CONSERVATION LAW FOUNDATION

October 15, 2009

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:

Conservation Law Foundation (CLF) respectfully submits its reply 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.

As used herein, the phrase "Grid's Comments" means the comments in this Docket filed by National Grid on October 13, 2009. As used herein, the phrase "the LTC Statute" refers to the Long-Term Contracting Statute, R. I. Gen. Laws § 39-26.1-1, et seq., the underlying organic statute pursuant to which the PUC is conducting this rule-making procedure.

In its October 15, 2009 filing, Grid takes the position that § 5.3 (and the related provision of § 6.1) of the Draft Rules are improper because they create "an additional obligation to re-bid and re-contract for long-term contracts when a project fails within three years of the execution of a long-term contract." Grid's Comments, at 4. Although Grid had expressed this view at the July 21, 2009 PUC discussion of the Draft Rules, Grid thereafter did not reiterate or repeat this position until now -- creating at least the appearance that Grid had been persuaded that its interpretation of the LTC Statute was without support.

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It is clear both from the purpose and the precise language of the LTC Statute that Grid's interpretation of the law is without support.

First, the language of the LTC Statute is clear. Rhode Island General Laws § 39-26.1-3(d) clearly states that "[c]ompliance with the long-term contract standard shall be demonstrated through procurement . . . of energy, capacity and [RECs] . . ." The law is unambiguous. Compliance with the law can be demonstrated only through actually acquiring, inter alia, energy and RECs. As the PUC's Staff Attorney explained quite accurately, the utility cannot procure energy or RECs merely by signing a contract with a project that later fails. If an initial project fails, then the only way actually to procure energy and RECs -- and thus demonstrate compliance with the LTC Statute -- is to enter into additional long-term contracts. When, as here, a statute is unambiguous, the words of the statute must be given their plain meaning. O'Neil v. Code Comm'n for Occupational Safety and Health, 534 A.2d 606 (R.I. 1987).

Grid relies heavily on the following sentence in the Statute (from R. I. Gen. Laws § 39-26.1-3(c)(1)) supports Grid's interpretation:

> "As long as the distribution company has entered into long-term contracts in compliance with this section, the distribution company shall not be required by regulation or order to enter into power purchase agreements with renewable energy projects for power, renewable energy certificates, or other attributes with terms of more than three years in meeting its applicable annual renewable portfolio standard requirement set forth in section 39-26-4 or pursuant to any other provision of the law."

Grid's Comments, at 3-4.

Respectfully, however, this sentence does not support Grid's argument. What the sentence quoted says (and means, and was intended to mean) is that if the utility is meeting its long-term contracting obligation under this new LTC Statute, then it was not obligated also to enter into long-term contracts under the previously existing Renewable Energy Standard (RES) enacted in 2004, R. I. Gen. Laws § 39-26-4. In other words, Grid cannot, in effect, be subject to a kind of "double jeopardy" -- in which it complies in good faith under the newly enacted LTC Statute by entering into long-term contracts under Chapter 26.1, and then gets challenged for not entering into long-term contracts under the old RES, Chapter 26.

Moreover, Grid's interpretation would produce an absurd result; in contrast, the PUC's draft rule, as it is currently written, produces a sensible, reasonable result in keeping with the purpose of the LTC Statute. Under Grid's interpretation, the utility

would be fully in compliance with the statute if the utility never procures a single electron -- not one, not ever -- from long-term contracts. Such an interpretation ignores the underlying public-policy goals of the statute. The purpose of the statute is "facilitating the financing of renewable energy generation . . . ." See R. I. Gen. Laws § 39-26.1-1. Statutes are never interpreted to yield absurd results. Braman v. Wawaloam Reservation, Inc., 107 R.I. 270, 267 A.2d 410 (1970) ("in interpreting a statute, it will not be presumed that the legislature intended to reach an unreasonable result or to have its legislation result in absurdities"); Kaya v. Partington, 681 A.2d 256, 261 (R.I.1996) ("Court will not construe a statute to reach an absurd result").

The first sentence of Draft Rule 5.3 (that allows Grid to terminate a contract without penalty after three years if "material progress [on the project] is not being made") is a necessary and desirable provision in order to avoid the problem of so-called "phantom projects" -- projects that may sign a long-term contract with Grid but later fail. The first sentence of Draft Rule 5.3 permits Grid to "get out from under" such phantom contracts. This first sentence of Draft Rule 5.3 provides a benefit to overall development of renewable energy -- if, but only if, Grid were then obligated to enter into new long-term contracts with other renewable projects. This is precisely what the second sentence of Draft Rule 5.3 says -- in that event, Grid "shall be required to make additional annual solicitation and enter into additional Long-Term Contracts in order to replace the energy, capacity and/or [RECs] lost as a result of the termination." The first and second sentences of Draft Rule 5.3 hang together and complement each other. Taken together, the two sentences accurately reflect the underlying public-policy purpose of the LTC Statute.

The PUC's language in the Draft Rules properly and accurately reflects this purpose and yields a sensible and reasonable result that comports with the purpose of the LTC Statute. Grid's competing interpretation does not reflect the purpose of the LTC Statute and if adopted would not only yield an absurd result, but would violate both the clear meaning and public-policy goals of the law.

For all of the foregoing reasons, CLF urges the PUC to adopt Draft Rules 5.3 and 6.1 as they currently appear in the Draft Rules, and reject Grid's arguments.

Respectfully submitted,

Jerry Elmer