STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: REVIEW INTO THE ADEQUACY	:	
OF RENEWABLE ENERGY SUPPLIES	:	DOCKET NO. 4404
PURSUANT TO R.I. GEN. LAWS § 39-26-6	:	

REPORT AND ORDER

I. Travel

On June 29, 2004, the General Assembly, with the Governor's signature, enacted a Renewable Energy Standard (RES) for the State of Rhode Island. The legislation, codified as R.I. Gen. Laws §§ 39-26-1 to 10, sets forth the parameters of such a standard designed to diversify energy sources, reduce carbon dioxide, and encourage the development of renewable energy resources. Under the RES legislation, beginning in compliance year 2007, Obligated Entities, defined as those persons or entities selling electrical energy to end-users in Rhode Island, shall obtain escalating percentages "of the electricity they sell at retail to Rhode Island end-use customers, adjusted for electric line losses, from eligible renewable energy resources."[1] Obligated entities can fulfill their obligations through the purchase of renewable energy certificates (RECs) or through the payment of an Alternative Compliance Payment (ACP) which escalates with inflation.

R.I. Gen. Laws § 39-26-6(d) requires the Public Utilities Commission (PUC) to "determine, on or before January 1, 2014, the adequacy, or potential adequacy, of renewable energy supplies to meet the increase in percentage requirement of energy from renewable energy supplies to go into effect in 2015".[2] In 2015, Obligated Entities are required to obtain at least 10.0% of electricity they sell at retail to Rhode Island end-use customers from eligible renewable energy resources unless the PUC finds that there are

[1] R.I. Gen. Laws § 39-26-4(a).
[2] R.I. Gen. Laws § 39-26-6(d).

not adequate or potentially adequate supplies to meet that percentage requirement in 2015, in which case, the obligation would remain at 8.5%, the 2014 level. The Commission opened the instant docket in order to conduct its review and make its determination by January 1, 2014.

The parties to the docket were The Narragansett Electric Company d/b/a National Grid (National Grid or Company) as the largest Obligated Entity in Rhode Island and the Division of Public Utilities and Carriers (Division) on behalf of the ratepayers. Conservation Law Foundation intervened, but did not submit any position papers.

II. Technical Record Session (ISO-NE)

At the request of the PUC, ISO-NE provided an "Outlook for Renewable Resources in New England."[3] This presentation was the topic of a Technical Record Session conducted on August 27, 2013 at the PUC's offices, 89 Jefferson Boulevard, Warwick, RI. Jon Black, Engineer, System Planning, for ISO-NE provided an overview of ISO-NE's role in the region and discussed renewable energy portfolio standards in general.[4] The presentation by ISO-NE provided a view of the potential resources at a snapshot in time and was not designed to provide an opinion on the available supply of RECs in 2015.

Mr. Black noted that the ACPs in each state are designed as a cap on the cost of compliance.[5] He also explained that each state has a slightly different approach to their respective renewable energy portfolio standards, including eligibility criteria for renewable projects.[6] Mr. Black outlined the various projects within the ISO-NE queue

[3] PUC Exhibit 2.
[4] Tr. 8/27/13 at 5-9.
[5] *Id.* at 7.
[6] *Id.* at 9.

and noted that there is a historical attrition rate greater than 70% in both renewable and non-renewable resources, meaning that many projects within the queue do not come to completion.[7] One reason for this may be that the projects in the queue do not necessarily have their permitting in place. Therefore, Mr. Black agreed that it is quite likely that substantially less than the megawatts projected from renewable energy projects in the queue will ever produce power in the foreseeable future. He further clarified that there are many factors that might be taken into account for determining the theoretical potential of queue total.[8]

III. National Grid's Filing

On September 25, 2013, National Grid filed with the PUC the pre-filed testimony of Margaret M. Janzen, Director of Wholesale Electric Supply for National Grid USA Service Company, Inc. and Paul H. Flemming, Director and Principal of ESAI Power, LLC (ESAI), a consultant specializing in the wholesale electricity markets. Ms. Janzen explained that National Grid is obligated to purchase RECs in accordance with R.I. Gen. Laws §§ 39-26-2(16) and 39-26-4(a).[9] She explained that this is done in accordance with an annual PUC-approved REC Procurement Plan which includes purchases under the Long-Term Contracting Standards Act, the Distributed Generation Standard Contracts Act, stand-alone procurements, and procurements in conjunction with procurement of standard offer service.[10] In this version of her testimony, Ms. Janzen projected that National Grid would be able to meet its 2015 obligation through its long-term renewable

[7] *Id.* at 51-52.
[8] *Id.* at 53-55, 57-58, 74-77. According to ISO-NE's response to a PUC record request, approximately 40% of the renewable energy queue would need to be built in order to meet the 2015 regional renewable portfolio standards. PUC Exhibit 4.
[9] National Grid Exhibit 2 (Pre-filed testimony of Margaret Janzen) at 3-4.
[10] *Id.* at 4-7.

energy contracts and distributed generation contracts.[11] However, by October 16, 2013, in response to a PUC data request, Ms. Janzen revised her projections based on project delays of which National Grid had become aware, resulting in less than sufficient REC supply from the long-term renewable energy contracts in 2015, and in 2016. In this exhibit, National Grid indicates that Champlain Wind will not be operational until 2017 and Deepwater Wind will not be operational until 2018.[12]

Ms. Janzen explained that National Grid had retained ESAI to conduct an assessment and prepare a report addressing the adequacy of renewable energy supply in 2015. She noted that ESAI's forecast indicates a tightening of renewable energy supply in New England by 2015 as the renewable energy mandates of the various states increase, with a potential 12% shortfall in the region. However, despite this forecast, Ms. Janzen explained that National Grid "believes that it is more likely than not that Rhode Island will still be able to meet its requirements."[13] She supported this statement largely based on the initial analysis that the long-term renewable contracts and distributed generation contracts would satisfy National Grid's obligation.[14] She stated, therefore, that National Grid recommended the scheduled percentage increase not be delayed.[15]

In his testimony, Mr. Flemming explained that ESAI developed "an assessment of renewable energy supplies available to meet the 2015 requirements of RES" requiring obligated entities to procure 10% in 2015, with at least 8% from new renewable energy resources.[16] Explaining the methodology, Mr. Flemming noted that total New England

[11] *Id.* at 9.
[12] PUC Exhibit 6 (National Grid Response to PUC-DR-2-1).
[13] National Grid Exhibit 2 at 11,16.
[14] *Id.* at 16-17.
[15] *Id.* at 17.
[16] National Grid Exhibit 3 (Pre-filed testimony of Paul Flemming) at 4.

supply was developed from real performance of operational facilities, projected completion times for facilities under construction or development, and imports. ESAI handicapped incomplete projects differently based on the probability of completion, giving more certainty to any project with a long-term contract with a utility.[17] ESAI uses this information together with ISO-NE load data to develop a yearly supply and demand outlook.[18]

ESAI developed three scenarios, a base case which predicts a shortfall of 1,320,000 RECs in 2015; a high supply scenario, based on accelerated project completion that predicts a surplus of 113,000 RECs supply; and a low supply scenario, based on lower supply and imports, that predicts a shortfall of 1,877,000 RECs.[19] Mr. Flemming cautioned that the predictions could be affected by the level of load growth, load variability, wind capacity factors, new development, future state legislated changes to RES standards, import levels, banking levels, natural gas prices which can affect new project construction, and the expiration of various tax credits.[20]

Mr. Flemming stated that "ESAI projects a potential regional supply deficit of 12% for Tier I [New] resources" in 2015.[21] However, Mr. Flemming cautioned that it is uncertain which state or states will have shortfalls in their renewable supply portfolios.[22] Because of the long-term contracts into which National Grid has entered, it may not

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[17] *Id.* at 4-5. The start dates of operation used for Orbit Energy, Bowers Mountain (Champlain Wind), and Deepwater Wind were all revised to later dates by National Grid after the analysis completed by ESAI). *Compare* National Grid Exhibit 3, Attachment at 36 of 36 with Schedule 1 – Revised to Margaret Janzen's testimony.
[18] *Id.* at 5.
[19] National Grid Exhibit 3, Attachment at 8-9 of 36. For purposes of this Order, all references in the filings or testimony to gigawatt hours (GWh) have been converted to megawatt hours (MWH) for consistency, particularly where, for every one MWH of renewable energy produced, one REC is produced. 1MWH=1REC.
[20] *Id.* at 10-13 of 36.
[21] National Grid Exhibit 3 at 5.
[22] *Id.*

experience a shortfall.[23] Furthermore, in the report appended to Mr. Flemming's testimony, it is noted that because Connecticut and New Hampshire have lowered their ACPs, thus lowering the ceiling price for RECs, it is likely that those states will experience a disproportionate share of the shortfall before higher ACP states like Rhode Island and Massachusetts.[24]

IV. Technical Record Session (National Grid)

The PUC conducted a second Technical Record Session on October 3, 2013, at its offices at 89 Jefferson Boulevard, Warwick, RI for the purpose of gaining a further understanding of ESAI's analysis. National Grid provided a presentation entitled "Analysis of National Grid's Renewable Portfolio and Renewable Energy Obligations."[25] Ms. Janzen and Mr. Flemming used this presentation as the basis for the discussion.

Ms. Janzen reviewed National Grid's renewable energy procurement strategies which include requesting pricing for RECs from the wholesale suppliers of standard offer service, procuring RECs through its long-term renewable energy contracts under the Long Term Contracting for Renewable Energy Act and the Distributed Generation Standard Contracts Act, and procuring RECs in the market.[26] She explained that this allows National Grid flexibility to respond to delays in the availability of RECs due to project delays.[27] For example, Ms. Janzen agreed that new information revealed that the amount available from long term renewable contracts would be reduced by 159,000

[23] *Id.* In
[24] National Grid Exhibit 3, Attachment at 8 of 36.
[25] National Grid Exhibit 1.
[26] Tr. 10/3/14 at 13-14.
[27] *Id.* at 15.

MWH, the equivalent to 159,000 RECs. These RECs would need to be procured through one of the other methods available as described above.[28]

Mr. Flemming confirmed that while National Grid had analyzed its ability to meet its RES obligation in 2015, for approximately 67% of the Rhode Island load, ESAI had analyzed the New England region's REC supply.[29] Further explaining ESAI's approach, Mr. Flemming referenced the presentation from the October 3rd Technical Record Session, noting that Existing Production includes any project producing renewable energy as of August 2013. Imports in the ESAI analysis include RECs coming into New England from New York and Canada, based on the 2012 import data while recognizing that recent data suggests an escalation of imports in 2013.[30]

Queue Projects can represent anything from projects that are "a gleam in someone's eye" to those nearly complete, thus necessitating the handicapping assigned to each project based on further analysis by ESAI. This is because according to Mr. Flemming, only approximately 20% of projects in the queue are ever completed. Explaining the handicapping further, Mr. Flemming explained that a project in the queue associated with an experienced or financially secured developer would be given a greater likelihood of success than one without.[31]

In ESAI's analysis, future generation assumes 350 MW of wind will be added each year beyond the amount assumed in ESAI's queue, with less included in 2015 due to the fact that most of that generation would be included in the queue. ESAI totaled the

[28] *Id.* at 24-26.
[29] *Id.* at 45.
[30] *Id.* at 56.
[31] *Id.* at 56-57.

availability base case supply of 9,600,000 MWH in the region compared to ISO-NE's forecast of 10,920,000 MWH of region-wide demand for RECs in 2015.[32]

Referencing ESAI's projected 1,300,000 REC deficit in 2015 in the region, also referred to as a "consistently projected supply deficit,"[33] Mr. Flemming stated that, "as we look at these regional deficits, it's likely that Rhode Island could meet its 2015 obligations, particularly given the long-term contract approach taken by National Grid."[34] He added that because Rhode Island has a higher ACP than New Hampshire and Connecticut, to the extent that RECs trade close to the higher ACP, New Hampshire and Connecticut will most likely rely on their lower ACP, leaving more RECs available for purchase in Massachusetts and Rhode Island with their higher ACPs.[35]

V. Division of Public Utilities and Carriers' Filing

On October 18, 2013, the Division submitted a Memorandum from Richard Hahn, its consultant. Mr. Hahn recommended the PUC delay the scheduled 1.5% increase in 2015, opining that "[b]ased upon currently expected in-service dates for key projects with long-term Purchased Power Agreements (PPAs), there is a potential shortage of …RECs in 2015…."[36] In support of this position, Mr. Hahn noted that National Grid's reliance on its long-term renewable energy contracts in support of adequacy of RECs assumes that three key projects will be in service by 2015, an assumption that was undermined by its responses to Division discovery requests in this docket.

According to Mr. Hahn, in its discovery responses, National Grid noted that Champlain Wind and Deepwater Wind will most likely not be on-line in 2015 and

[32] *Id.* at 57. ESAI's analysis assumes Cape Wind will begin producing in 2015. *Id.* at 63-64.
[33] *Id.* at 69.
[34] *Id.* at 46-48.
[35] *Id.* at 48-49.
[36] Division Exhibit 2 (Comments of Richard Hahn) at 2.

further, that Orbit Energy's siting issues could lead to slippage of that project's in service date as well.[37] Without the Champlain Wind and Deepwater projects operational in 2015, National Grid's long-term renewable energy projects will result in a shortfall of 94,040 MWH.[38] Even with a one-year delay in the scheduled REC increase, according to Mr. Hahn, National Grid will still experience a shortfall in RECs which will need to be procured outside of the long term contracting.[39] Mr. Hahn estimated that the cost savings to customers of the delay would be approximately $7.5 million in 2015.[40]

Mr. Hahn stated that he generally agreed with ESAI's prediction of a region-wide shortfall of RECs in 2015 and concluded that a potential inadequacy of supplies is likely to exist. Therefore, he recommended that "[b]ased on the Rhode Island statute that requires such a delay upon finding of the potential for inadequate supplies," the PUC should delay the scheduled increase for one year.[41] He opined that the delay would not adversely impact the cost of new RECs in New England. He did note that the law also allows the PUC to recommend a different increase to the General Assembly. Finally, he stated that while maintaining the scheduled increase may result in a higher reliance on ACPs, it would be a valid policy decision for the PUC to make.[42]

VI. National Grid's Response to Division

On October 23, 2013, National Grid submitted a Reply Memorandum in response to the Division. National Grid noted that its RES procurement plan has sufficient flexibility to allow it to address the variability of REC deliveries from long term

[37] *Id.* at 6-7.
[38] *Id.* at 7. One REC equals one MWh.
[39] *Id.* at 3, 8.
[40] *Id.* at 8-9. Mr. Hahn also noted that delaying the implementation of the scheduled percentage increase for a period of one year would result in a cost savings to customers of approximately $7.6 million in 2016, for a two year savings of approximately $15.1 million. *Id.* at 9.
[41] *Id.* at 9.
[42] *Id.*

contracts. National Grid also opined that the higher ACP price in Rhode Island compared to Connecticut and New Hampshire will give it an advantage over those states because the higher ACP will drive higher REC prices, leading to more available supply in Rhode Island. However, National Grid acknowledged that its updated in-service projections for the projects under long term contracts with National Grid leads to a reasonable projection of inadequate self-supply of RECs in 2015.[43]

National Grid stated that despite the fact that its analysis concludes "that there is potential for adequate supply for [obligated entities] to meet the RES obligations in 2015, [National Grid] recognizes that the Division's conclusions are reasonable, given the current information available."[44] Therefore, while National Grid reiterated its support for the development of renewable energy, "it is open to the Division's recommendation to delay the increase in the RES obligation in 2015 because such a delay would decrease compliance costs for customers."[45]

VII. Written Public Comment

The PUC received written comments from the Office of Energy Resources (OER), People's Power & Light and New England Clean Council. Although not evidence in the PUC Record, they are summarized below for completeness.

On October 23, 2013, the OER filed a letter in support of maintaining the scheduled increase in 2015 arguing that it is premature to make a determination of inadequacy of supply. In support of its comments, OER noted that while there is a projection of possible inadequate supply, the higher ACPs in Rhode Island make it

[43] *Id.* at 2-3.
[44] *Id.* at 3.
[45] *Id.*

"likely that the shortfall will be lower in Rhode Island than in other states."[46] In the event of a shortfall, the payment of ACPs to the state will be used to develop new renewable energy resources, thus stimulating the local economy.[47] According to OER, "the goal is not simply to keep costs down today but to minimize overall costs in the long term."[48] Finally, OER maintained that delaying the scheduled increase would send the wrong signal to utilities, signaling a retreat from a commitment to renewable energy.[49]

On October 24, 2013, People's Power & Light (PP&L) submitted comments in support of maintaining the scheduled increase in 2015. PP&L maintained that there would be adequate supply of RECs due to price signals sent by high REC prices. In addition, PP&L noted that in the area of biomass, Rhode Island has different standards than other states, allowing more of those projects to become eligible in Rhode Island. Finally, PP&L argued that delaying the increase would send a signal to developers of a lack of commitment to renewables which could result in fewer projects being constructed, further adding to the tightening of the market.[50]

On October 24, 2013, New England Clean Energy Council submitted comments in support of maintaining the scheduled increase in 2015, arguing that a delay would lead to a self-fulfilling prophecy because project developers would delay projects in response to the delayed increase.[51]

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[46] OER Comments at 1.
[47] *Id.*
[48] *Id.* at 2.
[49] *Id.*
[50] PP&L Comments at 1-2.
[51] New England Clean Energy Council Comments.

VIII. Evidentiary Hearing

On October 24, 2013, the Commission conducted a duly noticed public evidentiary hearing at its offices at 89 Jefferson Boulevard, Warwick, RI. The following appearances were entered:

FOR NATIONAL GRID:	Thomas Teehan, Esq.
FOR THE DIVISION:	Karen Lyons, Esq. SpecialAssistant Attorney General
FOR CLF:	Jerry Elmer, Esq.
FOR THE PUC:	Cynthia G. Wilson-Frias Senior Legal Counsel

Ms. Lutz provided public comment consistent with PP&L's letter, summarized above. After presenting Ms. Janzen and Mr. Flemming to testify that the changes to in-service dates for the long term contracts with Orbit Energy and Champlain Wind did not change National Grid's position that it would be able to meet its 2015 RES obligation, the witnesses were made available for cross examination.[52] Mr. Flemming concurred that long term contracting is not the only method National Grid can use to procure RECs in 2015.[53] Ms. Janzen clarified that National Grid's statement that the Division's conclusion to delay was reasonable was in reference to Mr. Hahn's point that National Grid would not be able to rely solely on its long-term contracts for compliance in 2015.[54] Ms. Janzen agreed that while National Grid's conclusion is based on what it would experience in 2015, she nonetheless believed that other obligated entities would have the same ability to access the REC market as National Grid in 2015.[55] With regard to the

[52] Tr. 10/24/14 at 23-26.
[53] *Id.* at 27.
[54] *Id.* at 41-42.
[55] *Id.* at 31.

magnitude of the shortage of RECs in 2015 to meet demand, Mr. Flemming testified that "the base case still holds."[56] To the extent that the RECs trade near the ACP, Mr. Flemming agreed with Mr. Hahn's analysis that RECs will likely trade at some discount below the ACP, consistent with Mr. Hahn's analysis.[57]

Mr. Flemming stated that "the conclusion of [ESAI's] study was that the region as a whole would be short. When you carve out the Connecticut and New Hampshire less competitive [ACPs], then you have more available to Massachusetts and Rhode Island."[58] He further elaborated that "[i]f Connecticut and New Hampshire don't compete for those [RECs], then it is possible that Massachusetts and Rhode Island could meet in the marketplace those RECs first."[59] However, he clarified that ESAI's study did not focus on the ability of the two states to meet the obligation where there was a shortfall in the region and further, that ESAI did not look at whether there are RECs already committed to Connecticut and New Hampshire.[60]

The Division presented Mr. Hahn in support of its recommendation to delay implementation of the 1.5% increase in the RES obligation in 2015. Mr. Hahn clarified that the Division's recommendation to delay is based not just on National Grid's ability to meet its 2015 RES obligation through long-term contracts, "but it is also based on what is expected to be a regional shortage of RECs during that time period."[61] He also expressed concern with the "fairly high level of uncertainty about how fast some of [the projects with long term contracts] are going to be completed."[62] He stated that while it is

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[56] *Id.* at 31-32.
[57] *Id.* at 46.
[58] *Id.* at 45.
[59] *Id.*
[60] *Id.* at 46-48.
[61] *Id.* at 64-65.
[62] *Id.* at 76.

possible Rhode Island's obligated entities would be able to meet their increased 2015 RES obligation, there remains considerable doubt. According to Mr. Hahn, there are no assurances that the higher ACPs in Massachusetts and Rhode Island compared to other states will ensure adequate supply in a market that is short.[63] Furthermore, the high prices of RECs currently with no evidence of mitigation in the near term "are indicative of a shortfall or a potential inadequacy."[64]

Mr. Hahn agreed that the ACP, as annually adjusted for inflation, is designed to serve as a cap on compliance.[65] He opined that this was indicative of the Rhode Island legislature's desire to protect ratepayers.[66] Addressing whether the PUC should review cost together with adequacy, he questioned why the legislature would have charged the PUC with conducting a review into future adequacy of supply if the legislature was not concerned with the cost implications of an inadequate supply.[67] He further stated that if the Legislature was not concerned with the cost consequences, it would not have included the provision for delaying the implementation of the percentage increases in the face of inadequate supplies.[68]

IV. Commission Findings

On December 20, 2014, at an Open Meeting, the PUC considered the evidence in the record and by a vote of 2-1 found that the evidence supported a finding of potential inadequacy of supply in 2015, and followed the Division's recommendation to delay the scheduled increase in 2015 as required by R.I. Gen. Laws § 39-26-6(d).[69] Therefore, in

[63] *Id.* at 74-75.
[64] *Id.* at 89.
[65] *Id.* at 85-86.
[66] *Id.* at 82.
[67] *Id.* at 83.
[68] *Id.* at 83-84.
[69] Chairperson Curran dissented. A separate opinion is attached hereto.

2015, Obligated Entities will be required to obtain at least 8.5% of electricity they sell at retail to Rhode Island end-use customers from eligible renewable energy resources, with no less than 6.5% coming from New Renewable Resources.[70]

In reaching this decision, the PUC must first review the intent of the statute, by reading and giving meaning to all of the words in the subsection.[71] R.I. Gen. Laws § 39-26-6(d) states, in relevant part:

> The [PUC] shall determine...on or before January 1, 2014, the adequacy or potential adequacy, of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2015. In making such determinations the commission shall consider among other factors the historical use of alternative compliance payments in Rhode Island and other states in the NEPOOL region. In the event that the commission determines an inadequacy *or potential inadequacy* of supplies for scheduled percentage increases, the commission *shall* delay the implementation of the scheduled percentage increase for a period of one year or recommend to the general assembly a revised schedule of percentage increases, if any, to achieve the purposes of this chapter.[72]

The Rhode Island Supreme Court has held that if "the language of a statute is clear and unambiguous," the Court will "interpret the statute literally" and "give the words of the statute their plain and ordinary meanings."[73] Furthermore, the Court has held that:

> 'when a statute is susceptible of more than one meaning,' we must subscribe to the canon of statutory construction that gives due consideration to the agency's interpretation. To resolve which of the two or more permissible statutory interpretations will control, we 'give deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized.'[74]

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[70] A chart showing the revised obligation for the period 2014 through 2019 is attached hereto.

[71] The Rhode Island Supreme Court has stated that: "[t]o ascertain a statute's meaning, 'we are mindful that our ultimate goal is to give effect to the General Assembly's intent.'". *In re Review of Proposed Town of New Shoreham Project*, 25 A.3d 482, 504 (2011) (citations omitted).

[72] R.I. Gen. Laws § 39-26-6(d) (emphasis added).

[73] *In re Review of Proposed Town of New Shoreham Project*, 25 A.3d at 504-505 (citations omitted)

[74] *Id.* at 505 (citations omitted). *See Pawtucket Power Associates v. City of Pawtucket*, 622 A.2d 452, 456-57 (R.I. 1993), *holding* that the Rhode Island Supreme Court has held that the Public Utilities Commission

R.I. Gen. Laws § 39-26-6(d) is not ambiguous. While the statute includes two phrases that may appear contradictory to one another, particularly with the use of the words "adequacy or potential adequacy" in the first sentence, and the use of the words "inadequacy or potential inadequacy" in the third, reconciliation of the two phrases is fairly straightforward. In the first sentence, the General Assembly provided a general direction to the PUC to determine the adequacy or potential adequacy of REC supplies in the future. The relevancy of the date is a time when the scheduled increases were to rise from 1% annually to 1.5% annually. In the third sentence, the General Assembly gave the PUC specific direction for the *basis* of that determination by *requiring* a delay in the event the PUC finds inadequacy or potential inadequacy.[75] Therefore, a finding of inadequacy or potential inadequacy is determinative of whether there is an adequacy or potential adequacy of supply.

Applying the plain language of the statute reveals that the intent of the General Assembly in enacting R.I. Gen. Laws § 39-26-6(d) is that if there is an inadequacy or potential inadequacy of supply projected for 2015, it is the duty of the PUC to delay implementation of an increased percentage obligation. As a policy matter, this makes sense because it serves to firmly commit the State of Rhode Island to renewable energy and energy diversification while also ensuring such commitment is accomplished at a

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is entitled to deference of its enabling statute "even when the agency's interpretation is not the only permissible interpretation that could be applied."

[75] *See Castelli v. Carcieri,* 961 A.2d 277, 284, *stating,* "We have held that the use of the word 'shall' contemplates something mandatory or the 'imposition of a duty.' The use of the word 'shall' is readily distinguishable from the use of the word 'may,' which implies an allowance of discretion. Indeed, Black's Law Dictionary defines the word 'shall' in a manner consistent with our prior decisions: '[S]hall. * * * Has a duty to; more broadly, is required to.' Black's Law Dictionary 1407 (8th ed.2004). In a note immediately following this definition, the editors explain that '[t]his is the mandatory sense that drafters typically intend and that courts typically uphold.'" (citations omitted).

reasonable cost to ratepayers, not at *any* cost to ratepayers.[76] It is consistent with the PUC's charge to ensure just and reasonable rates. Therefore, while the language does not appear ambiguous, even if it were deemed to be, this application of the two sentences is consistent with both policies set forth in Title 39 of the Rhode Island General Laws.[77]

With all of this in mind, the PUC must now review the facts upon which it reached its determination. There was no dispute in the Record that there is likely to be an inadequate supply of RECs to meet all of the RES requirements in New England in 2015. While ESAI's high supply scenario projects 100,000 excess RECs, it assumed, with 75% surety, a full year of operation in 2015 for the Champlain Wind project, the delay of which accounts for over 159,000 RECs. Since that report, National Grid has submitted evidence of further project delays and now projects like Champlain Wind will not be

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[76] One may argue that the ACP is designed to provide the cap on REC compliance and therefore, the PUC should not be concerned with cost in its analysis. It is a public policy argument that making ACPs to the Economic Development Corporation (EDC) for the development of new renewable energy resources should be considered for its economic development benefits. However, if the General Assembly simply meant for the RES obligation to be made through ACPs, which will still be adjusted for inflation in 2015, there would be no need for the PUC's review into the adequacy in the first instance. Therefore, reading these sections in harmony, it appears that while the General Assembly intended for ACPs to be available to EDC for renewable development, the review into the adequacy is intended to look at the adequacy or inadequacy of supply separate from the availability of ratepayer funds to make ACPs.

[77] R.I. Gen. Laws § 39-1-1 states: (b) It is hereby declared to be the policy of the state to provide fair regulation of public utilities and carriers in the interest of the public, to promote availability of adequate, efficient and economical energy… to the inhabitants of the state, to provide just and reasonable rates and charges for such services and supplies, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.... (c) To this end, there is hereby vested in the public utilities commission and the division of public utilities and carriers the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy… and protecting them and the public against improper and unreasonable rates, tolls and charges... (e) The legislature further finds and declares as of 2006: (1) That prices of energy, including especially fossil-fuels and electricity, are rising faster than the cost of living and are subject to sharp fluctuations, which conditions create hardships for many households, institutions, organizations, and businesses in the state; (2) That while utility restructuring has brought some benefits, notably in transmission and distribution costs and more efficient use of generating capacities, it has not resulted in competitive markets for residential and small commercial industrial customers, lower overall prices, or greater diversification of energy resources used for electrical generation; (3) That the state's economy and the health and general welfare of the people of Rhode Island benefit when energy supplies are reliable and least-cost; and (4) That it is a necessary move beyond basic utility restructuring in order to secure for Rhode Island, to the maximum extent reasonably feasible, the benefits of reasonable and stable rates, least-cost procurement, and system reliability that includes energy resource diversification, distributed generation, and load management.

operational until 2017 which will result in the requirement that National Grid seek procurements in a market likely to have a shortfall.[78] Furthermore, although atypical in its analysis, ESAI had already included a future generation allowance in its analysis accounting for 120 GWh of additional production not already within the queue "to account for the early arrival of smaller projects in the queue shifting from 2016 to 2015 (unlikely given the trend of delays), and also to act as a buffer for smaller solar and Distributed Generation projects that may not have been accounted for."[79] A review of information from ISO-NE shows that in order to meet the 2015 regional renewable portfolio standards, more than 40% of the projects in the queue would need to be completed on time. Historically, there has been a more than 70% attrition rate in generation projects.[80] Therefore, there was no dispute that the region will experience an inadequate supply of RECs to meet the region's demand in 2015.

The question of whether Rhode Island's obligated entities would be able to meet their increased requirement in 2015 is speculative. Rhode Island operates within a regional energy market and the PUC's review must look at the region. However, while the higher ACP in Rhode Island compared to Connecticut and New Hampshire may make Rhode Island more attractive to REC suppliers than the other two states, Mr. Flemming testified that ESAI did not conduct a granular review to determine whether there was supply that might already be committed to Connecticut and New Hampshire. Therefore, Rhode Island's likelihood of success in meeting a higher RES obligation in 2015 in a regional REC market that is indisputably projected to be short, even with imports from

[78] PUC Exhibit 6 (National Grid Response to PUC-DR-2-1).
[79] Commission Exhibit 6 (National Grid Response to PUC-2-2). According to ESAI, this allowance also more than covers the Connecticut ZREC and LREC contracting programs.
[80] Commission Exhibit 4 (ISO-NE Response to PUC-RR-2).

adjacent control areas, is not supported by the evidence in the Record. Therefore, where the legislation *requires* the PUC to delay the 1.5% increase scheduled for 2015 upon a finding of inadequacy, the PUC is bound to follow the law and implement the delay.

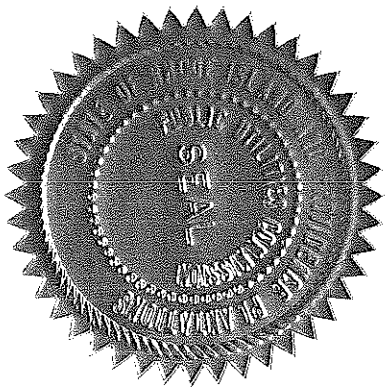
Accordingly, it is hereby

(21353) ORDERED:

1. There is potential inadequacy of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2015 and therefore, the scheduled percentage increase of energy required from renewable energy resources to go into effect in 2015 shall be delayed for a period of one year.
2. Obligated Entities will be required to obtain at least 8.5% of electricity they sell at retail to Rhode Island end-use customers from eligible renewable energy resources during the 2015 trading period.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 1, 2015 PURSUANT TO AN OPEN MEETING DECISION ON DECEMBER 20, 2013. WRITTEN ORDER ISSUED FEBRUARY 10, 2014.

PUBLIC UTILITIES COMMISSION



*Margaret E. Curran, Chairperson

Paul J. Roberti, Commissioner

Herbert F. DeSimone, Jr., Commissioner

*Chairperson Curran dissented from the majority. A separate opinion is attached hereto.

NOTICE OF RIGHT TO APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven days from the date of the order, petition the Rhode Island Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.

Dissenting Opinion of Chairperson Margaret E. Curran

I respectfully dissent. The facts and the statutory language compel a determination by the PUC of potential adequacy of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2015. Because there is support in the record for a determination of potential adequacy, the PUC violates the clear language of the statute by considering inadequacy or potential inadequacy. The statute charges the PUC with determining adequacy or potential adequacy, not inadequacy or potential inadequacy. If there is any credible support in the record to support adequacy or potential adequacy, the PUC should go no further. Only when there is no credible support in the record for a determination of adequacy or potential adequacy is the PUC authorized to go on to consider either delaying the implementation of the scheduled percentage increase for one year or recommending a revised schedule of increase to the legislature. The clear language of the statute compels the PUC to first determine adequacy or inadequacy. Only if the PUC is wholly without support for a finding of adequacy or potential adequacy can it go on to consider inadequacy or potential inadequacy.

Because the record here supports at least a determination of potential adequacy, the PUC is precluded from determining inadequacy or potential inadequacy. The scheduled percentage increase from 8.5 to 10% for 2015 should be allowed to go into effect with no delay.

The record includes the credible testimony of National Grid's witnesses, Margaret M. Janzen and Paul H. Flemming. Both witnesses consistently testified that National Grid would be able to meet the 2015 increase in the required percentage of

energy from renewable energy resources. The company would be able to meet its obligation through a mix of long term renewable energy contracts, including distributed generation contracts, and market solicitations.

Ms. Janzen testified that National Grid, which serves approximately 67% of the obligated load, would be able to meet an obligation in 2015 that includes procuring New Renewable Energy Certificates (RECs) equal to 8% of its load, adjusted for line losses. She further opined that the remaining Obligated Entities in Rhode Island would have the same opportunity as National Grid to procure sufficient RECs in the renewable energy certificate market. She was comfortable with these conclusions even considering delays in projects under long term contracts with National Grid. Where the obligation is a year out, and the relevant trading periods are even further out in the future, all Obligated Entities have sufficient time to plan procurements.

The Division's witness, Richard Hahn, presented an opinion somewhat contradictory to Ms. Janzen's. But Mr. Hahn's focus on National Grid's long term contracts and related delays was too narrow. He failed to take into account the ability of National Grid and other Obligated Entities to plan for and procure RECs in the market, even prior to the applicable trading periods.

Turning to the regional market for renewable energy, the relevant question -- in the context of the PUC's review -- is whether there are sufficient RECs to meet the Rhode Island demand. National Grid's other witness, Mr. Flemming from ESAI, supported the conclusion that there will be sufficient supply to meet Rhode Island's demand for RECs. ESAI projects a shortfall in the New England region to meet all of the states' renewable energy supply portfolio standards. However, ESAI concluded that it is

more likely than not that there will be adequate supply for Rhode Island's Obligated Entities. New Hampshire and Connecticut have recently taken actions to lower their ACPs. As a result, sellers will likely seek to sell their product into a state like Rhode Island, where the cap is expected to be in excess of $68 per REC in 2015, rather than in states with a cap of $55 per REC.[81] This makes it more likely than not that Obligated Entities in Rhode Island will have sufficient supplies available to them in 2015.

On cross examination, Mr. Hahn testified that while it is possible the higher ACP would lead to sufficient supply for Rhode Island's Obligated Entities, there is "no guarantee."[82] This caveat is irrelevant. The statute does not require the PUC to find a guaranteed supply will exist in 2015 before it may allow the scheduled increase to go into effect; it requires only a finding that the facts support a conclusion of potential adequacy of supply. And the evidence here supports such conclusion of potentially adequate supply for Rhode Island. In fact, because Rhode Island has an ACP value higher than both Connecticut and New Hampshire, there is clear evidence that Rhode Island will have an actually adequate supply to meet the scheduled renewable energy percentage increase -- to 10% -- in 2015. Therefore, the intent of the renewable energy standard legislation is satisfied and the scheduled increase should be allowed to go into effect as the General Assembly intended.

The purpose of the legislation is "to facilitate the development of new renewable energy resources to supply electricity to customers in Rhode Island with goals of stabilizing long-term energy prices, enhancing environmental quality, and creating jobs in

[81] National Grid Exhibit 3, Attachment at 7.
[82] Tr. 10/24/14 at 75.

Rhode Island in the renewable energy sector."[83] In order to facilitate the development of renewable energy, the general assembly determined there must be consistent, measured increases in the RES. The specific language and requirements of the RES legislation must be interpreted consistent with this overall intent.

The RES provides for modest annual increases in renewable energy procurements. Beginning at 3% in 2007, it increased the obligation by 0.5% in each of the following three years. The increase rose to 1% in each of the next three years. Another increase in percentage -- to 1.5% -- was scheduled for each of the subsequent compliance years, 2015 through 2019, provided that the PUC were able to determine "*the adequacy, or potential adequacy, of renewable energy supplies* to meet these percentage requirements."[84] The evidence presented in this proceeding showed that Rhode Island has "the potential adequacy of renewable energy supplies to meet these percentage requirements." Therefore, the provision of the law referring to inadequacy or potential inadequacy of renewable energy supplies for Rhode Island was not triggered. It is erroneous to consider it. Furthermore, the majority's interpretation of R.I.Gen. Laws § 39-26-6(d) is inconsistent with the overall legislative intent "to facilitate the development of new renewable energy resources."

Because there is at least a potential adequacy of renewable energy supply -- and most likely, adequate renewable energy supplies -- for Rhode Island's Obligated Entities in 2015, there is no need to reach the provisions of the law addressing any potential inadequacy of renewable energy supplies. Thus, the PUC should not delay the scheduled increase in 2015. Regrettably, the PUC's decision to order a one-year delay suggests a

[83] R.I. Gen. Laws § 29-26-3.
[84] R.I. Gen. Laws § 39-26-4(a)(4) (emphasis added).

retreat from Rhode Island's commitment to renewable energy. It will likely delay the development of new renewable energy resources and the creation of renewable energy jobs in Rhode Island.

Margaret E. Curran, Chairperson