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June 10, 2010

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

Re: Long Term Contracts for Renewable Energy Projects  
Pursuant to R.I.G.L. § 39-26.1 et seq. – Docket No. 4150

Dear Luly:

This office represents Constellation Energy Commodities Group, Inc. (“CCG”) and Constellation NewEnergy, Inc. (“CNE”) (collectively, “Constellation”) in the above docketed proceeding.

Enclosed are an original and nine copies of Constellation’s post-hearing brief in the above docket.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc/tmg  
cc: Service List

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**Narragansett Electric d/b/a National Grid** : **Docket No. 4150**  
**Long-Term Contracts for Renewable** :  
**Energy Pursuant to R.I.G.L. § 39-26.1 et** :  
**seq.** :

**POST-HEARING BRIEF OF INTERVENORS  
CONSTELLATION ENERGY COMMODITIES GROUP, INC.  
AND CONSTELLATION NEWENERGY, INC.**

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Constellation Energy Commodities Group, Inc.  
and Constellation NewEnergy, Inc.

**Dated: June 10, 2010**

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**POST-HEARING BRIEF OF INTERVENORS  
CONSTELLATION ENERGY COMMODITIES GROUP, INC.  
AND CONSTELLATION NEWENERGY, INC.**

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, “Constellation”) hereby submit to the Public Utilities Commission (“Commission”) their Post-Hearing Brief with regard to Commission Docket No. 4150, *Narragansett Electric Company d/b/a National Grid Long-Term Contracts for Renewable Energy Pursuant to R.I.G.L. § 39-26.1 et seq.* In the instant proceeding, Narragansett Electric Company d/b/a National Grid (“National Grid”) submitted on March 1, 2010 its *Request for Approval of Proposed Request for Proposal for Long-Term Contract for Renewable Energy Project (RFP)*<sup>1</sup> (“March 1 Request”). The March 1 Request included: (1) a proposed timetable and method for solicitation and execution of long-term contracts filed pursuant to R.I.G.L. Section 39-26.1-3 (the “Long-Term Contracting Standard”) and the Rules and Regulations Governing Long-Term Contracting Standards for Renewable Energy (collectively, the “Regulations”) promulgated by the Commission; and (2) a Request for Proposals for Long-Term Contracts for Renewable Energy Projects (“RFP”). As required by the Long-Term Contracting Standard and the Regulations, solar photovoltaic (“Solar PV”) systems were intended to be among the resources eligible to bid into the RFP.

In accordance with the procedural schedule established by the Commission, the Rhode Island Division of Public Utilities and Carriers (“Division”) submitted as its comments a *Memorandum from Richard S. Hahn* (“Division Memorandum”) on the contents of the March 1 Request.<sup>2</sup> Constellation submitted both initial<sup>3</sup> comments on the March 1 Request as well as

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<sup>1</sup> *National Grid Request for Approval of Proposed Request for Proposal for Long-Term Contract for Renewable Energy Project (RFP)*, Commission Docket No. 4150 (filed Mar. 1, 2010) (“March 1 Request”).

<sup>2</sup> *See Memorandum of Richard S. Hahn*, Commission Docket No. 4150 (filed May 3, 2010) (“Division Memorandum”).

reply<sup>4</sup> comments addressing the Division Memorandum. National Grid submitted its reply comments<sup>5</sup> on May 17, 2010 and, on May 28, 2010, included a revised form of RFP (“Revised RFP”) in a response to a Commission data request.<sup>6</sup> The Revised RFP was intended to address some of the issues raised in parties’ comments in this proceeding, but also included new language suggesting that National Grid was not required to enter into any long-term contracts for Solar PV resources for the Long-Term Contracting Standard’s defined 2010 time period.<sup>7</sup>

A hearing was held in this matter on June 1, 2010 at which parties discussed issues related to the Long-Term Contracting Standards and, in particular, the Revised RFP issued by National Grid. At the close of the hearing, parties agreed to provide briefs addressing only: (1) whether the Long-Term Contracting Standard requires National Grid to enter into a long-term contract for Solar PV resources by December 31, 2010; and (2) when considering the commercial reasonableness of bids for Solar PV resources in response to the Revised RFP, whether National Grid and the Commission should compare such Solar PV bids only against other similar Solar PV projects, or against other types of renewable resources, more generally.<sup>8</sup>

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<sup>3</sup> *Comments of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket No. 4150 (filed Apr. 15, 2010) (“Constellation Initial Comments”).

<sup>4</sup> *Reply Comments of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket No. 4150 (filed May 17, 2010) (“Constellation Reply Comments”).

<sup>5</sup> *Reply Comments of the Narragansett Electric Company d/b/a National Grid Regarding Long-Term Contracting for Renewable Energy*, Commission Docket No. 4150 (filed May 17, 2010) (“National Grid Reply Comments”).

<sup>6</sup> *Response of the Narragansett Electric Company d/b/a National Grid to Commission Data Request 1-3*, Commission Docket No. 4150 (filed May 28, 2010) (“National Grid DR Response”).

<sup>7</sup> See National Grid DR Response at Revised RFP p.1 (stating that “National Grid has already exceeded the maximum amount that [it] is required to procure in this first solicitation” and that “National Grid intends to proceed with this solicitation on a voluntary basis and will consider, in its sole discretion, all bids submitted”).

<sup>8</sup> Note that Constellation does not at this time take a position as to whether the Commission must rule on the “commercial reasonableness” standard prior to National Grid’s issuing its RFP for Solar PV resources to be contracted for by December 31, 2010, or at the time that bids for such resources are submitted and considered by National Grid and the Commission.

## I. STATEMENT OF THE CASE

As alluded to above, the parties to this proceeding have largely resolved the issues presented in this proceeding. Only two issues remain. With respect to these issues, Constellation avers that Rhode Island Law and the Long-Term Contracting Standard *require* National Grid to enter into at least 25% of three (3) megawatts (“MW”) worth of long-term contracts for Solar PV resources by December 31, 2010, and that the most appropriate policy for considering the commercial reasonableness of such Solar PV resources is to compare them only to other similar Solar PV projects.<sup>9</sup>

## II. ARGUMENT

### 1. NATIONAL GRID HAS NOT MET AND CANNOT MEET ITS ANNUAL PURCHASE OBLIGATIONS UNDER SECTION 39-26.1-3(C)(2) WITHOUT MAKING MINIMUM ANNUAL PURCHASES FROM NEWLY DEVELOPED SOLAR PV RESOURCES.

At the hearing on June 1, 2010, National Grid maintained the position alluded to in its Revised RFP that National Grid has complied with the Long-Term Contracting Standard procurement obligations set forth in R.I.G.L. Ch. 39-26.1-3 for 2010 by contracting with Ridgewood Energy for the output and associated attributes from a landfill gas facility to be located in Johnstown, Rhode Island. Constellation disagrees. National Grid cannot satisfy the relevant statutory obligations without making *annual* purchases from newly developed Solar PV energy resources.

Section 39-26.1-3(c)(2) of the Long-Term Contracting Standard provides that:

Except as provided in § 39-26.1-8 an electric distribution company shall not be required to enter into long-term contracts for newly developed energy resources that exceed the following four (4) year phased schedule:

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<sup>9</sup> Note again that Constellation does not at this time take a position as to *when* the Commission must determine how the “commercial reasonableness” standard must be applied; Constellation is concerned primarily with *how* the “commercial reasonableness” standard must be applied.

By December 30, 2010: Twenty-five percent (25%) of the *minimum long-term contract capacity*;

By December 30, 2011: Fifty percent (50%) of the *minimum long-term contract capacity*;

By December 30, 2012: Seventy-five percent (75%) of the *minimum long-term contract capacity*;

By December 30, 2013: One hundred percent (100%) of the *minimum long-term contract capacity*; but may do so earlier voluntarily, subject to commission approval.<sup>10</sup>

In this way, on its face the statute permits the distribution company to defer and avoid its annual solicitation and purchase of the “minimum long-term contract capacity,” but the Long-Term Contracting Standard makes clear that National Grid may *only* do so insofar as such deferrals are for amounts in excess of the annual percentages specified *therein*. To better understand the meaning of the Standard, then, the definition of “minimum long-term contract capacity” warrants a closer look. R.I.G.L. Section 39-26.1-2(7) contains the definition of “minimum long-term contract capacity” and provides, in relevant part, that:

“Minimum long-term contract capacity” means ninety (90) megawatts *of which three (3) megawatts must be* Solar PV projects located in the State of Rhode Island.<sup>11</sup>

Therefore, to satisfy its Section 39-26.1-3(c)(2) purchase obligations National Grid must purchase at least 25% of its minimum long term contract capacity by December 30, 2010; *by its very definition*, however, “minimum long-term contract capacity” consists of *both* a Solar PV *and* a potentially non-Solar PV component. Absent a Solar PV component, the purchase of the Ridgewood output and attributes simply fails to fully meet the statutory *definition* of minimum long-term contract capacity and thus fails to fulfill the Section 39-26.1-3(c)(2) purchase obligations for December 30, 2010.

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<sup>10</sup> R.I.G.L. § 39-26.1-3(c)(2) (*emph. added*).

<sup>11</sup> R.I.G.L. § 39-26.1-2(7) (*emph. added*).

National Grid should therefore be directed to solicit and enter into long-term contracts for attributes from at least 750 kilowatts (“kW”) of newly developed Solar PV energy resources by December 30, 2010 and from an additional 750 kW of newly developed Solar PV energy resources annually thereafter until the *full* statutorily required 3 MW minimum long-term contract capacity obligation is met. Allowing for the deferral until 2013 of the entire 3 MW Solar PV component of the minimum long-term contract capacity requirement is simply not consistent with the plain language of Sections 39-26.1-2(7) and 39-26.1-3(c)(2).

**2. THE COMMERCIAL REASONABLENESS OF LONG-TERM CONTRACTS FOR PURCHASES FROM NEWLY DEVELOPED SOLAR PV RESOURCES SHOULD BE DETERMINED BY REFERENCE TO THE MARKET FOR SIMILAR PRODUCT SALES FROM OTHER SOLAR PV RESOURCES.**

As noted above, the Legislature expressly included a Solar PV component in the definition of minimum long-term contract capacity. Evaluating long-term contracts for purchases from newly developed Solar PV resources by reference to other, less costly renewable resources could result in the outright rejection of all Solar PV resource contracts, making it impossible for National Grid to satisfy its annual purchase obligations under Section 39-26.1-3(c)(2). This would clearly be contrary to the statutory policy of assuring the development of a cumulative total of at least 3 MW of new Solar PV resources within the State of Rhode Island. The relevant inquiry should be, instead, whether the terms and conditions are commercially reasonable in fulfilling the Solar PV component of the minimum long-term contract standard. This standard can best be satisfied by reference to other market sales of similar products from other Solar PV resources.

Once the 3 MW minimum long-term contract capacity obligation has been satisfied, the Commission may consider whether to evaluate Solar PV purchases above that obligation by reference to other types of renewable resources. However, because the minimum long-term



contract capacity obligations have not been satisfied at this time, the Commission need not reach that determination in this proceeding.

### III. CONCLUSION

For the reasons presented herein, the Commission should rule that:

- (1) Rhode Island Law and the Long-Term Contracting Standard *require* National Grid to enter into at least 25% of 3 MW worth of long-term contracts for Solar PV resources by December 31, 2010; and
- (2) the most appropriate policy for considering the commercial reasonableness of bids for Solar PV resources is to compare them only to other similar Solar PV projects.

Constellation appreciates the opportunity to participate in this proceeding and offer this brief regarding the State's long-term contracting Law and policies, especially with respect to Rhode Island's actions to encourage the development of Solar PV resources in the region.

Respectfully Submitted,



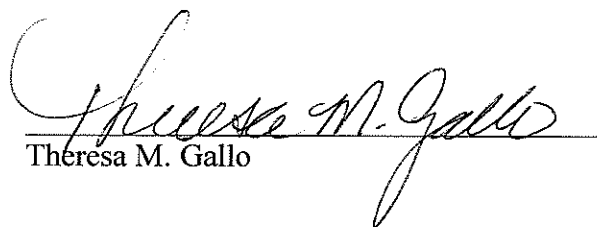
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*On Behalf of Constellation Intervenors: Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*

June 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of June, 2010, I sent a true copy of the foregoing to the attached service list.

  
Theresa M. Gallo

Docket No. 4150 National Grid – Long-Term Contracting for Renewable Energy  
 Projects Pursuant to R.I.G.L. Section 39-26.1 et seq.  
 Service List updated 3/19/10

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