39-1-27.1 to include a
8 requirement that nonregulated power producers,
9 which are obligated entities as defined in General
10 Laws Section 39-26-2, provide the Division of
11 Public Utilities and Carriers with evidence of
12 financial security.

13 The Division has been directed by statute to
14 set the level of financial security between
15 \$25,000 and \$500,000. The proposed rules under
16 consideration today set the level at \$250,000. In
17 the event of an obligated entity's bankruptcy, the
18 securities would be available to pay any unmade
19 alternative compliance payments to the Commerce
20 Corporation or any fines or consumer rebates
21 ordered by the Division.

22 The proposed rules at issue today, other than
23 for setting the financial security level at
24 \$250,000, hew closely to the amended language set
25 out in Rhode Island General Laws and essentially

1 restate the provisions of Rhode Island General Law
2 39-1-27.1. The hearing itself is governed by the
3 Rhode Island Administrative Procedures Act, as
4 amended and codified at Rhode Island General Law
5 Chapter 42-35.

6 Notice of today's hearing on this petition
7 was published on both the Rhode Island Secretary
8 of State's and Public Utilities
9 Commission/Division of Public Utilities and
10 Carriers' public websites on March 28, 2017.

11 The public comment period ends on May 1,
12 2017. The Division will continue to accept
13 written comment on this proposed rule until close
14 of business, that is, 4 P.M. on May 1, 2017.

15 Written comments received prior to this
16 morning are available for review on the Division's
17 website in this matter. Last time I checked there
18 were not any such comments from the public.

19 Written material received during this hearing
20 or at any time prior to the close of the public
21 comment period on May 1, 2017, shall similarly be
22 made available on the Division's website as soon
23 as practicable.

24 Since this is a rulemaking proceeding and not
25 a contested matter, no person or entity has party

1 status. I will, however, take appearances from
2 any counsel present who wish to enter an
3 appearance. All persons wishing to comment on the
4 proposed rules or offer arguments for or against
5 their adoption, in whole or in part, shall be
6 allowed to do so. Following the close of today's
7 hearings all persons wishing to supplement their
8 comments or arguments may do so in writing until
9 the end of the public comment period on May 1,
10 2017.

11 At this point I'm going to take appearances
12 for the record of any counsel who wish to enter an
13 appearance.

14 MS. HETHERINGTON: Good morning. My
15 name is Christy Hetherington, and I'm here on
16 behalf of the Advocacy Section of the Division of
17 Public Utilities and Carriers.

18 HEARING OFFICER LUEKER: Thank you.

19 MR. MUNNELLY: Robert Munnelly of the
20 law firm of Davis Malm & D'Agostine in Boston, and
21 I'm here representing the Retail Energy Supply
22 Association. With me here is Marc Hanks, who's a
23 Director at Direct Energy, who's a RESA member.

24 HEARING OFFICER LUEKER: Any other
25 attorneys present who wish to enter an appearance?

1 Okay, now I propose to invite individuals to
2 offer comment one at a time starting with the
3 Advocacy Section of the Division and then working
4 my way back from the front of the hearing room
5 towards the back. Those who are seated behind the
6 bar may use a microphone placed near the center of
7 the bar right at that little podium out there.

8 Anything else I need to address before I have
9 the first statements?

10 MS. HETHERINGTON: I guess as a
11 housekeeping matter, I wanted to make sure that if
12 there's anything that needs to be put on the
13 record or is everything that's public now on
14 record?

15 HEARING OFFICER LUEKER: I think
16 everything that's on the website is considered
17 part of the record of this proceeding and has
18 clearly been made available for the public at
19 least the last couple of the weeks or so, if not
20 more.

21 MS. HETHERINGTON: Okay.

22 HEARING OFFICER LUEKER: And as I
23 said earlier, anything that comes in today,
24 including I believe a copy of the video of this
25 hearing, will be made available on the website.

1 MS. HETHERINGTON: I also want to
2 mention that the Advocacy Section does have copies
3 of everything if anyone in the audience does need
4 a copy of what's on the web, so please let us
5 know.

6 HEARING OFFICER LUEKER: All right.
7 If there's nothing else, Miss Hetherington, I will
8 let you open things up.

9 MS. HETHERINGTON: Certainly. Thank
10 you, you've done a nice overview of why we're here
11 today. While we don't intend, the Advocacy
12 Section doesn't intend to provide public comment
13 per se, to give context and as a courtesy I
14 propose to put one witness, Mr. Tom Kogut of the
15 Division, up to give us a general overview of the
16 process and the procedure and how we got to where
17 we are today. So if I can without further ado, as
18 you said there's no parties per se, but I will put
19 him up for testimony for that purpose if that's
20 okay, and I don't know if you want him to sit at
21 the table.

22 HEARING OFFICER LUEKER: I think it's
23 such a small group today and we have microphones,
24 so I will allow everybody to testify more or less
25 where they're seated, unless they have to go to

1 the podium in the back. I don't really intend to
2 place anybody under oath.

3 MS. HETHERINGTON: Okay.

4 HEARING OFFICER LUEKER: Unless
5 somebody wants to testify or offer testimony under
6 oath, that's fine, but really I'm just interested
7 in getting information from the public. Go ahead,
8 Mr. Kogut.

9 MS. HETHERINGTON: And I want to make
10 sure these don't interfere (indicating
11 microphones). Is that working?

12 MR. KOGUT: Yes.

13 MS. HETHERINGTON: Okay.

14 MR. KOGUT: I am Thomas Kogut, the
15 Associate Administrator for the Division of Public
16 Utilities and Carriers. I'm the Cable TV
17 Administrator and not at the wrong hearing. I'm
18 appearing today in my dual capacity as Legislative
19 Liaison for the Division and also Rulemaking
20 Coordinator.

21 Mr. Lueker did a fantastic job of explaining
22 the travel of the proceeding. I just want to
23 touch base on a couple of issues, first off with
24 how we got to where we are today. This
25 legislation is not a Division-inspired directive.

1 It was not Division-initiated legislation. My
2 understanding is among some discussions amongst
3 Commission staff and Senate policy individuals
4 back in 2015, they were taking a look at a number
5 of utility-related issues. One of them included
6 the bankruptcy of a nonregulated power producer,
7 an obligated entity, that basically had left the
8 state owing a significant amount in alternative
9 compliance payments under the renewable energy
10 standard.

11 Subsequent to that discussion, in February of
12 2016, the Senate saw the first iteration of the
13 bill, that was eventually approved in the Senate,
14 companioned in the House, and enacted that has put
15 the legislation in front of us, and did, as
16 Mr. Lueker noted, direct the Division to, in
17 essence, select a proper level of financial
18 security in the range of \$25,000 to a half million
19 dollars for obligated entities, which are the NPPs
20 that are specifically obligated entities.

21 The Division also went through a process
22 under the Administrative Procedures Act, as we're
23 required to do, of presenting our proposed
24 regulation to the Office of Regulatory Review --
25 Reform, that is. We did generate a cost benefit

1 analysis, which is on the website. As part of
2 that process, in early March of this year we were
3 given approval -- actually late February, early
4 March of this year, given approval by ORR to
5 proceed with the rulemaking. And as Mr. Lueker
6 noted, on the 28th of March we had published on
7 the website, our website and the Secretary of
8 State's website, the notice and the proposed
9 amendment to the rule.

10 I do want to also discuss maybe a little bit
11 of the background thinking of how we got to where
12 we got with this proposed rule in terms of the
13 thinking internally within the Division. When the
14 legislation was passed, we had rather extensive
15 internal discussions amongst Division staff; and
16 we started, in our thinking process, at the lowest
17 level and that is \$25,000 or in that area.

18 While we walked that around the block a few
19 times, we did realize eventually that that \$25,000
20 or \$50,000 or that lowest level would be woefully
21 inadequate to address what the specific
22 legislative intent was, and that is to provide
23 some significant protection to the state.

24 This legislation was really borne out of the
25 failure of a particular obligated entity in 2014,

1 and that is Glacial Energy. Glacial Energy went
2 bankrupt, and in so doing, had owed or would have
3 owed the state some \$277,000 in alternative
4 compliance payments or ACPs. That is documented,
5 as we've referenced it, in the cost benefit
6 analysis and in the fiscal year 2014 renewable
7 energy standard reporting that's also on the
8 website.

9 Given that, we took a look at a few other
10 scenarios and then also engaged Daymark Energy
11 Advisors. As part of the record, I'm sure the
12 individuals here today have seen the memo that was
13 generated by Marc Montalvo of Daymark, which also
14 discusses in some great detail the travel of the
15 thinking of this. But just through the synopsis
16 of that and then merging it somewhat with our cost
17 benefit analysis, we took a look at the upper end
18 of the spectrum. And one of the problems with the
19 upper end of the spectrum was if we went to the
20 half million dollar mark we were seriously, almost
21 necessarily looking at a tiered approach. The
22 problem with that is a bit of an administrative
23 issue for the Division.

24 Currently the Division has a very hands-off
25 approach to nonregulated power producers. As you

1 will recall, we were the first state in 1996 to
2 deregulate, a term I'm not comfortable using,
3 we've got rid of our vertically integrated
4 structure. It's really not deregulation but
5 what's referred to as such. And because we were
6 the first state, I think statutorily a lot of our
7 language is very boilerplate as it relates to how
8 we, as a regulating entity, react to competitive
9 energy suppliers.

10 We do not currently require competitive
11 suppliers to file with us monthly or quarterly or
12 in any way, shape, or form their total sales in
13 any increments. That is captured in a separate
14 document that's generated by National Grid, which
15 is the Open Access Report, which has some lag time
16 in it, but we don't have a direct means of that
17 type of filing. So to develop a tiered approach
18 based on volumetric sales would, in essence,
19 require us to go to the competitive suppliers and
20 ask them to do something else.

21 In addition, we would also have to handle
22 that paperwork and also the corresponding
23 securities, taking a look at the securities and
24 whether or not they match up with those
25 requirements. At the end of the day, and I

1 believe the Daymark memo speaks to this far more
2 eloquently than I can, and certainly there's also
3 reference to it in our cost benefit analysis, that
4 we chose a midpoint.

5 There are other states in the Northeast that
6 have a flat fee at -- rather, a flat level of
7 security filing at a quarter million dollars,
8 \$250,000. It exists in other Northeastern states.
9 The flat fee would save us from the extra
10 administrative burden and also any other
11 additional binary requirements with the
12 competitive energy suppliers. And it would also
13 address what is a real-world example that we have
14 in Rhode Island that the statute was designed to
15 fix, that is, to protect the state from a similar
16 bankruptcy of a likely similar-sized firm going
17 out of business and leaving the state not whole in
18 terms of its renewal energy standard obligations.

19 That is basically the sum and substance of
20 what I have.

21 HEARING OFFICER LUEKER: Thank you.
22 If I could ask a couple of questions. I take it
23 when you talk about an administrative burden being
24 imposed on the Division, you're talking about
25 having to do potentially an FTE to devote somebody

1 to tracking, if you will, sales of NPPs?

2 MR. KOGUT: Currently one of our
3 accounting staff members is the individual who
4 handles the current annual renewables, if you
5 will, for NPPs filing. It's a relatively low bar,
6 but this individual is also involved with water
7 rate cases, assisting in numerous other types of
8 utility rate cases, so it's a small part of this
9 individual's job. One would imagine not only
10 tracking the notes of financial security but also
11 volumetric sales might -- it would be reasonable
12 to presume that there would be some additional
13 staffing required to handle that burden.

14 HEARING OFFICER LUEKER: And would
15 that potentially lead to a need for the Division
16 to try to get their assessment increased from the
17 General Assembly?

18 MR. KOGUT: If you base it on the
19 basic principle of cost causation, the cost would
20 be caused by requirements of that filing. It
21 might necessitate the Division pursuing some sort
22 of legislative remedy, and, that is, to allow us
23 to assess nonregulated power producers, in this
24 case nonregulated power producers that are
25 obligated entities, and to assess them to recover

1 those costs.

2 HEARING OFFICER LUEKER: And we're
3 hoping to avoid that whole process.

4 MR. KOGUT: Definitely. It is
5 because -- it's not -- the cost is not de minimis,
6 but the process of recovering the cost also has a
7 cost.

8 HEARING OFFICER LUEKER: Okay. Thank
9 you, Mr. Kogut. Let's move to the right.
10 Mr. Munnelly, I believe you wanted to introduce
11 yourself and your witness.

12 MR. MUNNELLY: Yes, sure. This is
13 Robert Munnelly representing the Retail Energy
14 Supply Association, and with me is Marc Hanks,
15 who's with Direct Energy and is a RESA member
16 company.

17 I was going to make kind of general
18 statements about some RESA positions and thoughts
19 with respect to the proposed rule.

20 HEARING OFFICER LUEKER: Sure.

21 MR. MUNNELLY: And I think that Mr.
22 Hanks is going to do some filling in and
23 additional commenting afterwards. First of all,
24 just to Mr. Kogut, yeah, I think RESA prefers the
25 term restructuring rather than deregulation

1 because it is, it's a reallocation of regulation,
2 so that's our magic word I think for that one.

3 I do want to commend the Division for the
4 process that was taken with respect to this
5 rulemaking. There was a lot of care taken to do
6 some research, to think about the options, and to
7 come up with a position; and, again, that's
8 something that I think RESA commends and supports.
9 I think RESA's position comes out as a slightly
10 different recommendation, but, again, we commend
11 the process and certainly can't say that -- can't
12 really fault the approach taken in general.

13 RESA's proposal would be to actually do a
14 sliding scale between a low of \$100,000 and up to
15 the \$250,000 that's being proposed. The thing is,
16 as is stated in the cost benefit analysis that Mr.
17 Kogut referenced and that you referenced from the
18 bench, Mr. Hearing Officer, there really are two
19 goals here involved. One is to protect the state
20 from inappropriate losses, and the other side of
21 it is to avoid being a barrier to entry. And I do
22 think that in balancing those two factors that the
23 proposal we're talking about hits a bit of a
24 better balance, especially with respect to smaller
25 suppliers who have to decide are they going to go

1 into Rhode Island at all.

2 Rhode Island is a smaller state itself. It
3 has more limited upside compared to some of the
4 other states around it, and you don't want to have
5 a situation where a supplier might be interested
6 in the state, but just in looking at the costs and
7 process issues and the regulatory scheme, will
8 ultimately decide to devote the resources to other
9 states. I do think that is a concern that is
10 something that the Division should remain mindful
11 of as it comes to a final resolution of these
12 rules. In particular, noting in the cost benefit
13 analysis that there isn't that much competition
14 here at the moment, there's only a relatively
15 limited number of players, and I think it's in the
16 interest of Rhode Island consumers that you have
17 more entry coming in that gives a more robust set
18 of options for consumers; and that's something
19 that we should just be hoping to further as we
20 deal with this set of rules and also the consumer
21 protection rules that we'll be dealing with later
22 on today.

23 In terms of the specific analysis, just
24 noting that, and I think that staff is correct
25 that the \$250,000 item is something that has been

1 made use of in other states, the analysis
2 references, for example, New Jersey and
3 Connecticut, Pennsylvania, and Maryland, but what
4 it doesn't discuss very much is that the smaller
5 states that are akin to Rhode Island have
6 generally adopted the sliding scale approach with
7 a lower entry bar. For example, New Hampshire and
8 Maine have that approach taken. I also think
9 Delaware is mentioned in the cost benefit, and,
10 again, I think it starts at the lower bar and
11 moves its way up. So that seems to be the -- I
12 think for exactly the same reasons I mentioned --
13 I think that's the balance that was struck by
14 those particular entities. And, again, in the
15 states like the New Jerseys and the Connecticuts
16 and the Pennsylvanias, it's just a bigger playing
17 field. There's more upside for suppliers to
18 enter, and that arguably justifies the higher
19 financial security in those states because there's
20 less of a concern that a supplier will bypass the
21 state because, you know, there's a lot of room to
22 grow in those states and to make the money back
23 that would pay for whatever the costs associated
24 are for that.

25 The only other thing I'd want to say on that,

1 before I hand it over to Mr. Hanks to talk, would
2 be that issue of the administrative burden. And,
3 again, I can't speak for the Division on how these
4 things are going to be set up and how much
5 staffing it would take to process it, but it is
6 something which I think it shouldn't be that
7 excessive of a burden. If you have an annual
8 filing with a good form that clearly reflects from
9 a supplier's standpoint what their revenues are,
10 what their bond would be under the formula that's
11 established in the rule, and then if you can do a
12 standing order on confidentiality, because this is
13 sensitive revenue information that you probably
14 don't want on the public record, so that it saves
15 regulatory hassles for anybody either having to
16 file a motion or to be able to have the Division
17 process it, it really shouldn't be all that bad.
18 It really does come down to blanks that are being
19 filled in, and that somebody can look at and say,
20 okay, checkmark, the revenues are what they said,
21 they did the math right, and then at that point
22 you can just adjust the formula.

23 There are some models on that from other
24 states I'm sure, and that can be something that
25 staff can check in with the agency folk at the

1 other states, for examples, New Hampshire and
2 Maine that do this; and I'm hoping that it would
3 not put too much burden on the staff person that
4 Mr. Kogut referenced in there. So, again, I think
5 it should be not that bad. It shouldn't require
6 full-time staffing. Again, this is at least our
7 sense from the outside on that. And, again, based
8 on the sum total of the pros and the cons and the
9 policies that are reflected and the materials that
10 we've seen, we just think that the 100 to 250
11 range would strike a better balance for the State
12 of Rhode Island.

13 Mr. Hanks, do you want to say a few words?

14 MR. HANKS: Thank you, Mr. Lueker.
15 Good morning.

16 HEARING OFFICER LUEKER: Good
17 morning.

18 MR. HANKS: Marc Hanks. I'm the
19 Senior Manager for Direct Energy For Government
20 Regulatory Affairs, but I also wear another hat,
21 I'm the Acting Chair of the Retail Energy Supply
22 Association.

23 I just would like to echo some of the
24 comments that have been made. I would first like
25 to commend the Division for their very thoughtful

1 approach with respect to the structuring of the
2 financial security. Clearly there was a lot of
3 effort put to that and we appreciate that effort.

4 To the extent that -- just sort of looking at
5 the points that Mr. Munnelly had just made, I do
6 believe it's important to look at striking that
7 right balance, the so-called Goldilocks effect.
8 Direct Energy, for example, we're a leading
9 national energy marketer throughout North America.
10 The levels that have been set, we don't have any
11 particular issues with those levels; however, it
12 is important to note that with respect to some of
13 the smaller suppliers or new market entrants that
14 may be contemplating the Rhode Island electricity
15 market, it is something that could be viewed as a
16 threshold issue. And so with respect to the price
17 elasticity of coming into a market or at least
18 considering some of the cost impacts associated
19 with that, these are some of the administrative
20 and financial considerations that oftentimes
21 smaller suppliers or new market entrants take into
22 account.

23 As a result, we would be an advocate for
24 incrementalism to look at, maybe as a first step,
25 to consider a range of the initial level of

1 \$100,000 up to \$250,000. To the extent that there
2 is an opportunity to revisit this question and to
3 determine if this is working in practice, I do
4 believe that it can be brought forward to that
5 higher level, but, again, I just wanted to
6 reinforce the fact that our view is that this is
7 something that is or could be viewed as a barrier
8 for some retail suppliers entering into this
9 market.

10 We are, again, reinforcing and are quite
11 supportive of the fact that the Division would be
12 instituting a financial security for the reasons
13 that Mr. Kogut had cited previously. We believe
14 that it's important to keep the bar high but at a
15 reasonable level. Again, it's striking that right
16 balance, so I just wanted to reinforce those
17 viewpoints. I'm happy to entertain any questions
18 you may have, but I will stop there. Thank you.

19 HEARING OFFICER LUEKER: I do have a
20 question. Do you know what the cost for a typical
21 company such as yours would be to buy this kind of
22 securitization as kind of a bond?

23 MR. HANKS: I don't know specifically
24 the cost. We can certainly provide that. We
25 could put that in our comments that would be due

1 on or before May 1st, but it's not just the one
2 cost, it's sort of the accumulation of the cost to
3 enter into a market, so that's just one element
4 that we need to consider.

5 And I do appreciate the fact, as outlined,
6 there are a number of approaches here that could
7 be considered. So certainly the option of looking
8 at a surety bond versus a certificate of deposit
9 or some other irrevocable standby letter of
10 credit, those are all important elements that I do
11 believe provide a degree of flexibility for retail
12 suppliers. Some of those are more expensive than
13 others, but it is something that I think, again,
14 was very thoughtfully included in these proposed
15 regulations, so I think that could be very
16 helpful.

17 HEARING OFFICER LUEKER: Thank you.
18 I know that Mr. Kogut attempted to get information
19 as to the cost of providing security to the state
20 and found it difficult to get any. So anything
21 that you or your organization can provide as to
22 the types of costs, and I realize too that the
23 cost might be higher for one NPP than for another
24 for a vast variety of reasons, but if you can give
25 us an idea, perhaps from marketing materials that

1 you've received from financial institutions, as to
2 what they would charge for a typical large, small,
3 or medium NPP, we would really appreciate that
4 because that would give us a much better feel for
5 whether or not what we're doing is practical and
6 whether or not we need to consider some sort of a
7 step system or a tier or a sliding system.

8 MR. HANKS: Yes, sir, I think we
9 could certainly include that in our comments,
10 provide that range and the degree of financial
11 impact. Again, it may be helpful in terms of your
12 deliberation.

13 HEARING OFFICER LUEKER: Thank you.
14 I would very much appreciate that. Anything else,
15 Mr. Munnelly?

16 MR. MUNNELLY: I have nothing to add.
17 Thank you.

18 HEARING OFFICER LUEKER: Ma'am, do
19 you wish to make a statement?

20 MS. COHEN: Not here.

21 HEARING OFFICER LUEKER: Okay. Sir?

22 MR. MITREY: Thank you. My name is
23 Andy Mitrey. I am the President of Archer Energy.
24 I'm one of the small suppliers that operates here
25 in Rhode Island. My background is I've been in

1 the unregulated, deregulated field I guess for
2 going on 20 years now. I was President of another
3 midsize marketing company called Border Energy
4 prior to forming Archer Energy that my partner and
5 I had formed and have sold off approximately three
6 years ago to a competitor.

7 Prior to that, I was the Director of Credit
8 at American Electric Power, a large utility based
9 out of Ohio. In that capacity I chaired the ERCOT
10 Credit Committee, establishing credit for the
11 Texas market. I also helped establish the rules
12 of credit requirements for suppliers in the State
13 of Ohio during Ohio's deregulation.

14 So I'm intimately familiar with all the
15 aspects of providing collateral and credit to both
16 utilities as well as to states, and I have
17 reviewed all the documents that have been put up
18 there, and I do think that there needs to be
19 collateral put in place to backstop the
20 obligations that the NRPPs would have to the
21 states.

22 I do question the amounts that have been
23 proposed, the \$250,000 specifically. There are
24 other states, seven states that have lesser
25 amounts than what is being proposed here. I

1 certainly understand how the rationale was derived
2 to come to the \$250,000, but I do believe it can
3 cause an artificial barrier to entry, especially
4 to smaller players, because it's not only just a
5 matter of the cost of it, it's an opportunity cost
6 of where else you can and can't go based on the
7 market size here in Rhode Island and the risk that
8 would be caused to the market versus where they
9 can go for similar size credit requirements. Like
10 going into New Jersey is completely different than
11 coming into Rhode Island on the size of the market
12 and what's available as far as your growth
13 potential.

14 I understand the impact that the Glacial
15 bankruptcy had on the state. You know, I question
16 whether or not the correct way to look at it was
17 the ACP cost versus actual market damages if you
18 went out and covered those instead of going to the
19 ACP calculation. I had done a quick back of the
20 envelope, and based on what I believed the REC
21 costs were for that period of time, they would
22 have been roughly around \$100,000 based on what
23 had been outstanding if you had gone out into the
24 open market and covered it at the time of the
25 bankruptcy versus waiting for the ACP

1 requirements.

2 Again, I think it's a great idea for
3 collateral. I like the idea RESA had put out with
4 a sliding scale of 100 to \$250,000. I think as
5 you bring more risk to the market, I think you
6 should have to post more. I believe that it will,
7 by keeping the threshold initially low, it will
8 allow more competitors to want to come to the
9 market; and with some other adjustments that I'm
10 sure we'll be discussing later this afternoon in
11 regards to some of the protections, I think you'll
12 be actively drawing competitors to this market.

13 As far as the additional burden it would
14 apply to staff, I guess I would look to see -- you
15 know, I know that the utility in this case,
16 National Grid, has all this data readily available
17 at its fingertips to indicate which supplier has
18 how many megawatt hours under their control. So I
19 guess I don't believe it would be overly
20 burdensome because that data is already available,
21 and I think it would just be a request from the
22 Commission to National Grid to provide that data,
23 and then use that data to I guess, you know,
24 measure how much on the sliding scale each
25 participant would have to provide.

1 As far as a cost structure, I think you
2 asked, I can tell you some of the cost measures to
3 post cash or CDs or letters of credit can be very
4 prohibitive because you have to have the financial
5 backing behind each one of those. Surety bonds
6 tend to be much more reasonable in cost. I can
7 tell you from personal experience it's going to be
8 anywhere from 2 to 3 percent of the face value of
9 the bond, and that's for a small company.

10 So as far as the letters of credit or cash,
11 obviously if you have to post letters of credit,
12 generally you have to have something, if you're a
13 smaller entity standing behind it, to backstop it,
14 and it's going to increase the cost dramatically
15 versus a surety bond.

16 Cash, same thing obviously. Cash out the
17 door limits what your marketing ability is going
18 forward in any markets.

19 So those are just some of the factors that I
20 believe need to be taken into consideration. I do
21 commend the Commission and Division for putting
22 these in place. I believe it is important to have
23 it in place, but I also believe it's important to
24 have it be in line with the risk that the entity
25 brings, not just a flat amount to cover everyone,

1 because it's completely different amounts that
2 should be required for a Direct Energy versus an
3 Archer Energy, who uses probably or brings one
4 one-tenth of the amount of power or customers that
5 Direct would have. That's all I have, and I would
6 be more than happy to answer any questions.

7 HEARING OFFICER LUEKER: Again, the
8 only thing I'd ask is if you have any hard data
9 that you can provide to us with respect to the
10 cost of obtaining securitization, I would
11 appreciate it if you could provide it to us after
12 the hearing sometime before May 1st at least.

13 MR. MITREY: Yes.

14 HEARING OFFICER LUEKER: So thank you
15 for testifying today. Sir, all the way in the
16 back, do you have anything you want to say?

17 MR. GARDNER: No, sir.

18 HEARING OFFICER LUEKER: And,
19 Mr. Spirito, do you have any comments? You're
20 part of the public.

21 MR. SPIRITO: I do not, sir. Thank
22 you for the opportunity though.

23 HEARING OFFICER LUEKER: Anything
24 else from anybody?

25 MS. HETHERINGTON: I'm curious if

1 Mr. Kogut would like to give any responsive
2 commentary or anything else that comes to mind?

3 MR. KOGUT: Actually, this is not on
4 the specifics of this rulemaking but a note that I
5 should and really do want to make for the record.
6 I do want to impose upon everyone for just a
7 moment. This legislation, as I mentioned earlier,
8 was not a Division-initiated initiative. It was
9 started in the Senate and was authored by Senator
10 William Walaska. Senator Walaska had a tremendous
11 career dealing with commerce generally in the
12 State of Rhode Island, not only dealing with
13 consumer-related issues but specifically trying to
14 make the State of Rhode Island a more viable
15 commercial entity. He was involved with a great
16 many issues from port development, infrastructure,
17 utility-related issues, and that's how we came to
18 know him quite well here at the Division. This
19 will be the last significant new rulemaking that
20 will ever be taken up with a William Walaska bill.
21 As some of you in the room know, Senator Walaska
22 died earlier this month, and I just wanted to put
23 on the record our great appreciation for his
24 attention to detail and issues related to the
25 Division and its operations.

1 HEARING OFFICER LUEKER: Mr. Kogut,
2 let me ask you a question.

3 MR. KOGUT: Sure.

4 HEARING OFFICER LUEKER: What efforts
5 did you go through to try to get -- to solicit
6 input from the industry about the proposed rule?

7 MR. KOGUT: I did speak with a number
8 of individuals over -- this was really in the
9 earliest stages of this process. We then turned
10 it over to Daymark to see if they could come up
11 with some information for us. We did not get a
12 whole lot of solid data specifically on the actual
13 cost of these instruments from Daymark, and I
14 tried to get some anecdotal information early on.
15 That was in the early stages of our discussions,
16 late summer, early fall of 2016.

17 HEARING OFFICER LUEKER: With respect
18 to the hearing today, did you send out notices to
19 NPPs and how many and which ones, if you know?

20 MR. KOGUT: Division staff had
21 generated a list of e-mails of approximately 98
22 nonregulated power producers. Again, I should
23 note that we're talking about the universe of
24 nonregulated power producers, which goes all the
25 way from TransCanada to someone who is an

1 aggregator. Our definition of NPP is a very broad
2 one. Specifically this rule deals with obligated
3 entities as defined in Rhode Island General Law.
4 But, nevertheless, we did send out electronic
5 notice to 98 entities that are currently listed as
6 active NPPs. We did have about a dozen of those
7 e-mails bounce back.

8 In addition to that, we have spoken to some
9 interested parties, certainly RESA, Direct Energy,
10 and others. We copied them directly on this
11 rulemaking process. As you noted earlier, the
12 process was also noticed on the Secretary of
13 State's website and our website. That's also an
14 Administrative Procedures Act allowable entity --
15 operation, rather. And in addition to that, the
16 Secretary of State's office has a rules tracker
17 function, and I don't know how many entities and I
18 can not know how many entities might have been
19 notified through rules tracker, but any company
20 that wants to follow the course of proposed
21 regulation or amendment of regulation can simply
22 request to be electronically automatically
23 notified, and that would deal not only with
24 utility-related issues but health or education or
25 anything along those lines. So these did pop up

1 on the rules tracker as well that was generated by
2 the Secretary of State's Office.

3 HEARING OFFICER LUEKER: And as of
4 this morning, other than the individuals, the
5 companies that have appeared today or the
6 organizations that have appeared today, how many
7 of those 98 responded?

8 MR. KOGUT: As of yesterday I was
9 aware of none. I did not check with the
10 Commission clerk this morning.

11 HEARING OFFICER LUEKER: Okay, thank
12 you. Any other comments from anybody? Sure.

13 MR. HANKS: Just a point on that last
14 comment. With respect to RESA, the RESA
15 Association as a trade association, we represent
16 20 active retail suppliers. Not all are licensed
17 as NPPs in the State of Rhode Island, but that
18 does represent a good cross-section of NPPs or
19 retail suppliers in the marketplace.

20 And one other final point, I think it goes to
21 the legislative intent, that the Legislature put
22 forward a range of \$25,000 at the low end up to
23 \$500,000 on the higher end, and I do appreciate
24 Mr. Kogut's comments about striking the right
25 balance, but I do believe, at least from our

1 perspective, that the Legislature was taking into
2 account those smaller retail suppliers or NPPs
3 when thinking about that lower amount. So I just
4 wanted to make sure that we had that point brought
5 forward with respect to any consideration from the
6 Legislature. Thank you.

7 HEARING OFFICER LUEKER: Thank you.
8 Anything else?

9 MR. MUNNELLY: Once again, one other
10 thing in terms of I commended the Division on the
11 process, and I mean it on that. Mr. Kogut did
12 reach out to me as an attorney who represents
13 retail suppliers personally early in the process
14 and was able to solicit some early input on that,
15 and, again, I appreciated having the opportunity
16 to give that. And he made sure that I was copied
17 on the appropriate notices, even though I'm not
18 going to show up on an NPP list, and I was able to
19 communicate that to several of my non-RESA clients
20 as well. So certainly there was a real effort to
21 make sure that people were aware of this
22 particular rulemaking.

23 HEARING OFFICER LUEKER: Thank you.
24 I have one other question I'd ask to the NPPs and,
25 in particular, for RESA. You have proposed that

1 we use a sliding scale rather than setting a flat
2 \$250,000 or some other flat fee. If you could
3 provide me with some input, written input before
4 May 1st as to what the levels should be for
5 triggering a step up that sliding scale, I would
6 appreciate it because we've had a great deal of
7 difficulty in gathering any kind of data that
8 would have allowed us to try to do something like
9 that.

10 MR. MUNNELLY: Okay. Thank you.

11 HEARING OFFICER LUEKER: Anything
12 else from anybody?

13 MR. KOGUT: And to that point very
14 briefly, our consultants in this matter did have
15 as a threshold when they were talking about a
16 quarter million to a half million dollar level of
17 sales of below and above 100,000 megawatt hours.
18 I just wanted to make reference to that and that's
19 also in the Daymark memo.

20 HEARING OFFICER LUEKER: 100,000?

21 MR. KOGUT: Yes.

22 HEARING OFFICER LUEKER: But that was
23 to jump from 250 to 500?

24 MR. KOGUT: That's correct.

25 HEARING OFFICER LUEKER: So anything

1 above -- 100,000 megawatts or above would be at a
2 \$500,000 level?

3 MR. KOGUT: Yes.

4 HEARING OFFICER LUEKER: Anything
5 below that would be the \$250,000?

6 MR. KOGUT: That's right.

7 HEARING OFFICER LUEKER: Which is
8 probably not the kind of level that RESA or Archer
9 are suggesting today, so I would really appreciate
10 some data that might help me to consider that more
11 realistically and flesh that out. I'm not saying
12 that we would adopt a sliding scale, but certainly
13 if I were to consider that, I'd need to have some
14 sort of data that would help to justify it because
15 I have to explain why we pick one value as opposed
16 to another value; okay?

17 MR. MUNNELLY: Understood.

18 HEARING OFFICER LUEKER: If there's
19 nothing else --

20 MS. HETHERINGTON: I just want to
21 make a quick corrective, nonmaterial correction to
22 the same Daymark memo of April 14th that Mr. Kogut
23 just referenced. On Page 1 on the first bullet
24 point near the bottom it says House Bill 331, I
25 want to correct it to say 8331, although I'm not

1 the author. Mr. Kogut alerted me to that today.
2 So it should say House Bill 8331.

3 HEARING OFFICER LUEKER: Okay, thank
4 you. If there's nothing else, then thank you all
5 for coming here this morning and we're now
6 adjourned.


7 (PROCEEDINGS CONCLUDED AT 10:43 A.M.)
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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, 2017.

Jane M. Poore
Notary Public


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

DATE: April 20, 2017
IN RE: Rulemaking to amend rules applicable to nonregulated power producers

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