

Robert J. Munnely Jr.

VIA E-FILING AND FIRST-CLASS MAIL

October 26, 2017

NHPUC 30OCT17AM11:54

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: Docket No. DM 17-125 North American Power and Gas, LLC Renewal Registration as a
Competitive Electric Power Supplier
Request for Waivers Pursuant to Puc 201.05 and Request for Expedited Review

Dear Ms. Howland:

Pursuant to Public Utilities Commission ("Commission") Rule Puc 201.05, North American Power and Gas, LLC ("NAP" or the "Company") seeks a waiver of certain new Puc 2000 competitive electric power supplier ("CEPS") rules that are scheduled to take effect on November 1, 2017.¹ The waivers seek to correct anomalies created by the new rules that will, absent a waiver, impede the ability of NAP to process customer enrollments in a timely and efficient manner and lead to customer confusion and unnecessary costs. Given the imminence of the November 1, 2017 implementation deadline, NAP requests that the Commission review these requests on an expedited basis.

NAP appreciates the time and effort extended by Staff to work through these anomalies. Ultimately, however, the Company made the decision that it would mitigate its compliance risks (as the subsidiary of a public Security and Exchange Commission reporting entity) by petitioning for the waivers outlined below.

¹ See August 25, 2017 letter from Chairman Honigberg in Docket No. DRM 16-853 (filing CEPs rules, as adopted by the Commission, and establishing effective date).

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Background

The Company has been a longtime New Hampshire CEPS licensed by the Commission. See Docket No. 12-138 (Initial License); Docket No. 17-125 (Renewal License). In reviewing the new Puc 2000 CEPS rules and developing revised customer materials and associated operational details, the Company recently identified potential anomalies and inconsistencies in the new Rules, as applied to NAP's process for enrolling customers in response to direct mail campaigns. These anomalies and inconsistencies would be certain to lead to multiple mailings of enrollment-related documents, including duplicate filings (at different times) of the same terms of service document. These multiple mailings would create significant risk of exorbitant and unnecessary costs, waste and customer confusion. The instant limited waiver request is being requested to resolve these anomalies and inconsistencies by allowing for a more efficient and customer-friendly enrollment process. NAP separately seeks a waiver of an unnecessary and confusing requirement that NAP must collect the customer's billing address as a precondition for a valid sale.

Rules Subject to Requested Waiver

1. Puc 2004.02:

- (a). Requirement to send written statement regarding terms of service within 3 business days of entering into an agreement to sell electricity;
- (b). Specifying when the contract becomes effective, including authorization, required disclosures and expiration of rescission period requirements;
- (d)(14)b. Requirement that rescission period extend until within 6 business days from the postmarked date of the terms of service being mailed to the customer; and
- (f). Requirement that contract summary be transmitted, along with the terms of service, using the customer's preferred form of communication.

2. Puc 2004.08:

- (d)(1). Customer authorization not to be combined with other materials sent to customer;
- (d)(4). Requirement that billing address be collected by supplier as part of having a valid consent;
- (d)(8)a. Requirement for having a written signature;

(e)(7). Signature requirement in Puc 2004.08(d)(8) requires that the customer has received the terms of service from the supplier, has read them, and agrees to the terms; and

(h). Requirement that no enrollment is considered to have been consented to or deemed valid unless all requirements in the Puc 2004.08 section have been met.

3. Puc 2004.10:

(b). Requirement for a welcome letter to be sent within 5 business days after expiration of the rescission.

Rationales for Seeking Limited Waiver

A. Consolidation of Multiple and Duplicative Mailings. If NAP were to implement these rules (as currently written) for its mailers, NAP would have to send up to six separate mail pieces to customers in order to have a proper and valid enrollment. Specifically, (1) the mailer would have to be sent to start the solicitation and enrollment process; (2) the terms of service (“TOS”) would have to be separately mailed to the customer (insofar as joint mailings are not permitted by Puc 2004.08(d)(1)) in order to meet the Puc 2004.08(e)(7) requirement that the customer attest to receiving the terms of service prior to enrollment; (3) the consent form would follow separately - because it cannot be combined with other communications under Puc 2004.08(d)(1); (4) the customer would have to know to retain the mailer and the terms of service, rather than throw them in the trash and make the connection that a consent form will be forthcoming; (5) assuming the customer actually enrolls, NAP would have to send the terms of service a second time under Puc 2004.02(a) along with other enrollment documents within 3 business of receipt by NAP of the completed consent form; and (6) the TOS and other enrollment documents would need to follow a separate welcome letter within 5 days of the expiration of the rescission period. The barrage of mailings to the customer (including a second mailing of the same terms of service) will likely lead to customer confusion and irritation. From NAP’s standpoint, it would be operationally difficult, unnecessarily expensive and, when taken together, unworkable in practice.

B. Unnecessary Requirement that NAP Collect Customer Billing Address. NAP separately is concerned with the requirement in Puc 2004.08(d)(4) that a supplier must collect the customer’s billing address as a precondition for gaining valid consent to the sale. NAP participates in utility consolidated billing and the customers with whom NAP interacts only receive the single utility bill. NAP views the requirement of securing a customer billing address to be unnecessary and potentially counterproductive to a seamless marketing process. NAP desires to tell the customer that he or she will continue to receive one bill from its utility, with the only difference being that the NAP name and supply rate will appear on the bill. Requesting unnecessary information adds time and expense to the marketing process and additional data to be preserved by NAP unnecessarily. It may also cause customer confusion and overreaching

concerns, specifically that the customer may be apprehensive as to why NAP is requesting billing address information, when it claims to rely only on the utility-delivered single bill.

Requested Waivers

1. NAP requests a waiver of Puc 2004.08(d) to enable it to send the direct mail collateral along with the consent form in the same mailing.
2. NAP requests a waiver of Puc 2004.08(e)(7) to forego sending a pre-enrollment terms of service to the customer with the direct mail collateral and consent form in each case. Instead, NAP would direct customers to the terms of service link on the NAP website and allow the customer the option to request a physical copy of the terms of service over the phone, thereby allowing the customer to “receive” the terms of service prior to enrollment.
3. To the extent that the Commission elects not to grant the waiver in paragraph 2 above, and insists that the pre-enrollment terms of service be sent in each case, NAP alternatively requests a waiver of the Puc 2004.08(d) separate mailing rule, in order to enable NAP to mail the terms of service with the direct mail and consent form.
4. NAP requests a waiver of the Puc 2004.08(d)(4) requirement that the supplier collect the billing address in enrollment forms and any other sales channel formats.

Justification Under Commission Waiver Requirements

Rule Puc 201.05 permits the Commission to grant a written request for a waiver if it (1) “serves the public interest” and “will not disrupt the orderly and efficient resolution of matters before the commission.” Furthermore, the Rule provides that in determining the public interest, the Commission “shall” waive a rule if (1) compliance with the rule would be “onerous or inapplicable given the circumstances of the affected person” or (2) “[t]he purpose of the rule would be satisfied by an alternative method proposed.”

For the reasons outlined above, NAP’s proposed waiver meets the Puc 201.05 requirements. If granted, it would result in a clear and streamlined enrollment process that: (1) consolidates related mailings that otherwise are likely to confuse consumers if sent separately; and (2) avoids duplicative transmissions of the same documents by allowing the first set to be accessed on line or by telephone request. The resulting NAP process would be in accord with the public interest and would avoid requirements that would be “onerous or inapplicable” and unnecessarily drive up costs for NAP and (ultimately) consumers. Furthermore, NAP’s process includes alternative methods that would satisfy the intent and underlying consumer protection purposes of the revised enrollment process pursuant to the new Commission retail supplier rules.

Similarly, the waiver relating to the unnecessary need to collect customer billing addresses during the sales process meets the same standards established in Puc 201.05. It is fully

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consistent with the public interest for NAP to be exempt from collecting unnecessary information from consumers during the enrollment process. Unless waived, the rule will be “onerous and inapplicable given the circumstances” of NAP and the customer. Finally, there is an alternative method for collecting the information – namely, the utility can continue to collect and maintain the customer’s billing address as part of its obligation to prepare a consolidated utility bill.

Conclusion

For the reasons stated herein, NAP requests that the Commission grant the limited waivers to several of the new Puc 2000 rules needed for efficient processing of enrollments in a manner not burdensome or confusing to customers or unnecessarily costly to NAP. NAP thanks the Commission for its time and consideration in reviewing this waiver request in an expedited timeframe. An original and six (6) copies of this waiver request are attached pursuant to the Commission’s filing rules.

NORTH AMERICAN POWER AND GAS, LLC

By its attorney,



Robert J. Munnely, Jr.

RJM/jmc

cc: Docket Service List (by email)