

October 13, 2009

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02889

**RE: Rulemaking for Long-Term Contracting for Renewables  
Docket No. 4069**

Dear Ms. Massaro:

On behalf of National Grid,<sup>1</sup> attached please find ten (10) copies of the Company's comments concerning the draft rules published by the Commission in this proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosure

cc: Leo Wold, Esq.  
Steve Scialabba, Division

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid, hereinafter referred to as "National Grid" or "Company"). .

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Docket No. 4069 Rulemaking for Long-Term Contracting for Renewables

Updated: 9/28/09

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**RHODE ISLAND PUBLIC UTILITIES COMMISSION**

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**Rulemaking for Long-Term Contracting  
For Renewables**

**Docket No. 4069**

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**National Grid Comments**

**Draft Commission Rules On Long-Term Contracting Standard for Renewable Energy**

National Grid<sup>1</sup> submits these comments in response to the Commission’s draft rules regarding long-term contracting for renewable energy. The stated purpose of these rules is to implement Rhode Island’s Long-Term Contracting Standard for Renewable Energy found in R.I.G.L. §§39-26.1-1 et seq. Nevertheless, the Company believes that Section 5.3 of the draft rules does not accurately reflect the statutory provisions, and would place requirements on the Company (and the Commission) that go beyond those permitted by the statute.

The Rhode Island Long-Term Contracting Standard for Renewable Energy (“the statute”), R.I. Gen. Laws §§ 39-26.1-1 *et seq.*, requires an electric distribution company to annually solicit proposals from renewable energy developers and, if it receives commercially reasonable proposals, to enter into long-term contracts for the purchase of statutorily prescribed minimum amounts of newly developed renewable energy resources. R.I. Gen Laws §39-26.1-3 (a) and (c)(2). The statute sets a four-year time horizon on this obligation. R.I. Gen Laws §39-26.1-3(c)(2).<sup>2</sup>

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid, hereinafter referred to as “National Grid” or “Company”.

<sup>2</sup> It is not required that the projects that are associated with these contracts be operational in four years. R.I. Gen. Laws §39-26.1-3(b).

The Rhode Island Public Utilities Commission (“Commission”) has published for comment draft “Rules and Regulations Governing Long-Term Contracting Standards for Renewable Energy” (“Commission Rules” or “Rules”).<sup>3</sup> Section 5.3 of the Rules requires that all long-term contracts contain a provision that permits the contract to be terminated after three years from its execution upon a determination that material progress on the project has not been made. Section 5.3 further requires that, in the event of a termination under the provisions of the rule, the electric distribution company must make an additional annual solicitation and enter into additional long-term contracts to replace the energy, capacity and/or other attributes “lost as a result of the termination.” This requirement of a replacement solicitation and contracts would violate the statutory limits on the obligations of electric utilities and would expose electric utilities and their customers to additional risk that is not contemplated in the statute. Accordingly, the Commission should delete the replacement solicitation and contracting language contained in draft Rule 5.3.

### **Statutory Framework**

On June 30, 2009, Rhode Island enacted the Long-Term Contracting Standard for Renewable Energy (“the statute”), which is found in Title 39, Chapter 26.1. The statute is intended to encourage and facilitate the creation of commercially reasonable long-term contracts for the procurement of newly developed renewable energy resources. Section 36-26.1-3 of the statute establishes a long-term contracting standard.<sup>4</sup> It requires electric distribution companies “to annually solicit proposals from renewable energy developers and enter into long-term contracts with terms of up to fifteen (15) years for the purchase of

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<sup>3</sup> The statute provides for the Commission to establish rules by April 1, 2010.

<sup>4</sup> There are other sections of the statute that deal with two specific types of projects: (1) an up to ten (10) megawatt renewable energy project for the Town of New Shoreham and (2) a utility-scale offshore wind project. These two specific projects are subject to separate proceedings.

capacity, energy and attributes from newly developed renewable energy resources.” R.I.G.L. §39-26.1-3.<sup>5</sup> The statute is careful to provide that no electric distribution company can be required to enter into a long-term contract on terms that are not “commercially reasonable.”

The statute also creates a four-year phased schedule of gradually increasing amounts of renewable energy resources for which the electric distribution company can be required to contract. That schedule ends in the year 2013. An electric distribution company “shall not be required to enter into long-term contracts for newly developed renewable energy resources that exceed the ... four year phase-in schedule.” R.I.G.L. §39-26.1-3(c)(2). Once the electric distribution company has entered into long-term contracts, it cannot be required to enter into additional contracts for renewable energy longer than three years. R.I.G.L. §39-26.1-3(c)(1).

Compliance with the statute is demonstrated through a long-term contract of energy, capacity, and attributes that qualify for NE-GIS certificates relating to generating units certified by the Commission as using newly developed renewable energy resources. R.I.G.L. §39-26.1-3(d).

### **Discussion**

The statute specifically provides that an electric distribution company’s obligations are completely and finally fulfilled when it has entered into long-term contracts.

**As long as the electric distribution company has entered into long-term contracts** in compliance with this section, the electric distribution company shall not be required by regulation or order to enter into power purchase contracts with renewable generation projects for power, renewable energy certificates, or any other attributes with terms of more than three (3) years in meeting its applicable annual renewable portfolio standard requirements set forth in section 39-26-4 **or pursuant to any other provision of the law.** R.I. Gen. Laws §39-26.1-3 (c)(1) (emphasis added).

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<sup>5</sup> A long-term contract for purposes of this section is a contract of not less than ten years nor more than fifteen (15) years. *See* R.I.G.L. §39-26.1-2 (5) and §39-26.1-3 (a).

Draft Rule 5.3 simply ignores this clear and unambiguous statement in the statute and creates 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.

Section 5.3 of the draft rules requires that long-term contracts that the electric distribution company enters into contain language that allows the company to terminate that contract after three years of execution should the electric distribution company or the Commission determine that material progress on the project is not being made. The rule then, however, further requires that the electric distribution company make an additional annual solicitation and enter into additional long-term contracts in order to replace the energy and other attributes that the terminated contract represented. To the extent the rule would require an additional solicitation after the termination of an essentially failed project, it imposes an additional obligation on the electric distribution company not found in the statutory language and violates the statutory limits protecting the Company and its customers.

**a. Draft Rule 5.3 creates an obligation not authorized by the statute.**

Under the statute, the Company is only obligated to conduct annual solicitations and to enter into commercially reasonable contracts on an annual basis for a four-year schedule. Once that cycle has run its course, the electric distribution company's obligations under the statute cease. There is clearly no requirement that the Company enter into contracts after that four-year period. The statute does not include a look-back provision that would require the Company to solicit and enter into subsequent contracts if the projects that are the subject of

those statutorily mandated annual procurements should fail. Neither does the statute authorize the Commission to order the Company to participate in procurements after 2013.

Moreover, as a matter of policy, mandating that an electric distribution company re-bid contracts involving certain failed projects is unnecessarily premature. Rather than anticipating situations where contracted projects fail, it would be prudent for the Commission to instead decide the proper course of action when those situations arise and in the financial and electric market climates that then exist. The statute does not require that an electric distribution company and its customers continually enter into bad contracts. Yet, as written, Rule 5.3 binds the hands of a future commission to fashion a remedy based on the circumstances that exist at that later date.

**b. The statute contains no requirement for re-bidding and re-contracting when contracts are terminated for failure to perform.**

The suggestion that the requirements found in draft Rule 5.3 are permitted under the language of R.I.G.L. §39-26.1-3(d) misconstrues that portion of the long-term standards statute. That section of the statute indicates that “[c]ompliance with the long-term contract standard shall be demonstrated through procurement pursuant to the provisions of a long-term contract of energy, capacity and attributes reflected in NE-GIS certificates.” The section goes on to further define a qualifying certificate.<sup>6</sup> Accordingly, the long-term contract must require

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<sup>6</sup> Section 39-26.1-3(d) reads as follows:

Compliance with the long-term contract standard shall be demonstrated through procurement pursuant to the *provisions* of a long-term contract of energy, capacity and attributes reflected in NE-GIS certificates relating to generating units certified by the commission as using newly developed renewable energy resources, as evidenced by reports issued by the NE-GIS administrator and the terms of the contract; provided however, that the NE-GIS certificates were procured pursuant to the provisions of a long-term contract. The electric distribution company also may purchase other attributes from the generator as part of the long-term contract. [Emphasis added]

that the attributes of the renewable energy supplied under the contract be able to qualify for certificates of the type issued by the NE-GIS administrator.

Section 39-26.1-3(d) serves only to describe the provisions of a long-term contract necessary to satisfy the electric distribution company's annual solicitation and contracting obligation. Section 39-26.1-3(d) is, thus, descriptive in nature. Simply stated, contracts that will satisfy the electric distribution company's obligation under the statute are contracts designed to procure energy, capacity, and attributes reflected in NE-GIS certificates. This section of the statute does not, however, require that the Company continue to enter into contracts where the renewable energy projects under contract fail. Rather, once a solicitation for the procurement of energy results in a contract for energy supply that will be reflected in NE-GIS certificates, the electric distribution company's obligations under the statute are fulfilled.

When applying a statute, "no sentence, clause or word [should be] construed as unmeaning or surplusage." Ruggero v. City of Providence, 893 R.I. 235, 237-38 (R.I. 2006). An electric distribution company's statutory obligations are limited to the following: (1) to annually solicit for a period of four years and (2) to contract for electric supply up to prescribed amounts only where commercially reasonable bids are received. Here, however, the mandate for re-bidding and re-contracting contained in draft Rule 5.3 ignores the statute's plain limitations on the obligations imposed on electric distribution companies. To illustrate, under draft Rule 5.3, the electric distribution company could arguably be required to conduct solicitations and enter into contracts well beyond the statutory four-year time limit on those obligations and after the electric distribution company had satisfied its obligations by entering

into a long-term contract. This result would directly contradict and render moot the plain statutory limitations that apply.

Section 39-26.1-3(d) does not create any new obligations upon an electric distribution company, and it cannot serve as the basis for the new obligations that Section 5.3 of the draft rules imposes on the electric distribution company and its customers.

### **Conclusion**

National Grid fully supports Rhode Island's efforts to encourage the development of renewable energy resources through long-term procurement contracts, and it believes that Rhode Island's new long-term contracting statute is designed with sufficient flexibility and safeguards to accomplish those objectives in a reasonable and measured way. The new statute creates a process that promotes long-term contracting for renewable energy resources in a manner that protects the Company and its customers from undue risks or unlimited obligations.

The new long-term contracting statute for renewable energy imposes an obligation on electric distribution companies to annually solicit proposals for and to enter into long-term contracts for the purchase of renewable energy. That obligation is limited and defined in several ways. An electric distribution company is not obligated to enter into a contract that is not commercially reasonable. Furthermore, the Company is not required to enter into a long-term contract after the expiration of the statutory schedule in 2013. When the electric distribution company has conducted the solicitation and has entered into a commercially reasonable contract, it has fully satisfied its obligations. The statute contains no additional future obligations. The language of Draft Rule 5.3 would undermine these limitations designed

to simultaneously encourage long-term contracts for renewable energy, but also protect the electric distribution company and its customers. Consequently, the Company requests that so much of Section 5.3 as requires a repetition of the solicitation and contracting be deleted from the draft rule.

Respectfully submitted,

**NATIONL GRID**

By its attorney,



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Dated: October 13, 2009