STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: RULES AND REGULATIONS :
GOVERNING THE IMPLEMENTATION : DOCKET NO. 3659
OF A RENEWABLE ENERGY STANDARD :

REPORT ON FINAL RULES

I. Overview

On June 29, 2004, the General Assembly, with the Governor's signature, enacted a Renewable Energy Standard ("RES") for the State of Rhode Island. The legislation, codified as R.I. Gen. Laws § 39-26-1 et seq., sets forth the parameters of such a standard designed to diversify energy sources, reduce carbon dioxide, and encourage the development of renewable energy resources. Under the RES legislation, beginning in compliance year 2007, Obligated Entities, defined as those persons or entities selling electrical energy to end-users in Rhode Island, shall obtain escalating percentages "of the electricity they sell at retail to Rhode Island end-use customers, adjusted for electric line losses, from eligible renewable energy resources."

As part of this legislation, codified at R.I. Gen. Laws § 39-26-7, the General Assembly created a Renewable Energy Development Trust Fund ("REDF") to be administered by a Board of Trustees, with funds held by the Economic Development Corporation ("EDC"). The uses of the REDF will include "stimulating investment in renewable energy development", "issuing assurances and/or guarantees to support the acquisition of renewable energy certificates and/or the development of new renewable energy sources for Rhode Island", "establishing escrows, reserves, and/or acquiring insurance of the obligations of the" REDF, and paying the administrative costs incurred by EDC in an amount not to exceed 10% of the REDF's income funded by Alternative

Compliance Payments ("ACP") made by Obligated Entities who cannot meet their annual RES requirements through market purchases.

R.I. Gen. Laws § 39-26-6(a) requires the Public Utilities Commission ("Commission") to "[d]evelop and adopt regulations on or before December 31, 2005 for implementing a renewable energy standard…" within certain parameters. On January 14, 2005, the Commission initiated the instant docket, commencing with a Negotiated Rulemaking Process under Commission Rule of Practice and Procedure 1.29. In accordance with state law (R.I. Gen. Laws § 42-35-3.3), the Commission advised, in writing, the Governor's Office and EDC of the Rulemaking process. The Commission subsequently published a Notice in the Providence Journal inviting people and groups to join the Negotiated Rulemaking Committee ("Committee"). All who filed applications in a timely manner were allowed to join the Committee.[1] Commission Rule of Practice and Procedure 1.29(b)(7) indicates that the Commission will choose a facilitator who will not represent the Committee. In this case, the Committee was allowed to choose its own facilitator who was paid for in part by the Renewable Energy Fund administered by the State Energy Office and in part by the Commission.

On February 15, 2005, Commission staff conducted a scheduling conference to discuss the process and time frame. The Committee was directed to provide the Commission with monthly status reports and to file a Committee Report no later than

[1] The members of the Negotiated Rulemaking Committee were Conservation Services Group, Inc., Cape Wind Associates, LLC, Rhode Island Division of Public Utilities and Carriers, FPLE Rhode Island Energy, LP and FPL Energy Power Marketing, Inc., Narragansett Electric Company, People's Power & Light on behalf of itself and the Environment Council of Rhode Island, Public Service of New Hampshire, Ridgewood Power, the Rhode Island Attorney General's Office, Rhode Island Economic Development Corporation, Rhode Island State Energy Office, SilentSherpa ECPS, Spin Blade Energy, The Energy Council of Rhode Island, and UPC Wind Management, LLC. The Commission's representative was Douglas Hartley, Commission Director of Energy Policy. The Facilitator chosen by the Committee was Jonathan Raab of Raab Associates. An occasional participant was Albert Benson from the New England Regional Office of the United States Department of Energy.

August 15, 2005. The Committee met regularly and filed its Committee Report in a timely manner. The Committee Report included proposed RES Rules which were reached by consensus along with all alternative viewpoints where consensus could not be reached by the Committee.

On August 31, 2005, pursuant to a published notice, the Commission conducted a Technical Record Session to review the Committee Report and to allow Committee members an opportunity to discuss their alternative viewpoints where consensus could not be reached.[2]

On September 22, 2005, at a duly noticed Open Meeting, the Commission issued proposed Rules and Regulations Governing the Implementation of a Renewable Energy Standard ("Rules") in accordance with R.I. Gen. Laws § 42-35-3. The Commission published a Notice of Proposed Rulemaking in the Providence Journal on that same day. Written comments were due on or before October 24, 2005. A public comment hearing was Noticed on September 12, 2005 and conducted on October 22, 2005.

On October 12, 2005, the Commission heard from the following people: James M. Grasso, SilentSherpa; Sakis Asteriadis, administrator of NEPOOL's GIS System; Chris Wilhite, Clean Water Action; Nubia Perez, Conservation Services Group; Matt Auten, RIPIRG; Fred Unger, Independent Verifier of Renewable Energy Generation; William Short, Ridgewood Power Management; Erich Stephens, People's Power & Light; Thomas Bessette, Constellation New Energy; Deborah Donovan, Union of Concerned Scientists; Dennis Duffy, Energy Management, Inc.; John Farley, TEC-RI; Chris Burnett, Spinblade Energy; and Bob Grace, Consultant to State Energy Office.[3]

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[2] Tr. 8/31/05.
[3] Tr. 10/12/05.

The Commission received written comments from the following entities: Union of Concerned Scientists' comments on proposed RES rules (10/11/05); Narragansett Electric Co.'s comments on proposed RES rules (10/11/05); RI Economic Development Corp.'s comments on proposed RES rules (10/12/05); Conservation Services Group comments on proposed RES rules (10/12/05); SilentSherpa ECPs's comments on proposed RES rules (10/20/05); Constellation NewEnergy's comments on proposed RES rules (10/20/05); RI State Energy Office's comments on proposed RES rules (10/21/05); Ridgewood Providence Power Partners LP's comments on proposed RES rules (10/24/05); Narragansett Electric Co.'s supplemental comments on proposed RES rules (10/24/05); RI Economic Development Corp.'s reply comments on proposed RES rules (10/24/05); Cape Wind, LLC's comments on proposed RES rules (10/24/05); Nova Recovery Group, LLC's comments on proposed RES rules (10/24/05); Clean Water Action's comments on proposed RES rules (10/24/05); Conservation Law Foundation's comments on proposed RES rules (10/24/05); Conservation Services Group reply comments out of time to Nova Recovery Group (11/15/05)

II. Administrative Procedures Act Requirements

The Administrative Procedures Act (“APA”), R.I. Gen. Laws § 42-35-1 et seq., governs the Rulemaking Process. The APA requires at least 30 days notice prior to the adoption of final rules and requires the Commission to provide opportunity for comments to be made during that 30-day period. The Commission must then file final rules with the Secretary of State’s office within 30 days of finalizing the rules. The Rules become effective 20 days after filing with the Secretary of State, or on such date as indicated in the Rules.

In this case, the Commission has provided two notices regarding the RES Rules. The Commission has allowed more than one opportunity for interested persons to comment, both verbally and in writing.

III. Mr. Grasso's Allegations of Invalid Process:

Mr. James Grasso made several complaints to the Commission regarding the validity of the process provided in the instant docket. Mr. Grasso stated that Dr. Raab had a conflict of interest because he has done consulting work for two of the members of the Negotiated Rulemaking Committee, that he had a conflict of interest because of the source of funds used to pay him, and that he exhibited biased treatment of two members of the Negotiated Rulemaking Committee because he allowed them to make presentations during the meetings.[4] Mr. Grasso made similar comments at the public comment hearing on October 12, 2005.[5] He further criticized the idea that a facilitator was even necessary for a group of 15 people, he criticized the Commission's handling of the process because they did not accept his modifications into the proposed rules and he disagreed with the representations in a staff memorandum.[6]

Due process means notice and an opportunity to be heard.[7] Interested persons have had the opportunity to be involved in this rulemaking process since February 2005. The Negotiated Rulemaking Committee has even had members from out of state. Mr. Grasso was admitted to the Negotiated Rulemaking Committee. However he made the choice not to continue his participation at some point in time.[8]

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[4] See Comments of SilentSherpa ECPS dated October 17, 2005.
[5] Tr. 10/12/05, pp. 9-13.
[6] Id. at 27-29.
[7] See BLACK'S LAW DICTIONARY 500 (6th ed. 1990).
[8] Tr. 10/12/05, pp. 45-46.

Jonathan Raab made no misrepresentations as to his client list which is posted on his company's website. Mr. Grasso raised his concerns at a Committee meeting. Other than Mr. Grasso, the Committee members were comfortable with Dr. Raab's facilitation. All other Committee members believed that Dr. Raab provided unbiased facilitation. This belief was held even by those Committee members who presented alternative viewpoints in the Committee Report or at the Technical Session and/or Public Hearing.[9]

Finally, the Committee Report included alternative viewpoints in every place where the Committee did not come to consensus. Simply because alternatives were discussed at a Negotiated Rulemaking Committee meeting does not make the process flawed.

After proposal of the Rules, every interested person had the opportunity to be heard. Mr. Grasso's positions on portions of the Rules were included in the Committee Report as an alternative viewpoint, his position was made known at the Public Hearing, and he provided written comments regarding his position. Aside from his assertions that the facilitator chosen by the rest of the Negotiated Rulemaking Committee created a flawed process, by his own comments, he had only two concerns with the proposed rules: (1) oversight of the administration of the Renewable Energy Development Fund and (2) the inclusion of long-term contracts, something also raised by others who commented.[10] However, despite the fact that he only has two concerns with the proposed Rules and the fact that he has had three opportunities to be heard on the record (and in fact was heard three times), he believes the Committee Report and Commission Rules should be thrown out and the process started again regardless of any delays such a decision would cause.

[9] See e.g., Comments of TEC-RI, Ridgewood Power, and Cape Wind Associates, LLC.
[10] Tr. 10/12/05, pp. 46-47.

His arguments on this point appear to put form over substance, even if one were to believe there may have been a conflict of interest on behalf of the facilitator. The Commission does not hold such a belief and finds that the process was not flawed because of the reasons cited by Mr. Grasso, that all interested persons had ample notice and opportunity to be heard both within the context of Committee meetings and after proposal of the Rules, and that there is no reason to start the process anew.

IV. Comments regarding the Proposed Rules:

There are only a few areas in the proposed Rules upon which comments were received, each of which is listed below and discussed in more detail:

(1) Definition 3.6 – Eligible Biomass Fuel
(2) Listing incremental cost of RES compliance on the NGRID bill
(3) Aggregation Verifier – Option A versus Option B
(4) Contract procurement by NGRID
(5) Administration of the Renewable Energy Development Fund
(6) Language in 3.22(v)-(vi) – defining New Renewable Energy Resources
(7) Language in 6.1 regarding Certification to address an oversight
(8) Lack of language requiring measurable reductions in Greenhouse Gas
(9) Proposed additional language regarding PUC and DEM in the future

(1) With regard to the definition of Eligible Biomass Fuel, the proposed Rules contained language in addition to that which is contained in the legislation. Nova Recovery Group argued that adding the language exceeds the Commission's authority because it changes a clear definition. The Commission rejects this argument on the basis that at the Technical Record Session, in response to a Commission inquiry, the members of the Committee explained that the additional language is designed to clarify the phrase, "other clean wood," a vague term, not a term of art, and to create consistency across jurisdictions. Additionally, with regard to landfill methane or biogas, according to the Committee, the additional language was necessary because there is not enough existing

information to track the gas otherwise. In the final Rules, therefore, the Commission retained the language referring to landfill methane or biogas, "provided that such gas is collected and conveyed directly to the Generation Unit without the use of facilities used as common carriers of natural gas" because there is currently no way to determine if the fuel is eligible biomass fuel once it enters the common carrier's pipes.

(2) With regard to the Commission's original proposal in the Rules to require Narragansett Electric Company d/b/a National Grid to list the incremental cost of RES compliance on the National Grid bill, none of those commenting supported this proposal. However five of those offering comment from various backgrounds did oppose it. Therefore, the Commission has struck that provision from the final Rules. However, the Commission is requiring National Grid to include in a bill insert to customers, at least annually beginning in 2007, explaining the RES along with the costs and benefits to customers. National Grid should provide the Commission and members of the Committee with a courtesy copy prior to its insertion in the bills.

(3) With regard to the Commission's initial determination in the proposed Rules to choose what was termed "Option B" in the Committee Report regarding an aggregation verifier, the comments following the issuance of the proposed Rules were the same as those filed previously. Therefore, the Commission will maintain in the final Rules its initial determination to have the generator input its own information into the GIS with an independent verifier reviewing the information afterwards. To include two options, the one chosen and one where the independent verifier would input the information, something which is currently not allowed under NEPOOL rules, would be confusing and could lead to interpretation problems in the future. However, the Commission agrees

with several of those who commented that the option which would have the verifiers entering the information would be preferable. Therefore, the Commission directed its Director of Energy Policy to send a letter to NEPOOL requesting a rule change to allow such a process. The Commission did not accept the comment which requested a change to require that only the electric distribution company be allowed to act as a verifier. There is currently a competitive market for qualified verifiers and they should be allowed to bid for this responsibility.

(4) With regard to the issue of contract procurement by National Grid, in the proposed Rules, the Commission required National Grid's annual procurement plan to include long term contracts as part of its portfolio. Those in favor of such a proposal were those seeking to develop renewable energy supply. Those opposed included National Grid and those who are involved in the competitive supply business. However, even some of those opposed to the long term contract provision conceded that any prudent portfolio would include long and short term commitments.

The General Assembly has set forth a policy to encourage investment in renewable energy supply. According to developers, commitments to purchase the energy are important for the financing of renewable energy supply development. The Commission agrees with the Post-Hearing Comments of Cape Wind, LLC, that the legislature anticipated long term RES commitments from obligated entities providing standard offer service, last resort service, and their successor services. Furthermore, the General Assembly set forth the policy that the goals of RES are to stabilize long-term energy prices and to create Rhode Island employment in the renewable energy sector. These are not short-term goals. Finally, the Commission finds that the policy statement

of the Massachusetts Renewable Energy Trust, cited by Cape Wind, LLC, is persuasive, particularly the concern that the absence of long term contracts hinders the development of renewable energy supplies.

The General Assembly expects the Commission to implement the policy objectives of the legislature in a way that will encourage their development. The Commission must learn from other states which have already implemented Renewable Portfolio Standards. Massachusetts currently has a ratepayer liability as a result of a shortage of renewable certificates. While the Commission cannot shield customers from increased billing costs during the remainder of the Standard Offer Service period, it should not stand in the way of any reasonable measure which may encourage development of renewable energy supplies, and in fact, it should be encouraging the development of such supplies in order to further the State's policies while protecting ratepayers, to the extent it can, from higher costs after 2009.

While such a move by the Commission may arguably hinder the ability of other generators to fund renewable energy development by arguably making them compete against the electric distribution company, the Commission finds persuasive the comments which argue that there is little chance of additional stranded costs accruing as a result of this decision. The Commission reminds all readers that there is nothing in the RES Rules that would prohibit the long term contracts from containing assignment clauses. Finally, the Commission has not indicated a fixed percentage of the procurement that must be from long term contracts and further, did not define "long term contract." Like the procedures for Last Resort Service procurement, these will be matters addressed during the RES procurement proceeding.

(5) With regard to the administration of the REDF, the Commission will maintain its original position that the General Assembly clearly indicated its preference that the REDF be administered by the EDC. The Commission understands that the money funding the REDF will be ratepayer dollars. However, we compare the REDF to the Renewable Energy Fund administered by the State Energy Office in accordance with R.I. Gen. Laws § 39-2-1.2(b)-(c). Although the Demand Side Management Fund and the Renewable Energy Fund are both funded with ratepayer dollars from a non-bypassable charge, unlike the Demand Side Management Fund, which is administered by National Grid, the Renewable Energy Fund is administered by another state agency. The Commission does not oversee the disbursement of funds to the State Energy Office by the General Assembly during the budget process nor does it oversee the expenditures approved by the State Energy Office.

We take issue with SilentSherpa's comments that there is no one who will be on the Board of Trustees of the REDF who will have the qualifications to manage the REDF in accordance with the legislation and consistent with the Commission's Rules. The Board of Trustees will be composed of people from varying areas of expertise, including members of the public. Furthermore, during the Technical Session on August 31, 2005, EDC's representative stated that the EDC would be promulgating its own rules and that the Board of Trustees would make its decisions in an open process.

(6) With regard to the language in section 3.22(v)-(vi) of the proposed Rules defining New Renewable Energy Resources, these two provisions address New Renewable Energy Resources that result from improvements to Existing Renewable Energy Resources. There were two issues: first, that the incremental production resulting from

upgrades be tied to upgrades made and second, to what extent the incremental increase over 100% would be considered a New Renewable Energy Resource once the production exceeded 10% of the Historical Generation Baseline. The Commission accepts the proposed changes of the State Energy Office, with the exception of the words "over 110%" because the proposed language prevents "gaming" of the calculation of incremental production resulting from upgrades to Existing Renewable Energy Resources, while also maintaining the Commission's original interpretation of the legislation.

(7) With regard to new language included in section 6.1 of the proposed Rules, the Commission has accepted the State Energy Office's proposed language which addresses the need for the Commission to differentiate between Existing and New Renewable Energy Resources in its Certification process. The State Energy Office had allowed the other members of the Negotiated Rulemaking Committee to review and comment on its proposed language before submitting it to the Commission.

(8) With regard to a concern by at least one environmental group that there was a lack of language in the proposed Rules to require measurable reductions in Greenhouse Gas levels, the Commission notes that there at the time of the passage of these Rules, a Regional Greenhouse Gas Initiative group which will be addressing this matter squarely included Rhode Island.[11] Additionally, there is no requirement in the legislation requiring such reductions.

[11] Since the time of the Commission's promulgation of these Rules, Rhode Island and Massachusetts have expressed concern regarding costs associate with the Regional Greenhouse Gas Initiative (RGGI), and to date, neither has signed on to a Memorandum of Understanding signed by the governors of each participating state setting forth guidelines for the creation of Model Rules in 2006 for a regional cap and trade program to initially cover carbon dioxide reductions from power plant emissions in the region.

(9) Finally, the Committee requested that the Commission include in its Report a statement that if a cap and trade or similar air emissions program is newly created in which tradable emission rights are created and (are or could be) allocated to eligible renewable energy resources, the Commission and the Rhode Island Department of Environmental Management should work together to ensure that the combined approaches and regulations of the Department of Environmental Management, the Commission and any regional program will produce the desired results consistent with promulgated Rhode Island legislation and underlying policy. It is always a good policy for state agencies to cooperate in order to ensure consistency and to maximize benefits to Rhode Islanders

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EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 1, 2006 PURSUANT TO AN OPEN MEETING DECISION ON NOVEMBER 30, 2005. FINAL RULES FILED WITH THE SECRETARY OF STATE'S OFFICE ON DECEMBER 8, 2005. REPORT ISSUED ON DECEMBER 28, 2005.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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*Robert B. Holbrook, Commissioner

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Mary E. Bray, Commissioner

*Commissioner Holbrook concurs with the decision, but was unavailable for signature.