

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

DOCKET NO. D-10-36

IN RE: LONG-TERM CONTRACTING STANDARD FOR RENEWABLE ENERGY - DETERMINATION OF WHETHER THE "TOWN OF JOHNSTON PROJECT" OUGHT TO BE CERTIFIED BY THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS, THE RHODE ISLAND DEPARTMENT OF ADMINISTRATION, THE RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION AND THE RHODE ISLAND OFFICE OF ENERGY RESOURCES, PURSUANT TO RHODE ISLAND GENERAL LAWS, SECTION 39-26-1-9.

**CERTIFICATION DECISION OF RHODE ISLAND DIVISION OF  
PUBLIC UTILITIES AND CARRIERS**

I. Introduction

The instant certification process has its genesis in a recent amendment to the State of Rhode Island's "Long-Term Contracting Standard for Renewable Energy" laws (R.I.G.L., Chapter 39-26.1). The amendment in issue, R.I.G.L., Section 39-26.1-9, relates to a new landfill gas fueled electric generating facility project to be constructed in the town of Johnston, Rhode Island at the State's Central Landfill. This project, referred to in the amended law as the "Town of Johnston Project" ("Project") has been determined by the General Assembly to contain a number of favorable attributes that could offer significant benefits to the State. At the same time, however, the financing plan associated with the construction of the Project is subject to certain time constraints, which necessitates that a regulatory review process be completed "on a timetable

earlier than is otherwise set forth in this chapter.” The expedited regulatory review mandated under Section 39-26.1-9 is designed to address the time constraints linked to the Project’s financing plan.

The anticipated benefits of the Project, as well as the reasons for the expedited review, are enumerated in the amendment’s preamble, which contains the following legislative findings and declarations:

- (1) The cost effective safe collection, processing and destruction of landfill gas produced from the natural decomposition of municipal solid waste at the central landfill in Johnston, Rhode Island is essential to the health and welfare of the residents of Rhode Island;*
- (2) The construction and operation of a new landfill gas fueled electric generating facility is an integral component of the cost-effective collection, processing and destruction of landfill gas;*
- (3) A new landfill gas fueled electric generating facility could qualify as a new renewable energy resource pursuant to section 39-26-2;*
- (4) The construction and operation of a new landfill gas fueled electric generating facility at the central landfill would result in direct economic benefits to Rhode Island, including:*
  - (i.) An investment of more than one hundred million dollars (\$100,000,000) in a new renewable energy generating facility located entirely within the State of Rhode Island;*
  - (ii.) Very near-term benefits with the start of construction of the facility in calendar year 2010;*
  - (iii.) Creation and retention of jobs during the construction and operating phases of the facility;*
  - (iv.) Reduction in capital and operating costs that would otherwise be borne by the Rhode Island Resource Recovery Corporation;*
  - (v.) Increases in taxes or payments-in-lieu-of-taxes to the town of Johnston;*
  - (vi.) Enabling the timely decommissioning of existing generation facilities at the central landfill that would free up valuable landfilling space worth more than two hundred million dollars (\$200,000,000);*
  - (vii.) Providing substantial amounts of renewable energy to Rhode Island in furtherance of the state’s policies of increasing diversity of energy resources, reducing reliance on fossil fuels and reducing the state’s carbon footprint; [and]*
  - (viii.) Provides for funding on an annual basis from the new landfill gas fueled electric generation facility to assist the town of Johnston School System with economic needs including capital improvements*

*and other school related expenses including athletic programs, textbooks, and extracurricular activities. The annual funding shall be deposited in a restricted receipt account that shall be known as the "Johnston School Renewable Energy Assistance Fund."*

- (5) The financing plan for the construction of a new landfill gas fueled electric generating facility is supported by more than fifty million dollars (\$50,000,000) of federal government grants, which are only available if construction of the facility is actually commenced before the end of the calendar year 2010;*
- (6) In order to complete the financing plan and secure the federal government grants that are necessary for the financing and construction of the facility, the owner/builder of the facility must obtain a long-term contract for the sale of the output of the facility;*
- (7) Under the current process, set forth in this chapter, relating to long-term renewable energy contracts, the owner/builder will not be able to obtain an executed long-term contract and otherwise complete the financing plan for the facility in sufficient time to meet the end of the calendar year 2010 requirement of the federal government grants;*
- (8) The development of an electric generating facility fueled by landfill gas from the central landfill will provide unique benefits to Rhode Island ratepayers and residents that are not reasonably available from other alternatives; and*
- (9) The amendments to the process for obtaining long-term renewable energy contracts as set forth herein are necessary in order to ensure that the owner/builder of the facility can promptly obtain a long-term renewable energy contract otherwise consistent with the provisions of this section to support the financing and construction of the facility, for the aforesaid legitimate local purposes including, without limitation, the benefit of Rhode Island ratepayers.*

## II. Regulatory "Certification" Process

Under the amendment, four State agencies, the Rhode Island Division of Public Utilities and Carriers ("Division"), the Rhode Island Department of Administration ("DOA"), the Rhode Island Economic Development Corporation ("EDC") and the Rhode Island Office of Energy Resources ("OER") share in the responsibility of reviewing the power purchase agreement ("PPA") executed between the Narragansett Electric Company, d/b/a National Grid ("Narragansett" or "National Grid") and the owner/builder of the Project, Rhode

Island LFG Genco, LLC (“LFG Genco”). Though each of the four agencies has a specific review mandate under the law, the law requires all four agencies to “issue a certification or decline certification in writing” “within thirty (30) days of receipt of the agreement...” For the Division, the mandate requires that the DPUC “shall certify the agreement if the administrator determines that the agreement is consistent with the provisions of this chapter and this section.”

Narragansett and LFG Genco submitted copies of the executed PPA to the Division, DOA, EDC and OER on June 7, 2010 (“PPA” or “Agreement”). In accordance with the requirements contained in Section 39-26.1-9, the PPA was “published on the website of the ... [Division] for public inspection.” Section 39-26.1-9 affords members of the public “fifteen (15) days to submit written comments to the four (4) agencies for the respective agency consideration.” In a notice provided by the Division, DOA, EDC and OER, which was simultaneously published on the Division’s website, interested persons wishing to offer written comments on this matter to any or all of the four (4) State agencies identified herein, were instructed to submit “their written comments in person, or by addressing their written comments to the attention of” the Division’s Clerk. In accordance with the time constraints contained in Section 39-26.1-9, interested persons were instructed that “all written comments must be received ... by June 23, 2010.”

### III. Narragansett’s and LFG Genco’s PPA Filing and Supporting Documents

The June 7, 2010 filing consisted of the proposed PPA, which includes the Agreement’s cover page, table of contents (consisting of 3 pages), the PPA

contract provisions (consisting of 53 pages), signature pages (consisting of 2 pages), and seven exhibits that are attached to PPA and incorporated therewith by reference (Exhibits A-G, consisting aggregately of an additional 17 pages). The June 7, 2010 filing was submitted to each of the four certifying state agencies, as evidenced by the four transmittal letters that accompanied the PPA filing.

Subsequently, on June 16, 2010, LFG Genco supplemented the June 7, 2010 PPA filing with a supporting memorandum from Mr. Stephen Galowitz, "Managing Director, Ridgewood Renewable Power On Behalf Of Rhode Island LFG Genco, LLC." The record also reflects that Mr. Galowitz is a Managing Director for LFG Genco as well.<sup>1</sup> In the memorandum, Mr. Galowitz provided a detailed discussion on a number of issues related to the instant PPA filing and the associated regulatory reviews to be conducted by the Division, DOA, OER and EDC.

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<sup>1</sup> The record reflects that LFG Genco is an affiliate of Ridgewood Renewable Power LLC ("Ridgewood") and will be the owner and operator of the facility in Johnston. Ridgewood is described as an international owner and operator of renewable energy and clean infrastructure projects around the world. Through its affiliates, Ridgewood has owned and operated landfill gas-fueled electric generating facilities at the Central Landfill for almost two decades where it currently owns and operates a 12 MW facility and a 6.6 MW facility. See Galowitz Memorandum, p. 2.

The Division notes that in the memorandum submitted by Mr. Stephen Galowitz on June 7, 2010, Mr. Galowitz is identified as submitting the memorandum in his capacity as the "Managing Director, Ridgewood Renewable Power On Behalf Of Rhode Island LFG Genco, LLC." As the Division does not recognize "Ridgewood Renewable Power" as having proper standing in this matter, the Division requested clarification from LFG Genco on Mr. Galowitz's authority to speak and act on behalf of LFG Genco. The Division subsequently received a letter, dated June 28, 2010, from Mr. Randall D. Holmes, the President & Chief Executive Officer of LFG Genco, and also the signatory for LFG Genco on the instant PPA, wherein Mr. Holmes confirmed Mr. Galowitz as a "Managing Director" for LFG Genco. Mr. Holmes also provided documentary evidence to prove that Mr. Galowitz is "authorized and directed to do or cause to be done all acts and things and to make and execute all agreements, instruments, certificates and other documents that may be necessary or appropriate in... [his] discretion..." See June 28, 2010 letter from Randall D. Homes to Thomas F. Ahern, with attachment.

Mr. Galowitz's memorandum included discussions on topics related to: "Background for the Facility," "Applicable Statutory Authority," "Key Statutory Provisions," "Legislative Findings," "Compliance with Specific Requirements," and "Benefits to Rhode Island."<sup>2</sup> As background information, Mr. Galowitz offered the following description of the Project's history:

*"The Central Landfill consists of five current phases. The void space in the currently active Phase V is almost completely filled. In 2007, the Rhode Island Comprehensive Solid Waste Management Plan determined that a Phase VI was required. It also found that the 12MW facility would need to be decommissioned. This plant had been operating since the early 1990's, is located fewer than 50 feet to the east of the existing landfill and is directly in the path of the Phase VI expansion of the landfill. Because the Central Landfill is the only open landfill in Rhode Island, it is a matter of public necessity that the 12 MW facility be decommissioned in order to make room for Phase VI.*

*In 2008, RILG [LFG Genco] negotiated an agreement with ... RIRRC..., the statutorily created public benefit corporation that owns and operates the Central Landfill, to decommission the 12 MW facility and to construct a new larger facility that would utilize the excess landfill gas that is currently being flared. The new plant will be ultra-high efficiency combined cycle plant that utilizes four combustion turbines and a single steam turbine to capture and reutilize the waste heat from the exhaust of the combustion turbines. In addition to its efficiency, the plant will utilize state-of-the-art post combustion emissions control systems that will establish a new standard for low emissions across the country. The plant will also include a significant gas clean-up system that will remove water, siloxanes and sulfur from the gas prior to combustion.*

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<sup>2</sup> See Galowitz Memorandum, pp. 2-16.

*The PPA with NGRID [Narragansett] is the last key element required to commence construction of the new facility during this calendar year.”<sup>3</sup>*

Mr. Galowitz’s discussions on “Applicable Statutory Authority,” “Key Statutory Provisions,” and “Legislative Findings,” closely parallel the statutory provisions contained in Chapter 39-26.1 (including Section 39-26.1-9). As these provisions have been detailed throughout this Certification Decision, the Division sees no reason to repeat them here.

In addressing the PPA’s perceived compliance with the law, Mr. Galowitz initially focused on LFG Genco’s Project’s status as a “newly developed renewable energy resource.” He provided a concise explanation of how LFG Genco’s Project satisfies the definitional standard prescribed in Section 39-26.1-2.

Mr. Galowitz next offered his rationale for why he believes the terms, conditions and pricing set forth in the PPA are “commercially reasonable.” He first pointed to Narragansett’s stated position on this issue. Referring to the “Certification” accompanying the June 7, 2010 PPA filing from Narragansett’s Director of Wholesale Market Relations, Mr. Madison Milhous, Mr. Galowitz observes that National Grid is satisfied that the Agreement is “commercially reasonable.” Mr. Galowitz relied on the following quote from Mr. Milhous:

*“...National Grid has procured through the Purchase Power Agreement a commercially reasonable long-term contract for a newly developed renewable energy resource fueled by landfill gas.”<sup>4</sup>*

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<sup>3</sup> See Galowitz Memorandum, p. 2.

<sup>4</sup> See Galowitz Memorandum, pp. 5-6.

Mr. Galowitz next sponsored a supporting affidavit from Mr. Peter Zaborowsky, Managing Director of Evolution Markets.<sup>5</sup> Mr. Galowitz related the opinion(s) of Evolution Markets, Inc. and Mr. Zaborowsky is being provided in the context of what “an experienced power market analyst” thinks of the commercial reasonableness of the PPA, which Mr. Galowitz identified as a required element within the legal definition of “commercially reasonable.” Mr. Galowitz related that Mr. Zaborowsky’s affidavit reflects that Evolution Markets, Inc. found the PPA to be commercially reasonable, infra.<sup>6</sup>

In a further effort to demonstrate the commercial reasonableness of the Agreement, Mr. Galowitz additionally compared the pricing terms of the PPA with the pricing terms of anticipated PPAs associated with other newly developed renewable energy resource projects. Specifically, he compared the Project’s PPA price of \$119.80 per MWh with the reported price of \$244 per MWh for Deepwater’s PPA in [PUC] Docket 4111, and the reported price of \$207 per MWh for Cape Wind’s PPA. Mr. Galowitz also emphasized that the Project’s escalator factor of 2.5% is less than the 3.5% escalator factors linked to the Deepwater and Cape Wind projects. Similarly, Mr. Galowitz emphasized that the high capacity baseload output sold to National Grid under the Project’s PPA “is much more valuable to ... [National Grid] (and its ratepayers) as compared to the product available from intermittent resources such as offshore wind...” He also pointed out that, based on historical market pricing, the “bundled” product that LFG Genco will sell National Grid for \$11.98

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<sup>5</sup> See Galowitz Memorandum, p. 6 and Attachment “A”.

<sup>6</sup> Id.

cents/kWh, consisting of “energy,” “renewable energy credits” and “capacity” will actually represent a savings of approximately 1.12 cents to ratepayers “compared to the estimated current market price of the individual components.”<sup>7</sup>

In his concluding comments on why he believes the Project and its PPA fully comply the requirements in the law, Mr. Galowitz also opined that the “PPA will promote the general assembly’s goal of stabilizing pricing of energy during the term of the contract.” Mr. Galowitz opined that because “market pricing of electrical energy is closely correlated to the price of natural gas” and because “in the past ten years, the average annual price of natural gas has fluctuated from a high of \$10/MMBTU to a low of \$4/MMBTU,” the Project’s fixed pricing PPA will provide ratepayers with some stability in their rates.<sup>8</sup>

Mr. Galowitz lastly discussed the “variety of benefits” that the Project will bring to Rhode Island. On this matter, Mr. Galowitz provided a detailed discussion on the Project’s (1) “environmental benefits;” (2) “job creation in the renewable energy sector;” and (3) “other direct economic benefits,” including a “significant investment” in the State (estimated at approximately \$120 million); the benefits to the Town of Johnston (i.e., \$250,000 annually in payments in lieu of taxes over the next ten years and \$50,000 annually paid by LFG Genco to the Johnston School System); as well as the economic benefits that would

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<sup>7</sup> See Galowitz Memorandum, pp. 6-11.

<sup>8</sup> See Galowitz Memorandum, pp. 11-12.

directly be realized by Rhode Island Resource and Recovery Corporation (“RIRRC”).<sup>9</sup>

The memorandum also included four attachments, whose content is described below:

- Attachment “A” is a supporting affidavit from Mr. Peter Zaborowsky, Managing Director at Evolution Markets, Inc, supra. Mr. Zaborowsky identifies himself as an expert witness on matters related to: structuring transactions involving energy and environmental commodities, developing energy and environmental risk management strategies, and structuring long term power purchase agreements involving energy and environmental attributes. Mr. Zaborowsky relates that his company has “a long-standing relationship” with National Grid and LFG Genco, and in that capacity has been retained by LFG Genco “to assist in structuring the off-take of renewable energy from the development of a new generating facility at the central landfill in Johnston...” Based on his knowledge of the project, Mr. Zaborowsky observed that the “PPA was the subject of an arms-length negotiation between... [Narragansett and LFG Genco] with... [Narragansett] seeking to procure renewable energy at the lowest cost to its rate payers and... [LFG Genco] seeking the highest return on its investment that the market would support.” Mr. Zaborowsky proffered the following opinion on the PPA now before the Division:

*“...that “in my experience, an arms-length negotiation between sophisticated and experienced counterparties*

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<sup>9</sup> See Galowitz Memorandum, pp. 15-16.

*produces commercially reasonable results for each counterparty, or the negotiations break down and do not result in a transaction... In the case of the PPA, the terms, conditions and pricing are consistent with the pricing for energy, capacity and environmental attributes that I have seen in the New England marketplace during the period of the PPA negotiations. For example, during the period of the negotiations, renewable power of a similar type, quantity and for a similar term was offered for sale in the range of 13.50 cents per kWh to 15.50 cents per kWh with bids to purchase renewable energy in the range of 10.00 cents per kWh to 11.00 cents per kWh. This suggests a market clearing price for the bundled product at, or above, the pricing in the PPA.*

*Given the market environment for renewable energy in New England, in my expert opinion, the terms, conditions and pricing in the PPA reflect a commercially reasonable agreement for a 15 year supply of bundled energy, capacity and environmental attributes.*

- Attachment “B” reflects the results provided through the “environmental benefits calculator” used by the U.S. Environmental Protection Agency to quantify the environmental benefits of the Project. The calculation shows that the environmental benefits attached to the Project “include a reduction of approximately 165,000 tons of CO2 emissions per year or the equivalent of approximately 260,000 passenger vehicles or 161.2 million gallons of gasoline.”<sup>10</sup>

- Attachment “C” consists of a April 27, 2010 letter from Michael F. Sabitoni, President of the Rhode Island Building and Construction Trades Council (“RIBCTC”) to the Honorable Gordon D. Fox, Speaker of the State of Rhode Island, House of Representatives, wherein the RIBCTC expresses

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<sup>10</sup> See Galowitz Memorandum, p. 12 and Attachment “B”.

support for the Project based on the job opportunities the RIBCTC believes it would provide to its members.<sup>11</sup>

- Attachment “D” consists of a May 5, 2010 letter from Michael OConnell, Executive Director of RIRRC, to the State of Rhode Island’s Senate members, wherein RIRRC expresses its support for the Project. The letter reflects that RIRRC supports the Project for three reasons: “(1) It is an attractive financial arrangement for RIRRC with a guaranteed annual savings of \$2 million as compared to today’s contract. (2) Includes demolition of Ridgewood’s existing power generating facility which is in the path of the required landfill expansion...at no cost to RIRRC. (3) Will increase power producing capacity, gas clean up capabilities, and back up [sic] systems which will contribute both positively to the environment and to our financials.”<sup>12</sup>

In addition to the June 7, 2010 PPA filing and the supporting materials subsequently received from LFG Genco on June 16, 2010, the Division additionally propounded a number of discovery requests to Narragansett and LFG Genco during the period leading up to the deadline for issuing this certification decision. Those related responses and documents from Narragansett and LFG Genco have become part of the record in this docket and were considered by the Division during the deliberative process associated with this docket.

#### IV. Public Comments

There were no public inquires or comments received in this docket.

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<sup>11</sup> See Galowitz Memorandum, p. 15 and Attachment “C”.

<sup>12</sup> See Galowitz Memorandum, pp. 15-16 and Attachment “D”.

## V. Division's Findings

Under the reviewing requirements set forth in R.I.G.L. Section 39-26.1-9, the Division is charged with the regulatory responsibility of determining whether Narragansett's and LFG Genco's Agreement is consistent with the provisions of "this chapter and this section." In order to properly effectuate this function, the Division was first required to carefully examine the various provisions contained in R.I.G.L. Chapter 39-26.1, including the Chapter's most recent amendment, Section 39-26.1-9. Predicated upon this examination, the Division has identified the following provisions of R.I.G.L. Chapter 39-26.1, and Section 39-26.1-9 as pertinent:

- *The purpose of this chapter is to encourage and facilitate the creation of commercially reasonable long-term contracts between electric distribution companies and developers or sponsors of newly developed renewable energy resources with the goals of stabilizing long-term energy prices, enhancing environmental quality, creating jobs in Rhode Island in the renewable energy sector, and facilitating the financing of renewable energy generation within the jurisdictional boundaries of the state or adjacent state or federal waters or providing direct economic benefit to the state. R.I.G.L. §39-26.1-1.*
- *"Commercially reasonable" means terms and pricing that are reasonably consistent with what an experienced power market analyst would expect to see in transactions involving newly developed renewable energy resources. Commercially reasonable shall include having a credible project operation date...but a project need not have completed the requisite permitting process to be considered commercially reasonable. R.I.G.L. §39-26.1-2(1).*

- *“Long-term contract” means a contract of not less than ten (10) years. R.I.G.L. §39-26.1-2(5).*
- *“Newly developed renewable energy resources” means electrical generation units that use exclusively an eligible renewable energy resource, and that have neither begun operation, nor have the developers of the units implemented investment or lending agreements necessary to finance the construction of the unit; provided, however, that any projects using eligible renewable energy resources and located within the state of Rhode Island which obtain project financing on or after January 1, 2009, shall qualify as newly developed renewable energy resources .... R.I.G.L. §39-26.1-2(6).*
- *“Eligible renewable energy resource” means resources as defined in §39-26-5 and any references therein. R.I.G.L. §39-26.1-2(4).*

*[E]ligible renewable energy resources are generation units in the NEPOOL control area using:*

- (1) Direct solar radiation;*
- (2) The wind;*
- (3) Movement or the latent heat of the ocean;*
- (4) The heat of the earth;*
- (5) Small hydro facilities;*
- (6) Biomass facilities using eligible biomass fuels and maintaining compliance with current air permits; eligible biomass fuels may be co-fired with fossil fuels, provided that only the renewable energy fraction of production from multi-fuel facilities shall be considered eligible;*
- (7) Fuel cells using the renewable resources referenced above in this section;*

*(8) Waste-to-energy combustion of any sort or manner shall in no instance be considered eligible except for fuels identified in § 39-26-2(6). R.I.G.L. §39-26-5(a).*

*“Eligible biomass fuel” means fuel sources including...landfill methane. R.I.G.L. §39-26-2(6).*

- *Beginning on or before July 1, 2010, each electric distribution company shall be required to annually solicit proposals from renewable energy developers and, provided commercially reasonable proposals have been received, enter into long-term contracts with terms of up to fifteen (15) years for the purchase of capacity, energy and attributes from newly developed renewable energy resources. R.I.G.L. §39-26.1-3(a).*
- *The solicitation process shall permit a reasonable amount of negotiating discretion for the parties to engage in commercially reasonable arms-length negotiations over final contract terms. R.I.G.L. §39-26.1-3(b).*
- *The Narragansett Electric Company is hereby authorized, at its sole discretion, to procure a commercially reasonable long-term contract for a newly developed renewable energy resource fueled by landfill gas from the central landfill in the town of Johnston .... R.I.G.L. §39-26.1-9(1).*
- *Any such contract executed on or before May 21, 2010 shall be legal, binding and enforceable and shall not be subject to commission approval if... [s]uch resource has a gross nameplate capacity rating of less than thirty-seven (37) megawatts; and ... [s]uch contract is ... [f]or a term not in excess of twenty (20) years. R.I.G.L. §39-26.1-9(2).*

The Division has carefully examined the Agreement that was filed by Narragansett and LFG Genco on June 7, 2010, as well as the evidentiary documents provided by Narragansett and LFG Genco in support of the PPA

filing. The Division notes that the first of these documents were hand-delivered to the Division, by LFG Genco, on June 16, 2010, a full nine (9) days after the agreement was jointly submitted by Narragansett and LFG Genco. Additional documents were produced by Narragansett and LFG Genco in response to discovery requests that were subsequently propounded by the Division. The last discovery and information responses from Narragansett and LFG Genco were received by the Division on June 29, 2010.<sup>13</sup>

Based on the totality of the record produced in this docket, the Division has determined that the proposed PPA submitted by Narragansett and LFG Genco “is consistent with the provisions of this chapter and this section.” Before reaching this conclusion, the Division specifically considered the degree to which the instant agreement satisfies the standards and principles fixed in R.I.G.L. Chapter 39-26.1, including Section 39-26.1-9. The Division found evidence of “consistency” in the following important areas:

1. Purpose - The Agreement is consistent with expressed “purpose” of Chapter 39-26.1 in that it represents the type of contract, between an electric distribution company and a sponsor of a newly developed renewable energy resource, which the General Assembly believes will help stabilize long-term energy prices, enhance environmental quality and create jobs in Rhode Island in the renewable energy sector.<sup>14</sup>

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<sup>13</sup> Also relating to the matter of discovery, as R.I.G.L. §39-26.1-9 mandated that the Division carry out its statutory charge within thirty (30) days, the Division found it necessary to deviate from the discovery practices and deadlines prescribed under its *Rules of Practice and Procedure* and instead institute an expedited discovery protocol in order to be able to complete its review within the time permitted for regulatory scrutiny under the law.

<sup>14</sup> Consistent with the provisions of R.I.G.L. §39-26.1-1.

2. Length of Contract – The Agreement is consistent with the statutory requirements that the duration of the contract not be “less than ten (10) years”<sup>15</sup> or “in excess of twenty (20) years.”<sup>16</sup> The contract in issue provides for a “Service Term” “of fifteen (15) years...”<sup>17</sup>

3. Qualifications as a Newly Developed Renewable Energy Resource – The Agreement is consistent the statutory requirement that the agreement be linked to a “newly developed renewable energy resource” as evidenced by the following Project attributes: (1) using “eligible renewable energy resources” (a generation unit in the NEPOOL control area using landfill methane); (2) located within the state of Rhode Island; and (3) will obtain project financing after January 1, 2009.<sup>18</sup>

4. Commercially Reasonable Requirement – In accordance with 39-26.1-9, the Division is required to certify the Agreement if the Division determines that the Agreement “is consistent with the provisions of this chapter and this section.” A provision of the chapter, as stated in its purpose at 39-26.1-1, provides that “the purpose of this chapter is to encourage and facilitate the creation of commercially reasonable long-term contracts between electric distribution companies and developers or sponsors of newly developed renewable energy resources. Therefore, in order to certify the Agreement, the Division must agree that the PPA is “commercially reasonable.”

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<sup>15</sup> Consistent with the provisions of R.I.G.L. §39-26.1-2(5).

<sup>16</sup> Consistent with the provisions of R.I.G.L. §39-26.1-9(2).

<sup>17</sup> See June 7, 2010 PPA, p. 13.

<sup>18</sup> Consistent with the provisions of R.I.G.L. §39-26.1-2(6) and §39-26.1-2(4).

Narragansett filed, along with the PPA, an attested "Certification" provided by Mr. Madison Milhous, Director of Wholesale Market Relations. The Division notes that Mr. Milhous has been accepted as an experienced power market analyst in the Deepwater Docket (Docket No. 4111) before the Rhode Island Public Utilities Commission. In the Certification, Mr. Milhous stated that, in his judgment, Narragansett has procured a commercially reasonable long-term contract for a newly renewable energy resource fueled by landfill gas.

In Division Data Request 1-1, the Division asked Narragansett to provide the basis for Mr. Milhous' opinion that the Agreement is commercially reasonable. The Division requested that Narragansett provide copies of all the studies, analyses, and data that were used and relied upon by Mr. Milhous in reaching his conclusion. In response, Mr. Milhous indicated that during his evaluation of the reasonableness of the PPA, he compared the pricing schedule in the Project's PPA to the September 2009 ESAI forecast<sup>19</sup> for capacity, energy, and renewable energy credits ("REC's") that Narragansett used for the Deepwater case, supra. Though the aforementioned forecast is confidential, and under seal, the Division is able to provide a general description of its content for the purpose of explaining its usefulness in assessing the "commercial reasonableness" of the Project's PPA.

Specifically, using the ESAI forecast, Mr. Milhous' analysis shows that over the fifteen-year term of the Project's PPA, the net costs (net of capacity credits that flow back to Narragansett's customers) for the Project's products of

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<sup>19</sup> The "ESAI forecast" refers to an energy pricing forecast guide prepared by the energy consulting firm of Energy Security Analysis, Inc., located in Wakefield, Massachusetts.

capacity, energy, and REC's are \$16.3 million below the ESAI forecast of market prices, and on a net present value (NPV) basis (7% discount rate) the PPA cost is actually projected to be \$9.4 million "below market." In his response to the Division's discovery request, Mr. Milhous additionally went further to support his opinion that the Agreement is commercially reasonable, based on his research of other renewable projects in Massachusetts, New York, Rhode Island, and New Hampshire. According to Mr. Milhous, the instant PPA's pricing is in the lower end of the range of pricing that he has seen from renewable projects of varying technologies.

In the final analysis, and also predicated upon the Division's independent review and verification of the market price forecast used by Mr. Milhous and our own calculation of the difference between the forecast market price and the LFG Genco bundled energy rate, the Division must agree with Narragansett's and LFG Genco's assertions that the Agreement before the Division is "commercially reasonable" as defined and required under the pertinent law. Also, consistent with the law, this conclusion includes a determination that the Project has "a credible...operation date." Accordingly, the Division finds that the Agreement is fully consistent with the "commercially reasonable" requirements "of this chapter and this section."

5. Annual Solicitation Requirement – The Agreement is consistent with the statutory requirement (R.I.G.L. §39-26.1-3(a)) that Narragansett annually solicit proposals from renewable energy developers and, provided commercially reasonable proposals have been received, enter into long-term contracts with

terms of up to fifteen (15) years for the purchase of capacity, energy and attributes from newly developed renewable energy resources.

6. The Narragansett Electric Company's Discretion, to Procure a Commercially Reasonable Long-term Contract for a Newly Developed Renewable Energy Resource Fueled by Landfill Gas from the Central Landfill in the Town of Johnston –

The Agreement is consistent with the authority conferred to Narragansett with regard to the Company's sole discretion to enter into the Agreement. Narragansett has represented that it has concluded that the proposed PPA is "commercially reasonable" and has consequently exercised its authority to sign a long-term contract with LFG Genco, thereby triggering the present regulatory certification process. The Division, therefore, finds the foundation of this filing to be proper and "consistent with the provisions of this chapter and this section."

7. Contract Execution Date and Nameplate Capacity Requirements - The Agreement is consistent the statutory requirements that it be "executed on or before May 21, 2010" and that the project have "a gross nameplate capacity rating of less than thirty-seven (37) megawatts."<sup>20</sup> The record reflects that the Agreement was indeed executed on May 21, 2010<sup>21</sup>; and that the gross nameplate capacity rating is less than 37 megawatts.<sup>22</sup>

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<sup>20</sup> Consistent with the provisions of R.I.G.L. §39-26.1-9(2).

<sup>21</sup> See June 7, 2010 PPA, p. 1.

<sup>22</sup> See June 7, 2010 PPA, p. 4; and discovery and information responses from LFG Genco, dated June 24, 2010 (from Attorney Richard A. Licht to Division Clerk, Luly Massaro) and June 28, 2010 (from Randall D. Holmes, LFG Genco President and CEO to Thomas F. Ahern, Division Administrator).

## VI. Conclusion

After a thorough examination of the record evidence, and based upon the findings and conclusions contained herein, the Division has determined that the PPA filed by Narragansett and LFG Genco on June 7, 2010 is consistent with the provisions of R.I.G.L., Chapter 39-26.1 and Section 39-26.1-9. Based upon this determination, the Division "shall certify the agreement."

(20047) ORDERED:

That the power purchase agreement filed by the Narragansett Electric Company and Rhode Island LFG Genco, LLC with the Rhode Island Division of Public Utilities and Carriers on June 7, 2010 is hereby certified in accordance with the review process established in R.I.G.L., Section 39-26.1-9.

Dated and Effective at Warwick, Rhode Island on July 1, 2010.



Thomas F. Ahern  
Administrator