RHODE ISLAND LFG GENCO, LLC

June 28, 2013

Cindy Wilson-Frias, Esq.
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Rhode Island LFG Genco, LLC ("RILG") Renewable Energy Resource Facility (Docket No. 4201)

Dear Cindy:

Thank you for speaking with us on June 17, 2013 regarding the RPS effective date for the above-facility (the "RILG facility"). We also appreciate the opportunity to address the issues that you raised, and to outline for you the reasons why all of the electricity (including test energy) generated by the RILG facility must qualify for the Rhode Island renewable energy standard ("RI RES").

In short, all of the electricity generated by the RILG facility, whether produced before or after the Commercial Operation Date, must qualify for RI RES based on the following reasons:

1. The Rhode Island Legislature clearly intended that test energy be qualified for the RI RES and the RI Public Utilities Commission (the "RI PUC") must follow the intent of the Legislature. The Legislature's intent is clearly reflected by the RI RES long-term contracting standard, the language of the power purchase agreement (the "RILG PPA"), the review, approval and certification of the RILG PPA by four separate Rhode Island administrative agencies, and the filing and certification of the RILG PPA with the RI PUC.

2. Qualification of the RILG facility's test energy is consistent with the RI PUC's Order 20225 in the above-referenced Docket.

3. There are many strong public policy arguments that support qualification of test energy and there is no articulable public policy reason to deny it.

4. The RILG facility's test energy meets the general requirements under the RI RES rules.

5. Other states allow test energy to qualify for renewable portfolio standards.

I. Background

RILG, as owner of the Eligible Biomass Renewable Energy Resource located within the NEPOOL Control area in Johnston, Rhode Island, was approved as a New Eligible Biomass Renewable Energy Resource as of December 20, 2010 in Docket No. 4201 ("Order").

The RILG facility first interconnected with the electricity grid and began generating electricity on December 10, 2012. As requested by the Order, RILG notified the RI PUC that the Commercial Operation Date (for the purposes of the RILG PPA) of the RILG facility occurred as of May 31, 2013 and that a NEPOOL-GIS Asset Identification Number was assigned by NEPOOL (MSS40054). On June 11, 2013, the RI PUC assigned a unique RI PUC Eligible Renewables Energy Resource Facility Certification Number (RI-4201-N13). The letter stated that electrical generation from the RILG facility would be considered Eligible New Renewable Energy for the purposes of the RI RES as of June 1, 2013.

II. Discussion

For each of the reasons set forth below, all of the output of the RILG facility, including test energy generated prior to the Commercial Operation Date, must qualify as Eligible New Renewable Energy for the purposes of the RI RES. The effective date for eligibility should not commence as of June 1, 2013.

1. The Legislative Intent Regarding the RILG Facility Clearly Indicates that the RI PUC is Required to Qualify the Test Energy

In 2010, the Rhode Island Legislature passed the Long-Term Contracting Standard for Renewable Energy §39-26.1-9. This legislation was specifically enacted to encourage and promote the development and construction of the RILG facility by enabling the financing of the RILG facility through a long-term contract for all of the bundled renewable output of the RILG facility, including the RECs associated with the test energy. Without this legislation and the resulting RILG PPA, the RILG facility would not, and could not, have been financed and constructed. Many parties, including RILG, its investors and Narragansett Electric Company relied on this legislation and the subsequent review, approval, certification and filing of the RILG PPA.

Section 3 of the statute states:

> *"The [RILG] PPA shall be reviewed by the administrator of the division of public utilities and carriers, the executive director of the Rhode Island economic development corporation, the administrator of the office of energy resources, and the director of the department of administration. Certified copies of the executed agreement shall be provided to each agency by the Narragansett Electric Company and published on the website of the division of public utilities and carriers for public inspection. Members of the public shall have fifteen (15) days to submit written comments to the four (4) agencies for the respective agency consideration; however, no evidentiary hearings shall be required."*

In response and reliance on this statute, RILG and Narragansett Electric Company (dba " National Grid") negotiated the RILG PPA which, as provided by the statute, was reviewed and certified in July 2010 by four separate Rhode Island administrative agencies.

Section 4 of the statute goes on to describe the RILG PPA approval process:

"(4) Within thirty (30) days of receipt of the agreement each of the four (4) agencies in subsection (c) shall issue a certification or decline certification in writing. Such certifications or declinations shall be final and conclusive as a matter of law and not subject to appeal. The respective certification determinations shall be made to the division of public utilities and carriers as follows:

(i) The administrator of the division of public utilities and carriers shall certify the agreement if the administrator determines that the agreement is consistent with the provisions of this chapter and this section;

(ii) The executive director of the Rhode Island economic development corporation shall certify the agreement if the executive director determines that the project encourages and facilitates the creation of jobs in Rhode Island in the renewable energy sector;

(iii) The administrator of the office of energy resources shall certify the agreement if the administrator determines that the agreement fulfills the declared policy of this chapter and this section;

(iv) The director of the department of administration shall certify the agreement if the director determines that the contractual terms of the agreement are reasonable and in the best interest of the state in accordance with this chapter and section; and

(v) Upon receipt of the certifications pursuant to subsection (d) the division shall review such certifications and confirm that each is in conformance with this section."

Thus, as set forth in Section 4 of the statute, in order to certify the RILG PPA, the four Rhode Island administrative agencies were required to first determine that the contractual provisions of the RILG PPA were consistent with the Legislature's intent, in the best interest of the state, and consistent with Rhode Island law and public policy. Further, as provided by the statute, after being certified by the four Rhode Island administrative agencies, National Grid filed the certified RILG PPA with the RI PUC on July 16, 2010. Once certified by the Rhode Island administrative agencies and filed with the RI PUC as provided by the formal statutory process, all terms and provisions in the RILG PPA were effectively validated as consistent with Legislative intent.

The state-certified RILG PPA, specifically anticipates that RECs produced during the RILG facility's test period will be eligible under the RI RES rules:

"Deliveries During Test Period. During the period prior to the Commercial Operation Date (the "Test Period"), Seller shall sell and Deliver, and Buyer shall purchase and receive, Energy and RECs produced by the Facility and Delivered. Notwithstanding the provisions of Section 5.1, (i) payment for all Energy produced and Delivered during the Test Period shall be equal to the product of (x) the MWh of Energy Delivered from the Facility, and (y) the Real Time Locational Marginal Price at the Delivery Point (as determined by ISO-NE) for each hour of the month when Energy is produced by the Facility, and (ii) payment for the RECs produced by the Facility and Delivered during that Test Period shall be equal to the product of (A) the Test REC Price

and (B) the MWh of Energy Delivered from the Facility. In no event shall the Test Period extend beyond six months, except due to Force Majeure."[1]

It was reasonable and appropriate for the RI PUC to include in its Order a requirement that RILG provide the RI PUC with notice of the Commercial Operation Date. Tracking the status of the RILG facility is surely an important goal for the RI PUC, especially given the fact that the RILG facility is the largest renewable energy generator in the state and is so critically important to fulfilling the renewable energy and other public policy goals of the Legislature.

However, as the above-quoted portion of the state-certified RILG PPA makes clear, the Commercial Operation Date has absolutely no bearing whatsoever on the date on which the RECs are qualified.

The RILG PPA is clear that RECs are created as soon as the RILG facility begins to generate electricity for the grid and Seller must sell and Buyer must buy these RECs even though they are associated with test energy (i.e. generated prior to the Commercial Operation Date). The RILG PPA provisions relating to RECs associated with deliveries during the test period were explicitly reviewed and considered by four different state administrative agencies in accordance with a lengthy formal statutory procedure and, after being certified, were filed with the RI PUC. The RI PUC cannot now subvert the Legislature's intent and frustrate the clear provisions of the state-certified RILG PPA.

2. Qualification of the RILG Facility's Test Energy is Consistent with the RI PUC's Order 20225

The Order stated that the RILG facility, as of December 20, 2010, met the requirements for eligibility as a New, Eligible Biomass Renewable Energy Resource. The Order became effective after a public comment period and an open meeting was held. To fulfill the Order's notice requirement, written documentation verifying the Commercial Operation Date under the RILG PPA and providing the RI PUC with the NEPOOL-GIS Asset Identification Number was submitted on June 6, 2013. The provision of the notice, while a requirement, did not have any bearing on the qualification of the RILG facility as renewable. At most, provision of the notice was required for a NEPOOL-GIS Asset Identification Number to be assigned, but once the required documentation was submitted to the RI PUC, the Order was effectively ratified, which meant that eligible energy should be dated from the effective date of the Order and not from the Commercial Operation Date.

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[1] The RILG PPA states that: *"Renewable Energy Certificates" or "RECs" shall mean all of the Certificates and any and all other Environmental Attributes associated with the Products which conform with the eligibility criteria set forth in the applicable Rhode Island regulations and are eligible to satisfy the Renewable Energy Standard, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such Newly Developed Renewable Energy Resource.*

Furthermore, public RI PUC statements make it clear that all energy generated by the RILG facility should be qualified. In the "Frequently Asked Questions" section of the RI PUC's website, which was updated as of September 18, 2012, states that:

> *"Q: At what date, if approved, will the generation from my facility be considered eligible renewable energy for the purposes of the Rhode Island Renewable Energy Standard?*
>
> *A: Beginning the 1st day of the month in which the Commission approves a facility at an open meeting."*

Because the date of the Order approving the RILG facility was December 20, 2010, all energy generated by the RILG facility after December 1, 2010, should be qualified. The fact that a notice of Commercial Operation was required to be given is inconsequential as to the effective date of the qualification. Indeed, the Order contains many other requirements and imposes other future obligations on RILG, some of which still have not occurred. It would contradict the intent of the Order to mandate fulfillment of all requirements of the Order when some of the requirements could not possibly be completed as of the effective date of the Order.

3. Public Policy Supports Qualification of Test Energy and There is No Articulable Public Policy Reason to Deny It

From a public policy standpoint, maximization of eligible renewable energy is a stated goal of the RI PUC"

> ***"§ 39-26-1 Legislative findings.*** *– The General Assembly finds that:*
>
> *(a) The people and energy users of Rhode Island have an interest in having electricity supplied in the state come from a diversity of energy sources including renewable resources;*
>
> *(b) Increased use of renewable energy may have the potential to lower and stabilize future energy costs;*
>
> *(c) Increased use of renewable energy can reduce air pollutants, including carbon dioxide emissions, that adversely affect public health and contribute to global warming;*
>
> *(d) Massachusetts, Connecticut, and other states have established renewable energy standard programs to encourage the development of renewable energy sources; and*
>
> *(e) It is in the interest of the people, in order to protect public health and the environment and to promote the general welfare, to establish a renewable energy standard program to increase levels of electric energy supplied in the state from renewable resources."*

There is no public policy distinction between renewable energy generated before and after the Commercial Operation Date. All such renewable energy has the same environmental

characteristics and addresses the legislative findings and public policy in exactly the same way. Just like energy created after Commercial Operation, test energy improves diversity of energy sources, lowers and stabilizes prices, reduces air pollutants and promotes the general public welfare. There is no valid public policy reason to discriminate against the energy created during the test period.

Section 4.0 of the RI RPS rules also required Obligated Entities to increase their electricity sales derived from both New and Existing Renewable Energy Resources beginning in 2007 and continuing through 2020 and beyond. Refusing to certify the pre-Commercial Operation Date energy would frustrate this goal and be counter to the Legislature's stated public policy. Indeed, as evidenced by the state-certified and approved RILG PPA, National Grid believed that it was accomplishing this public policy goal by purchasing qualified energy generated during the RILG facility's test period.

4. The RILG Facility's Test Energy Meets the General Requirements Under the RI RPS Rules

The energy generated prior to the Commercial Operation Date has all the same eligibility characteristics of energy generated after the Commercial Operation Date and meets the definition of renewable energy under both the RI RES statute and the RI RPS rules.

The RI RES statute states:

> ***"§ 39-26-5 Renewable energy resources.*** *– (a) Renewable energy resources are. . . Biomass facilities using eligible biomass fuels . . . .*
>
> ***§ 39-26-2 Definitions. –*** *. . . "Eligible biomass fuel" means fuel sources including . . . landfill methane. . ."*

All of the generation from the RILG facility including test energy, meets the definition of renewable energy under the statute and meets the stated public policy goal of the Legislature. There is no physical distinction between the test energy and the commercial energy. They have identical environmental attributes and they are equally "green".

Similarly, all energy generated from RILG's landfill gas-to-energy facility falls under the definition of "Landfill gas" pursuant to Section 5.2 of the RI RPS rules, whether it not is was generated before or after the Commercial Operation Date:

> *"Landfill gas, which is an Eligible Biomass Fuel, means only the gas recovered from inside a landfill and resulting from the natural decomposition of waste, and that would otherwise be vented or flared as part of the landfill's normal operation if not used as a fuel source."*

Since the energy generated from landfill gas fulfills the eligibility general requirements under the RI RES statute and the RPS rules throughout the period from the date of the Order up through the Commercial Operation Date, there is no basis for the RI PUC not to certify all electricity generated as RPS-eligible.

Needless to say, neither the RI RES statute nor the RI RPS rules forbid "test energy" from being considered eligible and there is no basis for the RI PUC to make this unfounded and unsupportable distinction.

5. Other States Allow Test Energy to Qualify for Renewable Portfolio Standards

The states of Massachusetts and California are among the leaders in the creation and support of renewable energy standards. Although not dispositive, looking to those states for guidance is appropriate to demonstrate the current state of renewable energy standards.

Massachusetts

Massachusetts will qualify energy as meeting the RPS beginning with "the date that a Generation Unit first produces electrical energy for sale within the ISO-NE Control Area or within an adjacent Control Area." Once that sale occurs (which Massachusetts rules refer to as "Commercial Operation Date") the Massachusetts RPS rules define the "RPS Effective Date" as "... the earliest date on or after the Commercial Operation Date on which electrical energy output of an RPS Class I Renewable Generation Unit [...] can result in the creation of RPS Class I [...] Renewable Generation Attributes."

It should also be noted that the Massachusetts Department of Energy Resources will create eligible RPS Class I certificates on a retroactive basis as long as the NEPOOL GIS system has not yet recorded the certificates. In the case of the energy generated by the RILG facility prior to the RILG PPA Commercial Operation Date, REC certificates for Q1 2013 have not yet been recorded with NEPOOL, so the RI PUC could follow Massachusetts precedent and certify the test power.

California

California's RPS rules specifically include provisions that address "test power":

> *"Using the ITS for Test Energy*
>
> *. . . the Energy Commission will accept only retail seller procurement claims for generation that is tracked in WREGIS and reported to the Energy Commission using WREGIS State/Provincial/Voluntary Compliance Reports (WREGIS Compliance Reports), except in the cases where tracking RECs for test energy was not available in WREGIS. . . . retail sellers may use the ITS to report test energy not tracked in WREGIS until July 31, 2012. After this date, retail sellers must report all test energy using WREGIS. . . ."*

For the purposes of the California RPS rules, "test energy" refers to preproduction electricity generation that occurs during the testing period of a facility before it commences commercial operations.

This situation is particularly relevant in this case because an affiliate of RILG recently completed construction of a landfill gas-fueled renewable energy facility in California that is virtually identical to RILG facility. In that case, RECs associated with the test energy generated

by the California facility were qualified as meeting the California RPS. There is no basis or reason why the state of Rhode Island should take a contrary position to the state of California.

6. Conclusion

As a general matter, qualifying test energy from a renewable energy facility is consistent with Rhode Island's public policy and meets the definition of renewable energy and is included in the RI RPS pursuant to the language of the RES statute and the RI RPS rules. This is consistent with the rules in other states, including Massachusetts and California, which are both leaders in the development of renewable portfolio standards and which recognize that test energy should qualify as renewable.

In any event, regardless of the RI PUC's general view toward the qualification of test energy, this situation is unique. The Rhode Island Legislature enacted specific legislation that relates exclusively to the renewable energy produced by the RILG facility. The Legislature established specific rules and procedures for the review, approval and certification of the RILG PPA by four separate state administrative agencies. The RILG PPA was in fact reviewed, approved and certified as provided by the statute and the certified RILG PPA was then filed with the RI PUC. The certified RILG PPA contains specific language referring to the RECs associated with the test energy and, consistent with the Legislature's intent, there is nothing in the resulting RI PUC Order approving the renewable status of the RILG facility that should be interpreted to deny the qualification of the test energy.

In summary, while the Order appropriately required RILG to provide notice of Commercial Operation of the RILG facility, that requirement is unrelated to the effective date for the renewable status of the RILG facility and all of the energy produced by the RILG facility must qualify as renewable.

It is critically important that this be resolved expeditiously. The GIS system has deadlines associated with the creation of the RECs and it is important that this be resolved prior to the end of next week (July 5th). We will call you early next week to discuss.

We appreciate your time in considering these important issues. Please do not hesitate to contact the undersigned should you have any questions or concerns.

Very truly yours,

Rhode Island LFG Genco, LLC

By: _____
Name: Stephen D. Galowitz
Title: Chief Development Officer