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February 20, 2007

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

Re: National Grid Renewable Energy Standard Procurement Plan
Docket No. 3765

Dear Luly:

Enclosed are ten copies of my surrebuttal testimony on behalf of Cape Wind Associates, LLC in Docket 3765. Copies are being sent to the service list in both electronic and hard copy format. Thank you for your attention to this matter.

Very truly yours,

Dennis J. Duffy

Dennis J. Duffy
VP Regulatory Affairs

cc: Service List

SURREBUTTAL TESTIMONY

OF

DENNIS J. DUFFY

FEBRUARY 20, 2007

Dennis J. Duffy
Energy Management, Inc.
75 Arlington Street, Suite 704
Boston, MA 02116
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I. Introduction

Q: Please state your name and business address.

A: My name is Dennis J. Duffy, 75 Arlington Street, Suite 704, Boston, Massachusetts 02116.

Q: What is the purpose of your testimony?

A: I previously submitted Direct Testimony in this proceeding on January 17, 2007. I now offer several comments to points raised in Narragansett's Rebuttal Testimony regarding the Renewable Energy Standard Procurement Plan proposed by National Grid.

II. Long-Term Contracts

Q: Do you agree with the testimony of Mr. Gerwatowski's opposing long-term renewable energy procurement?

A: No, I do not. As an initial matter, Gerwatowski primary arguments against long-term renewable procurement have already been considered and rejected by the Commission in its prior rulemaking, as referenced in my direct testimony. The Commission's Order in Docket No. 3659 adopting the Rules and Regulations Governing the Implementation of a Renewable Energy Standard (the "Regulations"), required at Section 9.3 that an Obligated Distribution Company's procurement procedures "includ[e] long-term contracts which shall be made a part of the Obligated Distribution Company's portfolio," with the Commission expressly rejecting Narragansett's arguments against the long-term renewable contracts, as follows:

> 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. [Report on Final Rules, at 9-10, emphasis added.]

Q: Do you concur with Mr. Gerwatowski that contracts for a term that extends beyond the period of predictable prices would be imprudent and inadvisable?

A: Absolutely not. National Grid's position that "anything longer than five years exceeds the threshold of speculation that a prudent purchasing plan should not cross" does not withstand scrutiny. It is effectively an assertion that it is unwise to hedge any portion of an economic exposure that cannot be quantified with precision, and thus involves "speculation" as to future pricing. The position would require a "no action" response to any unquantifiable future price risk, a proposition that has not, to our knowledge, been incorporated into any regulatory prudency standard. To the contrary, the more questionable practice from a prudency standpoint would be to take an entirely passive "no action" approach in those situations where future costs are the most uncertain.

Q: Do other electric distribution companies in the region concur with Narragansett's opposition to the long-term procurement of renewable resources?

A: No, they do not. For example, NSTAR has taken the contrary view that electric utilities should now take a more pro-active role in procuring resources for standard offer service in a manner that better serves the public interest. In a 2006 presentation entitled Ten

Years Later: Rethinking the Role of Distribution Utilities, NSTAR's Senior Vice President explained that the notion that utilities should "just deliver the power and stay out of the way" is no longer a tenable public policy position. Indeed, he went on to explain that "active utility involvement can help address needs," including "the need of the market for long-term dependable commitments to new, non-gas, and renewable resources." Id at 16. He further stated that distribution utilities should "facilitate resource development that benefits customers," specifically including "long-term commitments to renewable resources." Id at 16. It is also noteworthy that the jurisdictions with the most successful renewable project development, including Texas and California, have featured the long-term (i.e., 20 years) procurement of renewable resources by utilities.

Q: Do you concur with Mr. Gerwatowski's assertion that "as commitments are made to pay prices that are above the wholesale market price for electricity for the output, in the form certificates or renewable contracts, the rates for customers will rise?"

A: No, I do not. National Grid's position does not account for the fact that the addition of renewable generation resources tends to displace resources with higher marginal costs (and thus higher energy bids) from the economic dispatch of the NEPOOL system, thereby leading to lower energy clearing prices that apply across the entire pool. Indeed, Mr. Gerwatowski later confirms this price-suppression effect of renewable projects: "One of the key benefits of developing renewable projects is to reduce wholesale marginal costs in the region, from which regional benefits flow." Gerwatowski at 33. ISO-New England's 2006 regional System Plan ("RSP06") similarly confirms the significant price-suppression effect of renewable resources, as follows:

> Currently, renewables, coal, and nuclear power appear to be cost-effective options for new generation. … Because the lowest-price resources are selected first for commitment and dispatch, adding an inexpensive resource necessarily displaces the otherwise marginal units, lowering electric energy prices throughout the region. This effect can be significant.

RSP06 at 111. To illustrate the potential effect on the wholesale electric energy market of moving the resource mix away from gas and oil-fired resources, the ISO analyzed the savings cost impact of adding 1,000 MW of generation with low marginal costs and concluded that there would be a reduction in annual consumer costs of $600 million. RSP06 at 113.

Q: Is this effect of lowering regional energy prices relevant to "least cost" procurement practices for renewable resources?

A: Yes, it is. The critical point is that the price of a REC is not the sole indicator of least cost procurement. Rather, a sound procurement strategy should look at all impacts of renewable energy purchases on the overall cost of procurement under various economic scenarios. For example, the greatest benefits of energy price suppression will tend to come from the bundled purchase of energy RECs produced on-peak, when higher costs marginal units will be displaced from dispatch. The savings will also tend to be greater when bundled energy and RECs are purchased from units located in areas with adequate transmission capacity, rather than those located behind constrained interfaces. Each of these factors should be considered when attempting to identify overall "least cost" procurement options for renewable resources.

Q: Does the Narragansett testimony explain how the RPS development objectives will be met in the absence of long-term contracts?

A: No, it does not. While National Grid does recognize the legislative policy "of facilitating the financing and construction of large-scale renewable project" (Gerwatowski at 30,) it does not explain how such goals could be met without long-term contracts corresponding to the terms of project financing, which tend to be a period of fifteen years or more. To the contrary, National Grid recognizes the uncertainty of fluctuating RPS revenues as "one of the reasons why many banks or other investors financing significant renewables projects are reluctant to provide a loan without a contract locked up for the length of the debt service." Gerwatowski at 22. Thus, as the Commission already determined, the goals of the RPS are unlikely to be satisfied without provisions for long-term procurement.

Q: Do you agree with National Grid's suggestion that there are sufficient new renewable projects under construction to meet the stated goals of the RPS?

A: No, I do not. While Mr. Hager cites to proposed renewable generation that would be eligible for the Massachusetts RPS (Hager at 8), attachment MJH-11 indicates that new projects are "not in commercial operation," such that they are still uncertain and not an indication that short-term markets can satisfy the policy goals of the RPS. I would also refer to ISO-New England's RSP06, which at Section 7.1 indicates significant and continuing deficiencies in meeting the aggregate RPSs requirements of the New England states:

> Compared to the requirements for 2010 … the renewable projects in the queue would be deficient in meeting the RPS requirements by about 700 GWH (700,000 MWH). In 2015, the electricity generated by these

> projects would be deficient by about 400,800 GWH (4,800,000 MWH) in meeting that years' RPS requirements for the four states with RPs. … Onshore wind projects totaling about 2,900 MW with a 25% capacity factor would be needed." Id at 74.

Q: Do you concur with National Grid that long-term procurement is "incompatible" with deregulation?

A: No. As an initial matter, the Legislature has provided for both deregulation of retail markets and long-term renewable procurement as part of a deliberate and coherent plan. Further, other markets, including Texas and California, have both robust retail competition and the successful development of renewable projects through long-term procurement.

III. Evaluation Criteria

Q: Do you support the revisions to the RFP evaluation criteria proposed by National Grid?

A: Yes, I do. I would, however, make the criteria of satisfying the goals of the RPS, as shown at page 7 of this revised RFP, a separate item and not a subsidiary to the locational criteria.

Q: Do you have any other comments on the proposed procurement process?

A: Yes. The RFP documents should indicate that pricing proposals submitted to National Grid will be distributed to Participating Purchases "only upon the prior written consent of the Respondent." There may be Participating Purchasers with commercial interests adverse to an RFP Respondent, such that a general distribution of pricing proposals could adversely affect the Respondent's market position. Restricting the non-consensual

release of pricing proposals would not in any way impair the effectiveness National Grid's procurement processes.

IV. Commercial Terms

Q: Do you have any comments as to the revised commercial terms of the Proposed RFP and Purchase Agreement?

A: Yes, I do. As a general matter, National Grid's revisions address most of our prior concerns. Since the production of many of the intended projects will be intermittent in nature, the option at revised RFP Section 2-2 of selling the output of a specific facility on a "unit-contingent," basis is a very important improvement.

Q: Could you please comment regarding your previously referenced concerns over the proposed remedies for default (Section 6.2)?

A: Sections 6.2 (c) and (d) provide conflicting measures of damages for breach. Section 6.2 (c) calculates damages for Seller's default as the amount by which the Alternative Compliance Payment exceeds the contract price for the duration of the Agreement. In contrast, Section 6.2 (d) calculates damages for Buyer's default as the amount by which the contract price exceeds the market value of certificates for the duration of the Agreement (i.e., the amount remaining after Seller's attempts to "cover" the default in the market.) The determination of Buyer's and Seller's damages should be reciprocal, and we believe that the market "cover" quantification of Section 6.2 (d) is more reasonable and consistent with established measures of damages under contract law.

Q: Please react to the Company's reply regarding the security provisions of Section 6.3.

A: When I previously referenced concerns over the security required for "development stage projects," I intended to reference new technologies that require public policy incentives, rather than individual projects that are still in the early phases of the permitting process. I thus concur with Mr. Gerwatowski's testimony that "any bidding process for long-term commitment should require that the project submitting a bid be either fully permitted or close very close to being fully permitted." Gerwatowski rebuttal at 14. The concern remains, however, that the proposed security revisions are excessive and inconsistent with the objective of incentivizing new investment, even for projects that are fully permitted. The problem is that the proposed requirement of cash-equivalent security in the amount of the maximum potential damages for breech is unreasonably burdensome when applied in the context of the longer-term arrangements and, to our knowledge, far exceeds the provisions associated with the Companies' prior long-term procurement contracts.

The proposed security provisions would also be largely redundant to the security requirements imposed on all new renewable projects that bid into ISO-New England's forward capacity auction ("FCA"). Indeed, the Settlement Agreement regarding the FCA, as recently been approved by the FERC, includes stringent eligibility criteria for new projects participating in the FCA, including showings of site control, interconnection study, financial assurances, and milestone criteria, which "shall be included in any critical path schedule as a means of demonstrating that the Project will come on-line by the delivery date for the relevant Commitment Period." FCA Settlement at Section 4.2.B.

Section II.G. of the Settlement Agreement ("Financial Assurance") further provides for a graduated series of deposits to be made by new project participating in the FCA, including a pre-bid qualification deposit of $2/kw, with further deposit of $7.50/kw upon selection in the FCA, and additional $7.50/kw deposits payable upon the first and second anniversaries of the FCA. Thus, any new renewable project that has qualified for the FCA would have already posted sufficient security to provide reasonable assurance of coming online as expected.

Q: Does that complete your testimony?

A: Yes, it does.