STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: R.I. OFFICE OF ENERGY RESOURCES
PROPOSED DISTRIBUTED GENERATION STANDARD CONTRACT AND CEILING PRICES **DOCKET NO. 4288**

R.I. OFFICE OF ENERGY RESOURCES RESPONSE TO COMMENTS

Background: The R.I. Office of Energy Resources (OER) pursuant to the requirements of the Distributed Generation-Standard Contracts Act (DG-SCA), Public Laws of 2011, chapters 129 and 143, filed with the Public Utilities Commission (Commission) on September 27, 2011, recommended ceiling prices for the bundled commodity, comprising power, capacity, and attributes, of renewable energy facilities. In response the Commission opened Docket No. 4288. On October 12, 2011, the OER in accordance of the requirements of the DG-SCA filed with the Commission a draft standard contract, a power purchase agreement setting forth the terms of the sale of the bundled commodity by renewable energy facility owners to the electric distribution company. The Commission included its consideration of the standard contract in Docket No. 4288. A comment period on the ceiling prices and the standard contract closed on October 26, 2011. Renewable energy is of keen interest in Rhode Island; sixteen (16) parties submitted comments on the matters in Docket No. 4288, predominantly concerning provisions of the draft standard contract.

The DG-SCA has a very tight timetable for actions in 2011. The General Assembly specified that there should be an enrollment period for the use of the standard contract and ceiling prices in the year. The DG-SCA mandated that ceiling prices be

submitted to the Commission within ninety (90) days after enactment, which occurred on June 29, 2011, and that the Commission issue a decision sixty (60) days thereafter. The statutorily established timetable did not allow for an extended deliberative process. This makes the consideration of comments by the Commission a doubly important part of the public process: it is both a standard and necessary component of Commission proceedings of this type and it is opportunity to review and react to final draft documents prepared under the supervision of the OER. To have the consideration of ceiling prices and the standard contract remain with the statutory timetable, the OER could not itself provide another round of public meetings or community reviews.

Introduction to this response to comments. This response by the OER to comments received in Docket No. 4288 has three substantive sections. The first substantive section, OER's Position, sets forth the OER's position on key issues integral to the comments; it provides a basis for understanding why the OER has taken certain positions in its response to comments and indeed in its supervising the development of the ceiling prices and the standard contract: it provides the rationale of the OER actions pertaining the implementation of the DG-SCA. The second substantive section, General Response to Comments, provides the OER's response to comments that were made to the Commission by a number of parties and to matters that have general importance to the consideration of the ceiling prices and the standard contract submitted by the OER. The third substantive section, Specific Response to Comments, takes up each set of comments received into the Docket and responds to them, although not on a line by line by basis; in this way the OER is providing its assessment of the positions being taken by commenter.

The OER will provided to the Technical Review Session on November 9, a limited number of possible changes to the draft standard contract that would address issues raised in this review of comments.

I. The OER's Position.

The OER's position is based on principles that warrant disclosure; the OER respects that there are other reasonable and legitimate principles. However in handling the requirements of the DG-SCA and in responding to the comments submitted OER has endeavored to take actions and positions based on articulable principles.

Principle 1. Conform with Statute. The OER endeavors to stay within the boundaries established by statute, in this instance the DG-SCA. For example, the purpose of the statute is to acquire some energy from grid-connected renewable energy resources; the OER does not endeavor to consider whether acquiring supply from traditional, non-renewable resources might be lower cost at this time. If the statute provides only for acquisition of a limited amount of energy from grid-connected renewable energy resources, the OER does not design systems with a premise that the open-end acquisition of grid-connected renewable energy resources should be enabled.

Within the four corners of the DG-SCA, the OER recognizes that there is a balancing of interests and values. Where provisions of the statute could seem to work at cross purposes, the OER treats this as a statutory expectation for balancing competing legitimate public concerns. The OER operates on the basis that the DG-SCA is internally coherent overall and implementable.

Principle 2. Synoptic View. The OER recognizes that are there are essentially different views involved in implementing the provisions of the DG-SCA. There are the views of developers and renewable energy project owners, where ease of transactions, minimization of risks, and maximization of profits are core values. There are the views of the distribution company, where avoidance of administrative burdens, consistency with existing company systems and practices, management of risks, and ready conformity with the principles of the restructured utilities system are core matters affecting the DG-SCA. There are the views from an overall system perspective, where the reduction of societal costs and the realization of societal benefits are core values—for example, cost effectiveness has its deepest meaning from a systems perspective. These different perspectives both overlap and compete. With regard to its obligations under the DG-SCA, the OER operates on the principle that it has a duty to maintain a synoptic view, this means that the OER while acknowledging and respecting the legitimacy of the different views does not endeavor to conform its recommendations to any one set of views.

Principle 3. Respect for Complexity. If an issue is complex, if it involves multiple independent and interrelated variables, if it must accommodate several different points of view, if it has a temporal dimension that means that there is a high likelihood that conditions will change in the duration of the issue, the OER's principle is to respect that complexity. The sale of a bundled commodity, energy, capacity, and attributes, generated by an intermittent renewable energy resource for a fifteen year period has the characteristics of a complex transaction, and from the OER's perspective, a contract governing such a transaction must respect the temporal complexity of the transaction.

The detailed provisions describing how eventualities, which may not happen, would be handled if they were to occur, is a respect for complexity; and clarity in such matters is preferable to brevity for the sake of simplicity.

The DG-SCA essentially establishes a specific form of commercial transaction: the sale of a commodity in a manner that enables a reasonable rate of return on investment for a period of fifteen years. The standard contract thus inherently involves all of the complexities of parties entering into a commercial agreement for an extended period of time. In respecting this reality, the OER did not privilege in the calculation of ceiling prices or, especially, in the development of the standard contract, the hedonic value people may attach to undertaking renewable energy projects.

Principle 4. Respect for Context. The OER recognizes that statutes, decisions by public bodies, and private agreements among parties all exist in context. A specific statute has its life in the context of other laws; decisions by public bodies exist in the context of both prior decisions and the socio-economic reality of the time in which the decision is made; complex agreements among private parties are endued with the nature and the normal business practices of the parties, where one party is engaging in some new activity and the other party as long embedded practices with regard to the subject matter of the agreement, the inertia of context will be more strongly felt by the party where relevant practices have been longer embedded.

The DG-SCA was enacted in the context of the specific successes and failures over time of other Rhode Island statutory schemes pertaining to energy supply, environmental quality and economic development. The DG-SCA is in key respects a carve-out from the Long Term Contracting Standard Act, R.I.G.L. chapter 39-26.1. With

very minor exceptions Rhode Island is served one electric distribution company, and the law providing for utility restructuring was enacted in 1996. Rhode Island has the smallest land area of any state and is the second most urbanized state; only New Jersey has a higher proportion of its residents living in urban areas. Rhode Island has its own unique economic history and its own political culture. Other places may be far more liberal or far more conservative than Rhode Island, and a statute and an agreement that suit another place well, given its economic and political culture, may not be a good fit for Rhode Island unless a good deal of time is spent considering adjustments and tailoring the outcome to Rhode Island specific conditions.

II. General Response to Comments.

1. Barriers to project financing. A number of commenters said the provisions pertaining to Capacity Demonstration Testing, sec 3.1 (a)(iv) and 3.1(d), and to the lack of an unfettered ability of sellers to make assignments, sec. 11.3, could have a chilling effect on the ability to obtain financing for projects. While the OER has recognized that the provisions of sec. 3.1 pertaining to Capacity Demonstration Testing are consistent with sec. 39-26.2-7(2)(iv) of the DG-SCA, nevertheless the OER concurs in the contention of these commenters that the contract provision as drafted could have a chilling effect on the ability to finance projects. The OER believes that alternative reasonable provisions could be developed that would not have such an effect on project financing and would also be consistent with the express requirements of sec. 39-26.2-7(2)(iv) within the DG-SCA. The OER finds that the language in the section of statute is “output proposed in its application” and that “output proposed” is not a defined term in either the statute or the

contract. The term "Contract Maximum Amount" a term used in the draft standard contract is not defined or used in the statute. The OER believes it is possible to make adjustments to the draft standard contract that so that one provision of the DG-SCA is not used in a manner that could frustrate the realization of the basic purposes of the DG-SCA.

The OER finds that the restriction on the seller to make assignments is not based on the statute and that this restriction could have an adverse impact on the way in which renewable energy projects are often financed. The Buyer has an ability to make assignments in circumstances without the approval of the Seller, sec. 11.4. The OER submits that for the purposes of financing the project, the Seller should enjoy a similar right of making assignments without the approval of the Buyer.

2. Radical Simplification of the Contract. A number of commenters asked for radical simplification of the draft DG-Standard Contract. The Contract covers a complex commercial transaction. The OER respects this complexity and the need to address potential issues with specificity in the contract. Some commenters were attracted to California and Vermont models as an alternative to the one used by the OER. The OER notes that the California and Vermont agreements were developed in specific contexts in places that are quite different from Rhode Island in terms of their economies, their socio-political cultures, and structures of utilities. The OER position from the outset was to start with an agreement that had been developed in a Rhode Island context. When National Grid offered that it could delete the project specific language from the Orbit contract, which has received approval by this Commission, the OER accepted the offer.

Some commenters suggest that the Contract should be made much simpler so that it will be less intimidating to prospective owners of small projects. The OER finds there

may be some merit to this recommendation. However, the OER believes that a PPA covering a period of fifteen (15) years is a serious commercial transaction, it does involve significant ongoing obligations for both the seller and the buyer. Accordingly, the OER is of the position that the contract even for small projects should reflect both the complexity and the seriousness of the transaction. With these concerns in mind, the OER is nevertheless responsive to the possibility that a specific contract for very small projects might be developed for use in the future.

The OER believes that the requirement for seller enrollment of RECs beyond what is necessary for the purpose of complying with REFC requirements of R.I.G.L. chapter 39-26 is a burden to the seller and a benefit to the buyer. Beyond essential paper work supplied by the buyer to the seller, the OER submits that the burden of making such enrollments should rest with the buyer.

The OER also submits that level of burdens on sellers should be considered cumulatively: the burdens on sellers should be reduce those essential to the functioning of the Contract for its fifteen year duration; requirements that have little or no functional value should be eliminated. Doing this OER believes would be consistent with the statutory purpose of facilitating renewable energy development would reduce the length of the Contract, which is a goal of a number of commenters.

3. No Precedent Value. Some commenters urged that the DG-Standard Contract should be modified by the Commission and then approved by the Commission as not having any precedent value. These commenters were typically proponents of the California and Vermont models as well, what they are in essence asking for is only temporary use of an agreement based on Rhode Island experience and then migrating towards model

developed in the context of Vermont and California experience. The OER does not concur in this position.

The OER does note that the DG-SC speaks to contracts: "the contract working group shall work in good faith to develop standard contracts that would be applicable to various technologies for both small and large distributed generation projects" (within the DG-SCA, sec. 39-26.2-7(2)). The OER believes that this statutory provision would clearly allow for addenda to be developed for the DG-SCA to accommodate technologies other than wind turbines and solar-PV, and possibly a somewhat simpler agreement that would only be available for very small projects. The OER believes that within the timetable arising from the statute for 2011, the contract working group did not have time to develop any specialized contracts: the contract working group did conform to the requirement to develop a contract "for both small and large distributed generation projects" that are wind turbines or solar-PV.

4. Metering instead of Invoicing. Some commenters suggested that a meter based system for payments from the buyer to the seller be substituted for the invoice based system specified in section 5.2 of the draft DG-Standard Contract. The OER believes that while National Grid made a solid argument for the use of an invoice based system at this time, the OER notes that the DG-Standard Contract is for a fifteen (15) year period and that technology and business procedures can change dramatically during a such a period of time; accordingly the OER believes that it would be reasonable to permit in the contract the use of alternatives to an invoice based system in the future.

5. Default. The OER is cautious about any modifications to the default provisions of the draft DG-Standard Contract that would make it easy for sellers intentionally to stop

selling generated power, capacity, and attributes to the buyer for the ceiling price. The statute makes it a public policy that forty (40) megawatts of capacity name plate be placed in service for the benefit of the distribution grid serving Rhode Island. Defaults in order to make sales to buyers other than the distribution company would be counter to this basic statutory purpose. Furthermore, electricity prices out into the future, ten years hence for example, are not known at this time. If such prices were to exceed the price of electricity generated under the DG-Standard Contract, the DG-Standard Contract with its ceiling prices would act as a hedge, albeit quite small, against such higher future prices. Using renewable energy as a potential hedge against future price shocks appears to the OER to be one of the justifications for Rhode Island's renewable energy programs. The OER submits that no changes should be made to the default provisions that would compromise this public policy objective.

The OER believes that buyer delays in interconnection studies may constitute a Force Majeure from the seller's perspective as the Contract is currently drafted; the OER submits that to remove any doubt this understanding should be made express.

6. Definition of Avoided Costs. Several commenters have suggested that the ceiling prices should be defined as "avoided costs." While recognizing the potential value of having a specific definition of avoided costs, the OER does not believe that this is an issue that can be resolved in a distributed generation-standard contract; the OER asks that this determination be made by the Commission within this Docket.

7. Test Power. The OER finds that a period not to exceed one month for test power compensated at the ceiling price rate would be reasonable and asks that the Commission allow, consistent with section 39-26.2-3(13) of the DG-SCA, for such a period within the

Contract; the fifteen year period specified in section 39-26.2-3(13) should be for commercial operation.

III. Specific Response to Comments.

1. Nicholas Ratti. Mr. Ratti asks the PUC reject the filings made by the OER in Docket No. 4288. The obligation of the OER is to administer laws as enacted. The OER does concur in Mr. Ratti's position.

2. Washington County Regional Planning Council, (Seth Handy). Mr. Handy makes recommendations that have been addressed in the OER's General Response to Comments. Mr. Handy also provides valuable proof reading and editing recommendations, which the OER submits should be given consideration. Mr. Handy further poses questions the consideration of which is informative, but to which an OER response would be but one perspective.

3. Benjamin C. Riggs, Jr. The OER does not find that it is within its purview to comment in the context of this docket on the Federal law issues raised by Mr. Riggs.

4. TEC-RI, (William Ferguson). The OER does not believe the TEC-RI recommendation that the solar-PV portions of the DG-SCA program should be deferred. Given the difficulty and lead time in locating wind turbine projects, dropping solar-PV projects would vitiate the basic purposes of the DG-SCA. The OER does not find it within its statutory responsibilities or expertise to compare ceiling prices against standard

offer prices over a fifteen year period. The OER finds that the specified contract period of fifteen (15) years is set by statute and cannot be comprehensively adjusted by agreement. The OER believes that alternative projects (e.g. those other than wind turbines or solar-PV) could be accommodated in future enrollments and has suggested in its General Response to Comments that standard contract addenda might be developed, if necessary, to enable such alternatives.

5. GEM Plumbing, (Larry Gemma). The OER finds that a large broadly available program of small renewable projects is beyond the scope of the statutory cap on name plate capacity (40 MW); further OER finds that smaller projects are higher cost per KW than larger projects, thus the Gem Plumbing comments run counter to the TEC-RI comments. The OER does not believe a five page contract is reasonably feasible given the complexity of the transaction.

6. NEXAMP, (Jon Abe). The OER believes that it has addressed NEXAMP's major concerns in its General Response to Comments.

7. Bella Energy (Jim Welch). The OER believes that it has taken up the major issues presented in Bella Energy's comments in its General Response to Comments.

8. Phebe Perry McCosker. The OER believe that it has taken up the issues presented in Ms. McCosker's comments in its General Response to Comments and its response to the comments submitted by GEM Plumbing.

9. People's Power and Light, (Karina Lutz). The OER believes that it has taken up the major issues presented in Ms. Lutz's comments in its General Response to Comments.

10. Northeast Sustainable Energy Association, NESEA, (Jennifer Marrapese). NESEA offers both general observations regarding the process used in developing the draft DG-Standard Contract and some comments that are reasonably directed to the character and content of the contract; with regard to the comments, the OER believes that it has taken up the major issues presented in NESEA's comments in its General Response to Comments.

11. National Grid (Thomas Teehan). The OER appreciates the editorial/proofing correction recommended by National Grid. The capacity factor adjustment in chapter 39-26.1 is a multiplication. With regard to National Grid's about the long term status of the DG-standard contract, the OER believes it has addressed this matter in its General Response to Comments.

12. Conanicut Energy LLC, (Robert Tormey). Mr. Tormey as a participant in the working group meeting on October 10 was the most vigorous explicator of the risks to financing presented by the voiding of contracts based capacity testing. The OER immediately recognized the legitimacy of Mr. Tormey's concern and found that a root cause could be the statutory language itself. The OER has since given further thought to

matter which is presented in its General Response to Comments. The OER believes that Mr. Tormey's further comments merit consideration during the technical review meeting.

13. Heartwood Group, Inc. (Fred Unger). The OER recognizes that Mr. Unger's comments represent in many instances a rebalancing of obligations between the seller and the buyer, the distribution company, and that this rebalancing is powerfully reasoned from the seller's perspective. The OER believes that it has addressed many of the issues in its General Response to Comments. The OER encourages to the Commission to review Mr. Unger's specific substantive comments as a way to understand a seller's perspective on issues.

14. Solar Energy Business Association of New England, (John Carroll). The OER believes that it has addressed the concerns expressed by the Solar Energy Business Association of New England in its General Response to Comments.

15. Alteris Renewables, Inc., (Seth Handy). The OER believes that it has addressed many of the comments of Alteris Renewables in its General Response to Comments. The OER believes that comment 9 (b), (g), (h) are appropriate matters to be discussed by the parties at the Technical Session on November 9, 2011.

16. Division of Public Utilities, (Jon Hagopian). In the allocation of class sizes for 2011, the OER faced the challenge of low cap (5 MW) on total nameplate capacity. In terms of MWs the allocation may seem less generous to small scale projects, however in terms of

numbers projects this is not the case, and it should borne in mind that smaller scale projects are less cost effective. The OER believes that it has addressed the bullet points in the memorandum from La Capra Associates in its response to data requests from the Commission.

Respectfully Submitted,
Kenneth F. Payne,
Administrator
Rhode Island Office of Energy Resources

November 4, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within R.I. Office of Energy Resources Response to Comments were sent by email to the following this the **4th** day of November, 2011.

John A. Langlois, Esq. Dept. of Administration	John.Langlois@doa.ri.gov
Kenneth Payne RI Office of Energy Resources One Capitol Hill Providence, RI 02908-5850	Kenneth.Payne@energy.ri.gov
Thomas R. Teehan, Esq. National Grid 280 Melrose St. Providence, RI 02907	Thomas.teehan@us.ngrid.com Joanne.scanlon@us.ngrid.com
Leo Wold, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	Lwold@riag.ri.gov Sscialabba@ripuc.state.ri.us Dstearns@ripuc.state.ri.us Acontente@ripuc.state.ri.us
Jon Hagopian, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	jhagopian@riag.ri.gov mcorey@riag.ri.gov dmacrae@riag.ri.gov
Jerry Elmer, Esq. Conservation Law Foundation 55 Dorrance Street Providence, RI 02903	jelmer@clf.org akullenberg@clf.org
Richard Hahn Lacapra Associates 1 Washington Mall, 9th floor Boston, MA 02108	rhahn@lacapra.com apereira@lacapra.com

Service List (Continued)
Interested Public/Parties

Laurence W. Ehrhardt	LARRY4REP@aol.com
Chris Kearns	ckearns@alterisinc.com
Kristie Caltabiano, Tecta Solar	kcaltabiano@tectaamerica.com
Alan Shoer, Esq.	AShoer@apslaw.com
Julian Dash, RIEDC	jdash@riedc.com
Karina Lutz	karina@ripower.org
Stephan Wollenberg	stephan@ripower.org
Seth Handy, Esq.	seth@handylawllc.com
Paul Raducha	paulraducha@gmail.com
Kevin Stacom	Kevin.stacom@gmail.com
Fred Unger, Hartwood Group	unger@hrtwd.com
Robert J. Tomey, Conanicut Energy LLC	conanicutenergy@cox.net