STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DRM 10-014

PUC 2000 COMPETITIVE ELECTRIC POWER
SUPPLIER AND AGGREGATOR RULES

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION ON PROPOSED RETAIL SUPPLIER AND AGGREGATOR RULES

Introduction

Pursuant to the Commission's Rulemaking Notice Form ("Notice") and related materials dated May 28, 2010, the Retail Energy Supply Association ("RESA") respectfully offers the following comments on the Commission's Initial Proposal for revised Puc 2000 rules with annotated text ("Proposed Rules").[1] RESA supports most of the Commission's decisions to keep intact key provisions from the original 2000 version of the competitive supplier rules and to propose amendments that are generally reasonable and supportive of the continued development of retail electric competition in the State of New Hampshire. Nevertheless, RESA has identified changes that it recommends be made in order to avoid unnecessary or unwarranted burdens on competition both from the competitive supplier perspective and, most importantly, the

[1] RESA's members include ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; and Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

customer experience perspective. Accordingly, RESA proposes several amendments to the Proposed Rules as detailed herein.

Background

RESA is a nonprofit organization and trade association that represents the interests of its members in regulatory proceedings in restructured states within the New England, New York, Mid-Atlantic and Midwest regions. RESA members are comprised of companies that provide value-added electric supply products and services throughout the five New England states that have implemented electric restructuring, including New Hampshire.

On May 28, 2010, following an informal notice and comment process, the Commission filed a cover letter and the following materials with the Administrative Rules Division of the Office of Legislative Services: (1) Notice; (2) Fiscal Impact Statement; (3) Proposed Rules; and (4) Cross-Reference Table of Applicable Statutes. The Notice provides for a July 15, 2010 public hearing at the Commission and a July 22, 2010 date for submission of written comments.

RESA Comments

I. The New Consumer Protection Requirements in Puc 2004 Contain Some Excessively Burdensome Provisions That Should Be Narrowed To Better Fit The Purpose and Goal of the Requirements.

While undoubtedly well-intentioned, several provisions in the Proposed Rules at Puc 2004.01 to .10 ("Consumer Protection Requirements") impose unnecessary and excessive burdens on competitive suppliers and are too broadly crafted to apply to situations that may be overly burdensome for medium-sized and large commercial

customers who neither need nor want such requirements. RESA requests that the following provisions be reconsidered and more narrowly tailored as described below.

A. The Telephone and In-Person Solicitation Regulations Should Not Apply to Medium and Large Commercial Customers.

In Puc 2004.02, the Commission chose to limit the detailed pricing disclosure requirements set forth in the rule only to residential and small commercial customers, implicitly acknowledging that medium and large commercial customers do not require such detailed "consumer" protections and, thus can and should be exempted. The Commission, however, did not extend this same narrow application in its rules for telephone solicitations in Puc 2004.03 and in-person solicitations in Puc 2004.04.

Application of the telephone and in-person solicitation regulations to residential and small commercial customers may make sense. Regulations applicable to the content, time, place and manner of supplier marketing practices are unnecessary for medium and large commercial customers who are both sophisticated buyers of energy commodity and entities that employ resources, including experienced staff and outside consultants, assisting them in shopping for, selecting and contracting with a competitive supplier. On the contrary, such regulations as applied to medium and large commercial customers are burdensome and erect potential barriers to their shopping and selection activities.

For example, meetings between competitive suppliers (including their employees and third party sales agents) and medium and large commercial customers are pre-scheduled appointments often held both before and after normal business hours as a matter of mutual convenience and availability. Such beneficial arrangements would be prohibited if Sections 2004.03 and 2004.04 of the Proposed Rules are adopted in their

present form. As another example, it is unnecessary and burdensome for suppliers serving the medium and large business segment to monitor "do not call lists" for their many in-house and third party sales personnel.

In sum, limitations that might make sense for residential and small business customers concerned about receiving unsolicited at-your-door marketing contacts are unnecessary and burdensome for medium and large business customers. Accordingly, suppliers serving the medium and large customer classes should be exempted from the telephone and in-person solicitation in Puc 2004.03 and 2004.04 requirements in the same manner as they are exempted from pricing disclosure requirements in Puc 2004.02.

B. The Commission Should Permit Suppliers to Take Income into Account in Service Offers Until a Purchase of Receivables Program is Implemented.

Section 2004.10(e) of the Proposed Rules maintains the existing practice of prohibiting discrimination in the application process or termination process on a host of factors, including "income." RESA requests that income be deleted as a factor in this anti-discrimination section of the Proposed Rules. Many states, including Connecticut, New York, Illinois, Pennsylvania and Maryland, have adopted Purchase of Receivables ("POR") programs that enable suppliers to engage in marketing to customers in all segments without regard to their income or credit histories and assign to distribution companies – for a fee – the task of undertaking any debt collection issues that arise. The Commission should likewise adopt such a program.[2] Until one is in place,

[2] Massachusetts is implementing one now, based on a statutory directive. See Docket MA DPU 10-53.

however, the Commission should not preclude suppliers from considering income or, potentially, other creditworthiness factors in making offers.

RESA contends that maintaining the current rule will be harmful to competition, especially in the residential and small business segments but even with respect to medium and large customers where income status and credit checks are common features of product marketing efforts. With no POR program and a regulatory impediment to determining whether potential customers can pay bills if signed up, New Hampshire suppliers will be hard pressed to justify large-scale marketing efforts. This is a significant issue, as non-paying customers and collection costs can eviscerate the margins associated with smaller customer classes. The Commission should allow suppliers latitude to pre-screen potential customers to the extent applicable federal and state laws permit without a blanket ban on consideration of income factors embedded in the Proposed Rules. This is especially true where, as in this situation, there is no POR program in place.

Such an approach is consistent with the proposed amendment to Puc 2004.10(e) that eliminates credit extensions from the list of prohibited factors and establishes a new Puc 2004.10(f) that expressly authorizes suppliers to take income into account in extending credit. In a state without a functioning POR program, the suppliers should be allowed to consider income in determining whether to make service offers. If not, suppliers may elect to avoid marketing to such customers entirely.

II. Appropriate Protections Should Be in Place Regarding Confidential Information, Imposition of Sanctions, and Assessments Against Bonds.

The Proposed Rules maintain and, in some cases, expand on requirements that competitive electricity providers submit confidential data and be subject to sanctions and/or assessments against bonds in the event of noncompliance or misfeasance. While RESA does not challenge the need for or the appropriateness of such requirements, amendments are needed to ensure that appropriate procedural protections to the competitive suppliers govern the submission of such information and imposition of such sanctions and assessments.

A. Assessments Against Bonds Should Not Occur without Notice and Opportunity for Hearing.

Proposed Rule 2003.01(l) establishes that a competitive supplier's failure to comply with registration obligations may result in the Commission making assessments against the financial security bonds submitted in conjunction with the registration process in Proposed Rule 2003.03(a). While it may be implicit in ordinary Commission practice, Rule 2003.01(l) should be amended to provide that such assessments cannot be taken without notice and process involving the competitive supplier. The Commission should either add to Proposed Rule 2003.01(l) the "after opportunity to be heard" text that is present in the sanctions provisions in Proposed Rule 2005.01 or employ the more precise text "after notice and opportunity to be heard."

B. Submission of Information on Supplier Use of Aggregators and Associated Customer Numbers Should Be Confidential.

Section 2003.03(c) of the Proposed Rules requires that competitive suppliers disclose to the Commission their use of aggregators and the numbers of supplier customers served with the assistance of each. This information is so highly commercially sensitive that if disclosed could subject a competitive supplier to competitive disadvantage and business injury. It should therefore be subject to automatic confidentiality protection in the same manner as the sales data required to be provided to the Commission by suppliers on a quarterly basis in Proposed Rule 2003.03(b).

C. The Commission Should Consider Clarifying the Hearing Requirement for Sanctions in Proposed Rule 2005.01.

As discussed above, the Proposed Rules continue the current provision that permits assessment of sanctions on competitive suppliers only after "opportunity to be heard." It is not clear from the Proposed Rules the precise form of process encompassed within the "opportunity to be heard" text. RESA would support amending this rule to provide for "notice and opportunity to be heard," which would make clear that sanctions could be imposed in conjunction with an adjudicatory hearing pursuant to RSA 374:26.

III. The Definition of Small Commercial Electric Customer Should Be Clarified.

Section 2002.07 of the proposed rules contains a definition of "small commercial electric customer" that is based upon the customer's ability to take service under the utility's tariff for customers having a normal maximum demand threshold of less than 100 kilowatts. While this definition is sufficient to capture small business customers for

whom greater consumer protections are intended, it also has the potential to be over-inclusive.

Many large business enterprises own and operate numerous smaller business outlets. Thus, while each outlet may represent a separate metered account that takes service under a small commercial customer tariff, the business enterprise itself can be a large and sophisticated customer with a single supply agreement for its many dispersed business locations. To remedy this over-inclusion, RESA recommends that the definition of "small commercial electric customer" be clarified to exclude customers that are eligible to take service under the small customer tariff for individual metered accounts, but whose aggregated accounts in the State exceed a combined demand threshold of 100 kilowatts. In this manner, a single corporate owner of multiple accounts, none of which exceed the minimum 100 kilowatts on a standalone basis, could still be considered a medium or large commercial customer when those accounts are aggregated under a single supply contract and total more than the 100 kilowatt level.

IV. The Initial and Renewal Registration Processes Reflect Positive Technical Changes That Should Be Maintained in Final Rules.

RESA supports the thoughtful changes the Commission made to the already workable registration process as codified in Sections 2003.01 and 2003.02 of the Proposed Rules. RESA notes, however, that the Proposed Rules have erroneously included two identical provisions - Rules 2003.02(i) and 2003.02(k); one should be deleted. Specific points that reflect thoughtful changes or continued acceptance of key provisions include the following:

- Updated information submission requirements that appropriately require use of email addresses, website information and electronic formats in place of diskettes;
- Continuation in Sections 2003.01(h) and 2003.02(d) of the important current prompt processing requirement that complete initial and renewal applications must be ruled on or be deemed approved within 60 days after receipt;
- An extension in Section 2003.01(i) of the current effective period for an approved registration from two years to five years;
- An extension in Sections 2003.02(a) and (e) of the current effective period for a renewal registration from two years to five years.

V. Other Recommendations.

A. Amount of Bond.

The amount of financial security required under both the existing and proposed rules, namely up to $350,000 on a sliding scale, is excessive compared to other restructured states and discourages suppliers from devoting resources and attention to New Hampshire ahead of other markets. A maximum bond of $250,000 would be preferred.[3]

B. EDI Verification.

Suppliers are required to submit a separate certification for each EDI vendor used in proposed Rule 2003.01(d). Other states, however, (such as Massachusetts) only require one EDI certification, undoubtedly on the theory that once one certification

[3] Connecticut has a maximum security requirement of $250,000. See Regs. Conn. State Agencies § 16-245-4. In contrast, Massachusetts does not see fit to require security at all. See 220 CMR 11.05(2) (electricity-competitive supplier and broker licensing requirement).

is obtained, processes for working with other vendors become more routine and do not require direct Commission oversight. Based upon the aforementioned reasons the Commission should consider making the same change.

C. Quantity and Timing of Data Reported.

In Proposed Rule 2003.03(b), suppliers are required quarterly to provide a multi-category set of data to the Commission. RESA notes with support that this information is entitled to automatic confidential protection. Nevertheless, while RESA members supply similar information in other states, both the quantity of data and the extent of data disaggregation the Proposed Rules require are extensive and unduly burdensome in comparison to other similar states. RESA requests further consideration be given to reducing this obligation to a more manageable dataset. Similarly, the requirement that suppliers provide such information quarterly imposes burdens, as data often must be put together at the last minute to meet deadlines and delays are common due to lags in receiving information needed for the reports from customers and agents. Therefore, RESA requests that the Commission require such data on an annual or semi-annual basis.

CONCLUSION

RESA appreciates the opportunity to provide comments on the Proposed Rules, which with amendments should facilitate entry by competitive electricity providers into the service areas of New Hampshire investor-owned utilities. Accordingly, for the above-described reasons, the Commission should amend the Proposed Rules and issue Final Rules incorporating the suggested amendments described above.

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DATE: July 21, 2010