

Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888
Attn: Luly E. Massaro, Clerk

November 5, 2013

Re: Docket No. 4408; Petition of Howard Wind LLC for Designation as an Eligible Renewable Energy Resource; Protest and Objection to Supplemented Application for Certification of Eligibility of Renewable Energy Resource.

Dear Ms. Massaro,

Energy Management, Inc. (“EMI”) hereby files its Protest and Objection to the Application for Certification of Eligibility of Renewable Energy Resource filed by the Applicant on May 7, 2013, in the above-referenced docket. EMI on May 8, 2013 filed a Protest and Objection to the Applicant’s related Motion for Waiver of Bilateral Contract (“Motion”) whereby the Applicant requested waiver of the statutorily-imposed eligibility requirement that external generators deliver energy under “a unit-specific bilateral contract.” By its filing of October 25, 2013, the Applicant has now withdrawn the Motion and supplemented its Application by reference to a self-dealing contract with an affiliate under common control and ownership.

EMI is a company actively engaged in the development of renewable resources within the New England Power Pool (“NEPOOL”) and was actively engaged in the legislative proceedings that led to the adoption of Rhode Island’s statutory Renewable Energy Standard (“RES”) at R.I.G.L. c. 39-26, as well as the administrative proceedings of the Commission leading to the promulgation of the Commission’s RES regulations (“Regulations”). EMI protests and objects to the Application, as supplemented, as an impermissible attempt to disregard and violate the clear intent of the controlling statute, R.I.G.L. 39-26-5(b)(1), through the utilization of a contract for “wash trades” whereby wholly-owned affiliates execute simultaneous and offsetting purchase and sale transactions. The statutory provision is as follows:

A generation unit located in an adjacent control area outside of the NEPOOL may qualify as an eligible renewable energy resource, but the associated generation attributes shall be applied to the renewable energy standard only to the extent that the energy produced by the generation unit is actually delivered into NEPOOL for consumption by New England customers. The delivery of such energy from the generation unit into NEPOOL must be generated by: (1) A unit-specific bilateral contract for the sale and delivery of such energy into NEPOOL....

Thus, while the Legislature has imposed the requirement of a “bilateral” (i.e., two-sided) contract as a prerequisite to RES eligibility, Applicants now seek to circumvent such requirement with wash trades under a one-sided contract between affiliates under common ownership that serve no economic purpose other than to manipulate and evade the trading rules.

The Commission should note in this regard the FERC's characterization of "wash trades" in regulated markets as prohibited a due to being "impermissibly manipulative" in nature:

"The definition of wash trades states the two key elements that the Commission sees as fundamentally manipulative aspects of wash trading: (1) that the transaction or transactions are prearranged to cancel each other out; and (2) that they involve no economic risk. As such the prohibition against wash trades is illustrative of the Commission's prohibition against the manipulation of market conditions."

Docket No. RM03-10-000; Order No. 644 (FERC 2003.) The United States Commodities Future Trading Commission similarly defines prohibited "wash trading" as follows:

"Entering into, or purporting to enter into, transactions to give the appearance that purchases and sales have been made, without incurring market risk or changing the trader's position. The Commodity Exchange Act prohibits wash trading." See, http://www.cftc.gov/consumerprotection/educationcenter/cftcglossary/glossary_wxyz.

With respect to the similar position of the NYMEX on wash trades, also see Reuters, "JP Morgan Fined for Wash Trades in Oil, Gasoline" (June 1, 2012) ("On 10 separate occasions ... in an effort to manage position limits, traders employed by JPM executed block trades between separate legal entities with the same beneficial owner in WTI or gasoline," the [NYMEX] notice said.... "The (NYMEX Business Conduct Committee) Panel also found that in each of these 10 instances, the trader was the sole decision maker for both the buy and sell side of the trade." (Emphasis added.)

The Commission should thus reject the Application as supplemented by the latest filing. The submittal of a one-sided contract between affiliates under common ownership that provides for "wash trades" with no economic purpose or shift of economic risk is a transparent attempt to circumvent clear statutory requirement of a "bilateral" (i.e., two-sided) contract and, moreover, it would do so in a manner contrary to both the legislative intent and the transactional market policies of the FERC, CFTC and NYMEX against wash transactions.

Sincerely,



Dennis J. Duffy, V.P.

CC: Service List

Certificate of Service

I hereby certify that the foregoing Protest and Objection was served on the service list for this docket on the 8th day of May, 2013.

Dennis J. Duffy