

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

DOCKET NO. 3931

**REPLY BY THE RI ENERGY EFFICIENCY
AND RESOURCES MANAGEMENT COUNCIL,
CONSERVATION LAW FOUNDATION,
ENVIRONMENT NORTHEAST, AND
NATIONAL GRID**

TO:

**SUPPLEMENTAL COMMENTS OF THE RHODE ISLAND OFFICE OF
ENERGY RESOURCES ON THE ENERGY EFFICIENCY RESOURCE
MANAGEMENT COUNCIL’S PROPOSED STANDARDS FOR ENERGY
EFFICIENCY, CONSERVATION MANAGEMENT AND SYSTEM
RELIABILITY**

In its initial comments submitted on April 23, 2008, the Rhode Island Office of Energy Resources (“OER”) concluded with the statement “The Commission should not infer from OER’s decision not to specifically address a particular point or language of EERMC’s proposal in these comments that OER necessarily supports such point or language.”

While the comments filed by OER (Exhibit No. 5) on April 23rd were extensive and its attorney and its representative both raised and discussed issues in the Hearing on May 14th, the OER representative and OER Counsel present at the Hearing could not state whether OER’s concluding statement meant OER actually opposed any other provisions of the proposed Standards. Therefore, the Commission suggested to OER that if there were any other provisions they opposed in the Standards that they file any supplemental comments in that regard by May 19th. That is, the PUC asked OER if there was anything else they didn’t address that they did not support. The PUC did not ask for just general additional clarifying language, which would be akin to granting OER four additional weeks to supply comments on the proposed Standards, beyond the initial comment filing deadline of April 23rd.

The Energy Efficiency Resource Management Council (“EERMC” or “Council”), Conservation Law Foundation, Environment Northeast, and National Grid are therefore surprised to find that in its May 19th filing OER has raised both new clarifying arguments regarding issues previously addressed in its April 23rd comments and entirely new issues and subjects that it does not appear to oppose. We believe that such supplemental comments violate the Commission’s record request and should not be considered.

Over and above the strong procedural objections of the Council, Conservation Law Foundation, Environment Northeast, and National Grid, the group offers strong substantive objections to the points raised in OER's Supplemental Filing, in case the Commission should find them necessary or helpful in any way.

The EERMC, National Grid, TEC-RI, the URI Partnership for Energy, and OER with the technical assistance of the Vermont Energy Investment Corporation (consultant to the Council) made a substantial effort to resolve issues through direct communication and negotiations that started in the fall of 2007 and culminated in the filing of the proposed Standards on February 29, 2008. Leading up to the February 29th filing, there were numerous, lengthy discussions and negotiations on the substance of Standards through multiple collaborative working sessions.

Over and above the standing monthly meeting of the Council on the second Thursday of every month, a special three-hour plus meeting of the Council with OER, TEC-RI, and National Grid was convened on February 28th to negotiate remaining differences and finalize the proposed Standards. While the EERMC, Conservation Law Foundation, Environment Northeast, and National Grid do not dispute the right of the OER to raise additional issues generally as it did in its April 23rd Comments and during the May 14th Hearing, it does concern the group that issues that were resolved through direct communication and negotiation and the PUC process have now been brought anew before the Commission at the 11th hour on May 19th with the suggestion of a need for formal resolution.

OER's suggestion in this regard would result in an added and unnecessary litigious process for issues already resolved through lengthy and time consuming discussions leading up to the February 29th filing, the April 23rd Comments, the May 7th Reply Comments and the productive PUC Hearing on May 14th. Both as a matter of procedure and practicality, May 19th is not an appropriate time to open or re-open issues in light of the fact that the Final Standards are needed June 1st as specified by RIGL 39-1-27.7 to guide the Council's July 15th Opportunity Report, the Utility's Procurement Plan for a vote by the Council by August 15th, and the filing of the Procurement Plans by September 1st with the PUC as required by the RIGL 39-1-27.7.

At the April 8, 2008 EERMC meeting, the Commissioner of the OER introduced Ms. Janet Keller as a new employee of OER with specific responsibilities to support the work of the Council. Ms. Keller appeared at the Hearing on May 14th, and participated in the three-hour EERMC Collaborative Subcommittee meeting (including OER, TEC-RI, and the Division) following the Hearing to discuss the drafting of the Procurement and Program plans. We are optimistic that Ms. Keller's involvement will enable the OER to be engaged on an ongoing basis in the discussions that will be critical in filling in the details of the Procurement and Program Plans on September 1st and November 1st respectfully. This engagement by OER will be very important to continuing the spirit of collaboration of the current DSM process and ensuring a mutual commitment to realizing the cost saving potential of Least Cost Procurement for RI ratepayers.

I. The Standards Propose A Concrete Timeline and Process for the TRC Test Inputs to be Determined.

It is factually incorrect for the OER to state the Standards propose to leave the inputs to Rhode Island's TRC test to be determined "at some unspecified future time." To the contrary, the Standards require the TRC test be defined in a three-step process that includes required action on August 15th, September 1st, and November 1st, as well as informal interactions between National Grid and the Council and other interested parties leading up to August 15th.

The OER supplemental comments appear to propose a wholly unnecessary, additional formal litigation to define the inputs for use in the Total Resource Cost ("TRC") test,¹ whereas the parties have proposed ongoing discussion, negotiation, and a proposal by National Grid in its filings. The Standards propose a system that allows for Commission approval of the final form of the TRC as part of the following three-step process: (1) The Procurement Plan that will be discussed and negotiated with the Council and other parties this summer will contain the TRC proposal and will be formally submitted for an EERMC vote by August 15, 2008;² (2) the Procurement Plan, including the TRC test, will be filed at the PUC September 1st for review by the Commission;³ and (3) the PUC will issue a ruling on the proposed Procurement Plan, including the TRC test, by November 1st.⁴

This three-step process provides direct encouragement for the parties to come to an agreement about any unresolved details regarding inputs to the TRC test prior to the Council's vote on August 15th and the Company's submission on September 1st. In contrast, the OER supplemental comments seem to recommend increased formal litigation, but then also acknowledge in the third paragraph of page 3 that flexibility on this level of detail is advantageous.

The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid believe the draft Standards provide a sound framework, clear guidelines, and workable process for how the TRC should be developed and proposed. In addition, were a separate docket to define the TRC were to be created, we believe it would be impossible for the Council to complete its Opportunity Report by July 15 as required by RIGL 39-1-27.7. One key objective of the Opportunity Report is to develop an estimate of the economic energy efficiency potential in Rhode Island and consequently without the Opportunity Report, it would be impossible for the Company to meet the statutory deadline of September 1 for filing the Procurement Plan. We believe the OER proposal, which

¹ The OER cites the California Standard Practice Manual definition of the TRC Test. The Proposed Standards say there will be a TRC test but specifically does not adopt the definition of the California Manual; instead it specifies that the components will be defined through ongoing discussion and three-step process. Implicit in this therefore is not adopting the California definition word for word but ensuring that Rhode Island has the TRC test it needs to facilitate success of Least Cost Procurement in the state.

² Standards Section 1.4, E

³ Standards Section 1.1 and 1.2, A, ii.

⁴ RIGL Section 39-1-27.7(c)(5) "The commission shall issue an order with regard to the plan from the electrical distribution company not greater than sixty (60) days after it is filed with the commission."

would add unnecessary, formal litigation over details that can be resolved through negotiation and the three-step process proposed by the Standards should be rejected on the substantive grounds highlighted above. It is important to note it should also be rejected on procedural grounds as OER already addressed, with support, the TRC test provisions of the Standards in its April 23rd filing.⁵

In addition, the OER supplemental comments raise other issues regarding the contents of the TRC Test. They also should *all* be rejected on procedural grounds as the OER Comments of April 23rd previously addressed the TRC test with support.⁶

On substantive grounds, page 2 of the supplemental comments question the inclusion of non-energy benefits. Again, the proposed Standards serve as a guideline which provides for a three-step process for the parties to discuss the contents of the TRC and, accordingly, this provision should be retained and the process should be respected.

On Page 3, under “Other Comments,” item 2, the change proposed by OER’s supplemental comments goes against the negotiated agreement the parties came to on the issue of greenhouse gases in the Standards. Ironically, OER’s proposal could actually complicate the process of defining the details of TRC inputs during the three-step process. For context, this negotiated language helped make it possible for the parties to agree on the three-step process for defining the TRC. Thus, on substantive grounds the OER proposal should not be adopted.

The second paragraph on page 5 appears to be based on a misunderstanding of the purpose of a “sensitivity” run regarding greenhouse gases. This section was another part of the negotiated agreement regarding the TRC in the Standards and crucial to many parties involved. It allows for a sensitivity run with some selected higher level for greenhouse gas emissions, not as part of the TRC, but as a way to gain an understanding of the potential effect on measure, program and portfolio cost-effectiveness a much higher greenhouse gas cost might have. This language is included in part to assess the scale of possible effects future regulation might have on Rhode Island customers to facilitate planning and prepare Rhode Island for a nimble response should such regulation arrive. All parts of this section are inter-related and as a whole were essential to getting the broad support of the parties involved. As such, the OER proposal should be rejected.

II. The Standards Appropriately Address Issues of Equity and Program Design.

The OER supplemental comments raise a number of issues related to the principle of equity which should be rejected for several reasons. First, on procedural grounds the OER April 23rd comments already addressed such issues⁷ and as such should be rejected.

Second, as both OER’s April 23rd comments and the Joint Reply Comments on May 7th discuss, there is a strong recognition that prior practices should be continued, where they

⁵ OER April 23rd Comments, page 2.

⁶ OER April 23rd Comments, page 2.

⁷ OER April 23rd Comments, pages 2-4.

are not countermanded by the recent energy legislation. The principle of equity in program design is an example of such a prior practice where a criterion has been used in program design for many years, see for example, page 1 of the Settlement of the Parties in Docket 3892. Therefore, the OER supplemental comments questioning the statement “on behalf of” in the first paragraph of page 4 and subsequent comments discussing the many principles of program design and suggesting that Commission action is necessary to prioritize from among these principles are both inappropriate and unnecessary. The OER is aware from its many years of involvement in program implementation that the details of prudent program design require the balancing of many competing interests. The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid firmly believe the Standards adequately address the issues of customer equity. The OER’s supplemental comments apparent suggestion that litigating a “unified theory” of customer equity is necessary is factually false and by definition cannot serve principles customer equity as effectively as the Procurement and Efficiency Plan process contained in the Standards. This process allows for a steady ramp-up of low-cost efficiency capability and resources so that all customers have an opportunity to benefit from cost saving efficiency investments was worked out among the EERMC, National Grid, TEC-RI, the URI Partnership for Energy, and OER with the technical assistance of the Vermont Energy Investment Corporation, in the period leading up to the February 29th filing of the proposed Standards. This is not an issue that can be fixed in one litigated case at one moment in time, but rather is properly addressed from year to year through the Procurement Plan and Efficiency Plan implementation, which will find an appropriate balance between key principles on a system level with active Council and stakeholder involvement.

Finally, the OER supplemental comments propose to add a new Section 1.3(C)(iv)(f) to the programs description requirements that would read: “The Program may also contain such other elements as will advance the goals of energy efficiency in an economical and practical way.” This proposal should be rejected on procedural grounds because OER already addressed this issue at length in the fourth paragraph of page two of its April 23rd comments. Further, the Commission asked for supplemental comments only on any portions of the Standards OER does not support and had not previous addressed – the Commission did not invite OER to submit new language as the appropriate time for that was in the original February 29th proposed Standards (or in a separate filing of OER draft Standards by February 29th), in the April 23rd Comments or at the May 14th hearing. In addition, this suggestion should be rejected on substantive grounds as it substitutes the legislation’s criteria of “prudent and reliable” energy efficiency procurement with “economic and practical.”

III. Sections 3.1, 3.2, and 1.2, B of the Standards are Critical to the Success of Least Cost Procurement and Should Be Retained.

The third item on page 4 of OER’s supplemental comments touches on the questions of incentives for the utility to implement least cost procurement vigorously and creatively to maximize ratepayer cost savings suggesting on page 3 that Sections 1.2, B and 3.1 through 3.3 should be deleted in their entirety and these issues solely addressed in other

proceedings. The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid strongly disagree with OER on this point and request that the Commission reject OER's suggestion on this issue.

First, all parts of the Standards are closely inter-related and were essential to the success of achieving broad support of the parties involved for the Standards prior to the February 29th submission. As such, the OER proposal should be rejected as it would undermine the support and enthusiasm of the parties for the Standards.

Second, while the parties recognize that formal, detailed consideration of these topics will necessarily take place in other proceedings, it is still essential for the Standards to address them as well, at the high-level which they do, because it provides needed guidance to the parties that the success of least cost procurement depends on addressing these issues. In the case of performance incentives, the Standards in 1.2, B establishes that the efficiency performance incentive will follow the same three-step process as the TRC test. That is, (1) The Procurement Plan that will be discussed and negotiated with the Council and other parties this summer will contain the performance incentive proposal and will be formally submitted for an EERMC vote by August 15, 2008;⁸ (2) the Procurement Plan, including the performance incentive, will be filed at the PUC September 1st for review by the Commission;⁹ and (3) the PUC will issue a ruling on the proposed Procurement Plan, including the performance incentive, by November 1st.¹⁰

Sections 3.1, 3.2, and 3.3 were the subject of discussion at the May 14th Commission Hearing. At the hearing, the EERMC representative agreed with the Commission staff that Section 3.3 could be removed because proceeding actions had rendered it "no longer necessary." Section 3.1 was discussed at the May 14th Hearing at some length by the parties particularly, the Commission staff, the EERMC, and the representatives of the Division of Public Utilities and Carriers. The result was that all agreed to an adjustment to Section 3.1 necessary to soften the Section to ensure that it in no way would formally determine or lock in a solution. To accomplish this mutual goal the language change that was agreed to in Section 3.1 (4) was:

"It is important to the success of EE and Reliability Procurement to remove the Utility's current incentive to maximize sales, through the implementation of mechanisms such as decoupling ~~mechanism~~ that removes any disincentive to efficiency and distributed generation investments."

The group respectfully requests that the solution worked about by the parties and Commission staff through a discussion at the May 14th hearing be implemented by the PUC in its Final Standards. The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid know that Section 3.1 is necessary because it was a key part of the negotiated package that was essential to gaining broad support leading up to February 29th filing.

⁸ Standards Section 1.4, E

⁹ Standards Section 1.1 and 1.2, A, ii.

¹⁰ RIGL Section 39-1-27.7(c)(5) "The commission shall issue an order with regard to the plan from the electrical distribution company not greater than sixty (60) days after it is filed with the commission."

Section 3.2 was not discussed at the May 14th hearing. The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid believe this Section is necessary because it was a part of the negotiated package gaining broad support for the February 29th filing. It is important to the parties to those discussion and negotiations that there be flexibility to examine standby rates for customers with on-site generation and that the Utility's Reliability Procurement Plan include a discussion of this issue.

IV. Other Sections of the Standards Are Appropriately Addressed as Submitted and Should be Retained To Ensure the Success of Least Cost Procurement.

On page 3, under "Other Comments", item 3, the OER supplemental comments question the optional resource management study. The parties deliberately chose permissive language in the Standards and not a mandate and did not seek to "regulate" utility implementation practices at the level of detail proposed by OER. The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid do not know why this issue was not raised by OER in the public discussion of the document at the EERMC meeting, nor in its April 23rd filing, nor at the May 14th Hearing. The Commission should not have to be considering comments at this level of detail at this point in the proceeding. We respectfully request this suggestion be rejected so that the Commission can proceed with finalizing the Standards to meet the June 1st statutory deadline.

On page 4, the OER supplemental comments recommend that "in Section 1.2(A)(iv)(b), the budget should identify the projected cost of efficiency resources in cents/lifetime kWh at the program level as well as at the portfolio level." The goals of least cost procurement are best served by looking at the cost/lifetime kWh of the whole portfolio to compare with supply resources. The OER supplemental comments propose a level of detail that is unnecessary and that creates a new regulatory requirement that does not advance program cost-effectiveness, effectiveness of implementation, or ratepayer benefit. There is no value of calculating cents/lifetime kWh at a program level, and we strongly object to this proposal which should be rejected. In addition OER previously addressed the issue of cents/kWh in its April 23rd filing and as such should be barred from raising this topic again in its May 19th filing four week later.

In the next to last paragraph on page 4, the OER supplemental comments suggest that, in the second sentence of Section 1.3(A)(v), the OER would like to replace the phrase "possible and practical" with the phrase "it is economical and efficient to do so." We strongly believe that it would be very difficult to fabricate a test to meet this standard and, ultimately, detrimental to forward progress in developing the partnerships with existing educational and job training entities essential for implementing least cost procurement. The EERMC, Conservation Law Foundation, Environment Northeast, and National Grid strongly recommend the Commission reject this suggestion.

On Page 5, the OER supplemental comments suggest that "the references to incentives in Section 1.3(C)(iii) and (iv)(d) should be eliminated if these issues are deferred as

proposed.”¹¹ Section 1.3(C)iii refers to capital availability strategies for customers in addition to the rebate incentives paid and Section 1.3(iv)(d) refers to the utility potentially receiving credit towards its energy saving goals for its involvement in advancing codes and standards. Both are critical components that were essential to achieving broad support for the Standards leading up to the February 29th filing. If OER wanted to raise these issues the appropriate time would have been during the negotiations prior to the February 29th filing, during their April 23rd reply comments, or during the May 14th hearing. In addition to this suggestion being substantively problematic in light of the fact that capital availability and codes and standards will be critical to the success of least cost procurement, it is also a problem procedurally with meeting the June 1st deadline. The group respectfully requests that OER’s suggestion on this point be rejected.

On page 6, the OER supplemental comments suggest that the Measurement and Verification section of the Program Plan contain an additional “component that analyzes the costs and benefits of each program.” National Grid has no issue *reporting* the costs and benefits of each program and, indeed, that is the standard practice of the Utility today. However, OER does not define what would be required by an *analysis* of costs and benefits and, consequently, we object to this suggested change. In addition, procedurally this should have been raised in any one of the many prior processes points and not with a vague description on May 19th. As such, we request the rejection of this suggestion.

V. The Remaining Issues Raised by OER are Non-Substantive and Should be Retained as Proposed in the Standards.

The other points in OER’s supplemental comments deal with minor wording changes and organization of the proposed Standards. These are not instances where OER objects to the proposed standards. We reiterate our position that OER should be procedurally barred from making such suggestions in its May 19th filing as the Commission staff only asked for supplemental comments on any other provisions they opposed in the Standards.

In the event that the Commission should find them necessary or helpful in any way, the EERMC, Conservation Law Foundation, Environment Northeast, and National Grid provide several substantive objections to these additional suggestions made in the OER supplemental comments.

- On Page 3, under “Other Comments”, the first item is literally a minor editing suggestion that has no effect on the substance of the planning process and should have been made in the OER’s initial filing. Subsection 1.2(A)(i)(c) merely embellishes the point made in subsection (b). This suggestion should be rejected.
- On page 4, paragraph 6, the OER supplemental comments suggest inserting of the word “reasonable” to describe the portion of funding that may be allocated to research,

¹¹ The OER supplemental comments appear to have mistakenly confused the meaning of the word incentives in the section with utility shareholder incentives discussed above in Section III of these Reply Comments.

development, and pilot programs. The OER does not define what would meet their standard of reasonableness. Indeed, this is the kind of issue that could have been addressed in the drafting of the standards or commented on in a timely manner. The OER suggestion should be rejected.

- On page 4 in the last paragraph, the OER supplemental comments suggests that Sections 1.3(A)(ii) and 1.3(A)(vii) appear to be redundant. We do not consider them to be redundant in that the first subsection addresses equity in opportunity of customers to participate, while the second refers to carrying that principle into program design. In any event, this is a minor wording comment that should have been submitted in a timely fashion and should be rejected. In addition, it was very important to the parties leading up to the February 29th filing.
- The first paragraph on page 5, regarding the suggested relocation of two sections from Section 1.3(B) to 1.3(A), is not acceptable. The subject sections deal with the substance of the programs to be proposed, as opposed to the principles covered in Section 1.3(A) and therefore it is crucial that it remains as proposed in the Standards. The proposed changes should have discussed leading up to the February 29th filing or submitted in OER's April 23rd filing and it should be rejected.
- At the end of the first paragraph of page 5, the OER makes an interesting point that the inclusion of non-energy benefits could have been included in Section 1.2(A)(ii). Nevertheless, this has no substantive effect on the Standards and should have been included in the OER's April 23rd comments not in the supplemental comments.
- Page 5, paragraph 3, recommends deletion of Section 1.3(C)(i). This subsection does not impose any substantive requirements, as the OER notes, but this does not warrant removal of the subsection. In fact, this section recognizes the importance of program continuity and was important to the parties leading up to the February 29th filing. We recommend that it be retained.
- Page 5, paragraph 5, suggests an explanation of comprehensiveness to reasonably expect compliance. First, Section 1.3(C)(iv), says the Program Plan "shall address where appropriate, the following elements," which include comprehensiveness. This means it will be addressed by National Grid, where appropriate in its November 1st Program Plan. Second, the concept of comprehensiveness is well understood by parties such as the OER that have been involved in energy efficiency program implementation over the years. The OER's suggestion should be disregarded.
- Page 5, paragraph 7, suggests a word change that suggests the relation between energy efficiency programs be "coordinated" instead of "integrated." We believe this word change is unnecessary, given the clause "where appropriate" in the introduction to Section 1.3(C)(iv). In addition, the word "integrated" was important to the parties leading up to the February 29th filing. OER should have raised this point at the time, in their April 23rd filing or at the May 14th hearing.
- Page 5, paragraph 8, offers no substantive change, and merely recommends the combination of two subsections into one. This should not have been raised in the OER's supplemental comments and should be disregarded.

- Page 6, paragraph 5, suggests an additional subsection to the proposed Role of the Council in Section 1.4 of the proposed standards. The OER’s proposal addresses the rights of “any other party” and as such has no place in a Section addressing the role of the Council. For this substantive reason this suggestion should be rejected. In addition, this recommendation does not involve a matter of substance to which the OER objects and therefore should be procedurally barred.
- All of the comments on Page 6 regarding Chapter 2 of the proposed standards involve wording or organizational changes that do not materially change the proposed Standards. OER should be procedurally barred from making such suggestions in its May 19th filing as the Commission staff only asked for supplemental comments on any other provisions they opposed in the Standards. (There is a question whether the cost analysis of system reliability investment options discussed in Section 2.1(c)(6)(i), refers to a TRC analysis. It does not.) Consequently, we recommend that all of the Chapter 2 recommendations made in the OER supplemental comments should be ignored or rejected. They are minor in impact and procedurally should have been advanced in the negotiation process leading up to February 29th, in the initial OER filing on April 23rd, or at the Commission hearing on May 14th.

CONCLUSION

WHEREFORE, for the above-stated reasons, the EERMC, Conservation Law Foundation, Environment Northeast, and National Grid ask that the Commission not implement the OER's supplemental suggested changes but rather adopt the comments set forth above and reflect those comments in the final Standards to be adopted by this Commission.

Respectfully submitted, **the Rhode Island Energy Efficiency Resource Management Council (EERMC), Conservation Law Foundation, Environment Northeast, and National Grid**

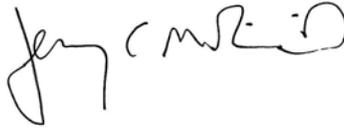
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