

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

In re Rhode Island Distributed Generation Standard :  
Contract Board's Report and Recommendations : Docket No. 4288  
Regarding 2014 Distributed Generation Classes, :  
Ceiling Prices and Targets :

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RESPONSE BRIEF OF THE DISTRIBUTED GENERATION STANDARD CONTRACTS  
BOARD AND THE OFFICE OF ENERGY RESOURCES TO THE OBJECTION OF WIND  
ENERGY DEVELOPMENT, LLC

**I. Introduction**

By its attorney, the Distributed Generation Standard Contracts Board ("Board") and the Office of Energy Resources ("OER"), hereby respond to the objection filed by Wind Energy Development, LLC ("WED"). Notwithstanding an aggressive statutory timeline, the OER, Board and Sustainable Energy Advantage ("SEA"), conducted a comprehensive, transparent and public process in accordance with statutory requirements of the Distributed Generation Standard Contract Act ("Act"), R.I. Gen. Laws § 39-26.2-1 *et seq.* This comprehensive, transparent and public process is outlined in the "Report and Recommendation Of the Rhode Island Distributed Generation Standard Contracts Board On 2014 Distributed Generation Classes, Ceiling Prices, and Targets" (Report") and the written direct testimony submitted by Kenneth Payne, Christopher Kearns and Jason Gifford. Therefore, the Rhode Island Public Utilities Commission ("Commission") should approve the recommendations submitted in the Report and deny the objection submitted by WED.

WED was given the opportunity and provided input during the stakeholder process. Although WED's input was not fully adopted to WED's satisfaction, the WED input was fully

considered by the OER, Board and SEA on behalf of the Board. In fact, based on the input provided by WED, adjustments were made to the recommended ceiling prices. For the allocation, the Board heard WED's public comments before voting on the matter. After a comprehensive review and despite an increase for the recommended ceiling price for wind in the 2014 DG program compared to the 2013 DG program, WED is objecting.<sup>1</sup> WED is attempting to argue that the Board improperly considered the input provided by WED when in fact, the Board, and SEA on behalf of the Board, in coordination with the OER, considered the input and recommended ceiling prices based on the express factors included in R.I. Gen. Law § 39-26.2-5.

## II. Argument

### A. **The Board properly considered and approved the 2014 Contract Target for Wind and WED was included in the Stakeholder process.**

There is a distinction between the recommend annual targets and ceiling prices subject to the respective processes outlined in R.I. Gen. Laws § 39-26.2-4 & 5 and additions, eliminations and changes to the "renewable energy classes" referenced in R.I, Gen. Laws § 39-26.2-3(11). Therefore, WED's assertion that sixty (60) days prior notice is required for a "revised contract target for wind" takes the statutory requirement out of context. The sixty (60) day notice requirement is not applicable for establishing ceiling prices and annual targets. R.I. Gen. Laws § 39-26.2-3(11) provides "[t]he Board may add, eliminate or adjust renewable energy classes for each program year with public notice given at least sixty (60) days previous to any renewable energy class change becoming effective." Recommending ceiling prices or 2014 targets to the Public Utilities Commission ("Commission") does not constitute an addition, elimination or an adjustment of a renewable energy class. Moreover, at the present time, without approval from the Commission, no changes to any renewable energy targets for the 2014 DG program are

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<sup>1</sup> It should be noted that the only objection received to date is from WED.

“effective” until approved by the Commission. Therefore, WED’s argument that sixty (60) days notice was not given “at least sixty (60) days previous to any renewable energy class becoming effective,” is misplaced.

As admitted in the Facts section of the brief submitted by WED and as illustrated in the First Response to Data Requests, in the Report and in the direct testimony, WED had actual notice of all proceedings and participated in the extensive process to develop the 2014 DG Program. SEA, on behalf of the Board, met with WED’s representative and WED submitted stakeholder comments to SEA for consideration. SEA provided the CREST model drafts to WED upon its request. Any claim by WED that it was provided insufficient notice or did not have the information necessary to argue its case is a red herring and is an attempt to simply to refocus the issues simply because WED is not fully satisfied with the recommendations submitted by the Board.

**B. The Board Weighed the Proper Factors for the Ceiling Price for Wind in accordance with R.I. Gen. Laws § 39-26.2-5.**

The inputs by WED were considered but were not fully accepted. In essence, WED, based on its own interests, seeks to disqualify the recommendation of the Board because it is not fully satisfied. WED seeks to supplant its opinion with the recommendations of the DG Board, which were developed through a comprehensive process with the assistance of SEA and the OER. After hearing public comment from WED, on December 2, 2013, the Board voted on the recommendations, which includes an increase on the ceiling price for wind. The Commission should review and approve the recommendations submitted by the Board and deny the objection submitted by WED.

As stated in the written testimony submitted by Kenneth Payne in Question #15:



*The Board reviewed the requirements of the statute, looked at past experience with the program, familiarized itself with the CREST model, received recommendations from OER staff, and took extensive input from SEA on what the CREST model runs showed. The Board, or SEA on behalf of the Board, received and discussed public and renewable energy developer comments, and the Board reached consensus that these recommendations should be submitted to the Commission for its consideration and approval. The process was conducted with public meetings and public comment was allowed and welcomed at all meetings. In sum the Board's reasoning followed a logical, ordered, reasonable and transparent process that enabled the Board to conclude that the recommendations that it was making, in concurrence with the OER, conformed with the requirements of the statute.*

As demonstrated in the Report and in the direct testimony submitted by Kenneth Payne, all of the factors listed in R.I. Gen. Laws § 39-26.2-5 were fully considered by the Board in the development of the 2014 DG Program.

**C. Despite an aggressive statutory time horizon, the Board had sufficient time to review the information provided by its expert consultant, SEA and voted on the recommendations contained in the Report.**

SEA was hired by the Board for several reasons: 1) SEA is an expert in the area of developing ceiling prices for renewable energy classes using the Cost of Renewable Energy Spreadsheet Tool ("CREST") model; 2) SEA assisted the OER in the development of the 2013 DG program; and 3) SEA has served as a technical consultant to the OER for the past three (3) years. The Board relied on SEA as an expert in this field to assist in the development of the ceiling prices.

If the Board intended to sort through and analyze all of the work product and information collected by SEA on its own, it would not have hired SEA as its agent to assist in the process. Ultimately, the Board adopted SEA's advice and voted to forward the recommendations on ceiling prices to the Commission, but not before WED's attorney publicly addressed the Board during the December 2, 2013 meeting.

### **III. Conclusion**

WED is not satisfied with the amount of the increase for the ceiling price for wind in the 2014 DG program, along with the allocation for wind. Because WED is not satisfied with the outcome contained in the recommendations, it is attempting to attack the comprehensive, transparent and public process performed by the Board, OER and SEA to develop the 2014 DG program recommendations for the consideration of the Commission. The process is substantially similar to the process performed during the development of the DG program for 2011, 2012 and 2013 and included several public meetings, along with presentations, an opportunity for stakeholder input and ultimately a public meeting to vote on the matter, which included the opportunity for further public comment.

Additionally, the Report is subject to the approval of the Commission and is currently undergoing another public review, with the opportunity for WED to challenge underlying substantive ceiling prices and allocation recommendations before the Commission. The Commission should not be diverted by WED's attempt to attack the DG Board's process and should instead focus on the underlying substantive recommendations for ceiling prices and target allocations.

Respectfully, the Commission should approve the recommendations contained in the Report and deny any objection by a single developer, who is solely interested in its own bottom line.

Respectfully submitted,

THE STATE OF RHODE ISLAND  
DISTRIBUTED GENERATION  
STANDARD CONTRACTS BOARD AND  
THE OFFICE OF ENERGY RESOURCES

By their attorney,

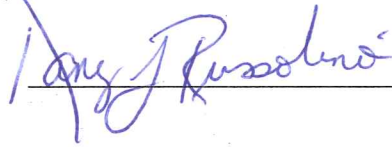


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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2014, I sent this brief via email to the Rhode Island Public Utilities Commission ("Commission") and sent the original and ten (10) copies to the Commission by hand delivery and sent a true copy of the document by electronic mail to the parties listed on the Service List for Docket # 4288.

  
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