

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DRM 16-853

RULEMAKING

New Hampshire Code of Administrative Rules

Chapter Puc 2000 - Competitive Electric Power Supplier and Aggregator Rules

Comments of the Retail Energy Supply Association - January 27, 2017

The Retail Energy Supply Association is a broad and diverse group of more than 20 retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members are active participants in the retail competitive markets for electricity, including the New Hampshire retail electric market. Several RESA member companies are licensed by the Commission to serve residential, commercial and industrial customers in New Hampshire and are presently providing electricity service to customers in the state. RESA appreciates the opportunity to provide comments regarding the proposed competitive supplier and aggregator rules. We provided oral comments at the public hearing on January 19, 2017 and are filing these comments along with the attached proposed redline version of the rules by the January 27, 2017 deadline indicated in the Order of Notice.

We have a few overall comments on the proposed rules and then some comments with regard to specific rules. As Chairman Honigberg noted at the beginning of the public hearing, in a memorandum to Commissioners and Agency Heads dated January 5, 2017, Governor Chris Sununu called for a moratorium on rulemaking and for a review of rules to make sure that a regulation does not “unduly burden the State’s citizens or businesses, and does not have an unreasonably adverse effect on the State’s competitive business environment.” The memorandum also said that the agency should be able to demonstrate that the regulation “is the least restrictive or intrusive alternative that will fulfill the need which the regulation addresses.” In the memorandum the Governor said that state agencies should repeal or suspend the adoption of all existing or proposed regulations that the agency finds are neither mandated by law nor essential to the public health, safety or welfare. RESA believes that some of the provisions in the proposed rules, as noted below, would have an unreasonably adverse effect on the competitive business environment for electricity that is mandated by RSA 374-F and that a less restrictive alternative could be used to fulfill the need which the proposed rule is attempting to address. We think it important that the Commission keep this in mind as it approaches these rules.

The second more general comment that we have is that we believe the rules should contain an overall reference to the ability to seek a waiver from rules pursuant to Admin. Rule Puc 201.05. We note that a number of rules that have been adopted by the Commission include references to the ability of utilities or others to obtain waivers from the provisions of the rules. One example is Admin. Rule Puc 903.02(n) which pertains to net energy metering,

but there are many other examples. Although the proposed rules in this proceeding contain a couple of specific references to the ability to request a waiver (Puc 2003.01(d) (1) and 2003.02 (c) (1) with regard to applications), we think it would be beneficial to have a more general provision near the beginning of the rules which cross references the ability to seek a waiver pursuant to Puc 201.05.

Proposed rule Puc 2002.03 provides a definition of “aggregator.” RESA submits that this rule and its application require some clarification. It is not clear from the proposal how these rules want to treat one of the largest and most active segments of the industry: the energy broker that works as an independent agent on behalf of itself and/or the retail customer. Energy brokers do not receive compensation or remuneration from the supplier, though as a matter of administrative convenience the supplier will often include the broker’s service fee in the supplier’s price. In effect, the supplier acts as a billing agent, collecting from the customer and passing through the broker’s fee to the broker. Since energy brokers do not receive compensation or remuneration from the supplier but rather from the customer, they would arguably fit within the proposed definition of “Buyer’s aggregator” in Puc 2002.06. We are not sure that is the Commission’s intent because per that section a buyer’s aggregator is not subject to the provisions of this chapter. If the Commission means to include energy brokers (as described above) in the definition of buyer’s aggregator then that should be included as an explicit example, along with a municipality and a cooperative. If not, then they should simply define a buyer’s aggregator as municipality or cooperative and should consider where energy brokers fit into the regulatory picture.

The definition of “Small commercial customer” in proposed rule Puc 2002.19 lowers the threshold for such customers from 100 kilowatts to 20 kilowatts. We support this change. RESA submits that 100 kilowatts is a very high threshold well beyond what are generally considered small commercial customers, so we support the change to 20 kilowatts.

When it comes to residential customers we think it is important to insert some language in the rules about incidental residential accounts. Incidental residential accounts are accounts that the utility has classified as residential based on its tariff guidelines; they are, however, accounts that are the responsibility of a non-residential entity. One example could be the on-campus residence of a university president, where responsibility for the account including selection of supply service rests with the university and not the individual residing there. We think that it should be made clear that the basis for determining whether or not rules directed at residential customers throughout this chapter are applicable to a certain account should be based on the type of customer that has contracted with the supplier and not the utility’s tariff-based designation.

The proposed rules would change the length of time that a supplier registration is good for from 5 years to 1-3 years depending on the financial security that is provided. Puc 2003.02(g). Although there are differences in how other states address this issue none seem to tie the length to the type of security provided. RESA believes that tiering the length of the registration to the financial security makes no sense. RESA recommends that the Commission retain the five year period which exists in the current rules. RESA is not sure

what was intended to be accomplished by creating different periods of time for a registration to be valid that is dependent on the time period during which financial draws can be made. RESA submits that it would be much easier, more consistent with what other states do, and far less confusing to have a registration valid for a five year period and make the period for making draws on the financial instrument clear and consistent.

Puc 2003.01(l) says that within 5 days of receiving approval from the Commission to operate in New Hampshire a supplier must notify the local distribution company – it is currently 30 days. RESA recommends changing the requirement to 15 *business* days – we think that is a reasonable compromise between what is proposed and what the current rules provide.

Puc 2003.02(d)(4) says that the PUC “shall deny” an application for renewal if the applicant has “been subject to consumer complaints in New Hampshire or other states”. We think the intent of this is that it apply to an applicant that has “been the *subject of* consumer complaints” since anyone is *subject to* complaints. In addition, and more importantly, just because a supplier has been the subject of complaints should not disqualify it from renewal. RESA believes that the language here mandating that the Commission deny renewal based on the mere existence of complaints is far too open-ended. As a matter of due process denial of an application for renewal based on complaints should only be allowed if the complaints have been found to have been substantiated. We recommend that the Commission change this section to reflect that the PUC “shall consider substantiated complaints during the review of an application for renewal” or eliminate this subparagraph altogether.

Puc 2003.03 establishes financial security requirements that are more detailed than in the current law. RESA has no particular concern with this section, we just want to make sure that the dates listed in paragraph (b) are consistent with the dates for submission of alternative compliance payments and the payment of the assessment.

Puc 2003.07 spells out how the assessment for funds to cover the PUC budget is paid. RESA agrees that it is a good idea to spell this out in the rules.

Puc 2004.02(d)(4) says that a supplier shall include in its terms of service a statement that the price does not include charges related to the delivery of electricity and that the customer “will be billed separately” for charges related to delivery service. This wording needs work given that many suppliers bill through the distribution company, and thus it may not be a separate bill, but rather a separate portion of the bill, which means that it is not “billed separately.”

Puc 2004.02(e), which says that a supplier must request that each residential and small commercial customer specify the preferred form of contact, has only two options: electronic mail or written correspondence delivered by US mail. RESA submits that there should be more flexibility to keep up with changes in how people communicate, including allowing written correspondence delivered through other trackable delivery services and through text messages where appropriate for the type and length of information being submitted.

Puc 2004.03(b) includes certain requirements for what has to be both on the website and in the terms of service. RESA has some suggestions for language changes in this section, but in particular it submits that there ought to be more flexibility allowed in how suppliers notify customers through a combination of written terms of service and through the website and citations to where information can be found. We have included specific language in the attached red line version of the rules.

Puc 2004.03 on price disclosure, particularly paragraph (d), contains some provisions which RESA believes should be modified. This section would require that residential and small commercial customers be notified 30 days prior to the effective date of any increase in a variable price projected to increase by 10% or more. There are similar provisions being worked on in Connecticut and Rhode Island that would apply if the increase is 25% or more, which RESA submits is a more reasonable standard for this requirement since these sections are designed to apply to a situation where there is an extreme price increase. Paragraph (f) says these customers must be notified no less than 45 and no more than 60 days prior to the effective date of any change in the terms or structure of a variable price. RESA recommends that this be modified to say 30-60 days prior to the effective date, which is consistent with what other states are looking at.

Puc 2004.08 pertains to customer authorization required for a change in supplier. RESA submits that there are approaches that can accomplish this task other than through the exchange of letters. In other words there are approaches, like the use of secure customer portals, that are customer friendly and that accommodate technological changes. RESA applauds the reference in subparagraph (c) which seems to account for more advanced ways of conveying information.

Puc 2004.11 concerns solicitation – as noted in paragraph (g) there are local peddler’s ordinances that have to be complied with. Nonetheless, paragraph (e) imposes what amounts to an outright ban on door to door solicitations even if the supplier complies with local ordinances. RESA is opposed to such a ban on solicitation. RESA submits that there are other far less restrictive or intrusive ways to address concerns about door to door solicitation, such as including a separate registration with particular standards that have to be met for a supplier that desires to do door to door solicitation.

Puc 2004.11(c)(1) c. prohibits a supplier from soliciting by initiating a telephone call to cellular telephone service or any service for which the called party is charged for the call. Because many customers today have cancelled their landlines and rely solely on cellular service RESA submits that this would have an unreasonably adverse effect on the competitive business environment. This restriction would effectively ban solicitation by telephone of a large segment of the population. RESA recommends removing the phrases “cellular telephone service” and “any service for which the called party is charged for the call.”

Puc 2004.11 (g)(5) appears to give some flexibility when it comes to dealing with a customer who has insufficient English skills. RESA believes this is the right approach.

RESA submits that Puc 2004.12, which deals with off-cycle meter reading, is too limiting in that it only allows a supplier to request this when there is *non-payment* by a large commercial/industrial customer. There should be more flexibility to request an off-cycle meter reading – off-cycle meter reading is usually done to benefit a new customer or a customer switching suppliers. Giving more flexibility for off-cycle meter reading is not only customer-friendly, but it has been made much more convenient as a result of remote meter reading and technological changes for which ratepayers have paid.

Puc 2004.13(a) concerns a transfer of customer accounts between suppliers and the requirement that a notice be provided at least 30 days before a transfer. Since it seems quite likely that a situation could arise where this period would have to be adjusted, RESA recommends including language that allows a supplier to request a different date.

Puc 2004.13(a) (3) and (6) suggest that, by Commission rule, customers will have a right to elect an alternative supplier upon notice of transfer to a new supplier. At least for large customers, assignment provisions are included in the terms of the agreement with the customer. For this reason RESA believes that this language is too much of a reach and interferes with the freedom of buyer and seller to negotiate their own contract terms.

Paragraph (d) of Puc 2004.13 includes a requirement that refunds to customers be made within 30 days of the effective date of the transfer or sale. RESA believes a supplier should have up to 60 days to provide any refund.

Puc 2004.14 concerns a change in ownership of a supplier. Because changes in ownership take many different forms and often can be delayed or modified, RESA believes that this section may need some tweaking. It might also make sense to include a cross reference here to the section allowing a person to seek a waiver from the rules.

Puc 2004.18 concerns termination of service to a customer. In this proposed rule the use of the term “material” seems unnecessary – typically an agreement with a customer lists certain things that trigger termination and use of the term in this context may contradict provisions in the agreements.

Puc 2004.18(b) contains a provision that limits a supplier to having one contact with a residential or commercial customer prior to sending a termination notice. RESA submits that it is often to the benefit of the customers to have more than one contact prior to termination. Given how busy many customers’ lives are today, it may be to the customer’s benefit to allow for more than one contact because the customer may unintentionally overlook or ignore one contact regarding termination.

In connection with the PART 2005 section of the proposed rules, RESA submits that the rules should incorporate a reference to an opportunity for the Commission to offer mediation as a means of avoiding the need for a full hearing on a complaint. Many other states offer this service and it ends up serving the interests of the customers and the Commission by saving time unnecessarily spent in hearings. RESA believes that it would behoove the Commission to have on its staff a person or persons trained in mediation to help resolve

matters without a hearing with regard to complaints under these particular rules, but also more generally.

Puc 2005.05 contains a broader list of factors than in the current rules of what the PUC will take into account when assessing fines or imposing sanctions. RESA believes that this provides the Commission with more flexibility in making decisions and submits that is a step in the right direction.

During the public hearing on the rules Public Service Company of New Hampshire (“PSNH”) commented that the rules should allow a utility that incurs charges associated with a supplier to collect them against the financial security provided by a supplier. RESA thinks it important that the Commission understands that this, and many other matters, are covered in the agreement between the supplier and the utility; RESA therefore submits that there is no need to amend the proposed rules to address this as PSNH suggests.

PSNH said that the purpose of the rules is to address the relationship between the supplier and the customer so the rules should not be used to impose new requirements on the utility, like requiring that the utility provide a list of eligible customers to suppliers. RESA submits that these rules necessarily address not just the relationship between the customer and the supplier, but also between the supplier and the utility, so we think it fair that these rules address matters between suppliers and utilities. Off-cycle meter reading is an example of this. We disagree with PSNH, as noted above, that the proposed rules go far enough with regard to off-cycle meter readings.

In terms of partial payments by customers and a payment hierarchy, as well as the number of customer contacts allowed prior to initiating termination efforts, PSNH cited to the settlement approved by the Commission in DE 13-244. That agreement was entered into and approved by the Commission almost 3 years ago. There is nothing to prevent the Commission from deciding in the context of these rules at this point in time that it should change any of the approaches reflected in that settlement agreement.

At the public hearing PSNH, citing proposed Puc 2003.08, said that a supplier may be permitted to withdraw its registration “if there are no pending customer complaints against” the supplier and went on to say that there may be instances where there are complaints but they are not customer complaints. They cited complaints by utilities or from the Commission. PSNH said that the language should be revised to note that all outstanding complaints, including the additional ones they mentioned, would need to be addressed prior to withdrawal. RESA is opposed to this suggestion because as proposed it would seem to create a separate category of complaints that would be treated differently than other complaints. RESA believes that all complaints should be treated the same and should not be the basis for any action until there has been notice and an opportunity to be heard. RESA believes that the language in Puc 2003.08 as proposed is more than sufficient to address the situation.

Thank you again for the opportunity to provide comments on behalf of RESA both at the hearing and in writing.