

concerns aimed at the group facilitator. Further, all relevant facts regarding the facilitator were fully disclosed at the outset, and failure to make a timely motion for disqualification prior to the close of proceedings should be deemed a waiver of any related issues. In sum, CWA strongly supports the Proposed Regulations, subject to the limited concerns discussed in Sections III and IV below.

III. The Commission Should Retain the Requirement of Section 8.3 of the Proposed Regulations Regarding Long-Term Purchases by Electric Utility Distribution Companies.

CWA strongly supports the provisions of Section 8.3 of the Proposed Regulations regarding “long-term contracts which shall be made a part of the electric utility distribution company’s portfolio for procuring its target percentage of Eligible Renewable Energy Resources for each Electrical Energy product offered to End-use Customers.” As noted at page 21 of the Group Filing, a majority of the working group (including CWA, Florida Power & Light, Spin Blade Energy, the Rhode Island Economic Corporation, TEC-RI, the Rhode Island Division of Public Utilities and Carriers, the United States Department of Energy, the State Energy Office and People’s Power & Light) recognized the importance of long-term renewable contracts to meeting the purposes of the Act. CWA also directs the Commission to Attachment C to the Group filing entitled “Position on Long-Term Utility Commitments for RPS.”

A. The Legislature Anticipated Long-Term RPS Commitments by Utilities.

As an initial matter, it must be noted that the Legislature at R.I.G.L. Section 39-26-2(16) defines the operative term of “obligated entity” in a way that will plainly continue to include all electric utility distribution companies for the entire duration of the RPS, whether supplying “standard offer service, last resort service, or successor service to end user customers.” There can thus be no questions that utility RPS obligations are long-term, and will continue throughout all stages of the deregulation process and for the entire duration of the RPS.

Similarly, R.I.G.L. § 39-26-6 provides that the Commission shall adopt regulations establishing “standards for contracts and procurement plans for renewable energy resources, to achieve the purpose of this chapter,” which purposes are defined at 39-26-3 to expressly include “stabilizing long-term prices” and “creating jobs in Rhode Island in the renewable energy sector,” two long-term objectives that simply cannot be met with short-term measures. Notably, those few entities opposing long-term procurement ignore entirely these expressly long-term RPS objectives of the Legislature.

B. Numerous Governmental Entities and Public Policy Advocates Support Provisions Requiring Long-Term RPS Procurement.

The Commission’s inclusion of long-term procurement provisions is entirely consistent with the views of a growing body of governmental and public advocacy entities, which recognize that the RPS objectives are unlikely to be met without long-term procurement that corresponds to the typical term financing of new renewable facilities. In this regard, the Massachusetts Renewable Energy Trust recently issued the following policy statement regarding the need for long-term renewable contracts:

Without such [long-term] agreements, developers are unable to secure project financing because lenders and equity investors are not willing to assume a substantial amount of REC or energy market price risk on a long-term basis.

Furthermore, investors require that the long-term revenue contracts be “bankable,” i.e., long-term contracts with investment-grade entities that cover market price risk. This is true even for projects that are equity financed by the developer, so that the developer can project finance the project or sell it at a later date. Without such contracts, it is very difficult to secure investors for renewable projects in New England. Unfortunately, there are a limited number of creditworthy entities in the region that are active market participants and very few are willing to assume market price risk by entering into long-term contracts, especially for RECs.

The lack of bankable long-term contracts for renewable developers is due in part to the absence of creditworthy entities that are willing or able to participate in long-term purchase agreements, particularly in the REC market.

“Long-Term Revenue Support to Help Developers Secure Project Financing,” presented by Karolyn Cory of MTC at Global Wind Power 2004 Conference. The Department should note the similar comments raised by the region’s leading public interest advocacy groups (i.e., The Union of Concerned Scientists, Massachusetts Public Interest Research Group, Massachusetts Energy Consumers Alliance, Clean Water Action, and the Conservation Law Foundation) in Massachusetts DTE Docket 04-115 requesting that the MDTE support the legislative mandate of the Massachusetts RPS through longer-term procurement practices:

In particular, the failure of state government in general and the Department in particular to foster development of renewable resources through its policies has been part of the cycle of failure. The Department must recognize that long-term contracts are needed for new renewable generation sources to be built. In our recommendations included here and in our initial comments, we call on the Department to address the failures of the current defaults through procurement practices to deliver renewable energy and energy efficiency results that consumers require and deserve, and in so doing, change the cause of failure to become part of the solution.

Reply Comments, at 4. A similar policy position was taken in by the United States Department of Energy and the Massachusetts Technology Collaborative in the Framework for Off-Shore Wind Energy Development in the United States released in September of 2005, which was based upon input from more than 60 experts via interviews and workshops. Such Framework recognized the benefits of renewable energy and included the following specific strategy item for increasing long-term renewable energy contracts:

Strategy 3-3 Increase Availability of Long-Term Power Purchase Agreements

Near Term:

- Identify barriers to long-term power purchase agreements.

Medium to Long Term:

- Work on a collaborative basis to address barriers.
- Investigate role of government directly purchasing energy from offshore wind.
- Investigate positive linkages with state Renewable Portfolio Standard programs, long-term Renewable Energy Credit programs, and others.

Framework document, at 21.

More recently, ISO New England CEO Gordon Van Welie issued a policy statement at the ISO New England Regional Energy Forum of October 16, 2005, which similarly recognized that long-term contracts are a prerequisite to incentivizing necessary investment in new generation projects:

The length of time that default service is offered poses potential problems, since it does not encourage long-term contracting and investment on the part of those suppliers serving retail load. Region-wide, contracts between distribution companies and suppliers to supply default service are as short as three months and few exceed a year.

These short-term deals act as barriers to financing new generators and demand response. They also create uncertainty over how long wholesale suppliers will be serving the amount of load designated in the contract. Thus, they are unlikely to invest in supply or demand response programs that have a multi-year payback period.

Id. at 6. Thus, the Commission's proposed requirements of long-term procurement in Section 8.3 are entirely consistent with a growing consensus in the regulatory and public advocacy community.

C. **Recent Restructuring Policy Clarifications by the FERC Further Support Long-Term Purchases by Utilities.**

Recent clarifications by the FERC regarding restructuring policy also support the Commission's proposal to require electric companies to make long-term RPS supply contracts. In the Devon Power proceedings, FERC Dockets No. ER03-563-030 and EL04-102-000, FERC explained that, in the specific context of the restructured New England markets, it remains necessary for entities with long-term public service obligations to undertake the long-term capacity procurement required to maintain system reliability:

ISO-NE has sought guidance on the issue of what entity should bear the responsibility for longer-term capacity procurement and long-term reliability. The Commission addressed a similar issue in the PJM Order. As a general matter, the Commission believes that the market design of the RTO or ISO should be structured to send appropriate price signals and thus provide an incentive for load to procure capacity to meet their long-

term requirements. ... However, it is LSEs that have the primary responsibility for longer-term capacity procurement and obtaining sufficient supplies to ensure long-term reliability.

Devon Power LLC, 107 FERC ¶ 61, 240 (2004), ¶ 75 (emphasis added). Upon rehearing and clarification, the FERC further explained that it is the responsibility of the State commissions (in this case, the Commission) to specify exactly which entities have the public service responsibility for procuring the long-term capacity adequate to serve the public:

Resource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there. States have traditionally designated the entities that are responsible for procuring adequate capacity to serve loads within their respective jurisdictions. ... [W]e conclude that each state should continue to establish policies that determine which entities are responsible for procuring adequate capacity for loads.

Devon Power LLC, 109 FERC ¶ 61, 154 (2004), ¶ 47 (emphasis added). Notably, the FERC reached this conclusion after recognizing comments indicating that wholesale suppliers under relatively short-term default service supply contracts have no incentive to enter into the longer-term agreements with generators necessary for new investment. The FERC noted in particular that “the Maine PUC contends that given the relatively short-term nature of the standard offer contracts, it is difficult to foresee why load serving entities would enter into bilateral contracts with generators that have terms long enough to attract financing” and that “the Maine PUC states that generators need either longer-term contracts or a substantial risk premium before they will be able to voluntarily invest in new capacity.” Id. at ¶ 46. There should thus be no question that long-term procurement (especially in the limited amounts of the RPS) is entirely consistent with the FERC’s view of the restructured electric markets.

D. Longer-Term Purchase Agreements are Not Inconsistent with the Economic Theory of Deregulation.

Contrary to several comments raised at the technical conference and hearing, requiring electric companies to procure a relatively small portion of their wholesale supply requirements (whether for standard offer, last resort “or any successor service”) on a longer-term

basis is in no sense inconsistent with the economic theory of deregulation. To the contrary, as noted above, the recent policy clarifications by the FERC confirm that there can be no presumption that necessary generation investments will occur absent such long-term procurement. Similarly, Professor William Hogan in his leading deregulation treatise, Competitive Electricity Market Design: A Wholesale Primer (1998), clearly indicated that post-restructuring generation investment would be expected to occur only when long-term procurement contracts are in place, and that spot markets alone would not sufficiently incentivize needed investment in generation:

If the generator or customer wants price certainty, then new generation contracts can be struck between a willing buyer and a willing seller. The complexity and reach of these contracts would be limited only by the needs of the market. Typically we expect a new generator to look for a customer who wants a price hedge, and for the generators to defer investing in new plant until sufficient long-term contracts with customers can be arranged to cover a sufficient portion of the requirement investment. The generation contracts could be with one or more customers and might involve a mix of fixed charges coupled with the obligations to compensate for price differences relative to the spot-market price.

Id. at 20 (emphasis added). It was thus presumed from the outset that investment in new generation could not be expected to occur in the absence of long-term procurement contracts.

It is also incorrect to suggest that long-term procurement by electric companies would result in an adverse impact upon the workings of the competitive markets. Indeed, reference to the Rhode Island and Massachusetts experience in the restructured retail gas markets indicates a contrary conclusion. Notwithstanding the fact that (i) Massachusetts gas companies have not been exempted from the ten-year supply planning responsibilities under Section 69I and (ii) both Massachusetts and Rhode Island gas companies have procured gas supply and transportation for longer terms, retail gas competition has proceeded and New England's wholesale gas spot market (i.e., as reflected in the Algonquin Gate Index Price) remains

exceptionally liquid and responsive. Further, since natural gas is the marginal fuel for most hours of NEPOOL dispatch, the same Algonquin Gate index (adjusted by a heat rate conversion factor) will in effect set equally responsive electricity prices for the regional electric market, irrespective of a relatively small increment of longer-term R[S procurement by electric companies.

There is also no reason to presume that the modest volumes associated with the RPS would lead to an unacceptable level of so-called “stranded costs.” As pointed out in the post-hearing comments of both the State Energy Office and the UCS, it is in fact unlikely that any associated costs would be either extensive or stranded. As referenced by the UCS, REC certificates are in fact traded in a liquid regional market where any residual amounts can readily be resold independent of associated energy, on either a “bundled” or “unbundled” basis. Further, the opponents’ logic would also apply to preclude any means of insulating residual market consumers from price volatility of either electricity or gas (i.e., any means by which long-term contracts or retail rates “do not match the current prices in the short term market.” NGRID, at 2.) NGRID’s position, however, is contrary to well-established Commission precedent recognizing rate stability as an important regulatory objective and, with specific respect to the RPS, the express Legislative purpose of “stabilizing long-term energy prices.” R.I.G.L. § 39-26-3. NGRID simply cannot reconcile its demand for exclusively short-term procurement with this clear statement of long-term Legislative intent. There is thus no basis to include that the small volume of longer-term RPS procurement would unduly undermine the responsiveness of the region’s electric pricing or otherwise contravene the will of the Legislature.

IV. The Commission Should adopt the Corrections to Section 3.22 Proposed by the State Energy Office and by Ridgewood Energy.

CWA also strongly urges the Commission to adopt the corrections to Section 3.22 requested by the post-hearing comments of the State Energy Office (as detailed at Attachment 3

to the SEO filing) and the comments of Ridgewood Energy. Such parties have identified a drafting oversight by the Group in Section 3.22 that could have extremely detrimental impacts upon the RPS if not corrected. The Legislature at R.I.G.L. § 39-26-2(14) plainly intended that only the “incremental output” of upgraded units should be eligible for the RPS, and the suggested corrective edits would eliminate potentially damaging ambiguity in that regard. These corrections are particularly important because any residual uncertainty as to eligibility would have a direct impact upon the future valuation of RPS credits and thereby undermine the confidence of the project lending community.

V. Conclusion

The Commission should retain the long-term provisions of Section 8.3 of the proposed regulations and adopt the Energy Office’s proposed connection to Section 3.22. Further, in light of the clear and continuing warnings from ISO-New England as to the coming crisis in electrical supply, Section 8.3 would be an effective and affirmative step towards assuring that requisite investment in new generation facilities will occur in time to satisfy both the RPS and the growing reliability needs of the public. We thus respectfully request that the Commission retain the long-term provisions of Section 8.3 and direct electric companies to procure portions of their retail supply requirement on a longer-term basis sufficient to fulfill the expressly long-term RPS objectives of the Legislature.

Respectfully submitted,
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