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Memorandum
From: Seth Handy, on behalf of the Washington County Regional Planning Council
To: RI Public Utilities Commission
Date: November 8, 2011
Regarding: Docket # 4288 Distributed Generation Ceiling Prices and Standard Contract

On behalf of the Washington County Regional Planning Council, I submit the following reply to the Office of Energy Resources response to comments on the proposed ceiling prices and standard contract. As requested by the PUC, these comments are designed to highlight concerns we raised in our initial comments that were not (or, in some cases, not fully) addressed by OER's response.

I. Ceiling Prices

1) We respectfully disagree that the issue of avoided cost cannot be addressed in the contract. We strongly urge OER and PUC to add the following section 5.1(b) to the contract, in the section entitled "Price for Products:"

> Given the clear intent of the Rhode Island legislature in adopting and designing this program, Buyer acknowledges that the price it pays for energy under this contract is its "avoided cost" for the purchase of energy from the sources eligible for this program pursuant to section 210(a) of PURPA. 16 U.S.C. § 824a-3 (2006).

2) Page 33: We repeat the request that OER and/or the Renewable Energy Coordinating Board carefully document how additional factors including "environmental benefits, including, but not limited to, reducing carbon emissions, and system benefits" were or should be considered in setting ceiling pricing. It is important to establish a real record of such considerations so that they can be included in any evaluation of the program's results. In the absence of details on these additional factors, any evaluation of the "cost effectiveness" of this program (it's cost relative to the open market) will be apples-to-oranges.

II. Standard Contracts

1) We request that OER, PUC and/or the Renewable Energy Coordinating Board give strong consideration to the redlined contracts submitted by WCRPC and the development community. While OER advised PUC to consider the many specific comments on the contract offered by WCRPC, it is still unclear whether or how that will be done. We urge particular attention to the following:

a. Sections 3.2(b)(v) and 3.3(j): to require FERC approval of these sales at "market-based rates" raises the avoided cost issue again. Avoided cost should be addressed in section 5.1(b) of the contract (as requested above) and this "market based rates" language should be deleted or at least clarified by cross reference to the added section 5.1(b).
b. Section 3.4(b): the requirement that Seller should indemnify Buyer for "performance" of the contract is inappropriate. Any indemnification obligations should also be reciprocal.
c. Section 6.3(e): Seller's rights and remedies for Buyer's default is the termination penalty per section 8.3 so this section and section 8.3 should clearly and consistently reflect that.
d. Section 16.4: This section, providing for a standard of review, should be deleted and that should be left to the neutral deciding any dispute.

2) Sections 3.1 and 3.3: All the NGrid-administered criteria for "substantial completion" and "critical milestones" should be deleted, leaving only the issue of "commercial operation" which should be based on complying with production requirements within 18 months of signing the contract, as contemplated by the statute.

III. Enrollment Application

In response to NGrid's response to comments and its revised enrollment application, WCRPC simply submits that the application form could be greatly simplified and much less onerous while still generating sufficient information to verify whether projects are feasible. A much simpler and easier form of enrollment application would be in keeping with the statute's requirement that the developer post a performance deposit and with our legislature's clear objective of simplifying and facilitating the development of renewable energy.