



CONSERVATION LAW FOUNDATION

September 15, 2009

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PUBLIC UTILITIES COMMISSION

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

Re: PUC Docket 4069
Rules and Regulations Governing Long-Term Contracting for Renewable Energy

Dear Ms. Massaro:

Preliminary

Conservation Law Foundation (CLF) respectfully submits its comments concerning the Draft Rules and Regulations Governing Long-Term Contracting for Renewable Energy ("Draft LTC Rules"). The Draft LTC Rules were promulgated by the Public Utilities Commission (PUC) on September 2, 2009, and are dated September 4, 2009.

CLF's Interest in This Rule-Making

CLF is New England's leading environmental advocacy organization. Since 1966, CLF has worked to protect New England's people, natural resources and communities. CLF is a nonprofit, member-supported organization with offices throughout New England. The Rhode Island CLF office is located at 55 Dorrance Street, Providence.

CLF promotes clean, renewable and efficient energy production throughout New England and has an unparalleled record of advocacy on behalf of the region's environmental resources. As part of its 40-year legacy, CLF was a party in the landmark case in which the U.S. Supreme Court ruled that the U.S. Environmental Protection Agency has an obligation under the Clean Air Act to consider regulating tailpipe emissions that contribute to global warming, Massachusetts v. E.P.A., 127 S. Ct. 1438 (2007).

CLF participated in previous PUC Dockets involving Grid's procurement of renewable energy resources (Dockets 3765, 3901, and 4012). CLF also participated in the Working Group established by the PUC as part of the PUC's decision in Docket 3765 (concerning Grid's renewable energy procurement for 2007). In 2008 and 2009, CLF

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played a key, central role in securing passage of the new LTC Statute, which forms the basis for the present Rule-making by the PUC.

CLF's Comments on the Proposed Rules

General Comment: The Draft LTC Rules conform to the underlying LTC Statute in every respect. In several critical areas (such as the definition of "commercially reasonable," in Draft Rule 3.1, and the definition of "Long-Term Contract Standard" in Draft Rule 4.0), the Draft LTC Rules track the underlying LTC Statute verbatim. This is as it should be. The LTC Statute was carefully crafted by the General Assembly, and the specific wording used in the various parts of the LTC Statute reflect two years of discussion, negotiation, and compromise.

1. There appears to be a grammatical error in the draft of Rule 5.2 (Rule 5.2 is a single sentence). The placement of the word "other" appears to come too early in the sentence. This can be fixed in either of two ways: (1) by dropping the word "other" entirely (because the direct economic benefits are explained later in the sentence); or (2) by moving the word later in the sentence and defining it ("All approved projects, regardless of their location, shall provide direct economic benefits to Rhode Island other than electricity, such as job creation . . .").

2. CLF believes that the current definition of "Credible operation date" in Draft Rule 3.3 is a reasonable and sensible compromise between the desire not to make the standard too stringent (so that it is not too difficult for developers of new renewable energy projects to meet the standard) while also not making the standard too lax (in order to avoid the risk of so-called "phantom projects" that have little likelihood of coming to fruition). CLF withdraws its earlier criticism of the current formulation and supports the language now in Draft Rule 3.3.

3. Similarly, CLF believes that the contracting procedure described in Draft Rule 4.2 is sensible and appropriate. More specifically, this Rule walks an appropriate (and difficult) line between being flexible enough to encourage development of new renewable energy facilities but also stringent enough to guard effectively against the risk of the utility signing contracts with phantom projects.

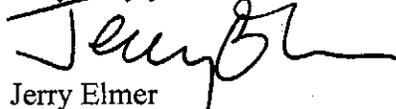
4. In a related section, CLF believes that Draft Rule 6.1, requiring that the utility demonstrate compliance with the LTC Statute by means of actually obtaining renewable energy (rather than merely by signing contracts) is correct and accurately reflects both the letter of the LTC Statute and its purpose and underlying spirit. This is related to the issue raised in the preceding two paragraphs about the risk of phantom projects, because if a

renewable energy project fails after Grid has signed a LTC with that project's developer, Grid would be obligated to substitute a different renewable energy project for the failed one. Although there was discussion in the PUC about whether the provisions of the LTC Statute would be satisfied if Grid merely signed projects with (ultimately unsuccessful) developers -- without ever procuring renewable energy by LTCs -- CLF believes that the PUC's interpretation, as reflected in Draft Rule 6.1, is correct. CLF can find no language whatever in the Statute to support a contrary view and, accordingly, CLF supports the current language in Draft Rule 6.1.

5. Another provision of the Draft Rules helps address the problem of phantom projects. Draft Rule 5.3 permits the utility to cancel contracts after three years if no material progress on the project is being made. This provision, coupled with Draft Rule 4.2 (attempting to prevent contracts with phantom projects in the first instance) and Draft Rule 6.1 (requiring that compliance with the Statute be shown by actual procurement) creates a powerful set of forces which will help assure that the new LTC Statute will actually result in real contracts for actual renewable energy. CLF strongly supports this troika of provisions.

6. CLF is pleased that the process for PUC review which is set forth in the Draft Rules is transparent and open. Under Draft Rule 4.2, the utility's proposal for timetable and method of solicitation is filed with the PUC. Under Draft Rule 4.3, review of the utility's proposal takes place in a public proceeding, with express provision for intervention and participation by the public. Under Draft Rule 4.10, before LTCs go into effect, the utility must file the proposed LTC with the PUC, with notice of the filing being given publicly by, among other methods, advertising in the Providence Journal. Under Draft Rule 4.12, detailed information on each solicitation must be filed by the PUC with the PUC detailing how the overall solicitation was conducted, what the results of the solicitation were, and what lessons regarding renewable energy were learned by the utility. CLF believes that this type of open and public process will help to build confidence in the state's implementation of the new LTC Statute.

Very truly yours,


Jerry Elmer
Staff Attorney