State of Rhode Island and Providence Plantations

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Patrick C. Lynch, Attorney General

June 15, 2010

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

Re: Docket No. 4150

Dear Ms. Massaro,

The Division of Public Utilities and Carriers (the "Division") submits this correspondence to address two legal issues that have arisen in the above-entitled matter, namely: (i) whether the commercial reasonableness of solar/photovoltaic contract pricing should be determined by comparing it to the pricing of other solar/photovoltaic contracts only, or, by comparing it to the pricing of contracts for other "eligible renewable energy resources,"[1] and (ii) whether electric distribution companies ("EDCs") must purchase their three (3) megawatt solar/photovoltaic statutory requirement ratably over the four-year phased schedule designated in G.L. 39-26.1-3(c)(2), or whether the requirement may be purchased in any amount or amounts during the schedule so long as the requirement is satisfied by December 30, 2013.[2]

[1] Defined generally by G.L. § 39-26-5 as energy resource(s) that would include energy from, the wind, movement or the latent heat of the ocean, heat of the earth, etc.

[2] The Division relies on its Memorandum dated April 30, 2010, and the Testimony of Ricahard S. Hahn at hearing relative to addressing the issue of whether the RFP should allow REC-only sales to the Company and the other recommendations of the Division.

Issue (i)

At the hearing of this matter, the Division's expert consultant, Richard S. Hahn, succinctly explained the rationale for assessing the commercial reasonableness of solar/photovoltaic pricing in terms of the pricing of other solar/photovoltaic contracts only.

> Q. Mr. Hahn, in your first sentence on the top of Page 2 of your memo, you state that, "I agree with Constellation that solar projects should be evaluated only against other solar projects. . . . Could you explain why?
>
> A. Well, I think for many reasons that Mr. Milhous discussed this morning. I think there's an acknowledgement that photovoltaic solar is currently an expensive form of renewable energy and that's why states have what they refer to as solar carve-outs; many states have them. The three megawatt requirement here in Rhode Island is another form of solar carve-out. And if you're going to buy that amount, it makes sense to really compare those projects against each other as opposed to other forms of renewables energy which I think there'd be some consensus that those are lower in cost. 6/1/2010 Transcript at 105-106.

National Grid acknowledged the problem at hearing:

> Q. If you're comparing solar projects to other forms of energy to determine commercial reasonableness . . . and solar is more expensive than those projects, how are you ever going to obtain your three megawatt requirement under the statute?
>
> A. Comparing solar to other technologies at this point, is not a straight-forward situation where solar is going to compete favorably with those other technologies . . . I don't know exactly how the company is going to be able to satisfy this requirement...6/1/2010 Transcript at 30-31.

As these witnesses all observed, comparing the pricing of solar/photovoltaic contracts to that of contracts for other forms of eligible renewable energy resources—due to the relatively high cost of solar/photovoltaic projects—would "result in an outright rejection of all Solar PV resource contracts, making it impossible for National Grid to satisfy purchase obligations under Section 39-26.1-3(c)(2)." See Constellation Mem. at 7. This conclusion strongly counsels in favor of assessing the commercial reasonableness of solar/photovoltaic contract pricing by comparing it to the pricing obtained under contract for other solar/photovoltaic projects only. E.g., Landrigan v. McElroy, 457

A.2d 1056, 1061 (R.I. 1983) (under no circumstance should a statute be construed to produce a meaningless or absurd result).

Issue (ii)

The Rhode Island Supreme Court has held that a statute's language generally must be given its "plain and ordinary meaning[ ]," Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996); Beaudoin v. Petit, 409 A.2d 536, 539 (R.I. 1979), unless that meaning, as stated above, produces an absurd or meaningless result. Tidewater Realty, 942 A.2d at 992. G.L. § 39-26.1-2(7) defines "minimum long term contract capacity" to "mean[ ] ninety (90) megawatts of which three (3) megawatts must be solar or photovoltaic projects located in Rhode Island." G.L. § 39-26.1-3(c)(2) designates a "phased schedule" that establishes annual, "not to exceed" thresholds for EDC purchases "of the minimum long-term contract capacity" over the four year period 2010 - 2013: 25% by December 30, 2010, 25% by December 30, 2011, 25% by December 30, 2012, and 25% by December 30, 2013.

The Company contends that "the Ridgewood landfill gas contract" will account for about 30.3% of the minimum long-term contract capacity for 2010, well in excess of what the Company characterizes as the "25% "ceiling" for 2010. Company Mem. at 4. The Company contends that if it "is required to enter into solar/PV contracts" for 2010, such an interpretation would "dismantle statutory protections," which ensure the Company is "free to decide not to enter into additional contracts at that time." Id.

The Company's position does not address the specific statutory language, which embeds the three megawatts of solar/photovoltaic power into the minimum long-term contract capacity. Nor does the Company address the contradiction that under its interpretation it cannot defer purchasing non-solar/photovoltaic power—the Company signed the Ridgewood contract in order to satisfy the 2010 minimum long-term contract capacity percentage—but purportedly is free to defer any portion of the 3 megawatt solar/voltaic amount until 2013. An interpretation that permits the Company to defer all power purchases, solar/photovoltaic or otherwise, until 2013, however, would render the designated statutory timetable largely meaningless. As stated above, statutory interpretations that produce absurd or meaningless results are not favored. E.g., Accent Store Design, 674 A.2d at 1226.

Percentages designated in G.L. § 39-26.1-3(c)(2) reflect mandatory, minimum annual amounts of the 90-megawatt minimum long-term contract capacity that EDCs must purchase over the phased schedule. Moreover, the minimum long-term contract capacity includes three (3) megawatts solar/photo voltaic power. It follows that EDCs must purchase 25% of the three (3) megawatts or .75 megawatts of solar voltaic power in each of the four years of the phased schedule. The Division, therefore, concurs with Constellation's interpretation that, "deferral until 2013 of the entire 3 MW Solar PV

component of the minimum long-term capacity requirement is simply not consistent with the plain language of Sections 39-26.1-2(7) and 39-26.1-3(c)(2)."

Respectfully submitted,

Division of Public Utilities and Carriers
By its attorney,

Leo J. Wold
Assistant Attorney General

cc: Service List