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July 27, 2015

FIRST CLASS MAIL and ELECTRONIC FILE

Luly E. Massaro, Clerk
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, Rhode Island 02888

Re: Covanta Maine, LLC - Docket No. 4497

Dear Ms. Massaro:

Enclosed please find three copies of the Memorandum of Covanta Maine, LLC in Response to Consultant Calculation for filing in the above-referenced docket.

Please call me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,

Ronald M. LaRocca

RML/JMA/cdw
Enclosure
cc: Cynthia Wilson-Frias, Deputy Chief of Legal Services (first class mail and electronic)
Ken Nydam, New England Director, Covanta (electronic)
William P. Short, III (electronic)
James M. Avery, Esq., Pierce Atwood, LLP

PORTLAND, ME BOSTON, MA PORTSMOUTH, NH PROVIDENCE, RI AUGUSTA, ME STOCKHOLM, SE WASHINGTON, DC

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

Covanta Maine, LLC	)	Docket No. 4497

MEMORANDUM OF COVANTA MAINE, LLC
IN RESPONSE TO CONSULTANT CALCULATION

On March 27, 2014, Covanta Maine, LLC ("Petitioner") submitted a Renewable Energy Resources Eligibility Form ("Application") with respect to its forest bio-mass-powered electric generating plant located in Jonesboro, Maine (the "Plant") seeking treatment as a "New Renewable Energy Resource" pursuant to Section 39-26-1 et seq. of the General Laws of Rhode Island and the Public Utilities Commission's ("Commission") RES Rules. The Application demonstrated that the Plant satisfied the requirements of Section 3.23(v) of the RES Rules that define a "New Renewable Energy Resource." A New Renewable Energy Resource is defined, inter alia, to mean the "incremental output in any Compliance Year over the Historical Generation Baseline" for an "Existing Renewable Energy Resource," provided that such resource was "certified by the Commission pursuant to Rule 6.0 to have demonstrable completed capital investments after December 31, 1997 attributable to the energy efficiency improvements . . . that are sufficient to, were intended to, and can be demonstrated to increase electricity output in excess of ten percent (10%)." Section 3.23(v) also provides that operational changes "not directly associated with the efficiency improvements" are not to be considered in evaluating satisfaction of this requirement.

The Commission has retained a consultant, GDS Associates ("Commission's Consultant"), to assist in the review of applications pursuant to the RES Rules. The Petitioner became concerned with what seemed to be the arbitrary and capricious manner by which the

Commission's Consultant was applying the Rules to the Application such that on April 3, 2015, the Petitioner filed a Request for Declaratory Judgment pursuant to Rule 1.10(c) of the Commission's Rules of Practice and Procedure.[1] On May 20, 2015, the Commission considered the Request for Declaratory Judgment at an open meeting. On May 21, 2015, the Deputy Chief of Legal Services issued a Memorandum ("PUC Memorandum") summarizing the Commission's determination and remaining concern with Petitioner's Application.

Subsequent to the issuance of the PUC Memorandum, the Petitioner has worked cooperatively and in good faith with the Commission's Consultant to reach a mutually satisfactory, negotiated resolution of this matter, including by responding to the Commission's Consultant's information requests. This negotiation or settlement process resulted in the issuance of an email dated May 21, 2015 by the Commission's Consultant applying a methodology outlined in the Commission's Memorandum resulting in a determination that twelve percent (12%) of the Plant's capability would qualify as "new." Later that day, the Commission's Deputy Chief of Legal Services allowed for objections to this new calculation to be filed by memorandum; this memorandum provides Petitioner's response to the Commission Consultant's latest effort to apply the RES Rules.

The RES Rules are clear and simple with respect to the proper determination of a "New Renewable Energy Resource" as applied to capital improvements at an "Existing Renewable Energy Resource" such as the Plant. First, an applicant must show that it completed "capital investments after December 31, 1997 attributable to efficiency improvements or additions of capacity" that "increase annual electricity output in excess of ten percent (10%)." The substantial and comprehensive capital investments at the Plan were fully described in the Application and referenced in the Request for Declaratory Judgement. The PUC Memorandum, in fact, cited the Plant's increased capacity factor and confirmed that Petitioner had satisfied this

[1] The Petitioner was (and remains) concerned that the Commission's Consultant was applying the RES Rules erroneously and pursuant to what appear to be pre-conceived notions of the proper interpretation of such rules and, then, developing new and varying theories or interpretations to support the erroneous predetermination.

requirement noting that the Commission "has previously allowed increased efficiency to be demonstrated by a calculation of increased output under similar operating circumstances." PUC Memorandum, p. 1 (emphasis added). In fact, the Petitioner is familiar with the Commission's practice in this regard and the determination of "new" for other comparable generation facilities (see Alexandria, NH plant).

Having satisfied this threshold, the RES Rules then provide for only a simple, straight-forward calculation, namely a comparison of the "Historical Generation Baseline" to the incremental output in any "Compliance Year." Indeed, the RES Rules afford little, if any room, for alternative theories. The "Historical Generation Baseline" is defined to mean the average annual production . . . stated in mega-watt hours (MWhs), for the three calendar years 1995 through 1997 . . . ." RES Rules, Section 3.14. This calculation was summarized in the Request for Declaratory Relief, paragraph 8 (and evidence cited therein) resulting a "percent new" determination of ninety-six percent (96%) or ninety-seven percent (97%).

There is one further limitation in that the determination of incremental production "shall not be based on any operational changes at such facility not directly associated with the efficiency improvements . . . ." RES Rules, Section 3.23(v). Importantly, the Commission must recognize that the Commission Consultant's concerns (as reflected in the PUC Memorandum) and has proposed adjustment are based upon mistake of fact, namely an assumption that there were "operational" changes at the Plant. The PUC Memorandum noted that the Plant "currently operates as a baseload unit," but, that during the Historical Generation Baseline period, the Plant "operated as a peaking unit." PUC Memorandum, p. 1. The PUC Memorandum then classified this change from "peaking" to "baseload" as an "operational change" for purposes of Section 3.23(v). From there, the PUC Memorandum proposed a process by which the effect or impact of this supposed operational change could be calculated or developed to determine the appropriate "percentage new." The PUC Memorandum proposed a five-step "proxy" calculation, while noting that the Request for Declaratory Judgment would be held in abeyance pending an effort to

resolve this matter collaboratively. The Petitioner worked in good faith and cooperatively with the Commission's Consultant to provide information suggested in the PUC Memorandum. The Commission Consultant's recent email actually applied the proposed five-step calculation (resulted in a "percentage new" of 12%).

The Commission Consultant's five-step proxy calculation, however, is not needed, erroneous and based upon an established, factual error. Promptly upon the issuance of the PUC Memorandum, the Petitioner provided the Commission with certain supplemental information. First, the Petitioner explained that there, in fact, has been no operational change at the Plant. At all relevant times, the Plant has been maintained and operated as a "baseload" unit (the very limited operation of the Plant might be perceived as consistent with that of a "peaking" unit, but is actually a testament to the poor condition of the Plant prior to the Petitioner's comprehensive capital improvements). The Petitioner explained that:

> Peaker plants are generally gas turbines that burn natural gas or other petroleum derived liquids which can startup/shutdown in a rapid fashion. Due to the characteristics of biomass and the startup process at the Jonesboro plant, the plant would never be considered a peaking unit which is consistent with the Jonesboro's ISO-NE default status of must run . . . .

Petitioner Letter, June 1, 2015 (Attachment A hereto). Given this clarification which demonstrated the consistent operating conditions at the Plant for both the "Baseline" and "Compliance" periods, the Commission should simply follow the process required by the RES Rules; there is no basis or need for this "adjustment."

While reserving all arguments, given the fact that there is no legal basis for the Commission Consultant's adjustments, Petitioner also notes that the calculation itself contains multiple errors. For example, "average hours of operation" is overstated by totally disregarding 1996 actual experience of zero hours (the Alexandria, NH plant had zero production that year as well, which Petitioner understands was reflected in the Plant's baseline calculation pursuant to the RES Rules). In addition, assumptions regarding fuel use and heat rate are arbitrary and not

supported by substantial or credible evidence, a trait evidenced throughout the erroneously-applied proxy calculation. Other judgments of the Commission Consultant's are not fully explained or tied to credible evidence. Thus, even if the proxy was theoretically appropriate, there is not sufficient or credible evidence to support the Commission Consultant's judgments or arbitrary and capricious treatment of the Plant's application.

In sum, Mr. Nydam's June 1, 2015 Letter fully clarified that the prior concern with respect to a purported "operational" change was unwarranted and off the mark. The Plant is now and has always been operated as baseload unit. The recent and comprehensive capital investments at the Plant have secured substantial efficiency improvements which the Commission found should be properly reflected as "new" consistent with the clear and express terms of the RES Rules. Accordingly, Petitioner respectfully requests that the Commission take such actions as are necessary and appropriate and issues its certification of Petitioner's Eligibility of Renewable Energy Resources for the Plant in the amount of at least ninety-six percent (96%) of the Plant's current output, which is the required approach pursuant to the RES Rules.

Respectfully submitted,

COVANTA MAINE, LLC

By:_____

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Dated: July 27, 2015

ATTACHMENT A

COVANTA
Powering Today. Protecting Tomorrow.

Ken Nydam
Regional Finance Director
100 Recovery Way
Haverhill, MA 01835
Tel: 978.241.3030
knydam@covanta.com

Sent by email

June 1, 2015

Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

RE: Docket 4497 Service List

Covanta Jonesboro has reviewed the May 21, 2015 letter from the State of Rhode Island regarding Docket 4497.

Covanta must emphasize that Jonesboro is not a peaking unit. Peaker plants are generally gas turbines that burn natural gas or other petroleum derived liquids which can start-up/shutdown in a rapid fashion. Due to the characteristics of biomass and the startup process at the Jonesboro plant, the plant would never be considered a peaking unit which is consistent with the Jonesboro's ISO-NE default status of must run (Attachment #1).

Covanta's application is based on capital investments making the plant more reliable whereby the investment resulted in longer runs which make the plant more efficient. Regarding the request for base period information, Covanta is supplying the following:

1. Attachment #2 is 1995 to 1998 EIA-860B Reporting information. The table below is a summary of the data which could aid the consultant in the review:

	KWh Sold	Status	Days Operated
1995	5,394,400	Cold Standby	25
1996	0	Out of service	0
1997	16,969,000	Operating	57
1998	1,858,000	Operating	6

2. Covanta has been unable to locate daily production data which matches information in the base period however Covanta submits 1998 daily production information which does match 1998 EIA reports and could be a reasonable proxy (Attachment #3).

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3. Covanta has introduced data showing Jonesboro increased availability by more than 10%. (The exact increase in availability was slightly more than 30%). Thus, Covanta Jonesboro has met the 10% increase in efficiency required by the RI RES regulations. For a reference see paragraph 10 of Thibodeau affidavit which states:

> *"As we gained valuable operating experience and data, we continued to make significant refurbishments in the Facilities that have allowed us to increase capacity factors from 44% to 78% for Jonesboro and availabilities from 67% to 89% for Jonesboro. These refurbishments to improve capacity and availability were necessary to make the Facilities economically viable."*

Covanta believes this information should allow for the process to be complete and I will make myself available to meet if necessary. Please feel free to contact me at 978.241.3030 to discuss completing any requirement on Docket 4497.

Sincerely,

Ken Nydam
New England Regional Director