

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: REVIEW INTO THE ADEQUACY :  
OF RENEWABLE ENERGY SUPPLIES : DOCKET NO. 4050  
PURSUANT TO R.I.G.L. 39-26-6 :

**REPORT AND ORDER**

**I. Travel**

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." Obligated entities can fulfill their obligations through the purchase of renewable energy certificates ("RECs") or through the payment of an Alternative Compliance Payment ("ACP") which escalates with inflation.

R.I. Gen. Laws § 39-26-6(d) requires the Commission to "determine, on or before January 1, 2010, the adequacy, or potential adequacy, of renewable energy supplies to meet the increase in percentage requirement of energy from renewable energy supplies to go into effect in 2011".<sup>1</sup> In 2011, Obligated Entities are required to obtain at least 5.5%

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<sup>1</sup> R.I.G.L. § 39-26-6(d) states in full: The Commission shall determine, on or before January 1, 2010, the adequacy, or potential adequacy, of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2011 and determine on or

of electricity they sell at retail to Rhode Island end-use customers from eligible renewable energy resources unless the Commission finds that there are not adequate or potentially adequate supplies to meet that percentage requirement in 2011, in which case, the obligation would remain at 4.5%, the 2010 level. The Commission opened the instant docket in order to conduct its review and make its determination by January 1, 2010.

On May 7, 2009, a procedural schedule was set allowing for intervention, pre-filed testimony, a Technical Record Session, and an Evidentiary Hearing. Timely, Motions for Intervention, all of which were granted, were filed by Conservation Law Foundation (“CLF”) and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively “Constellation”). Narragansett Electric Company d/b/a National Grid (“NGrid” or “Company”) was made a party pursuant to its status as an Obligated Entity and the Division of Public Utilities and Carriers (“Division”) participated on behalf of the ratepayers.<sup>2</sup>

On July 10, 2009, NGrid submitted pre-filed direct testimony of Madison Milhous, Director of Wholesale Market Relations for Energy Portfolio Management, and Ronald Norman of PA Consulting Group. Mr. Milhous testified that NGrid has been successful in meeting its RES obligations through the purchase of RECs at prices below

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before January 1, 2014, the adequacy or potential adequacy, of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2015. In making such determinations the commission shall consider among other factors the historical use of alternative compliance payments in Rhode Island and other states in the NEPOOL region. In the event that the commission determines an inadequacy or potential inadequacy of supplies for scheduled percentage increases, the commission shall delay the implementation of the scheduled percentage increase for a period of one year or recommend to the general assembly a revised schedule of percentage increases, if any, to achieve the purposes of this chapter.

<sup>2</sup> On August 17, 2009, People’s Power and Light (“PP&L”) submitted public comment. PP&L indicated that it purchases RECs from renewable energy suppliers and have had little difficulty in procuring supply with no anticipation of future shortages in 2010. PP&L also noted that NGrid had not been required to make Alternative Compliance Payments (“ACPs”) because of the ability to contract for a sufficient number of RECs to fulfill its obligation. Had NGrid had to make ACPs to fulfill its obligation, PP&L indicated that they would support the review in the instant docket as a means to rethink the standards, but believe the statute is working as intended and thus does not require adjustment.

the ACP.<sup>3</sup> Mr. Milhous noted that based on certain assumptions, the Company's consultant determined that there was a tightening of supplies in New England by 2011 and projected a shortfall of RECs by 11%.<sup>4</sup> Mr. Milhous also noted that both the Company and its consultant recognize that a change in assumptions could erase the projected deficit.<sup>5</sup>

Mr. Norman, a Partner in PA Consulting Group's Global Energy Consulting practice ("PA Consulting") discussed his group's report. He indicated that PA Consulting had been retained to complete an assessment of the adequacy of RECs to fulfill the 2011 RES standards in Rhode Island. He noted that each state in New England "competes for the same general resources to meet its own standard."<sup>6</sup> Therefore, he indicated that PA Consulting's analysis reviewed the renewable energy supply and demand throughout the New England region.<sup>7</sup>

Mr. Norman stated that based on "conservative judgments with regard to the availability of particular renewable resources to meet expected 2011 demand", PA Consulting was forecasting a 11% shortfall in the availability of renewable energy resources.<sup>8</sup> Mr. Norman explained that PA Consulting assumed no increase in renewable energy imports from outside of the ISO-NE control area. Additionally, he indicated that PA Consulting was conservative in identifying new projects to become operational by 2011.<sup>9</sup> For example, PA Consulting assumed there would be no increase in imports over the 2008 level. Additionally, no offshore wind projects were included in the base case

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<sup>3</sup> NGrid Exhibit 1 (Pre-filed Testimony of Madison Milhous), p. 4.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4-5.

<sup>6</sup> NGrid Exhibit 2 (Pre-filed Testimony of Ronald Norman), p. 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4-5.

<sup>9</sup> *Id.*

scenario and at least 560 MW of proposed renewable plants were not included in the base case scenario.<sup>10</sup> He stated that either increased imports or speedier than expected project construction “would result in the mitigation or complete satisfaction of the projected” deficit.<sup>11</sup>

## II. Technical Session

At the request of the Commission, ISO-NE provided the Commission with an “Update on New England Renewable Portfolio Standards (RPS) and Renewable Resources Outlook.” This presentation was the topic of a Technical Record Session conducted on July 28, 2009. Eric Johnson, Senior External Affairs Representative for ISO-NE noted that of its areas of responsibility, two are to manage the interconnection process for resources seeking to connect to the bulk power system and to conduct long-term regional system planning through an open stakeholder process.<sup>12</sup>

Jim Platts, Lead Planning Engineer, explained that there is a great deal of uncertainty of the renewable supply resources in the interconnection queue.<sup>13</sup> Mr. Platts discussed the common technologies that are generally allowed to meet RPS compliance in the New England states. He also explained ISO-NE’s methodology for forecasting load and thereby calculating the amount of renewable energy that would be required to meet all of the RPS mandates.<sup>14</sup> Mr. Platts then discussed the number of projects in the queue and noted that between 1997 and 2009 approximately 20% of the projects in the queue became operational.<sup>15</sup> Reviewing just wind projects, Mr. Platts noted that

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<sup>10</sup> NGrid Exhibit 2, Attachment 1, p. 19 of 25.

<sup>11</sup> NGrid Exhibit 2, p. 5.

<sup>12</sup> Tr. 7/28/09, pp. 5-6.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* 9-16.

<sup>15</sup> *Id.* at 17-20.

approximately 45% of the projects in the queue were withdrawn, equaling approximately 60% on a megawatt basis.<sup>16</sup> Mr. Platts stated that a forecasted 20% completion rate for projects in the queue would be considered a worst case scenario and would result in a shortfall. He indicated that if 40% of the projects in the queue came online, there would be sufficient renewable energy supplies to meet the New England RPS standards through 2014.<sup>17</sup> Mr. Platts opined that it would be reasonable to expect the percentage completion rate to increase based on the projects currently in the queue.<sup>18</sup> Mr. Platts noted that his forecasts did not specifically include imports into the ISO-NE control area from an adjacent control area.<sup>19</sup>

### III. Hearing

On September 16, 2009, the Commission conducted a duly noticed public hearing at its offices at 89 Jefferson Boulevard, Warwick, RI. The following appearances were entered:

FOR NATIONAL GRID:	Thomas Teehan, Esq.
FOR THE DIVISION:	Leo Wold, Esq. Assistant Attorney General
FOR CONSERVATION LAW FOUNDATION:	Jerry Elmer, Esq.
FOR CONSTELLATION NEW ENERGY:	Michael R. McElroy, Esq.
FOR THE COMMISSION:	Cynthia G. Wilson-Frias Senior Legal Counsel

NGrid presented Mr. Norman and Mr. Milhous in support of PA Consulting's analysis of the RES Adequacy. On cross-examination, Mr. Milhous testified that the

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<sup>16</sup> *Id.* at 20.

<sup>17</sup> *Id.* at 23-24.

<sup>18</sup> *Id.* at 32-33, 35-36.

<sup>19</sup> *Id.* at 43.

Company had experienced no difficulty meeting its RES obligations in Rhode Island or Massachusetts through the purchase of RECs.<sup>20</sup> Additionally, Mr. Milhous noted that prior solicitations resulted in more offers than NGrid needed in order to meet its obligation.<sup>21</sup> Mr. Milhous agreed that he would advise the Commission of any difficulty procuring 2010 RECs in the Fall 2009.<sup>22</sup>

Mr. Norman explained that his analysis concluded with a region-wide deficit and that the deficit was allocated to the various New England states.<sup>23</sup> He clarified that PA Consulting's conservative approach included placing a relatively high hurdle on the likelihood of any particular project becoming operational by 2011. He stated that "it's not particularly difficult to envision a circumstance in which there is supply actually available to the market in 2011...."<sup>24</sup> Mr. Norman also agreed that his analysis would be impacted by reduced demand in the New England region.<sup>25</sup>

Upon further cross-examination, Mr. Milhous testified that based on the analysis presented by PA Consulting, it appeared there would be a tightening of supplies and perhaps a shortfall in 2011. However, he stated that NGrid was not in the position to recommend the Commission suspend the statutory increase in 2011 "because the findings would not warrant that."<sup>26</sup>

The Division did not submit a formal position prior to the hearing. At the conclusion of the hearing, Mr. Wold stated that "[b]ased on the evidence the Division

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<sup>20</sup> Tr. 9/16/2009, p. 15-16, 21-23..

<sup>21</sup> *Id.* at 31-32.

<sup>22</sup> *Id.* at 21.

<sup>23</sup> *Id.* at 16-18.

<sup>24</sup> *Id.* at 18-19.

<sup>25</sup> *Id.* at 29.

<sup>26</sup> *Id.* at 48-49.

believes that there is adequate supply to meet the increase in percentage requirement of energy from renewable energy sources to go into effect in 2011.”<sup>27</sup>

#### **IV. Commission Findings**

On December 23, 2009, at an Open Meeting, the Commission considered the evidence in the record and unanimously determined that there is at least the potential adequacy of renewable energy supplies to meet the increase in percentage requirement of energy from renewable energy supplies to go into effect in 2011. Therefore, as it states in R.I. Gen. Laws § 39-26-4, in 2011, Obligated Entities will be required to obtain at least 5.5% of electricity they sell at retail to Rhode Island end-use customers from eligible renewable energy resources. This is a one percent increase over the requirement in 2010.

While there are indications that the renewable energy supply will tighten in 2011, there is nothing in the statute that allows the Commission to alter the percentage requirement simply because a tightening of supplies may cause an increase in the price of RECs. The ACP provides a price cap on the price of purchased RECs. While there is a concern that there may even be a shortage of RECs throughout New England in 2011, this analysis was based on conservative assumptions. The witnesses suggested that with some minor adjustments in the assumptions, there could be sufficient resources available to all Obligated Entities.

Furthermore, the statute requires the Commission to consider the historical use of ACPs. The Commission notes that while other Obligated Entities have used ACPs to satisfy some or all of their respective obligations, NGrid has been able to satisfy its entire requirement through the purchase of RECs at a price below the ACP. Therefore, without

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<sup>27</sup> *Id.* at 55.

further information relative to the reasons why other Obligated Entities have used the ACPs, the Commission can only assume it is through choice and not a lack of supply.

The State of Rhode Island, through the passage of the Renewable Energy Standard legislation set forth a clear policy to support the development of renewable energy supplies. The manner the State chose was to require Obligated Entities, those suppliers of retail supply to Rhode Island end-users, to purchase a growing percentage of RECs or make ACPs each year. The State put a safety-valve into place, allowing the Commission to slow the increase if it found a lack of adequate or *potentially* adequate supply. The Commission is mindful that there may ultimately be a lack of supply in 2011 requiring ACPs. However, the Commission is cautious when altering the effects of a statute, even where it is given the power to do so. Therefore, the Commission finds that the evidence in the record supports a finding that there is at least a potential of adequate supply of 2011 RECs. It certainly does not support a finding that the potential adequacy does not exist.

Accordingly, it is hereby

(19893) ORDERED:

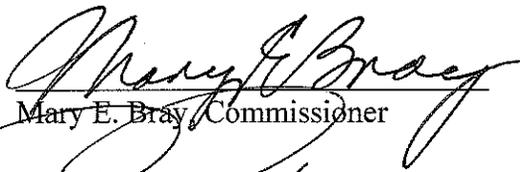
1. There is potential adequacy of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2011.
2. Obligated Entities will be required to obtain at least 5.5% of electricity they sell at retail to Rhode Island end-use customers from eligible renewable energy resources during the 2011 trading period.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 1, 2011  
PURSUANT TO AN OPEN MEETING DECISION ON DECEMBER 23, 2009.  
WRITTEN ORDER ISSUED JANUARY 29, 2010.

PUBLIC UTILITIES COMMISSION



  
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Elia Germani, Chairman

  
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Mary E. Bray, Commissioner

  
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Paul J. Roberti, Commissioner