

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: APPLICATION FOR STANDARD CERTIFICATION
AS ELIGIBLE RENEWABLE ENERGY RESOURCE
FILED BY RIDGEWOOD RENEWABLE POWER, LLC –
RHODE ISLAND LFG, NEW GENERATION

DOCKET NO. 4201

ORDER ON CLARIFICATION
AND REQUEST FOR CHANGE IN EFFECTIVE DATE OF ELIGIBILITY

On September 7, 2010, Ridgewood Renewable Power, LLC filed with the Commission an application seeking certification for its RI LFG Genco Generation Unit (“Genco”), a 33.4 MW Landfill Methane Gas energy Generation Unit located in Johnston, RI as an eligible New Renewable Energy Resource. On December 20, 2010, the Commission issued an Order finding that the Genco Generation Unit meets the requirements for eligibility as a New Eligible Biomass Renewable Energy Resource with its 33.4 MW Grid-Connected Generation Unit having a projected Commercial Operation Date of December 2012 and located within the NEPOOL Control Area in Johnston, RI.¹

Order No. 20225 contained the following Ordering Paragraphs:

- (2) That, as a Generation Unit which has not yet achieved Commercial Operation, eligibility is granted with a conditional requirement that the Company provide the Commission with written documentation verifying Commercial Operation and that the Company provide the Generation Unit’s NEPOOL-GIS Asset Identification Number when assigned by NEPOOL following achievement of Commercial Operation.
- (3) That, following receipt from the Company of acceptable written documentation supporting the Generation Unit’s Commercial Operation Date and provision of the NEPOOL-GIS asset identification number, Commission staff is hereby authorized to assign a unique Rhode Island Public Utilities Commission Eligible Renewable Energy Resource Facility Certification Number for the Company’s Generation Unit.²

On June 10, 2013, the Commission received a letter from Genco (dated June 6, 2013) advising that the facility’s Commercial Operation Date was May 31, 2013 and providing the

¹ *Order No. 20225* (issued December 20, 2010).

² *Id.* at 2-3.

Generation Unit's NEPOOL-GIS Asset Identification Number. On June 11, 2013, after review by the Commission Staff, Commission Clerk Luly Massaro emailed a letter to the appropriate contact person for Genco providing the unique Rhode Island Public Utilities Commission Eligible Renewable Energy Resource Facility Certification Number. Consistent with the Commission's Order, the Clerk advised Genco that "Generation from the Rhode Island LFG Genco facility occurring on or after June 1, 2013 shall be considered to be an Eligible New Renewable Energy for the purposes of the Rhode Island Renewable Energy Standard." The NEPOOL GIS Administrator was copied and the NEPOOL GIS records reflect the June 1, 2013 date.³

On July 1, 2013, after informal inquires to Commission Staff, Genco filed a letter with the Commission requesting that Renewable Energy Certificates ("RECs") produced during the period prior to the start of commercial operation ("Test Period") be eligible as Rhode Island New RECs. Genco argued that: (1) the conditions contained in the Commission's December 20, 2010 Order should be considered notice requirements rather than conditions precedent to the eligibility,⁴ (2) the energy produced during Test Period is the same kind of energy produced during commercial operation and, if one qualifies, the other should as well,⁵ (3) that allowing RECs generated during the Test Period would advance the goal of increasing REC purchases by Obligated Entities as required by the Renewable Energy Standard,⁶ (4) that the Power Purchase Agreement ("PPA") entered into between Genco and The Narragansett Electric Company d/b/a National Grid ("National Grid") pursuant to a specific statute, R.I. Gen. Laws § 39-26.1-9 (Town of Johnston Project) evidenced an intent by the State of Rhode Island that the R.I. Gen. Laws §

³ Certification Letter to LFG Genco from Luly Massaro, Commission Clerk (6/11/13).

⁴ Letter from Stephen Galowitz to Cindy Wilson-Frias, Esq. (6/28/13) at 4.

⁵ *Id.* at 5-7.

⁶ *Id.* at 6.

39-26-1 et seq. (Renewable Energy Standard) should be interpreted to include RECs generated during the Test Period,⁷ and (5) it would be consistent with other states' practices.

On July 11, 2013, National Grid filed a letter with the Commission in which National Grid accepted the date upon which the conditions for eligibility were met by Genco as June 1, 2013. Recognizing that if the Commission did not grant Genco's request to find the RECs generated during the Test Period to be eligible, Genco would forfeit the revenue associated with those RECs in Rhode Island, National Grid noted, nonetheless that Genco "may be able to sell these RECs into other New England REC markets such as Massachusetts."⁸ National Grid did not dispute that the intent of the PPA was to treat Test Period RECs as a renewable resource and generally agreed that there was no distinction between RECs generated by test energy and RECs generated after commercial operation. Additionally, National Grid noted that allowing test RECs to qualify would increase the supply of eligible RECs in the market, potentially reducing the price. Finally, National Grid was supportive if the Commission determines a change in policy is required.⁹

On July 11, 2013, at a duly noticed Open Meeting, the Commission unanimously denied Genco's request and voted to reopen Docket No. 3798 (In re: Rules and Regulations Governing the Implementation of a Renewable Energy Standard) to take comments on whether to change the effective date of eligibility for Renewable Energy Resources which receive conditional approval. For a facility that receives a conditional order from the Commission prior to the commencement of commercial operation, certification of an Eligible Renewable Energy Resource is complete upon notification of the facility's Commercial Operation Date and assignment of a NEPOOL-GIS Asset Identification Number, at which time the Commission

⁷ *Id.* at 2-4.

⁸ Letter from The Narragansett Electric Company d/b/a National Grid (7/11/13) at 1.

⁹ Letter from The Narragansett Electric Company d/b/a National Grid (7/11/13) at 1-2.

issues a unique, Rhode Island-specific certification number. The facility's RECs become Rhode Island eligible effective on the first day of the month in which the Rhode Island certification number is issued.

Rule 6.0 of the Renewable Energy Standard ("RES") Rules governs the Certification of Eligible Renewable Energy Resources which is completed "by issuing statements of qualifications....The Commission's statement of qualification will include a unique certification number for each Generation Unit..."¹⁰ The RES Rules are silent as to the Effective Date of eligibility where the Commission's statement of qualification contains conditions that need to be fulfilled before the issuance of a unique certification number. The RES Rules are also silent as to the Effective Date of eligibility where there is no such condition included in the Commission's Order. Rule 6.4 states: "To the extent consistent with the requirements of these regulations, the Commission will rely upon the NEPOOL GIS for verification of production of energy from Generation Units certified as eligible."¹¹ It appears that as long as ISO-NE has received the energy and has the data from the generation unit, it can be reported to the NEPOOL-GIS and it can be identified with the facility, even before the assignment of the NEPOOL-GIS Asset Identification Number.

The Commission has been consistent in its use of the first day of the month in which the Order or Certification Letter is sent as the effective date for eligibility of a Renewable Energy Resource and has applied it to all facilities since 2007. There are currently three other facilities in the same situation as Genco and to allow one facility special treatment would arguably be the very definition of arbitrary and capricious.¹² Nothing in R.I. Gen. Laws. Sec. 39-26.1-9

¹⁰ Rules and Regulations Implementing a Renewable Energy Standard, Rule 6.1, 6.1(iv).

¹¹ Rules and Regulations Implementing a Renewable Energy Standard, Rule 6.4.

¹² Each of those other three facilities met the conditions in February 2013 after receiving conditional approval in January 2013.

references unique eligibility of the facility for RECs under the RES as compared to other generating units not covered by the Town of Johnston statute. However, to the extent practical, the RES laws should be read in harmony with the Long-Term Contracting Standard in order to promote the development of renewable energy resources.

The Commission finds merit in Genco's arguments that:

- (1) If the generation unit is found to meet the eligibility requirements as a Renewable Energy Resource but for the Commercial Operation Date, all energy delivered to ISO-NE from that generation unit should be eligible regardless of whether it is test energy or post-Commercial Operation Date.¹³
- (2) Allowing RECs produced during the test period to be considered eligible would assist Distributed Generation Facilities and facilities entering into Long-Term Contracts with National Grid in financing.
- (3) Allowing test energy to be considered eligible would allow more RECs into the market, thereby increasing supply and potentially reducing prices for end-users. This would further the State's RES policy.

Therefore, it may be time to change the Commission's policy so to now include RECs produced during the Test Period. While it appears on its face that this change in Commission policy would be simple, it is, nonetheless, a change to a policy that has been in place since 2006 and cannot be changed without sufficient notice to all interested parties.¹⁴ This is important to avoid any unintended consequences.

¹³ For facilities using Eligible Biomass Fuels that may be co-fired with fossil fuels, care will be needed to ensure that only generation from Eligible Biomass Fuels during such test period be eligible for Rhode Island RECs.

¹⁴ The Supreme Court has stated: "Throughout the course of its dealings with [New England Telephone & Telegraph Company], the commission has operated under its own articulated policy that whenever there is a major change in a governing regulatory standard, 'there should ordinarily be warning sufficient to adjust both the practice and proof to the new situation.' Re New England Telephone & Telegraph Co., 39 P.U.R.4th at 533. We commend the commission for adopting such a policy and are aware of no sound reasons to justify the sudden retreat therefrom in the docket No. 1560 proceedings. See *Boston Edison Co. v. Federal Power Commission*, 557 F.2d 845, 848-49 (D.C.Cir.), cert. denied, 434 U.S. 956, 98 S.Ct. 482, 54 L.Ed.2d 314 (1977) (when administrative agency reverses course from its precedents, it must give notice that standard is being changed). Furthermore, although the commission is free to alter past standards and practices, it must provide an explanation for such departures. As aptly stated by the *United States Court of Appeals for the District of Columbia in Greater Boston Television Corp. v. Federal Communications Commission*, 444 F.2d 841, 852 (D.C.Cir.1970), cert. denied, 403 U.S. 923, 91 S.Ct. 2229, 29 L.Ed.2d 701 (1971): "[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." (Footnotes omitted.) *Accord Hatch v. Federal Energy Regulatory Commission*, 654 F.2d 825 (D.C.Cir.1981); *Ohio*

Although the Commission is aware that this decision will not assist Genco for the first quarter of 2013 (the trading period opens on July 15, 2013 and all RECs must be recorded with the NEPOOL GIS by then), it appears that Massachusetts has previously issued a Declaratory Judgment Ruling in Genco's favor, and Genco may have an application pending before the Massachusetts Department of Energy Resources.¹⁵ The second quarter trading period does not open until October 15, 2013. If the Commission changes its policy, Genco (and other similarly situated facilities) could take advantage of the Rhode Island market for the second quarter RECs.

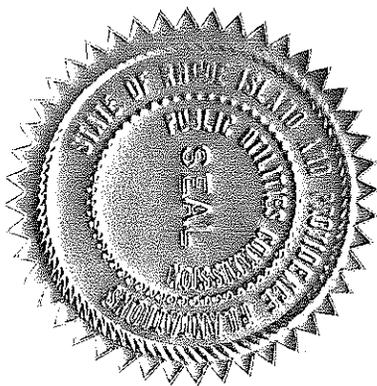
Accordingly, it is hereby,

(21120) ORDERED:

Rhode Island LFG Genco, LLC's Request that RECs produced during the period prior to the start of commercial operation be eligible as Rhode Island New RECs is hereby denied.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JULY 11, 2013 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JULY 25, 2013.

PUBLIC UTILITIES COMMISSION




Margaret E. Curran, Chairperson


Paul J. Roberti, Commissioner


Mary E. Bray, Commissioner

Fast Freight, Inc. v. United States, 574 F.2d 316 (6th Cir. 1978); see also *Atchison, Topeka & Santa Fe Railway Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 806-08, 93 S.Ct. 2367, 2374-75, 37 L.Ed.2d 350, 361-63 (1973). (*New England Telephone & Telegraph Co. v. P.U.C.* 446 A.2d 1376, 1389 (R.I. 1982)).

¹⁵ Ridgewood Power, LLC's Application for the Rhode Island LFG Genco 33.4 MW biomass facility.

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I. GEN. LAWS. § 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.