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October 24, 2005

VIA MESSENGER

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Proposed Rules and Regulations Governing the
Implementation of a Renewable Energy Standard (the "Proposed Rules")

Dear Ms. Massaro:

On behalf of Nova Recovery Group, LLC, the following written comments are submitted on the Proposed Rules.

It is a fundamental principle of administrative law that regulations promulgated by an agency must be consistent with the statutory provisions enacted by the general assembly. An administrative agency does not have authority to invade the province of the legislature by promulgating regulations that contravene the governing statute. As such, an administrative agency's regulatory provisions cannot overrule or modify an act of the legislature. Nor may administrative regulations serve to amend the statute or to add to the statute something which is not there. See generally, Reback v. Rhode Island Board of Agents for Secondary Education, 560 A 2nd 357 (R.I. 1989); In Re: Advisory Opinion to the Governor, 732 A 2nd 55 (R.I. 1999); In Re: Advisory Opinion to the Governor, 627 A 2nd 1246 (R.I. 1993). The Proposed Rules violate this fundamental principle of administrative law in two ways.

First, the definition of "eligible biomass fuel" found at Section 3.6 of the Proposed Rules impermissibly modifies the statutory definition of that term found at R.I. Gen. Laws § 36-21-2 (6). That term as defined by the Rhode Island General Assembly is unambiguous and therefore cannot be the subject of administrative interpretation. In short, the Commission has no authority to modify or redefine this term beyond the explicit definitional language set forth in the statute itself.

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More significantly, Section 5.2 of the Proposed Rules constitutes an impermissible attempt to both expand and restrict the statutory terms "eligible biomass fuel" and "eligible renewable energy resource". See R.I. Gen. Laws §§ 20 or 39-26-2 (6) and (7). Simply put, Section 5.2 of the Proposed Rules constitutes and attempt to rewrite the statutory definition of these critical terms. This attempt to amend the statute is in direct conflict with the unambiguous statutory definition of these terms and must give way to the unambiguously expressed intent of the General Assembly. The General Assembly has directly spoken to the issue addressed by the proposed regulations and its intent is clear. That is the end of the matter and the Commission must give deference to the unambiguously expressed intent of the General Assembly.

Accordingly, Section 3.6 of the Proposed Rules must be amended to conform to the statutory definition and Section 5.2 of the Proposed Rules must be eliminated.

Sincerely yours,

HOLLAND & KNIGHT LLP

Gregory L. Benik, Esq.

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