

JOHN P. CASEY

88 Howard Street, Suite C-1
New London, CT 06320
Main (860) 275-8200
Fax (860) 275-8299
jcasey@rc.com
Direct (860) 275-8359

Also admitted in Rhode Island

July 16, 2019

VIA HAND DELIVERY ONLY

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

**CONTAINS PRIVILEGED
AND CONFIDENTIAL
INFORMATION – DO NOT
RELEASE.**

RECEIVED
2019 JUL 16 PM 3:07
PUBLIC UTILITIES COMMISSION

RE: Renewable Energy Standard Annual Compliance Filing for Compliance Year 2018 by Obligated Entities

Dear Ms. Massaro:

On behalf of Agera Energy, LLC (the “Company”), I enclose the Company’s Renewable Energy Standard Annual Compliance Filing for Compliance Year 2018 (the “RES Filing”). The RES Filing consists of:

1. The Annual Compliance Filing;
2. Table One thereto; and
3. NEPOOL GIS Certificate documentation.

Because the RES Filing contains **PRIVILEGED AND CONFIDENTIAL INFORMATION**, I enclose an original and nine (9) copies of a Motion of Agera Energy, LLC for Protective Treatment of Confidential Information (the “Motion”) in accordance with Rule 1.3(H) of the Rhode Island Public Utilities Commission’s (the “PUC’s”) Rules of Practice and Procedure and R.I. Gen. Laws § 38-2-2(4)(B).

As set forth in the Motion, the Company seeks protection from public disclosure of certain confidential information, specifically, (i) the Annual Compliance Filing; (ii) Table One thereto; and (iii) NEPOOL GIS Certificate documentation. Accordingly, the Company has provided the PUC with one (1) complete unredacted copy of the Annual Compliance Filing in a sealed envelope marked “**Contains Privileged and Confidential Materials – Do Not Release,**” and

Robinson+Cole

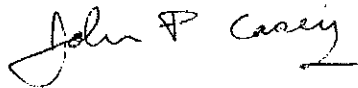
Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
July 16, 2019
Page 2

one (1) redacted, public copy of each of (i) the Annual Compliance Filing; (ii) Table One thereto; and (iii) NEPOOL GIS Certificate documentation.

Pursuant to the PUC's instructions, electronic versions of the RES Filing (including confidential versions of (i) the Annual Compliance Filing; (ii) Table One thereto; and (ii) NEPOOL GIS Certificate documentation) and the Motion were sent via electronic mail to the PUC. This electronic mail submission occurred by shortly after 12:00 a.m. on July 16, 2019.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "John P. Casey". The signature is written in black ink and is positioned above the typed name.

John P. Casey

Enclosures

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND PUBLIC UTILITIES COMMISSION

)
)
Renewable Energy Standard)
Annual Compliance Filing)
For Compliance Year 2018)
)

**MOTION OF AGERA ENERGY, LLC
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Agera Energy, LLC (the “Company”) hereby requests that the Rhode Island Public Utilities Commission (the “PUC”) grant protection from public disclosure of certain confidential, competitively sensitive, and proprietary information submitted in this proceeding, as permitted by PUC Rules 1.3(h) and 1.19(e) and R.I. Gen. Laws § 38-2-2(4)(B). The Company also hereby requests that, pending entry of that finding, the PUC preliminarily grant the Company’s request for confidential treatment pursuant to Rule 1.3 (h)(2).

I. BACKGROUND

Rhode Island General Laws § 39-26-1 *et seq.* and the Rules and Regulations Governing the Implementation of a Renewable Energy Standard (“RES Regulations”) promulgated pursuant thereto require that each Obligated Entity obtain a certain percentage of electricity sold by that entity to Rhode Island end-use customers from Eligible Renewable Energy Resources (“RES Obligation”). Each Obligated Entity is required to submit an annual filing demonstrating compliance with the RES Obligation (“Annual Compliance Filing”). As part of that Annual Compliance Filing, each Obligated Entity is required to provide information regarding its annual sales and Renewable Energy Resource purchases. *See, generally*, Renewable Energy Standard,

RES Annual Compliance Filing for Compliance Year 2018, Form (“Annual Compliance Filing Form”). The Company considers this information to be proprietary information that constitutes trade secrets and confidential commercial information because the information is not available to the public and, if made available to the public, the Company’s position in the competitive marketplace could be harmed.

On July 15, 2019, the Company submitted its Renewable Energy Standard Annual Compliance Filing for Compliance Year 2018 (the “RES Filing”). The RES Filing includes confidential information redacted from the publicly-filed version of that filing (the “Confidential Information”). Specifically, the Confidential Information consists of Section 1, Section 2, and Section 3 of the RES Filing, along with Table One there to and the NEPOOL GIS Certificate documentation, and includes information about the Company’s renewable energy obligation, renewable energy purchases, current year surplus (if any), current year shortfall (if any), and voluntary purchases, and well as the names and identities of the Company’s contact person and authorized representative. In accordance with Rule 1.3(h)(3), the Company has provided a redacted public version of the RES Filing, as well as an unredacted, confidential version.

Therefore, the Company requests that, pursuant to Rules 1.3(h) and 1.19(e), the PUC afford confidential treatment to the Confidential Information.

II. LEGAL STANDARD

Rule 1.3(h) of the PUC’s Rules of Practice and Procedure provides that access to public records shall be granted in accordance with the Access to Public Records Act (“APRA”), R.I. Gen. Laws § 38-2-1, *et seq.* Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency is deemed to be a “public record,” unless the information contained in such documents and materials falls within one of the exceptions

specifically identified in R.I. Gen. Laws § 38-2-2(4). To the extent that information provided to the PUC falls within one of the designated exceptions to the public records law, the PUC has the authority under the terms of APRA to deem such information as confidential and to protect that information from public disclosure.

In that regard, R.I. Gen. Laws § 38-2-2(4)(B) provides that the following types of records shall not be deemed public:

Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

The Rhode Island Supreme Court has held that this confidential information exemption applies where the disclosure of information would be likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Providence Journal v. Convention Ctr. Auth.*, 774 A.2d 40, 47 (R.I. 2001).

The Rhode Island Supreme Court has also acknowledged that agencies making determinations as to the disclosure of information under the APRA may apply a balancing test. *See In re New England Gas Co.*, 842 A.2d 545, 557 (R.I. 2004) Under this balancing test, the Commission may protect information from public disclosure if the benefit of such protection outweighs the public interest in disclosure. *See id.*

III. BASIS FOR CONFIDENTIALITY

The information that the Company is required to provide in the Annual Compliance Filing Form, including information regarding electricity sold, renewable resources purchased and banked compliance, has the potential to divulge its marketing, hedging and general business strategies. As a consequence, the Company does not generally make this information available

to the public. In fact, disclosure of this information to the public could harm the Company's position in the marketplace. As such, this information constitutes trade secrets that should be protected from disclosure. *See* R.I. Gen. Laws §38-2-2(4)(B).

Moreover, the public benefit of protecting this information far outweighs the public interest in disclosure. The Rhode Island General Assembly has specifically concluded that “[i]t is in the interest of the people, in order to protect public health and the environment and to promote the general welfare, to establish a renewable energy standard program to increase levels of electric energy supplied in the state from renewable resources.” R.I. Gen. Laws § 39-26-1(e). Based on this finding, the legislature established the Renewable Energy Standard (“RES”), which requires that a certain percentage of *all* electricity sold at retail to Rhode Island end-use customers be obtained from eligible renewable energy resources. *See, generally*, R.I. Gen. Laws § 39-26-4.

The Annual RES Compliance Report prepared by the Commission provides interested stakeholders with a summary of how the RES is being satisfied each year on an aggregate basis. *See, e.g.*, Rhode Island Annual RES Compliance Report for Compliance Year 2017 (May 2017). Since the RES is based on a percentage of *total* electricity sales to end-use customers in Rhode Island, the public interest is fully served by providing the information in this manner.

However, as discussed above, the disclosure of individual Obligated Entity information has the potential to divulge an entity's marketing, hedging and general business strategies. *See, e.g.*, Rhode Island Annual RES Compliance Report for Compliance Year 2017 (May 2019), at 29 n.56, Table A2 (presenting competitive supplier information within the report only in a summarized fashion to avoid the potential identification of proprietary business activities). The disclosure of this type of commercially valuable and competitively sensitive information can

have a chilling effect on a competitive entity's willingness to participate in a market and, as a result, could reduce the number of competitive options available to Rhode Island ratepayers. Thus, the benefits of protecting this information from public disclosure far outweigh the public interest in disclosure. Accordingly, the Company requests that the Commission grant confidential treatment to the Confidential Information and exempt it from public disclosure.

Moreover, the Company also competes in the financial markets for various resources, including without limitation, investors and financing. In these highly competitive markets, publicly disclosing the Confidential Information could cause substantial harm to the competitive position of the Company. The Company is privately held and does not publicly disclose its confidential business information. Public disclosure of the Confidential Information may affect third-party decisions to invest in the Company and the Company's market valuation.

The public disclosure of the Confidential Information on Section 2 of the RES Filing would reveal information about the Company's strategic business decisions, conditions, considerations, and opportunities, and RES procurement and compliance strategies. Once publicly disclosed, this information could be used by competitors as well as investors to their economic advantage and to the economic harm of the Company. For example, competitors with different capitalization or RES compliance strategies could use the Confidential Information to their competitive advantage by disparaging the Company and preventing it from gaining market share. As a consequence, the Company would suffer substantial harm. In addition, publicly disclosing the Confidential Information could affect the Company's market valuation. As a consequence, investors, other financial backers or contractual counterparties could use this information to demand more favorable terms, such as increasing the cost of capital; thereby, providing them with economic value from the disclosure of the Confidential Information.

Disclosing the identities and contact information of the Company's contact person and authorized representative, together with the other business sensitive information in Section 2 of the RES Filing, could facilitate efforts by the Company's competitors to recruit these individuals, who perform important services for the Company. If any competitor is successful in these efforts, the Company would have to expend resources to replace the services that these individuals provide. Such expenditure would constitute substantial harm to the Company.

Each of the potential outcomes discussed above would cause substantial harm to the Company. This harm outweighs any public interest in the disclosure of the Confidential Information.

Accordingly, the Confidential Information should be protected from public disclosure. Therefore, the Company respectfully requests that the PUC provide confidential treatment to the Confidential Information.

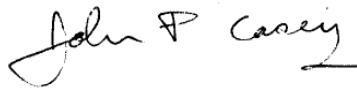
IV. CONCLUSION

For the foregoing reasons, the Company respectfully requests that the PUC grant its Motion for Protective Treatment of Confidential Information.

Respectfully submitted,

AGERA ENERGY, LLC

By its attorney,



John P. Casey, Esq. (# 6424)

Robinson & Cole LLP

88 Howard Street

Suite C-1

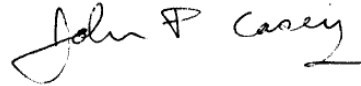
New London, CT 06320

Dated: July 16, 2019

Certificate of Service

I hereby certify that on July 16, 2019, a copy of the foregoing filing was sent, by first class mail or hand-delivery, to the persons listed below.

Administrator, Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

A handwritten signature in black ink that reads "John P. Casey". The signature is written in a cursive style with a large initial "J" and a distinct "P" and "C".

John P. Casey

Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888
RENEWABLE ENERGY STANDARD
ANNUAL COMPLIANCE FILING
FOR COMPLIANCE YEAR 2018
BY Obligated Entities
Pursuant to the Renewable Energy Standard Regulations

Compliance Filing Deadline

Pursuant to the Rules and Regulations Governing the Implementation of a Renewable Energy Standard, the *RES Annual Compliance Filing* is due no later than July 15, 2019¹

Applicable Regulations and Minimum Renewable Energy Resource Requirements

Rhode Island General Laws §39-26-1 *et seq.* and the Rules and Regulations Governing the Implementation of a Renewable Energy Standard (RES Rules) promulgated pursuant thereto require that for Compliance Year 2018, all Obligated Entities shall obtain at least thirteen percent (13%) of electricity sold by the Obligated Entity to Rhode Island end-use customers inclusive of losses from Eligible Renewable Energy Resources. Specifically, no more than two percent (2%) of the retail electricity sales used to meet this obligation shall be from Existing Renewable Energy Resources and a minimum of eleven percent (11%) shall be from New Renewable Energy Resources. A table of target percentages is published at <http://www.ripuc.org/utilityinfo/RES-Annual-Targets.pdf>.

The electronic spreadsheet (MS Excel) versions of **both** Table One **and** the NEPOOL GIS Certificate documentations, along with a PDF of the Annual Compliance Filing must be submitted by email to the Commission. **Any information submitted in or attached to the Compliance Filing shall be considered public record unless specifically exempt pursuant to R.I.G.L. §38-2-2. An Obligated Entity or a party may petition the Commission pursuant to Rule 1.19(E) of the Commission's Rules of Practice and Procedure to request confidential treatment of certain information and exemption from the requirement of public disclosure.**

Compliance Filing Instructions

Mail an original of the completed *Annual Compliance Filing* to:

Luly Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

In addition, e-mail to Res.Filings@puc.ri.gov, an MS Excel version of **both** Table One **and** the NEPOOL GIS Certificate documentation, along with a PDF of the Annual Compliance Filing. Questions regarding completion of the RES Compliance Filing should be directed to Res.Filings@puc.ri.gov or to Luly E. Massaro, Commission Clerk at (401) 780-2107.

¹ Within thirty (30) calendar days after NEPOOL GIS reports are available for the fourth (4th) quarter of the applicable Compliance Year. RES Regulation 2.8(E).

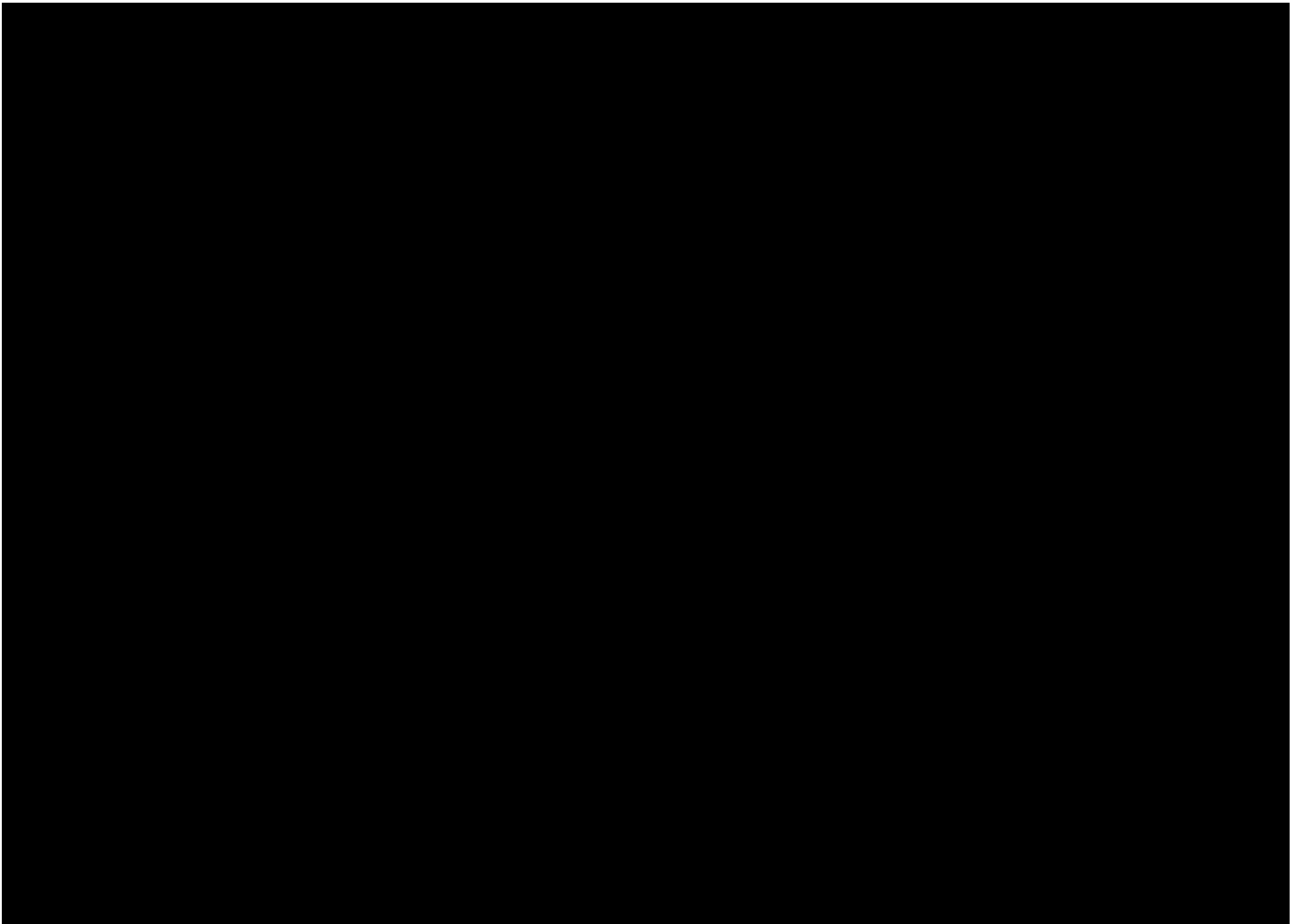
Rhode Island Public Utilities Commission
RENEWABLE ENERGY STANDARD
ANNUAL COMPLIANCE FILING
FOR COMPLIANCE YEAR 2018
BY Obligated Entities

SECTION 1: Identification and Contact Information

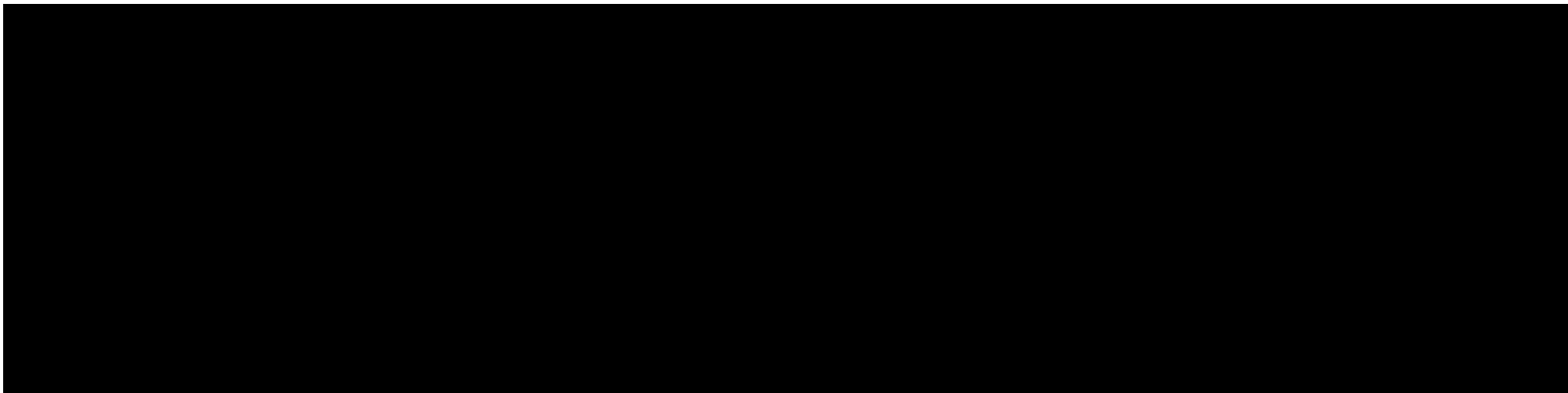
1.1 Name of Obligated Entity:

Legal Name: Agera Energy LLC _____

Any Other Name(s) Used in the Retail Electricity Market in Rhode Island:



Section 2: Annual Sales and New and Existing Renewable Energy Resource Certificates for Each Electrical Energy Product



SECTION 3: Certification

Sign and date both Certifications on this page.

In addition, provide documentation, in accordance with the instructions below – attaching, if applicable, Appendix A or Appendix B – that demonstrates the authority of the Authorized Representative named in Section 1.3 to certify and submit this *Annual Compliance Filing*.

Corporations

If the Obligated Entity is a corporation, the Authorized Representative shall attach **either**:

- (a) A Board of Directors vote granting authority to the Authorized Representative to execute the *Annual Compliance Filing*, **or**
- (b) A certification from the Corporation stating that the Authorized Representative is authorized to execute the *Annual Compliance Filing*, or is otherwise authorized to legally bind the corporation in like matters.

Individuals

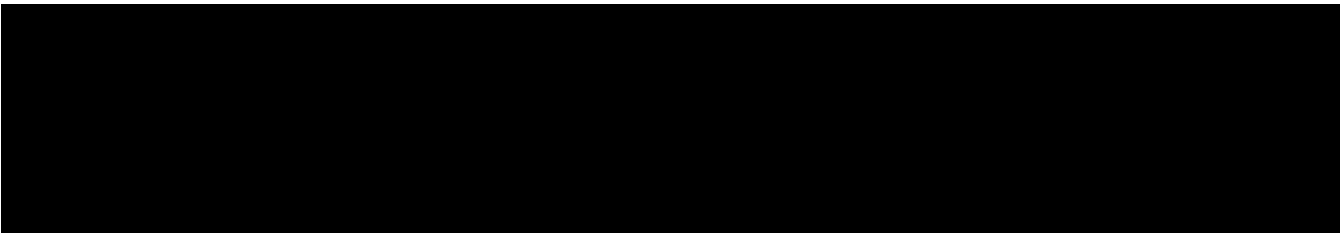
If the Obligated Entity is an individual, that individual shall complete and attach APPENDIX A, or a similar form of certification from the Obligated Entity, duly notarized, that certifies that the Authorized Representative has authority to execute the *Annual Compliance Filing*.

Non-Corporate Entities

(Proprietorships, Partnerships, Cooperatives, etc.)

If the Obligated Entity is not an individual or a Corporation, the Authorized Representative shall provide APPENDIX B or other executed resolution indicating that the person named in section 1.3 has authority to execute the *Annual Compliance Filing*.

I hereby certify that the RI Renewable Energy Resource Attribute Certificates reported in this *Annual Compliance Filing* have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Rhode Island.



I hereby certify that the information submitted herein is true, accurate and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including possible fines and punishment.

