State of Rhode Island and Providence Plantations
A. Ralph Mollis
Secretary of State

Rules and Regulations Filing Form

1. Agency Name and Address
Public Utilities Commission
89 Jefferson Blvd., Warwick

2. Title of Rule
Rules and Regulations Governing Long–Term Contracting Standards for Renewable Energy

3. Statutory Source of Authority
RIGL §§ 39–1–1 et seq., 39–26–1 et seq, and 42–35–3

4. Concise Explanatory Statement – §42–35–2.3
To implement Rhode Island's Long–Term Contracting Standard for Renewable Energy

5. Type of Filing

Emergency Rules

A1. Emergency 120–day initial – §42–35–3(b)
☐ Adoption
☐ Amendment of ERLID:
☐ Repeal of ERLID:

A2. Emergency 90–day renewal – §42–35–3(b)
☐ Adoption
☐ Amendment
Indicate ERLID of 120–day initial:

Brief Statement of Reason for Finding Imminent Peril §42–35–3(b)(2):

Final Rules

☐ B1. Amendment ☐ B2. Adoption ☐ B3. Repeal ☑ C. Technical Revision

Supersedes ERLID: 5808 Repeals ERLID: Expires ERLID:

If B1 or C, please indicate new, amended, deleted, or revised sections:
Text change to Section 3.16 to correct reference from R.I. Gen. Laws § 39–26–4 to R.I. Gen. Laws § 39–26–5

6. Notice and Hearing Information
Date of Public Notice – §42–35–3(a)(1):Notice Not Required
Date of Public Hearing – §42–35–3(a)(2):Hearing Not Required
End of Comment Period:00/00/0000

7. Agency Additional Information – Web Page
http://www.ripuc.org/eventsactions/docket/4069page.html .

8. Certification
I hereby certify that the attached rules and regulations were adopted in accordance with the Administrative Procedures Act (42–35) and that they are true copies of this Department, attest,

Lucy E. Massaro
Name

Commission Clerk
Title

Patricia J. Lucarelli
Notary Public
My Commission expires 1/17/10

Subscribed and sworn before me
this 14th day of January, 2010

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

RULES AND REGULATIONS GOVERNING LONG-TERM CONTRACTING STANDARDS FOR RENEWABLE ENERGY

Date of Public Notice: September 4, 2009

Date of Public Hearing: September 29, 2009

Effective Date: January 28, 2010

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Section:
1.0: Authority
2.0: Purpose of Regulations
3.0: Definitions
4.0: Long Term Contract Standard
5.0: Long-Term Contracts Requirements
6.0: Compliance
7.0: Use of Energy and RECs Obtained Through Long-Term Contracts
8.0: Netting of Costs and Remuneration to Distribution Companies
9.0: Long-Term Contracts and RES Requirements

1.0: Authority

These regulations are promulgated pursuant to Title 39 Chapter 26.1 of the General Laws of Rhode Island.

2.0: Purpose of Regulations

The purpose of this chapter is to implement Rhode Island's Long-Term Contracting Standard for Renewable Energy.

3.0: Definitions

Except as otherwise expressly provided, terms with initial capitalization used in these regulations and not defined herein shall have the meaning as defined in the NEPOOL Rules and/or the Commission's Rules and Regulations Governing the Implementation of a Renewable Energy Standard.

3.1 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 as determined by the Commission. Commercially Reasonable shall include having a credible operation date, as determined by the commission, but a project need not have completed the requisite permitting process to be considered Commercially Reasonable.

3.2 Commission: means the Rhode Island Public Utilities Commission.

3.3 Credible operation date: means that a project is more likely than not to come on line within ninety (90) days of that which is projected as evidenced by documents filed by a Renewable Energy Developer showing, at a minimum, the following: commencement of permitting processes, a plan for completing all permitting processes, viable resource assessment or fuel supply plans and agreements, viable financing plans, viable installation and electrical interconnect plans, material progress toward acquisition of real property rights and evidence of material vendor activity. In determining whether an operation date proposed by a developer is credible, the Electric Distribution Company Commission shall give substantial consideration to the developer's experience in completing similar projects by proposed dates, the track record and state of development of the particular technology being proposed, assignment of an ISO queue position, if

required, and the developer's ability to secure financing necessary to complete the project by the proposed date.

3.4 Division: means the Rhode Island Division of Public Utilities and Carriers.

3.5 Electric Distribution Company: means a company defined in subsection 39-1-2(12), supplying standard offer service, last resort service, or any successor service to end-use customers, but not including the Block Island Power Company or the Pascoag Utility District.

3.6 Generation Attributes: means the non-price characteristics of the electrical energy output of a generation unit including, but not limited to, the unit's location, fuel type, actual emissions, vintage and policy eligibility. The Commission may modify this list as appropriate.

3.7 ISO: means ISO New England Inc., authorized by the FERC to exercise for the New England Control Area the functions required pursuant to FERC's Order No. 2000 and the FERC's corresponding regulations, and any successor organization.

3.8 Load Asset: means the term as used in the New England Markets.

3.9 Long-Term Contract: means a contract of ten (10) to fifteen (15) years in duration, or of a term greater than fifteen (15) years upon approval of the Commission.

3.10 Minimum Long-Term Contract Capacity: means ninety (90) megawatts of which three (3) megawatts must be solar or photovoltaic projects located in the State of Rhode Island. In determining whether the minimum long-term contract capacity has been reached, the capacity under contract shall be adjusted by the capacity factor of each renewable generator as determined by the ISO-NE rules, as they may change from time to time. By way of example, a contract with a one hundred (100) megawatt facility with a thirty percent (30%) capacity factor would be counted as providing thirty (30) megawatts to the minimum long-term contract capacity requirement.

3.11 NEPOOL GIS: means the Generation Information System operated by NEPOOL, its designee or successor entity, which includes a generation information database and certificate system, and that accounts for certain of the Generation Attributes of electrical energy consumed within, imported into or exported from NEPOOL.

3.12 NEPOOL GIS Certificate: means an electronic record produced by the NEPOOL GIS that identifies certain of the Generation Attributes of each megawatt-hour of electrical energy accounted for in the NEPOOL GIS.

3.13 NEPOOL: means the New England Power Pool or its successor.

3.14 NEPOOL Rules: means all rules adopted by NEPOOL or the ISO, as such rules may be amended, modified, supplemented or superseded and restated from time to time, including but not limited to, the NEPOOL Agreement, the ISO Tariff, the ISO New England Operating Documents, the Transmission Operating Agreement, the Participants Agreement, the NEPOOL Manuals, and the NEPOOL Operating Procedures, as amended, superseded or restated from time to time.

3.15 New England Markets: means the Markets or programs for the purchase of energy, capacity, ancillary services, demand response services, NEPOOL GIS Certificates, or other related products or services (including Financial Transmission Rights) that are delivered through or useful to the operation of the New England Transmission System and that are administered by the ISO pursuant to rules, rates, or agreements on file from time to time with the FERC.

3.16 Newly Developed Renewable Energy Resource: means electrical generation units that use exclusively an Eligible Renewable Energy Resource as defined in R.I. Gen. Laws § 39-26-5 and Section 5 of the Commission's Rules and Regulations Governing the Implementation of a Renewable Energy Standard, 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 for purposes of the first solicitation under R.I. Gen. Laws § 39-26.1-3.

3.17 Renewable Energy Developer: means a person or entity engaged in the design, construction and/or operation of Newly Developed Renewable Energy Resources.

4.0: Long Term Contract Standard

4.1 On or before July 1, 2010, each Electric Distribution Company is required to annually solicit proposals from Renewable Energy Developers and, provided Commercially Reasonable proposals have been received, enter into Long-Term Contracts for the purchase of capacity, energy and attributes from Newly Developed Renewable Energy Resources.

4.2 Each Electric Distribution Company shall file its proposed timetable and method for solicitation and execution of such contracts no less than one hundred twenty (120) days prior to the issuance of the first annual solicitation and execution of such contracts for review and approval by the Commission.

(a) In its filing supporting the timetable and methods for solicitation, which shall include at least one annual public solicitation, the Electric Distribution Company shall:

1. Describe the methods reviewed or selected;

2. Explain the rationale for choosing the proposed method selected and for rejecting other methods;
3. Set forth a clear timetable for each event that will occur prior to filing a contract for Commission review;
4. Set forth the Electric Distribution Company's intent regarding the use of energy, capacity, NEPOOL GIS Certificates, and any other attributes procured, subject to the Electric Distribution Company's right to seek Commission approval of alternative uses under R.I. Gen. Laws § 39-26.1-5(d);
5. Set forth the criteria that will be used to evaluate responses to the solicitation, including the value of direct economic benefits to the State of Rhode Island when evaluating whether the pricing is consistent with what an experienced power market analyst would expect to see in transactions involving Newly Developed Renewable Energy Resources.
6. Address how the Electric Distribution Company will seek to fulfill its annual obligation in the event the annual solicitation does not result in the execution of Commercially Reasonable contracts to fulfill the annual obligation.
7. Address how the Electric Distribution Company may, at its option, seek to execute Long-Term Contracts in excess of the given year's annual obligation in the event the annual solicitation results in proposals that could reasonably result in the execution of Commercially Reasonable contracts in excess of the annual obligation.

4.3 Intervenors shall provide comments regarding the Electric Distribution Company's proposal within forty-five (45) days of the filing.

4.4 The Division shall file comments regarding the Electric Distribution Company's proposal within sixty (60) days of the filing.

4.5 The Electric Distribution Company and any intervenor may file Reply Comments following the Division's Comments and prior to a hearing on the matter.

4.6. In the event the Electric Distribution Company determines that any changes should be made to its timetable and/or method for solicitation and execution of Long-Term Contracts after the initial solicitation, it shall file such proposed changes no less than one hundred twenty (120) days prior to the issuance of the next annual solicitation for review by the Commission as set forth in Sections 4.2 through 4.5 of these Rules.

4.7. An Electric Distribution Company shall not be required to enter into Long-Term Contracts for Newly Developed Renewable Energy Resources that exceed the following four (4) year phased schedule:

(i) By December 30, 2010: Twenty-five percent (25%) of the Minimum Long-Term Contract Capacity;

(ii) By December 30, 2011: Fifty percent (50%) of the Minimum Long-Term Contract Capacity;

(iii) By December 30, 2012: Seventy-five percent (75%) of the Minimum Long-Term Contract Capacity;

(iv) By December 30, 2013: One-hundred percent (100%) of the Minimum Long-Term Contract Capacity.

4.8 Provided, however, that no Electric Distribution Company shall be obligated to enter into Long-Term Contracts for Newly Developed Renewable Energy Resources on terms which the electric distribution company reasonably believes to be commercially unreasonable. In the event no Commercially Reasonable responses are received pursuant to the solicitations, the Electric Distribution Company's annual obligation as set forth in Rule 4.6 will roll forward to the next year and the Electric Distribution Company shall not be considered non-compliant with its obligation for that year.

4.9 Within five (5) days following the receipt of proposals resulting from the annual solicitation, the Electric Distribution Company shall consult with the Division.

4.10 Long-Term Contracts executed by the Electric Distribution Company shall be filed with and be reviewed and approved by the Commission within sixty (60) days before they become effective and shall contain a condition to that effect. The Electric Distribution Company shall cause to be published in the Providence Journal, or other newspaper of general circulation to the State of Rhode Island, a Notice of Filing on the date when any Long-Term Contract under these Rules is filed for Commission review and approval. The Commission will hold a hearing within forty-five (45) days of the filing. To the extent practical, the proceeding will be governed by the Commission's Rules of Practice and Procedure.

4.11 If there is a dispute about whether any terms or pricing of a proposal are Commercially Reasonable, the Commission will make a final determination after and evidentiary hearing.

4.12 Within thirty (30) days of the execution of final contracts, or upon a determination that no Commercially Reasonable contracts could be entered into, the Electric Distribution Company shall file with the Commission a report on each solicitation regarding the results of such solicitation, even if no contracts are executed following the solicitation. The report shall include:

a. Brief description of solicitation;
b. Number of proposals received;
c. Generation source of each proposal;
d. Total MW offered, broken out by generation source, and average capacity factor for each source;
e. Number of proposals accepted;
f. Number of proposals rejected and the reasons (i.e., why they were not considered Commercially Reasonable, etc.);
g. Total MW under contract; and
h. Lessons learned.

5.0 Long-Term Contracts Requirements:

5.1 Long-Term Contracts shall contain provisions and terms to address the features and risks that are unique to the purchase of Newly Developed Renewable Energy Resources. Such terms shall include the following:

(i.) Definitions particular to energy, capacity, and renewable energy certificate transactions;

(ii.) Purchase and sale of energy, capacity and/or renewable energy certificates;

(iii.) Quantities;

(iv.) Representations and warranties of the parties;

(v.) Obligations of the parties;

(vi.) Relationship of the parties;

(vii.) Non-performance, and Remedies;

(viii.) Default;

(ix.) Term, termination and waiver;

(x.) Binding milestones and associated remedies;

(xi.) Credit and Collateral, if any appropriate to the nature of the project including subordination of interests to project lenders;

(xii.) Additional agreements conforming to the nature of the transaction;

(xiii.) Price; and

(xiv.) Operational dates.

5.2 All approved projects, regardless of their location, shall provide other direct economic benefits to the State of Rhode Island, such as job creation, increased property tax revenues or other similar revenues deemed substantial by the Commission as determined on a case-by-case basis. In reviewing the responses to each solicitation, the Electric Distribution Company shall conduct an analysis of the value of the respective direct economic benefits to the State of Rhode Island in relation to the cost under the contract.

5.3 All Long-Term Contracts shall contain provisions which allow the Electric Distribution Company to terminate, without penalty to the Electric Distribution Company, the contract after three (3) years of execution should the Electric Distribution Company or the Commission determine that material progress on the project is not being made, as determined by evaluating the success in meeting milestones in the contract. In the event a Long-Term contract is so terminated, the Electric Distribution Company will not be found non-compliant with this regulation because of the termination, and it shall be required to make additional annual solicitation and enter into additional Long-Term Contracts in order to

replace the energy, capacity and/or NEPOOL GIS Certificates lost as a result of the termination.

5.4 In the event the Electric Distribution Company receives responses to its solicitations that would result in Commercially Reasonable contracts in excess of the annual obligation set forth in Section 4.7, the Electric Distribution Company shall provide an analysis of the value of the respective direct economic benefits to the State of Rhode Island including the benefit of stabilizing rates for its customers, in relation to the cost under the contract to determine which contracts to execute.

5.5 A copy of each executed Long-Term Contract between the Electric Distribution Company and the Renewable Energy Developer shall be filed with the Commission in its entirety. The entire contract shall be a public document.

6.0 Compliance

6.1 Compliance with the Long-Term Contract standard shall be demonstrated through procurement pursuant to the provisions of a Long-Term Contract of energy, capacity and attributes reflected in NE-GIS certificates relating to generating units certified by the Commission as using Newly Developed Renewable Energy Resources.

6.2 A generating unit shall be certified as using Newly Developed Renewable Energy Resource through its Applications in accordance with the Commission's Rules and Regulations Governing the Implementation of a Renewable Energy Standard.

7.0 Use of Energy and RECs Obtained Through Long-Term Contracts

7.1 Unless the Commission approves otherwise, all energy and capacity purchased by an Electric Distribution Company pursuant to R.I. Gen. Laws § 39-26.1 shall be immediately sold by the Electric Distribution Company into the wholesale spot market through arms-length transactions.

7.2 Unless the Commission approves otherwise, any attributes including NE-GIS certificates purchased by an Electric Distribution Company pursuant to R.I. Gen. Laws § 39-26.1 shall be sold through a competitive bidding process in a commercially reasonable manner.

7.3 Subject to Commission approval, and in accordance with its plan filed per Section 4.2, an Electric Distribution Company shall be permitted to do the following:

a. to use the energy, capacity and other attributes purchased for resale to customers; and/or

b. to use the NE-GIS certificates for purposes of meeting the obligations set forth in R.I. Gen. Laws § 39-26-1 et seq., provided, however, that the Commission finds that such sales would not have a detrimental impact on energy markets, on the market for NE-GIS certificates, and is otherwise in the interest of utility customers.

8.0 Netting of Costs and Remuneration to Distribution Companies

8.1 An Electric Distribution Company shall receive an annual remuneration equal to 2.75% of the actual annual payments made under the contracts for those projects that are commercially operating.

8.2 The annual remuneration shall be calculated and determined as part of the Electric Distribution Company's annual reconciliation of costs set forth below.

8.3 The Electric Distribution shall file tariffs with the Commission that net the cost of payments made to projects under the Long-Term Contracts against the proceeds obtained from the sale of energy, capacity, RECs or other attributes. The difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates.

8.4 The annual reconciliation shall be designed so that customers are credited with any net savings resulting from the Long-Term Contracts and the Electric Distribution Company recovers all costs incurred under such contracts.

9.0 Long-Term Contracts and RES Requirements

9.1 An Electric Distribution Company's obligation to enter into Long-Term Contracts under these Rules is separate and distinct from its obligation to meet RES requirements.

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