

certification is suspended.” The Public Utilities Commission’s (the “Commission’s”) Renewable Energy Standard regulations only prohibit a nonregulated power producer in this situation from “enroll[ing] new customers.” They do not prohibit renewing existing customers. Accordingly, Agera requests that the Division identify the basis for the prohibition on renewing existing contracts and, if no such basis exists, modify the Order appropriately.

In addition, Agera requests specific clarification on the impact of the Order on Agera’s service of existing customers on month-to-month contracts (“Monthly Customers”). As the Division is aware, Monthly Customers’ contracts continue until terminated by notice from either party. Thus, Agera is neither entering into new contracts with Monthly Customers nor renewing these customers’ contracts. Further, because the Monthly Customers are already being served by Agera, they are not being enrolled. Accordingly, Agera requests that the Division clarify that the Order does not prohibit Agera from continuing to serve its Monthly Customers.

Attorney Casey letter at p. 2 (footnotes omitted; footnotes all referenced the Commission’s Renewable Energy Standard regulations at 810-RICR-40-05-2.10A: “If such Obligated Entity then fails to comply by the date indicated in the warning letter its license will be suspended and it will not be allowed to enroll new customers.”)

Commission Order number 23659, dated and effective August 28, 2019, in *In Re Agera Energy LLC Renewable Energy Standard Compliance*, found that Agera Energy LLC had failed to comply with the 2018 Renewable Energy Standard, and that its Alternative Energy Compliance Payment obligation to the State of Rhode Island far exceeded the Letter of Credit on file with the Rhode Island Public Utilities Commission and the Rhode Island Division of Public Utilities and Carriers. The Commission then made a demand for the full amount of the Letter of Credit; the Commission noted that once the funds were released, Agera Energy LLC would be out of compliance with the Division’s *Rules*

Applicable to Nonregulated Power Producers. The funds were released to the State in partial compliance of Agera Energy LLC’s 2018 Renewable Energy Standard.

The Division’s *Rules Applicable to Nonregulated Power Producers*, 815-RICR-30-05-1, provide, in pertinent part:

1.3 Prerequisites for Rhode Island Operations

A. All NPPs seeking to do business in Rhode Island **must** file with the Division a notarized registration application that includes the following:

...

9. Evidence of financial soundness:

a. Evidence of financial soundness ... **except** those nonregulated power producers who may be **obligated entities shall provide financial security** showing evidence of liquid funds, such as:

(1) a surety bond;

...

(5) The financial security **shall** be in an amount of not less than two hundred fifty thousand dollars (\$250,000.00). All financial security provided in satisfaction of this provision **shall name** the Commission and **the Division** as obligees;

b. **Financial security shall be reviewed each year** at the time a nonregulated power producer makes its annual filing. The above notwithstanding, **each obligated entity is responsible for informing the Division in writing within five (5) business days of any material adverse change in its financial status.** The **financial security shall be available** to satisfy penalties assessed by the Division for violations of any consumer protection rules or laws related to nonregulated power producers, refunds ordered by the Division, or failure to comply with the provisions of ...

[the Renewable Energy Standard, RIGL §§ 39-26-1 *et seq.*] ... as determined by the Public Utilities Commission ...

...

(Emphasis supplied.) The important point to be drawn from these rules is that companies such as Agera Energy LLC are required to maintain the required level of financial security at all times “to satisfy penalties assessed by the Division for violations of any consumer protection rules or laws related to nonregulated power producers, refunds ordered by the Division, or failure to comply with the provisions of ... [the Renewable Energy Standard, RIGL §§ 39-26-1 *et seq.*].”

As of the date of this Order, the Division has not received any evidence of Agera Energy LLC’s continuing financial soundness (such as a new surety bond). In the absence of a new surety bond, there are no funds available “to satisfy penalties assessed by the Division for violations of any consumer protection rules or laws related to nonregulated power producers, refunds ordered by the Division, or failure to comply with the provisions of ... [the Renewable Energy Standard, RIGL §§ 39-26-1 *et seq.*].” with respect to the 2019 Renewable Energy Standard, much less for any subsequent years (indeed, it is possible that Agera Energy LLC still has an obligation for the 2018 Renewable Energy Standard – the subject of this docket.)

Under these circumstances, until such time as Agera Energy LLC provides the Division satisfactory evidence of ongoing financial soundness, its authority to enter into any new contracts has been suspended. As each contract term expires, the consumer with whom that contract was made ceases to be a customer of Agera Energy LLC. The Division views any new contract with such

a customer to be a new contract with a new customer. In the absence of satisfactory evidence of ongoing financial soundness, Agera Energy LLC is not in compliance with either the applicable Division or Commission rules or their underlying statutes and may not enter into any new contract in this State.

The same reasoning applies with respect to Agera Energy LLC's month-to-month contracts. Such contracts are not of an unknown or continuing duration. They are each for one month of service. At the end of the current month, there has to be an agreement (or "contract") whether written or oral for a succeeding month. (*See* RIGL 39-26.7-5(m) *as amended by* Senate Bill No. 399, Ch. 281, §2, on July 16, 2019, which states "On and after August 1, 2019, no nonregulated power producer shall automatically renew or cause to be automatically renewed a contract with a residential customer..."). In the absence of satisfactory evidence of ongoing financial soundness, Agera Energy LLC is not in compliance with either the applicable Division or Commission rules or their underlying statutes and may not enter into any new contract in this State and may not enter into a new agreement for any existing "month-to-month" contract customer.

Accordingly, it is

(23673) ORDERED:

1. That until such time as Agera Energy LLC provides the Division satisfactory evidence of ongoing financial soundness, its authority to enter into any new contracts has been suspended. As each contract term expires, the consumer with whom that contract was made ceases to be a

customer of Agera Energy LLC. The Division views any new contract with such a customer to be a new contract with a new customer. In the absence of satisfactory evidence of ongoing financial soundness, Agera Energy LLC is not in compliance with either the applicable Division or Commission rules or their underlying statutes and may not enter into any new contract in this State.

2. That with respect, to Agera Energy LLC's month-to-month contracts, in the absence of satisfactory evidence of ongoing financial soundness, Agera Energy LLC is not in compliance with either the applicable Division or Commission rules or their underlying statutes and may not enter into any new contract in this State and may not enter into a new agreement for any existing "month-to-month" contract customer.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, SEPTEMBER 23, 2019.



William K. Lueker, Esq.
Deputy Chief of Legal Services
Hearing Officer

APPROVED:


Kevin Lynch
Deputy Administrator¹

¹ Normally, the Administrator of the Rhode Island Division of Public Utilities and Carriers ("the Administrator") would approve and sign Orders such as this. In his absence, and pursuant to the authority granted by R.I.G.L. §§ 42-20-3 and 42-20-5, Deputy Administrator Lynch has been designated and authorized by the Administrator to sign Orders such as this issued by the Division of Public Utilities and Carriers.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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NOTICE OF AVAILABILITY OF JUDICIAL REVIEW
(PROVIDED PURSUANT TO R.I.G.L. §42-35-12)

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.