

DOCKET NO. DRM 16-853

Chapter Puc 2000 – Competitive Electric Power Supplier and Aggregator Rules

Comments of Eversource

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) provides the below comments, edits, and suggestions on the draft Puc 2000 rules. In general, Eversource supports the rules and the efforts of the Commission to address developments in the market for competitive electric supply in New Hampshire. Eversource’s below comments reference the rules version marked “Initial Proposal 11-21-16” in the upper corner and which was included in the Staff request for Fiscal Impact Statement dated November 28, 2016.

Puc 2002.10

Presently, the rule defines “Customer” as “any person or entity in this state, including any governmental unit, which purchases electricity at retail.” Eversource recommends changing the end of the definition to read: “which purchases electricity for retail use.” This change would capture entities that may buy electricity from the wholesale market through an aggregator or otherwise, but use it for retail service.

Puc 2003.02(h)

The rule states that a CEPS must update certain information, but exempts the information in 2006.01(n) and (o) from the updating requirement. 2006.01(n) and (o) relate to other states where the CEPS operates and any customer complaints the CEPS has dealt with in other states. It is not clear why updates to that information are exempted by the rule and Eversource recommends removing those exemptions.

Puc 2003.02(i)

The rule states “Failure by a CEPS to comply with the requirements or obligations of this chapter may result in a charge against the CEPS’s financial security provided to the commission, following the process set forth in Puc 2005 and subject to the priority set forth in Puc 2003.03(b).” Eversource recommends adding language stating that the failure may also result in suspension or revocation of a CEPS’ registration.

Puc 2003.03(b)

Eversource recommends adding a provision that makes the financial security payable to the utility for costs it may have incurred due to the actions of the CEPS.

Puc 2003.03(c)

Relative to the operative language required by the Commission, Eversource recommends adding the words “the Commission determines that” after the phrase “if and when” and before “the Company has failed”.

Puc 2003.08

The rule contemplates that a CEPS will be permitted to withdraw its registration if there are no pending customer complaints to resolve. At the time of withdrawal, however, it may be that there are outstanding financial obligations or unresolved complaints from others, including utilities or the Commission itself, even if there are no customer complaints. Eversource recommends amending the rule to ensure that ***all*** outstanding obligations are addressed prior to a CEPS being permitted to withdraw. *See also* Puc 2004.15(c)(2)a. which contains similar language.

Puc 2004.02(f)

The Disclosure Summary Template Form referenced here has not been made available for review.

Puc 2004.02(g)(4)

Eversource recommends rewording this to: “Printed in a font size no smaller than 12 point for residential and small commercial customers.”

Puc 2004.03(k)

This section lists a variety of ways for a customer to terminate service with a CEPS, but does not include contacting the utility and requesting default service, or contacting another CEPS and agreeing to service, as means of terminating service with an existing CEPS. Eversource recommends those be added.

Puc 2004.09

Language should be added to explicitly state that an aggregator granted agency authority owes a fiduciary duty to its customers. Given that under the definition of an aggregator granted agency authority can enter into contracts on behalf of the customer, such a statement will make clear that doing so is to be done in the best interests of the customer.

Puc 2004.09(a)

Because an aggregator granted agency authority owes a duty to the customer, language should be added stating that an aggregator granted agency authority shall not enter into an electricity supply contract on behalf of a customer with an affiliate of the aggregator without first requiring the aggregator to: 1) notify the customer of the affiliate relationship; and 2) obtain express authorization from the customer to enter into the affiliate contract. Such authorization should be in addition to any general authorization granted at the time the customer and aggregator commenced their business relationship.

Puc 2004.11 (a)

The National Do Not Call Registry is managed by the Federal Trade Commission, while the Telephone Consumer Protection Act, which includes the so-called “Wireless Do Not Call” obligations, is managed by the Federal Communications Commission. Eversource recommends that the rule be amended either to add a reference the Federal Trade Commission, or, more generically, to include the language “subject to applicable state or federal law.”

Puc 2004.12

Eversource supports the language contained in this section.

Puc 2004.13(c)

Eversource recommends that language be added requiring the notice to be given to affected utilities at the same time it is provided to the Commission.

Puc 2004.13

Eversource recommends adding a new subpart, subpart (f), stating: “If either the current, or receiving, CEPS goes into default or suspension during the transfer period, the customer transfer shall be void, and any affected accounts shall be switched to the applicable service rate under the associated utility’s tariffs as described in the ISO-NE rules and Puc 2004.16 below.” Such a provision will help avoid confusion about the rights and obligations of the supplier(s) and the utility in the event of default.

Puc 2004.16(a)(1)

Eversource recommends that language be added requiring the notice to be given to affected utilities at the same time it is provided to the Commission.

Puc 2004.16

Eversource recommends adding a new subpart at the end, subpart (g), stating: “Affected utilities that are required to transfer CEPS’ customers to account for the CEPS’ cessation may delete all pending EDI transfers relating to the customers of that CEPS as part of the process of transferring customers. Any EDI entries for transfer to another CEPS may be resubmitted by the new CEPS in accordance with these rules at a time subsequent to the transfer required by the original CEPS’ cessation, and shall take effect on the next regularly scheduled meter read date occurring at least 2 business days following the successful entry of the new EDI transaction.” As with the statements relative to Puc 2004.13 above, such a provision will help avoid confusion about the parties’ rights and obligations both at the time of a cessation of business, and in the time following that cessation.

Puc 2005.03(a) and 2005.04(a)

As written, these rules provide that if the Commission has determined that a sanctionable event has occurred, the suspension or revocation of a registration may only be accomplished if “the interests of customers of the CEPS or aggregator would not be harmed” by the suspension or revocation. In that any suspension or revocation would, at a minimum, require that a customer enroll with a new CEPS or aggregator, or return to default service, and that the terms and conditions of service with a new provider may be different than those of the initial provider, it is not clear what would constitute a “harm” to the interests of customers for purposes of this rule. Eversource recommends that language be added clarifying that the need to have a customer enroll with a new CEPS or aggregator, or return to default service, is not, in itself, a harm for purposes of the rules.

Puc 2005.06

Eversource recommends adding two new subparts, subparts (e) and (f), that would make the financial security payable to the utility for costs it may have incurred due to the actions of the CEPS, and payable to customers for any contract damages they may have suffered as a result of the a breach of contract by the CEPS for the premature cessation of business for any cause.

Puc 2005.01

This rule provides that a CEPS or aggregator has 10 business days to respond to a NOV issued by the Commission. Some supplier comments have indicated that 10 business days is insufficient to give them sufficient time to respond. In Eversource’s opinion, 10 business days is sufficient time to respond to a NOV particularly since the CEPS or aggregator is not required to collect or produce any evidence, but merely state that it agrees with the NOV, or that it desires a hearing. Nonetheless, to provide some measure of flexibility, the Commission could adopt language similar to that relating to consumer complaints against utilities in Puc 204. In Puc 204.02(b) it provides: “The utility shall provide a written response to the complaint by the date specified in the letter, or, when no date is specified in the letter, no later than 10 days from the date the complaint is received by the utility.”

Puc 2006.01(j)

Eversource recommends that that following language in bold italics be added to this provision: “Evidence of the applicant’s ISO-NE market participant membership ***and good financial standing with ISO-NE.***”

Eversource also offers the below comments in response to commentary during the January 19, 2017 public hearing on the rules, as well as the Commission's request to address the Governor's January 5, 2017 request for agencies to review their regulations.

With respect to the comments during the January 19 hearing, various comments were offered that the Commission's rules should require utilities to offer or provide certain services or information – information such as customer lists, or services such as on-demand, off-cycle meter readings for any reason – to CEPS. As stated at that hearing, Eversource is generally opposed to any proposed requirements in the regulations that would increase the burden or responsibility of the utilities relative to the competitive supply market. The rules under review are not rules relating to utilities – though utilities will be affected by them – and utilities should not be burdened by them. Moreover, in some cases the requests being made would require changes in laws, rules, Commission precedents or other policies or precedents.

Additionally, there were numerous comments recommending that the Commission scale back the scope of customer solicitation and contact restrictions stated in the initial proposal. As Eversource stated at the hearing, in cases where there is any confusion on the part of a customer about a CEPS' or aggregator's activities, such as whether they: may obtain certain information; are working with or for a utility; are otherwise making appropriate and reasonable solicitation, customers often call the utility in search of either information or, in some cases, a resolution of their concern about the CEPS or aggregator. Utilities are generally not equipped to address such concerns, nor should utilities be expected to explain or answer for the activities of those in the competitive supply market. Accordingly, Eversource supports requirements or limitations relating to: the types of customers who may be solicited, including when and where they may be solicited; the scope and nature of solicitations; and requirements for suppliers to swiftly and effectively address concerns about overly aggressive, fraudulent, or otherwise improper solicitations.

Lastly, with respect to the comments made during the hearing, and in particular with respect to comments relative to off-cycle meter reading, Eversource supports the language that has been adopted in the initial proposal and does not agree that changes to it are necessary or proper.

Turning to the Governor's January 5, 2017 letter, and the Commission's request relative to it, Eversource understands that the Commission is looking for guidance and information on the impact of the requirement to review certain aspects of the Commission's existing and proposed regulations. Eversource does not intend to offer an exhaustive response to the items identified by the Governor, but does offer the below general observations.

In the Governor's letter, it seeks information about whether there is "a clear need for the regulation that is best addressed by the Agency and not another Agency or governmental body." Eversource fully believes that there is a "clear need" for the proposed regulations, particularly

those covering registration, marketing, customer protections, and relationships with utilities, and even more particularly in the context of a supplier default or other customer transfer. Moreover, given the nature of the transactions at issue, and the relevant underlying law in RSA 374-F:7, in Eversource's opinion not only is the Commission the appropriate entity to adopt and enforce these regulations, it is the entity best positioned to do so. The Commission and its Staff have relevant knowledge of the markets, activities, and participants at issue, and any other agency or entity would not have the benefit of that knowledge, nor the processes in place to appropriately maintain appropriate oversight on the marketplace. Also, to the best of Eversource's knowledge, every other state with a competitive electric market leaves the regulation of that market to the relevant utility commission, and Eversource sees no reason for New Hampshire to depart from that system.

The Governor next seeks input on the relative costs and benefits of the proposed regulations. Eversource has not conducted any type of cost/benefit analysis of the subject regulations, but offers this observation. It is the policy of the state, as expressed in RSA chapter 374-F, to encourage competition in electric supply, and it is the policy of the state to ensure that customers are able to find reasonably priced electric service. To recognize these benefits, the state must have a system in place to ensure that those who seek to provide this necessary commodity have the financial and operational capability of meeting customers' needs at the time of contracting and beyond. Eversource believes that the costs of the regulations on suppliers – such as the registration and assessment fees, and the costs of compliance filings – are not onerous and do not outweigh the benefits that the state seeks to obtain through a deregulated electric market.

As to the Governor's request regarding information on whether the proposed regulations are "the least restrictive or intrusive that will fulfill the need," Eversource acknowledges that there may nearly always be a less intrusive way to do something. However, the fact that restrictions or intrusions may be removed does not mean that a regulation imposing a restriction is improper or inadvisable. As the Commission is aware, the existing regulations are somewhat "thin" in part because at the time they were last adopted, the competitive electric market was relatively undeveloped in New Hampshire. With time and experience, the Commission has become aware of certain gaps in the rules that should be addressed. In general, Eversource believes that the proposed regulations appropriately address the otherwise uncovered areas and that they do so in an appropriate, and not overly restrictive, manner.

With respect to the Governor's request to evaluate whether the regulation will "unduly burden the State's citizens' or businesses" or have an "unreasonably adverse effect on the State's competitive business environment," Eversource does not believe the regulations at issue have or will have an unduly burdensome or detrimental effect. The number of suppliers operating in New Hampshire appears to be appropriate for the size of the customer base – it is approximately the same as the number operating in Maine, a state with a similar population and demographics – and there does not appear any reason to believe the number of suppliers would decline appreciably following the implementation of the proposed rules. Moreover, most, if not all, of the suppliers operating in New Hampshire are operating in other New England states, including

states with far greater levels of regulation than New Hampshire. There is no cause to conclude that the regulations at issue would burden citizens or businesses, or negatively impact the State's competitive business environment.

Lastly, the Governor sought input on whether "the effectiveness of the regulation can be reasonably and periodically measured." Notably, there is no framework or process offered to aid the Commission in determining how to measure the "effectiveness" of a regulation, nor is it clear whether effectiveness can be measured in some cases. For example, it may be that a particular regulation prevents a supplier from engaging in activities that might generate complaints. It would seem difficult, at best, to attempt to measure how effective a regulation is by measuring something that is not happening. Eversource submits that the Commission's regulations are effective tools for managing the competitive supply market in New Hampshire.