STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: R.I. OFFICE OF ENERGY RESOURCES' REPORT AND RECOMMENDATIONS REGARDING 2013 DISTRIBUTED GENERATION CLASSES, CEILING PRICES AND TARGETS	:	DOCKET NO. 4288

REPORT AND ORDER

I. Travel

The Distributed Generation Standard Contracts Act ("Act") requires the Office of Energy Resources ("OER") to establish renewable energy classes, set renewable energy class targets, and propose ceiling prices for each renewable energy class on an annual basis and to file those with the Public Utilities Commission ("Commission") for its review.[1] On October 4, 2012, the Commission granted OER's Request for an Extension of Time to file its Report and Recommendations Regarding 2013 Distributed Generation Classes, Ceiling Prices and Targets ("2013 Report and Recommendations") no later than November 29, 2012.[2] On November 29, 2012, OER filed its 2013 Report and Recommendations.[3]

The OER explained that in the first three enrollments (December 2011, April 2012 and July 2012), National Grid received 30 applications for projects totaling more than 32 MW. National Grid selected sixteen DG projects that totaled 16.177 MW. Of these, only one was a wind project, with the remaining fifteen being solar. Therefore, in order to better evaluate the

[1] R.I.G.L. §§ 39-26.2-3(10), 39-26.2-4 and 39-26.2-5. The Distributed Generation Standard Contracts Act requires the Distributed Generation Standard Contract Board (Board) to file the recommendations if the members have been appointed. However, to date, no members have been appointed and thus, the Act delegates the Board's duties to OER. R.I.G.L. § 39-26.2-3(3).
[2] Order No. 20880 (issued November 16, 2012). In a separate Order, the Commission approved OER's Recommendation to permit the reallocation of the remaining target from the 2012 allocation into the 2013 allocation, thus cancelling the final solicitation of 2012. Order No. 20883 (issued November 21, 2012).
[3] OER Exhibit 13-1.

program and develop its 2013 Report and Recommendation, OER held six public meetings with stakeholders.[4]

In its filing, OER set forth four objectives for the 2013 program: (1) Increase the opportunities for different technologies to participate in the program; (2) Decrease, where appropriate, the technology class ceiling prices; (3) Reduce the overall program cost from the 2012 program; and (4) Create a stable and predictable program.[5] Accordingly, OER recommended changes to the technology sizing within the classification and recommended the addition of anaerobic digestion as a class. Finally, OER also recommended setting a ceiling price for hydro projects, but without a 2013 target in order to provide target pricing for developers to implement in future years.[6]

OER recommended pricing for Small Wind (50 kW-1.5 MW), Small Anaerobic Digestion (400-500 kW), and Solar, with three subcategories of small solar (50-100 kW, 101-250 kW and 251-500 kW). OER also recommended pricing for Large Solar (501 kW and above) and Large Anaerobic Digestion (501 kW and above). Finally, OER proposed a Hydro class (500 kW – 1 MW) with pricing, but with no targets as noted above. Discussing the classes and sizing, OER indicated that solar target classes were adjusted to expand participation to smaller projects appropriate for small business or municipal sites. Despite this expansion to smaller projects, the target prices have been reduced from the prior period. Likewise, the wind target classes were designed to allow smaller wind turbine systems to participate. The new anaerobic digestion technology class may lead to lower ratepayer impacts based on disversification of technology. Finally, with regard to hydro, OER did not recommend an allocation to hydro because no

[4] *Id.* at 1-2.
[5] *Id.* at 2.
[6] *Id.* at 2-3.

hydropower project could clear all of the regulatory reviews required within an 18 month period, the limit imposed by the Distributed Generation Standard Contracts Act.[7]

OER explained that, similar to last year's process, OER retained Sustainable Energy Advantage ("SEA") to perform the analysis of ceiling prices for the 2013 program using a Cost of Renewable Energy Spreadsheet Tool ("CREST") Model.[8] SEA used data from renewable energy programs in four other states along with information from National Grid in order to generate ceiling prices with the CREST Model.[9] After their development, OER presented the pricing to stakeholders at an October 19, 2012 meeting and accepted public comments. OER also held two other stakeholder meetings to discuss the 2013 ceiling prices.[10] OER recommended reduced pricing and allocations for solar projects based on available information. The reduced allocation led to the availability of an allocation to anaerobic digestion as noted above. Wind pricing was increased and project sizing was adjusted in order to provide more flexibility for wind projects and an incentive for more wind projects to participate at a lower price than solar. Additionally, OER initially recommended two different prices for anaerobic digestion and wind to take into account uncertainty surrounding the continued availability of the federal Production Tax Credit beyond December 2012.[11]

With regard to the allocation of resources within the 2013 program, OER noted that at OER's request, the Commission had approved a change to the 2012 program whereby 3.8 MW would be rolled over to the 2013 program, making a total of 13.8 MW available to distributed generation programs in 2013. The proposed allocation was 9.8 MW to be available to small

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[7] *Id.* at 2-3. OER stated that it would be working with state and federal officials to determine if the time frame could be addressed so to allow hydro to participate in 2014. *Id.* at 3.
[8] *Id.* at 3.
[9] *Id.* at 4.
[10] *Id.*
[11] *Id.* at 4-5.

distributed generation projects and 4.0 MW available to large distributed generation projects.[12] The specific allocations would be as follows: Small Wind (1.5 MW), Small Anaerobic Digestion (500 kW), and Solar, with four subcategories (50-100 kW) at 300 kW, (101-250 kW) at 250 kW, (251-500 kW) at 750 kW, and Large Solar PV/Anaerobic Digestion (501 kW and above) at 1.3 MW. The allocations would remain firm throughout the year, rolling over from one enrollment to the next, except that if the 300 kW allocation for the 50-100 kW small solar PV is not used in one or more allocation periods, the unused portion of the allocation from that enrollment would be added to the large distributed generation class for that and future periods. Any remaining allocations at the end of 2013 would be rolled over to the 2014 program year.[13]

On December 28, 2012, the Division of Public Utilities and Carriers ("Division") filed a memorandum from its consultants, Alvaro Pereira and Richard Hahn of La Capra Associates, Inc., summarizing OER's proposal and agreeing that the proposed ceiling prices were reasonable, but raising a question regarding certain inputs related to the wind projects.[14] In a January 2, 2013 memorandum, Messers. Perreira and Hahn indicated that they had received further information regarding the questioned inputs and were satisfied that the proposed ceiling prices of the 2013 wind projects are supported by the data available to OER. They concluded the proposed ceiling prices were reasonable.[15]

On January 4, 2013, OER filed a Statement advising the Commission that the American Taxpayer Relief Act of 2012, signed into law on January 2, 2013, included certain renewable energy incentives. On January 8, 2013 and January 9, 2013, OER filed proposed revisions to the ceiling prices based on the passage of the American Taxpayer Relief Act provisions, but still

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[12] *Id.* at 5.
[13] *Id.* at 5-6.
[14] Memorandum from Al Pereira and Dick Hahn to the Division of Public Utilities and Carriers, 12/28/12.
[15] Memorandum from Al Pereira and Dick Hahn to the Division of Public Utilities and Carriers, 1/2/13.

proposing separate pricing based on the availability of the Investment Tax Credit ("ITC") and Bonus Depreciation.[16] At the hearing on January 10, 2013, OER clarified that it was only seeking approval of ceiling prices based on the assumption that projects would qualify for the ITC but not Bonus Depreciation.

II. Hearing

On January 10, 2013, after due notice, the Commission conducted an evidentiary hearing at its offices at 89 Jefferson Boulevard, Warwick, Rhode Island. The following appearances were entered:

FOR OFFICE OF ENERGY RESOURCES:	Peter V. Lacouture, Esq.
FOR NATIONAL GRID:	Thomas Teehan, Esq.
FOR CONSERVATION LAW FOUNDATION:	Jerry Elmer, Esq.
FOR WIND ENERGY DEVELOPMENT, LLC:[17]	Seth Handy, Esq.
FOR DIVISION:	Karen Lyons, Esq. Special Assistant Attorney General Jon Hagopian, Esq. Senior Legal Counsel
FOR COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

OER presented Marion Gold, Administrator of the OER, Christopher Kearns, Programming Servicing Officer of OER and Jason Gifford, Senior Consultant at Sustainable Energy Advantage in support of its proposed targets and ceiling prices for the 2013 program year. Ms. Gold clarified that OER was proposing to present the 2013 revised ceiling prices with

[16] Statement of OER 1/8/13 and revision dated 1/9/13. In its filing, OER noted that Bonus Depreciation is available to qualifying projects placed in service before January 1, 2014, that the Production Tax Credit will be extended to qualifying facilities "the construction of which begins before January 1, 2014, and that qualifying facilities will be able to make an irrevocable election to take the Investment Tax Credit in lieu of the Production Tax Credit. Statement of OER 1/8/13 at 1.

[17] Wind Energy Development, LLC filed a Motion to Intervene on January 10, 2013. The parties had no objection to the intervention. The Commission granted the Motion at the beginning of the hearing. Tr. 1/10/13 at 12.

the ITC, but not the bonus depreciation.[18] On cross examination, she explained that the State is in the process of developing a strategic energy plan, part of which will include a determination of the ultimate role of renewable energy in the overall energy system which needs to be secure, cost effective, affordable and clean. She noted that there has also been concern in Rhode Island about economic development. However, she stated that "[e]conomic development and energy development are two separate issues."[19] Therefore, while People's Power and Light, through its public comments, advocates for a more aggressive approach to renewable energy, including expanding the distributed generation pilot program, Dr. Gold indicated that OER is "trying to balance all the variables – security, costs, impact on the ratepayers, [and] cleanliness or environmental friendliness."[20] Noting that the proposed 2013 ceiling prices are lower than in 2012, Dr. Gold also indicated that it may be possible for small DG projects to help decrease expensive transmission and distribution costs. Therefore, she concluded, it is important to explore the effect of these projects in Rhode Island.[21]

Mr. Kearns explained that the reason OER was proposing a single set of ceiling prices was the result of conversations with National Grid regarding the feasibility of having two ceiling prices for a single class.[22] He indicated that proposing the ceiling prices assuming the ITC but not the bonus depreciation was based on the analysis that no DG project enrolled in 2013 would be eligible. According to Mr. Kearns, in order to be eligible for bonus depreciation, a project must be operational by the end of 2013. He believed this was unlikely based on the fact that with the exception of one wind turbine project, none of the projects enrolled in 2011 or 2012 were operational at the time of the hearing. Conversely, in order to be eligible for the ITC, Mr.

[18] Tr. 1/10/13 at 16.
[19] *Id.* at 21-22.
[20] *Id.* at 22.
[21] *Id.* at 21, 23.
[22] *Id.* at 26-28.

Gifford explained that a project does not need to be operational by the end of 2013. It is a credit of thirty percent (30 %) of eligible costs which may be taken in the first quarter of operation for eligible technologies. Mr. Gifford discussed the availability of the production tax credit which is a credit that may be taken each year during the first ten years of commercial operation and which is based on production. Where a project can elect either credit, the proposed pricing assumes the ITC because it is a more beneficial credit to the project and therefore, OER assumed a project would elect that option. It also produces lower prices for ratepayers.[23] Mr. Gifford explained that some of the ceiling prices remained unchanged after the passage of the American Taxpayer Relief Act because those projects, solar in particular, had been qualified for the ITC through 2016.[24]

On cross examination, Mr. Gifford agreed that the lower pricing proposed in OER's revised filing was not the same pricing on which comments were taken during the stakeholder meetings.[25] He indicated that he believed that at the time of the stakeholder meetings, the industry did not anticipate the extension of the ITC, noting that he certainly did not.[26] He stated that because the ITC offers a greater tax benefit than the production tax credit, even with the lower price, the target return on the projects has not changed from that which was discussed during the stakeholder meetings.[27] Mr. Kearns maintained that once the ITC was extended, the OER had a responsibility to factor that into the ceiling prices in order to balance the promotion of small renewable DG projects with ratepayer impact.[28]

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[23] *Id.* at 28-30, 32-35.
[24] *Id.* at 46.
[25] *Id.* at 38-40.
[26] *Id.* at 41.
[27] *Id.* at 42, 48.
[28] *Id.* at 44.

National Grid presented Corinne Abrams for a review of the DG Enrollment Rules and to comment on the ceiling prices. Ms. Abrams opined that in light of the fact that most projects enrolled in 2013 would most likely not be able to take advantage of bonus depreciation, particularly with the first enrollment occurring in February or March 2013, a single price for each class of projects would send an appropriate market signal to developers.[29] On cross examination, she agreed that the existence of two prices may also affect the terms of the previously approved Distributed Generation Standard Contracts and create problems in the execution of the Contract with a developer.[30]

The Division presented Mr. Pereira in support of its position that the targets and ceiling prices were reasonable. Mr. Pereira stated that the pricing proposed by OER was commercially reasonable.[31] Mr. Pereira also indicated that the pricing proposed at the hearing was reasonable because "the assumptions that we've questioned earlier did not change, it was simply an application for the ITC and bonus depreciation."[32] With regard to those earlier questions to OER, Mr. Pereira explained that he was able to personally review the database and the data points upon which SEA relied in developing the ceiling prices. He indicated that these data points were received from developers during stakeholder discussions and were received from developers at SEA's request.[33] While the Division continued to support the initial proposal of two prices, with and without bonus depreciation, Mr. Pereira agreed that it would be a simpler process, particularly for small developers, if there were a single price point.[34]

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[29] *Id.* at 75-76.
[30] *Id.* at 76-77.
[31] *Id.* at 86.
[32] *Id.* at 96.
[33] *Id.* at 97.
[34] *Id.* at 88, 95-96, 100.

III. Commission Findings

At an Open Meeting held on January 31, 2013, the Commission reviewed OER's proposed targets and ceiling prices along with the comments and testimony from the hearing and approved the targets and pricing as revised on January 9, 2013. The Commission finds that a single ceiling price based on the availability of the ITC but without the bonus depreciation is reasonable and sets a clear market signal to developers and investors. It is reasonable to assume the availability of tax incentives in the development of ceiling prices, particularly where the recovery of costs will be through rates with the addition of a 2.75% remuneration payment to National Grid. As Dr. Gold testified, the role of the State needs to include the balancing of the development of renewable energy with efficiency and cost. Likewise, Mr. Kearns testified that when the ITC was unexpectedly extended, OER had "the responsibility" to consider the effects on the pricing and propose revisions. This Commission agrees with both statements.

While Wind Energy Development, LLC expressed concern through cross examination that the pricing did not reflect the pricing provided in stakeholder meetings and questioned the transparency of the process, the Commission finds that OER's process and resulting prices will provide an appropriate incentive to the development of renewable distributed generation projects. During the stakeholder meetings, the OER could not have foretold the last-minute extension of the ITC by Congress, particularly with the nature of the debate in Washington, D.C. In fact, Mr. Gifford testified that the attendees of the stakeholder meetings did not anticipate such an event. Furthermore, according to all of the witnesses who testified to the development of the ceiling prices, the reduced pricing still allows the projects the same return as that which was discussed at the stakeholder meetings although at a lower price to ratepayers. As a result, developers should have the same opportunity to enroll projects in the DG Enrollments under the revised pricing that they did under the originally filed pricing. Therefore, the Commission finds that the process was transparent and in compliance with the Act.

The following chart sets forth the Approved Technology Classes, Targets and Ceiling Prices:

Approved Technology Classes and Targets (Allocations)

Small DGSC Enrollment Program

Technology & Class	Allocation (kW/MW)
Wind: 50 kW - 1.5 MW	1.5 MW
Small Solar PV: 50-100 kW	300 kW
Small Solar PV: 101-250 kW	250 kW
Small Solar PV: 251-500 kW	750 kW
Anaerobic Digestion: 400–500 kW	500 kW

Large DGSC Enrollment Program

Large Solar PV: 501 kW and above and Anaerobic Digestion: 501 kW and above	1.3 MW total (for 2 technologies)
Total MW	**4.6 MW**

Approved Ceiling Prices (¢/kWh), by Technology Class

Technology, sub-class	2013 Proposed Ceiling Price w/ITC but Without Bonus Depreciation
Solar, 501 kW+	24.95
Solar, 251 – 500 kW	28.40
Solar, 101 – 250 kW	28.80
Solar, 50 – 100 kW	29.95
Wind, 1 – 1.5 MW	14.80
Wind, 200 – 999 kW	16.20
Wind, 50 – 100 kW	24.65
AD, 400 kW – 500kW	18.55
AD, 500 kW +	18.55
Hydro, 500 kW – 1 MW	-------

Accordingly, it is hereby

(20995) ORDERED:

1. The 2013 Distributed Generation Classes and Targets filed by the Office of Energy Resources on November 29, 2012 are hereby approved.

2. The 2013 Distributed Generation Ceiling Prices filed by the Office of Energy Resources on January 9, 2013 are hereby approved.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 31, 2013 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED MARCH 26, 2013.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Mary E. Bray, Commissioner

Paul J. Roberti, Commissioner

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 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.