

10/24/2005

Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Proposed Regulations to Implement a Renewable Energy Standard
Supplemental RIEDC Comments

ATTN: Luly E. Massaro, Commission Clerk

Dear Ms. Massaro:

The Rhode Island Economic Development Corporation ("EDC") offers the following comments regarding the subject document in response to certain assertions made by Mr. James Grasso at the October 12, 2005 public hearing and as memorialized in the transcript provided to all parties.

To put these assertions into the proper context, it is necessary to understand the overall intent of the statute, the means of implementing the intent, the process to develop the Commission rules, and the mission and capabilities of the various state agencies charged with the implementation. Taking all of this into context, the rules in their current draft form as they relate to the EDC are wholly appropriate to accomplish the intent of the statute.

Background

The intent of the statute, R. I. Gen. Laws § 39-26-1, et. seq., clearly and simply is to assure that a significant portion of the electrical energy consumed in Rhode Island is produced by renewable energy facilities, and to stimulate the development of new renewable energy facilities. The intent is that this development will lower and stabilize future energy costs, reduce air pollution and create jobs.

The means to implement that intent are twofold. First, the purchase of an escalating percentage of renewable energy is mandated for each seller of electricity in Rhode Island. Second, in the event that insufficient resources are available to meet that mandate, a fund is created to be invested in the development of new facilities, using a charge to be collected through electrical energy sales.

To create the rules under which the portions of the system over which the Commission has authority, it elected to use a negotiated rather than a litigated rulemaking process. It did not establish a "committee" in the sense of an advisory group. Rather, the negotiated rulemaking process brought participants with differing views together to establish proposed rules.

The statute clearly assigns roles in the process to several state agencies.

In §39-26-6, the statute assigns six specific duties to the Commission. These duties are specific to the role customarily fulfilled by the Commission pursuant to its statutory authority. The Commission is made up of individuals with specific expertise, as specified in §39-1-4(a) to include "...qualifications and experience in law and government, energy matters, economics and finance, engineering and accounting..."

Under §39-26-7 of the statute, the EDC is charged with investing the REDF in projects that create new renewable energy facilities. This is entirely consistent with the mission of the EDC, which is to promote business growth, thereby enhancing the creation of new jobs in Rhode Island. In addition, the EDC Director is statutorily the chairman of the REDF Board of Trustees.

The Department of Administration ("DOA") provides a member of the REDF Board of Trustees. Of the three statutory members of the Board, the DOA is the only one where the Director may designate a staff member to serve. It should be noted that the DOA contains the State Energy Office, and other staff involved in energy matters any of whom could serve as designee.

The Administrator of the Division of Public Utilities ("Division") is a member of the REDF Board of Trustees. The Division is the state agency charged with ratepayer advocacy.

Specific Comments

Mr. Grasso asserts that the entire process should be dismissed because of a conflict of an interest on the part of some of the parties. This was not a committee, with a chairman exerting influence over its members. The parties were all stakeholders in a process of negotiation. The negotiation was facilitated by an individual competent in facilitation, as well as in the renewable energy field.

None of the parties were reticent to argue their views vehemently. All who participated in the entire process won some points and lost some points. Any stakeholder is free to litigate issues they feel strongly about or offer oral and written comments. We believe that the process was fair, and that there is no need to repeat this portion of the proceeding.

Mr. Grasso further asserts that the Commission should have approval authority over the expenditures made by the REDF, which will be administered by the EDC. Mr. Grasso argues that there is no one at the EDC with the requisite knowledge of the energy business to make sound decisions.

These assertions are fundamentally flawed on several levels.

First, it is clear in the statute that expenditures from this fund are to be made to advance the development of new renewable generation assets. This fits into the overall strategy of the statute to assure that a substantial portion of the generation mix from which Rhode Island customers are served is from renewable resources. The statute recognizes that there may be insufficient existing resources to meet the ultimate percentage goal. The statute creates the REDF to provide monies for incentives to develop additional resources. The EDC was chosen as the agency to administer the REDF because the goal of the fund fits the overall mission of the EDC. Skills required for the administration of this fund are substantially more based in the knowledge of project development than in energy matters. Among the professionals at the EDC are a mix of individuals with various skills and experiences that provide the project development background to accomplish this task.

That having been said, the EDC does not lack in people with very substantial knowledge of energy matters. EDC's representative during the negotiation process has been Mr. Andrew Dzykewicz, who has spent more than 35 years in the energy field, with senior level positions in energy project design, project management, financing and construction. In addition, Mr. Dzykewicz has served on numerous professional and trade organization committees dealing with energy policy. The Director of the EDC was a former investment banker for Lehman Bros. within its energy group. These backgrounds certainly fulfill the required skill sets to judge good energy development projects.

Mr. Grasso's entire premise is that there is insufficient oversight of the REDF without approval authority by the Commission. The statute creates a Board of Trustees to serve that precise purpose. A secondary premise is that the Board and the EDC lack the expertise to make sound decisions regarding the expenditure of monies from the Fund. The statutory membership includes the Director of the EDC, the Administrator of the Division of Public Utilities and Carriers, The Director of the Department of Administration or designee, a public member, and a second public member who is an advocate for renewable energy.

There will be ample opportunity for public comment on decisions to be made. The Board of Trustees will be obligated to hold public meetings. It will not be able to operate behind closed doors. A second opportunity for public comment is afforded at meetings of the EDC Board of Directors, charged with ratifying recommendations of the REDF Board of Trustees. All of these meetings are public as well.

The EDC further believes that the construction of the statute is clear that the legislative intent does not include Commission oversight of the REDF. We have previously submitted a memorandum on this issue and hereby incorporate it by reference. The statute does not include commission oversight of the fund among the six explicitly stated duties of the Commission in §39-26-6. In addition, precedent exists in the treatment of the Rhode Island Renewable Energy Fund. This is similar in principle to the REDF and is overseen by a Board. That board contains representation from the Commission, but the Commission does not approve its expenditures.

For these reasons, the EDC believes that Commission oversight of the REDF should not and cannot be included in these Regulations.

Finally, the RIEDC has reviewed the statute with respect to the question posed regarding the 2% of renewable energy from existing resources posed in our comments dated October 12, 2005. We now believe that the statute is clear in its requirement that each seller is limited to 2% from existing resources rather than an aggregate of 2%. We therefore rescind that previous comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig L. Eaton', written over a horizontal line.

Craig L. Eaton
Attorney for Rhode Island Economic Development Corp.

cc: A. Dzykewicz
M. McMahon, RIEDC
R. Reed, RIEDC
M. Adelman, Office of the Governor