

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: R.I. OFFICE OF ENERGY RESOURCES'
REPORT AND RECOMMENDATIONS REGARDING
DISTRIBUTED GENERATION CLASSES AND CEILING
PRICES; RI OFFICE OF ENERGY RESOURCES'
PROPOSED STANDARD CONTRACT;
NARRAGANSETT ELECTRIC COMPANY d/b/a/
NATIONAL GRID'S PROPOSED DISTRIBUTED
GENERATION ENROLLMENT APPLICATION
AND PROCESS RULES

DOCKET NO. 4288, 4277

REPORT AND ORDER

1. Introduction

This Order addresses the Commission's decisions regarding three proposals. Two of the proposals were filed by the R.I. Office of Energy Resources ("OER") in Docket 4288 (the proposed Standard Contract filed November 18, 2011 and the Report and Recommendations Regarding Classes and Ceiling Prices ("Ceiling Prices" or "Report") filed September 27, 2011.¹ The third proposal is National Grid's Distributed Generation Enrollment Application and Process Rules ("Rules" or "Application") filed November 21, 2011 in Docket 4277.² The two dockets are combined in this Order for purposes of efficiency, due to the proximity of issues involved in

¹ The Standard Contract referenced here is a revised version of the original standard contract filed by OER on October 12, 2011. Unless otherwise specified, references to "Standard Contract" are to the revised contract filed by OER on November 18, 2011.

² The Company's original DG Enrollment Application/Process Rules was filed on August 30, 2011. The Company filed a revised distributed generation enrollment application/process rules on October 28, 2011, in response to various comments filed with the Commission. The Company filed a final DG Enrollment Application and Process Rules on November 21, 2011. The November 21 filing attempts to achieve consistency with the OER's final revised Standard Contract which was also filed on November 21, 2011. Unless otherwise specified, references to the Company's "DG Enrollment Application and Process Rules" or "Enrollment Rules" or "Rules" shall mean the Company's final filing on November 21, 2011. In general, with regard to all filings in this Order, the use of capitalization denotes a final draft. Thus, DG Enrollment Application and Process Rules refers to the final draft filed by the Company on November 21, 2011, whereas distributed generation application and process rules refers to one of the earlier drafts. Likewise, DG Standard Contract refers to the OER's final draft Standard Contract filed on November 21, 2011.

these two dockets.³ The above referenced filings are precipitated by the Distributed Generation Standard Contracts Act (“Act” or “DG-SCA”), which the Legislature passed in 2011 for purposes of encouraging the development of distributed renewable energy generation systems, and realizing the benefits derived from distributed generation, such as economic development and reduced carbon emissions.⁴ The Act establishes a framework for the development of distributed generation which includes several mandates intended to jumpstart a local market for distributed generation. The term “distributed generation” in general refers to power that is generated at the location where it is consumed in whole or in part. Because it is power that is produced and consumed on-site, it is often referred to as on-site generation. The Act defines “distributed generation facility” as a newly developed renewable energy resource...with a nameplate capacity no greater than 5 MW using eligible renewable energy resources...and connected to an electrical power system owned, controlled or operated by the electric distribution company.⁵ The Act defines “distributed generation project” as a distinct installation of a distributed generation facility and requires National Grid to enter into standard contracts for 40 MW of distributed generation projects by December 31, 2014.⁶ Forty (40) megawatts is the cumulative nameplate capacity of distributed generation standard contracts the Company is required to enter into by year 2014.⁷ According to the Act, the Company must fulfill the 40 MW requirement by engaging in three (3) standard contract enrollments per year until 2014, provided that in 2011, the Company need only conduct one (1) enrollment.⁸ The Company must gradually

³ It was the general consensus of the parties to consolidate the two dockets. On November 1, 2011, OER filed a written request that the Commission give integrated consideration to the matters set forth in dockets 4277 and 4288 due to overlapping content, and the parties supported this request. OER 3, p.1.

⁴ H-6104Sub Aaa- An Act Relating to Public Utilities And Carriers—Distributed Generation Standard Contracts was signed by Governor Chafee on June 29, 2011; RIGL §39-26.2-1 et seq..

⁵ R.I.G.L. §39-26.2-3(5).

⁶ R.I.G.L. §39-26.2-3(6); RIGL 39-26.1-4(a).

⁷ R.I.G.L. §39-26.2-4(a)(1).

⁸ R.I.G.L. §39-26.2-6(a).

increase its nameplate capacity of new distributed generation standard contracts each year beginning in 2011 with a 5MW requirement and increasing to 20MW in 2012, 30MW in 2013 and 40MW in 2014.⁹ The Act creates a Contract Working Group, represented by multiple stakeholders, charged with the responsibility of developing the distributed generation standard contracts the Company must use in the enrollment process.¹⁰ The Act also creates a Distributed Generation Standard Contract Board (“Board”) to set ceiling prices and annual targets for renewable energy classes which are to be incorporated in the distributed generation standard contracts.¹¹ The Ceiling Prices, Classes and Targets filed in Docket 4288 were developed by OER, consistent with R.I.G.L. §39-26.2-3, because the Board had not been constituted as of the date of these filings.¹²

II. Docket 4277- National Grid’s Distributed Generation Enrollment Application and Process Rules

On November 21, 2011, National Grid filed its Distributed Generation Enrollment Application and Process Rules pursuant to the recently enacted Distributed Generation Standard Contracts Act.¹³ The Rules are designed to establish an application process and procedures governing the solicitation of distributed generation contracts consistent with the Act. They provide the detailed process that a distributed generation developer must follow, and the qualifications it must meet, in order to enter into a standard contract with National Grid. The Rules contain the minimum threshold requirements that project owners must fulfill in order to be selected by National Grid, all of which are mandated by statute. The minimum threshold

⁹ R.I.G.L. §39-26.2-4(a)(1).

¹⁰ R.I.G.L. §39-26.2-7(1).

¹¹ R.I.G.L. §39-26.2-5(a); RIGL §39-26.2-10.

¹² According to the Act, the office of energy resources serves as the Board with the same powers and duties of the Board, until such time as the Board is duly constituted. RIGL §39-26.2-3(3).

¹³ H-6104 Sub A aa- An Act Relating to Public Utilities and Carriers- Distributed Generation Standard Contracts, signed by Governor Chafee on June 29, 2011; see also RIGL 39-26.2-5(b).

requirements are 1) the project owner must submit a performance guarantee deposit to National Grid;¹⁴ 2) the project owner's proposed hourly output, or maximum amount of energy and related products available for delivery to National Grid, must be demonstrated for at least four (4) complete, non-consecutive hours, adjusted, if necessary, to reflect lack of availability of motive energy such as wind speed or insolation and other factors;¹⁵ and 3) project owners must also have received either a feasibility study or impact study pursuant to R.I.G.L. §39-26.3-3. In addition to passing the minimum threshold requirements, the Rules specify that in order to be selected for a distributed generation standard contract with National Grid, project owners must also submit to additional evaluation criteria designed to assist National Grid in "screening out proposals that are insufficiently mature from a project development perspective, lack technical viability; or fail to satisfy minimum standards for bidder experience and ability to finance the proposed project."¹⁶ The Enrollment Application submitted by the Company, comprised of 13 sections and 20 pages long, requires the applicant to submit a variety of information about the proposed project, including the specific technology proposed for the project, the financial and legal aspects of the project, the fixed bundled price (for large projects), nameplate capacity, the project schedule, environmental impacts, economic benefits of the project and a host of other facts concerning the timing and viability of the project.¹⁷ Some of the information required in the Application was required by the DG Standard Contracts Act. Other information was not required by statute but considered by the Company necessary in order to ensure the viability of the proposed project. The length and detail of the original enrollment application and process

¹⁴ The performance guarantee deposit is fifteen dollars (\$15.00) for small distributed generation projects and twenty dollars (\$20.00) for large distributed generation projects for every renewable energy certificate estimated to be generated per year under the contract but at least five hundred dollars (\$500.00) and not more than seventy-five thousand dollars (\$75,000), paid at the time of contract execution. National Grid 4, p.4; see also RIGL 39-26.2-7(2)(ii).

¹⁵ R.I.G.L. §39-26.2-7(2)(iii).

¹⁶ National Grid 4, p.5 (Docket 4277).

¹⁷ National Grid 4, Appendix A, pgs. 1-20 (Docket 4277).

rules, filed on August 31, 2011, generated conflict among stakeholders filing comments in this docket, which is discussed in more detail below. The final DG Enrollment Application and Process Rules filed on November 21, 2011 was accepted by the parties. Section II contains a summary of the comments received concerning the original distributed generation enrollment application and process rules filed on August 31, 2011.

National Grid's process of selecting a bidder for a distributed generation contract is determined by a scoring system developed by the Company. The scoring methodology is set forth in Schedule 3 of the Rules. Both small and large projects are assigned up to 20 overall points in the non-price categories of siting and permitting; project development status; experience and capability of bidder; financing; and economic benefit. Small projects are assigned up to 20 additional points for the nearest completion date score for an overall maximum total of forty (40) points. This means that small projects with the nearest completion date will receive 20 points. Other small projects are deducted two (2) points for each month beyond the nearest completion date.¹⁸ Large projects can receive a maximum of 80 price scoring points, in addition to the above referenced non-price score (maximum 20), for a maximum total score of one hundred (100) points.¹⁹ A large project that receives a maximum score of 100 is considered by the Company to be a credible project (most likely to be successfully deployed) with competitive pricing.²⁰ Small projects with a maximum score 40 would be considered a credible project (most likely to be deployed) with a near term completion date.²¹ At the November 10 technical session, Mr. Milhous explained that the Company's scoring system was necessary in order to discriminate between multiple identical or similar bids which are received at the same

¹⁸ National Grid 4, p.12.

¹⁹ Id.

²⁰ Id.

²¹ Id.

time, or minutes or seconds apart.²² He suggested that it was neither practical nor prudent to rigidly apply the statutory first come-first serve rule to the bidding process due to the realistic timing and nature of the process.²³

III. Docket 4277- Comments

On September 27, 2011, the Commission published a Notice to Solicit Comments requesting interested parties and members of the public to offer comments regarding National Grid's distributed generation enrollment application and process rules filed on August 31, 2011.²⁴ On October 7, the Commission received comments from the Division of Public Utilities and Carriers, the Heartwood Group, Inc., the R.I. Economic Development Corporation, People's Power & Light and the Washington County Regional Planning Council. Most of the comments summarized below were addressed in the Company's second revised DG Enrollment Application and Process Rules and are provided for informational purposes.

A. The Division. Consultants, Al Pereira and Richard Hahn, of La Capra Associates, filed comments on behalf of the Division on October 7, 2011, stating that the Company's distributed generation enrollment application and process rules complied with the Act but could be improved with "minor modifications". The Division consultants were not convinced that the completion date of a project should be incorporated into the Company's scoring system.²⁵ The consultants also noted that the amount of the performance guarantee was limited by statute, and that those limitations, or caps, should be included in the Company's application.²⁶ Similarly, the

²² November 10 Transcript, p. 13-18.

²³ Id., pgs. 13-16.

²⁴ The September 27, 2011 Notice to Solicit Comments was issued in reference to the Company's initial DG Enrollment Application filed on August 30, 2011. As previously noted, the Company revised these Rules, in response to stakeholder comments, on October 28, 2011 and again on November 21, 2011; therefore, most of the comments identified in Section II have been addressed by the Company and are provided for informational or background purposes only.

²⁵ "Removal of completion date as scoring criteria may be warranted." Division 1, p. 2.

²⁶ Id.

consultants felt that the Act's requirement of the installation of an output meter could have been included in the application, but was "not absolutely necessary."²⁷ Similar to other stakeholders, the Division consultants felt that each project should not be subjected to an economic benefits test even though the Act's stated purpose is to stimulate economic development. Such a requirement, the consultants (and others) argued, would constitute an onerous burden especially on smaller projects.²⁸ The Division's final recommendation related to the development of future ceiling prices. Specifically, the consultants recommended that the Company compile data at the completion of the project, such as project capital costs, interconnection costs, O & M costs, debt interest rates, financial capitalization and loan terms.²⁹ The Division contended that these costs would be useful to OER in developing ceiling prices for future enrollment periods.³⁰

B. Heartwood Group, Inc. Self-described as the largest owner of rooftop solar projects in Massachusetts, the Heartwood Group, Inc., through its President, Fred Unger, harshly criticized National Grid's distributed generation enrollment application and process rules as a distortion of the legislative intent that precipitated this filing and asked the Commission to reject the Company's filing.³¹ Mr. Unger said that he worked on the legislation that supports this filing and felt that the Company's distributed enrollment application and process rules were contrary to the intent of the legislation to encourage an efficient market based mechanism to encourage small and moderate renewable energy projects.³² Mr. Unger felt that National Grid's proposed enrollment rules would discourage distributed generation and asked the Commission to

²⁷ Id., pgs. 2-3.

²⁸ Id., p. 3.

²⁹ Id.

³⁰ Id.

³¹ "Having been involved in the initial small group of renewable energy professionals who conceived of this legislation and worked on it for well over a year, it has been disheartening to see the intent so distorted in the National Grid document you are considering." Heartwood Group 1, p.1.

³² Id. By "legislation", Mr. Unger presumably refers to the DG-SCA, although it is not specifically referenced.

“radically simplify” the filing.³³ He was particularly concerned that the enrollment application requested financial information that was private and unnecessary to the application process. He argued that the enrollment rules placed an unfair burden on distributed generation owners to the extent of their required participation in the forward capacity and REC markets. Finally, he criticized several other parts of the application and rules for being unduly complicated.

C. Rhode Island Renewable Energy Fund (“REF”). REF Director, Julian Dash, criticized the Company’s initial distributed generation enrollment application and process rules, filed August 30, 2011, claiming they created a bidding process that was overly burdensome and commercially impractical particularly for small distributed generation owners.³⁴ He argued in particular that the Company’s minimum threshold requirements of an interconnection application and a feasibility study were overly burdensome to the extent that they would require owners to expend funds on studies that would in many circumstances be no benefit to the project owner in the event of oversubscription.³⁵ To make the process less burdensome, Mr. Dash argued that the Company should require the interconnection application and feasibility study only *after* the applicant is awarded the contract to avoid unnecessary expenditure of funds.³⁶ Mr. Dash further suggested that the Company should provide an explanation to applicants failing to meet threshold requirements of how to remedy deficiencies.³⁷ He also argued that for each enrollment, the Company should reveal the final scores of all applicants.³⁸

Mr. Dash criticized the Company for requiring distributed generation owners to be lead

³³ Id.

³⁴ REF 1, p.1, 3, 4.

³⁵ Id., p. 1.

³⁶ Id., p. 2.

³⁷ Id.

³⁸ Id.

participants in the forward capacity market.³⁹ He claimed this requirement is overly burdensome because the administrative expense of selling into the forward capacity market far exceeds the value received.⁴⁰ Mr. Dash also requested revisions to various sections of the application and rules addressing the handling of RECs as well as the viability and economic benefit of the proposed project. He argued that applicants should not be required to submit the quantity of information requested by the Company in order to prove project viability (Sections 6-10 of the Application) and also that the economic benefits test (Section 13 of the Application) was unfair particularly to small projects that would score lower than large projects based on size alone. He suggested that the application/rules be modified to clarify that the Company is responsible for selling RECs and also to reduce the scope of information requested of the applicant to ensure that large projects do not have an unfair advantage in the application process.^{41 42}

D. People's Power & Light ("PPL"). Filing comments on behalf of PPL were Advocacy Consultant, Karina Lutz, and Green Power Manager, Stephan Wollenberg. Many of PPL's complaints mirrored those of The Renewable Energy Fund. Thus, PPL objected to the threshold requirements proposed by the Company, claiming they would make it difficult for distributed generation developers to enter the market.⁴³ PPL likewise criticized the Company's provisions requiring distributed generation owners to be lead participants in the forward capacity market.⁴⁴ Finally, PPL criticized the Company's inclusion of an economic benefits test in the application claiming that although economic development was one of the policies supporting the

³⁹ Id.

⁴⁰ Id.

⁴¹ Id., pgs. 3-4.

⁴² Mr. Dash also argued that the phrase "R.I. Zone", appearing throughout the Application and Rules, should be replaced with "electric distribution company's load zone." This criticism was lodged by several other stakeholders. The reason for this criticism was to avoid a constitutional challenge based on the U.S. Commerce Clause.

⁴³ PPL 1, p. 1.

⁴⁴ Id.

DG-SCA, the legislature did not intend to require each distributed generation project owner to prove direct economic benefits to the state of Rhode Island.⁴⁵

E. Washington County Regional Planning Council. Attorney Seth Handy, on behalf of the Washington County Regional Planning Council, filed comments similar to those of REF and PPL, claiming the Company's enrollment application and process rules were much more complicated and burdensome than what was envisioned by the Distributed Generation Standard Contracts Act.⁴⁶ Mr. Handy claimed that most of the threshold requirements included in the Company's proposed application/rules were not necessary since the performance deposit would serve to weed out unviable projects.⁴⁷ Mr. Handy claimed that these additional requirements imposed by the Company would discourage the development of distributed generation projects which the DG-SCA was designed to promote. Similar to the other stakeholders, Mr. Handy requested deletion of the phrase "R.I. Zone" from the rules and claimed the feasibility study was overly burdensome given the new requirement for an impact study established in the Interconnection Act.⁴⁸ He criticized the Company's scoring system as a method of disqualifying applicants and said the scoring system should be used for prioritizing applicants, not for disqualifying them.⁴⁹ He argued that the Company should provide notice and an opportunity to cure deficiencies in the project owner's application.⁵⁰ and criticized the Company's scoring system as a method of disqualifying applicants.⁵¹ Finally, Mr. Handy claimed that the non-price evaluation criteria devised by National Grid, including bidder experience, site control and

⁴⁵ Id.

⁴⁶ WCRPC 1, p.1.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id., pgs. 1-2.

⁵⁰ Id., p. 2.

⁵¹ Id.

economic benefit, were inconsistent with the DG-SCA.⁵²

IV. National Grid's Responses to Comments

On October 28, 2011, the Company filed Comment Replies and a revised distributed generation enrollment application and enrollment process rules. This red-lined version of the August 30 filing contained several revisions which addressed most of the concerns raised by stakeholders. The Company replaced all references to "R.I. zone" with "Narragansett Electric Company ISO-NE load zone". In response to criticisms that the application would give large projects an unfair advantage over small projects, the Company revised the application to specifically state that projects would only be evaluated and ranked within its own class.⁵³ Thus, the Company would not, for example, evaluate a small project against a large project, as it would not expect small projects to have the same degree of detail as large projects.⁵⁴ The Company added that it needed some level of criteria to distinguish between multiple projects in the same class that bid the same price.⁵⁵ In addition to these revisions, National Grid explained that it would monitor future enrollments to determine whether the application was indeed too complex for applicants or acting as a disincentive for small projects to enroll.⁵⁶ In response to criticisms that the feasibility study was unduly burdensome in light of the new requirement of an impact study contained in the DG Interconnection Act, the Company revised the application to specify that a feasibility study would not be required by an applicant who had already completed an impact study.⁵⁷

⁵² Id., p. 2. Similar to the other stakeholders, Mr. Handy also objected to the portion of the enrollment application/rules which required project owners to act as lead market participants in the forward capacity market.
Id.

⁵³ National Grid 2, p. 3; National Grid 3, (Comment Replies), p. 1.

⁵⁴ Id., (Comment Replies), p.1.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ National Grid 2, p. 4.

The Company eliminated other requirements from the application in effort to simplify the application process for distributed generation owners. The Company no longer required the applicant to provide an explanation for missing information.⁵⁸ The net effect of this revision, however, may be slightly misinterpreted to the extent that any missing information may negatively impact the applicant's ultimate score.⁵⁹ Regardless of whether it affects the bidder's ultimate score, this revision is still one less step in the application process, and therefore complies with stakeholders' requests to simplify the application process. The Company also deleted the requirement that distributed generation owners act as ISO-NE lead market participants in administering the project in the forward capacity market.⁶⁰ In its revised application, the Company specified that it would act as project sponsor for all large distributed generation facilities and it reserved the right, after consultation with the Division and the Board, to act as project sponsor for small distributed generation facilities.⁶¹ Finally, the Company supported the Division's recommendation to collect data on projects that were awarded contracts for purposes of developing future ceiling prices.⁶²

V. Docket 4288- OER's Proposed DG Ceiling Prices, Classes and Targets and DG Standard Contract

A. OER's Proposed DG Ceiling Prices, Classes and Targets

On September 27, 2011, in accordance with the Distributed Generation Standard Contracts Act, OER filed the Report and Recommendations regarding Classes and Ceiling Prices ("Report") for 2011. Despite its title, this filing consists of OER's recommendations for distributed generation classes, ceiling prices *and targets*, consistent with the Act. On October

⁵⁸ Id., p. 5.

⁵⁹ Id., p. 5. Section 2.3 of the revised application, filed with the Commission on October 28, 2011 states, "It is emphasized however, that Applicants who do not provide complete and credible information in any of the above categories, will be scored accordingly in the Scoring Process."

⁶⁰ Id, p.7 (Section 2.8 of the revised application).

⁶¹ Id.

⁶² National Grid 3, p.3.

12, 2011, OER filed a report of Kenneth F. Payne, director of the R.I. Office of Energy Resources (“OER”), and a proposed standard contract also in accordance with the DG-SCA.⁶³ The Commission opened Docket 4288 to address both of these filings.

The DG-SCA requires OER to set ceiling prices and annual targets for each renewable energy class at a price that would allow a private owner to invest in a given project at a reasonable rate of return, based on recent reported and forecast information on the cost of capital and the cost of generation equipment.⁶⁴ Renewable energy class is defined in the Act as renewable energy technologies using the eligible renewable energy resources defined by R.I.G.L. §39-26-5.⁶⁵ Eligible renewable energy resources are defined in R.I.G.L. §39-26-5 as generation units using direct solar radiation; wind; movement or the latent heat of the ocean; the heat of the earth; small hydro facilities; biomass facilities using eligible biomass fuels and maintaining compliance with air permits; and fuel cells using renewable resources.⁶⁶ The Act further states that the calculation of the reasonable rate of return for a project shall include where applicable any state or federal incentives including, but not limited to, tax incentives.⁶⁷ In addition to this mandate, the Act lists a number of other factors the OER may consider in setting the Ceiling Prices, including regional transactions for newly developed renewable energy resources, environmental benefits and cost effectiveness.⁶⁸ According to the Act, the OER (or Board, if constituted) can file a request to modify already approved Ceiling Prices, if they are determined

⁶³ R.I.G.L. §39-26.2-1 et seq. This original standard contract is an earlier draft of the final Standard Contract considered by the Commission at the November 30, 2011 Open Meeting.

⁶⁴ R.I.G.L. §39-26.2-5(a). The Act requires the Distributed Standard Contract Board (“the Board”) to develop ceiling prices but designates OER to serve as the Board until the Board is constituted. R.I.G.L. §39-26.2-3(3).

⁶⁵ R.I.G.L. §39-26.2-3(10).

⁶⁶ R.I.G.L. §39-26-5. Waste-to-energy combustion is not an eligible renewable resources except for biomass fuels listed in R.I.G.L. §39-26-2(6).

⁶⁷ Id.

⁶⁸ Id.

to be too low or too high.⁶⁹ The ceiling prices proposed by the OER were developed through the use of the CREST Model (Cost of Renewable Energy Spreadsheet Tool), an in-depth analytical tool, created by a private consulting firm with funding and input from the U.S. Department of Energy, for the purpose of assisting regulators and utilities in estimating the cost of renewable energy in the context of incentive rate setting proceedings.⁷⁰ In developing the Ceiling Prices, OER retained the authors of the Crest Model, Robert C. Grace and Jason S. Gifford, as well as Wilson H. Richerson of Meister Consultants Group, Inc., to assist OER in running the CREST Model with appropriate inputs and assumptions.⁷¹ It is important to note that the CREST Model was recommended and ultimately supported by stakeholders at public meetings held prior to the opening of this docket.⁷² Furthermore, after this docket was opened, and throughout these proceedings, though issues arose concerning the assumptions applied in the CREST Model, none of the parties objected to the use of the CREST Model as an appropriate analytical tool in the development of the ceiling prices.

OER began by asking stakeholders for recommendations for appropriate inputs into the CREST Model for various categories.⁷³ Specifically, OER sought recommendations for wind and solar classes ranging in size from 150 kW (solar) to 1.5MW (wind) in categories such as expected annual average net capacity factor, total installed cost excluding interconnection cost, interconnection cost, O&M expenses in the first year of operations, debt to equity ratio, interest rate on debt and after tax return on equity.⁷⁴ The OER and its consultants also conducted

⁶⁹ R.I.G.L. §39-26.2-5(c).

⁷⁰ OER 2, p.25. See also Appendix D, Cost of Renewable Energy Spreadsheet Tool: A Model for Developing Cost-based Incentives in the United States, p.1. The authors of this report are Robert C. Grace and Jason S. Gifford of Sustainable Energy Advantage, LLC. with substantial input from various individuals including the U.S. Dept. of Energy staff and Wilson H. Richerson of Meister Consultants Group. OER 2, p. 21 and OER 2, Appendix D, p.iii.

⁷¹ OER 2, p. 21, 34.

⁷² Id., p. 20, 21. See also OER's Response to Commission 1-6.

⁷³ OER 2, p. 22.

⁷⁴ OER 2, Appendix B.

independent research on appropriate values for each of these categories, and based on all of this information, selected a reasonable value for each input category in each technology and class size.⁷⁵ OER stated that the values it initially selected for the strawman proposal were on the lower end of the spectrum in order to ensure cost-effectiveness consistent with the DG-SCA.⁷⁶ OER specifically stated that in developing the strawman proposal, the values it chose to input into the CREST Model represented approximately the twenty-fifth percentile for each range of values in each class.⁷⁷ OER inserted these values into the CREST Model to arrive at an initial set of ceiling prices which it referred to as a strawman proposal. The OER solicited stakeholder feedback on this strawman set of ceiling prices and then revised the inputs based on the feedback and ran two more sets of ceiling prices. Feedback from stakeholders revealed a general consensus that the ceiling prices in the strawman proposal were slightly low, and there was a concern on the part of stakeholders that the strawman proposal might not allow project owners to earn a reasonable rate of return on their investments, as required by the DG-SCA.⁷⁸ Stakeholders took issue specifically with the assumptions the OER used for interest rate, debt tenor and components of the annual capacity factor. They felt that the interest rate of 0.6% and the 14-year debt tenor used by the OER were unrepresentative of the current market.⁷⁹ They also felt that assumptions used to calculate the annual capacity factor were unreflective of practical realities inherent in the construction of roof mounted solar photovoltaic (“PV”) systems.⁸⁰ The OER used somewhat opposing scenarios in two revised runs to the CREST Model. For both runs it used both minimum and average debt service coverage ratios (“DSCR”), but it ran one model

⁷⁵ OER 2, p. 22; OER Response to Commission 1-10.

⁷⁶ OER 2, p. 27, 28; OER Response to Commission 1-10.

⁷⁷ OER 2, p. 28.

⁷⁸ Id., pgs. 28-29; RIGL §39-26.2-5(a).

⁷⁹ Id., p. 29.

⁸⁰ Id.

assuming tax benefits realized as generated and another model assuming net operating losses carried forward and only used by the project.⁸¹ The results of these two revised model runs yielded two sets of ceiling prices with a range differential of approximately 0.3%. The Ceiling Prices that the OER proposed to the Commission represented the mid-point in this range.⁸² These are the Distributed Generation Ceiling Prices, Classes and Targets that the OER proposed to the Commission for the 2011 enrollment:

<u>Technology</u>	<u>Size/Class</u>	<u>Ceiling Price (cents/KWh)</u>	<u>Target</u>
Solar-PV	10-150 KW	33.35	0.5 MW
Solar-PV	151-500 KW	31.60	1.0 MW
Solar-PV	501-5000 KW	28.95	2.0 MW
Wind Turbine	1.5 MW	13.35	1.5 MW

In recognition of the fact that there may be no enrollments in 2011 from wind developers, and to ensure compliance with the Act's 5 MW enrollment requirement for 2011, OER proposed the following alternative Targets, Classes and Ceiling Prices in the event of no wind turbine enrollments in 2011:

<u>Technology</u>	<u>Size/Class</u>	<u>Ceiling Price (cents/KWh)</u>	<u>Target</u>
Solar-PV	10-150 KW	33.35	1.0 MW
Solar-PV	151-500 KW	31.60	1.5 MW
Solar-PV	501-5000 KW	28.95	2.5 MW

The ceiling prices ultimately proposed to the Commission assumed a debt tenor of 12 years, a DSCR of 1.45 and an interest rate on term debt of 6.50% for all technologies and classes,

⁸¹ Id., p. 30; OER 2, Appendix D.

⁸² OER 2, Appendix D, "Final Ceiling Prices".

with the exception of solar-PV (1,500 KW).⁸³ The ceiling price for solar-PV (1,500 KW) had an assumed interest rate of 6.00%.⁸⁴ The ceiling prices included assumptions for federal investment tax credits and fifty percent (50%) bonus depreciation; however, no other federal or state grants were assumed.⁸⁵ The OER contended the ceiling prices were cost effective and should allow a private owner to invest in project at a reasonable rate of return, as required by statute.⁸⁶

According to the OER, the ceiling prices reflect regional transactions in the ISO-NE region as the consultants and stakeholders who assisted in the development of the ceiling prices have substantial knowledge of prevailing costs inherent in the development of renewable energy projects.⁸⁷ The OER consistently averred that the costs assumed in the development of the ceiling prices were on the lower range of the spectrum of assumed costs, and therefore, the OER claimed the ceiling prices were cost effective. To the extent that the ceiling prices take into account environmental benefits, the OER stated that the renewable classes proposed in its Report (solar and wind) would reduce the system mix of emissions per megawatt hour of National Grid for Rhode Island.⁸⁸ Beyond that, the OER stated that the system wide environmental benefits that would be achieved from implementation of the ceiling prices could not be quantified since the installation of 5 MW of renewable energy capacity in unknown location(s) was simply too small and too uncertain to allow for any such estimation.⁸⁹

B. OER's Proposed DG Standard Contract

Following passage of the DG-SCA, the R.I. Distributed Generation Contract Working

⁸³ OER 2, Appendix D.

⁸⁴ Id.

⁸⁵ Id.; OER Response to Commission 3-2.

⁸⁶ Id, p. 34.

⁸⁷ Id., p. 32.

⁸⁸ Id., p. 33.

⁸⁹ Id.

Group (“Contract Working Group” or “Working Group”) prepared a Distributed Generation Standard Contract (“Standard Contract”) in accordance with R.I.G.L. §39-26.2-7(2). Peter V. Lacouture, counsel for OER, filed the Standard Contract with the Commission on October 12, 2011. The DG-SCA requires the Contract Working Group to “work in good faith to develop standard contracts that would be applicable for various technologies for both small and large distributed generation projects.”⁹⁰ The aforementioned statute references the plural form of standard contracts on five (5) separate occasions, but also references standard contract in the singular form.⁹¹ The initial standard contract filed with the Commission was 38 pages in length including appendices and was derived from the PPA between Orbit Energy Rhode Island, LLC (“Orbit Energy”) and National Grid, approved by the Commission on July 29, 2011. This draft contract was submitted to the Working Group whereupon suggested revisions were made. The OER revised the contract twice based on revisions requested by the Working Group before filing it with the Commission.⁹² The Act states,

“If the Contract working group reaches agreement on the terms of standard contracts, the board shall file the contracts with the commission for approval. If there are any disagreements, they shall be identified to the commission. The commission shall review the standard contracts for conformance with the standards set forth in subsection (2). Should there be any disputes, the commission shall issue and order resolving them.”⁹³

As previously noted, the OER filed one standard contract with the Commission, which was the product of three (3) Working Group sessions in which the Working Group had an opportunity to voice concerns and provide feedback regarding the draft contract that would ultimately be proposed to the Commission.⁹⁴ This process of reviewing and revising the Orbit

⁹⁰ R.I.G.L. §39-26.2-7(2).

⁹¹ Id.

⁹² OER 1, pgs. 3-4.

⁹³ R.I.G.L. §39-26.2-7(3)(emphasis added).

⁹⁴ OER, p. 4.

Energy contract, with input from the Working Group, occurred during a two (2) week period.⁹⁵ In his report to the Commission, filed contemporaneously with the standard contract on October 12, 2011, Mr. Payne stated that the Working Group “had reached agreement on the terms of the standard contract” and agreed that the contract had met the requirements of the DG-SCA.⁹⁶ Mr. Payne later reported, after comments from fourteen (14) individuals had been filed with the Commission, mostly critical of the standard contract, that “writing this standard contract in a manner that conforms with the law results in an outcome that certain parties believe is suboptimal.”⁹⁷ When asked by the Commission to identify disagreements voiced by the Working Group, Mr. Payne replied, “the consensus of the participants at the end of the October 10, 2011 meeting was that “the final draft of the DG standard contract met the requirements of the statute” and “the OER was acutely aware that some meeting participants were dismayed by the effect of specific statutory provisions on the final draft of the DG standard contract.”⁹⁸ Of course by the time these data responses were received from OER, it was obvious that the standard contract filed with the Commission did not have the full support of the Working Group.

C. Docket 4288- Comments

While the working group charged with developing the standard contract generally agreed that the contract complied with the limited provisions of the Act, several parties filed comments expressing concerns about the standard contract. In total, sixteen parties filed comments in Docket 4288.⁹⁹ Four of these parties were interveners, Washington County Regional Planning

⁹⁵ OER 1, p. 3. Working Group meetings occurred on September 30, October 4 and October 10 of 2011. See also OER Response to Commission 2-9

⁹⁶ Id., p. 5.

⁹⁷ OER Response to Commission 2-1.

⁹⁸ OER Response to Commission 2-9.

⁹⁹ TEC-RI, Washington County Regional Planning Council (“WCRPC”), Northeast Sustainable Energy Association (“NESEA”), GEM Plumbing, Benjamin Riggs, Borrego Solar, Solar Energy Business Assoc. of New England, Conanicut Energy, LLC., Bella Energy, NEXAMP, Nicholas Ratti, Alteris Renewables, Inc., Peoples Power & Light (“PPL”), Heartwood Group, the Division of Public Utilities and Carriers (“Division”) and National Grid.

Council (“WCRPC”), CME Energy, LLC (“CME”), Alteris Renewables, Inc. (“Alteris”) and the Conservation Law Foundation (“CLF”). The remainder of the parties were members of the public or the renewable energy sector. Most of the parties filed comments regarding the OER’s proposed DG standard contract. Five of the parties, including the Division and National Grid, filed comments regarding both the standard contract and OER’s Report on Ceiling Prices, Classes and Targets.

The majority of the comments filed in Docket 4288 were in opposition to the standard contract filed by OER on October 12, 2011. The criticisms focused primarily on the complexity of the contract and what parties perceived to be onerous provisions that would operate as a disincentive to the development of distributed generation, particularly smaller distributed generation projects. Most of the comments were addressed in the OER’s November 8 draft and the final draft Standard Contract filed on November 21, 2011 which are summarized in Sections VI and VII below. The OER filed a formal response to these comments on November 4, 2011 in which it agreed that the contract “as drafted could have a chilling effect on the ability to finance projects.”¹⁰⁰ The OER also conceded to other potential issues with the language of the contract including restrictions on the Seller’s assignment rights and the burdens on the Seller’s participation in the sale of RECs.¹⁰¹ Despite these concessions, the OER disputed the allegation raised by stakeholders that the contract needed to be radically simplified. The OER maintained in its formal response to comments and throughout the proceedings that the task of simplifying the contract should be approached cautiously. It maintained that since the contract addresses a serious commercial transaction covering a period of 15 years, the contract reflecting this

¹⁰⁰ OER 4, p. 6.

¹⁰¹ Id., pgs.7-8

transaction should not be oversimplified.¹⁰² The OER nonetheless stated that it was “responsive to the possibility that a specific contract for very small projects might be developed for use in the future.”¹⁰³ The OER revised the standard contract to address many of the concerns raised by the parties and filed the same with the Commission on November 8, 2011. Following the technical session on November 10, wherein parties expressed that they still had concerns with the revised contract, the Commission suggested that all parties present at the hearing meet in the hearing room for the purpose of discussing a final revision to the contract that could be supported by all parties. The parties did in fact convene to negotiate revisions to the contract on November 9 and November 16, and on November 21, the OER filed a final draft of the Standard Contract. The Commission allowed the parties a final opportunity to express comments on this final draft, and on November 21, the parties and the Division filed comments in support of the final draft Standard Contract; however, PPL and Heartwood Group maintained their request that the Standard Contract have limited application to 2011 only, and that for years 2012 through 2014, OER be required to develop a separate contract designed specifically for small distributed generation projects.

As previously noted, most of the comments filed in Docket 4288 referred to the standard contract; however, parties also filed comments regarding OER’s Report and Recommendations Regarding Classes and Ceiling Prices for 2011. Referring to the OER’s recommended Distributed Generation Classes, Ceiling Prices and Targets, the Division noted that the OER’s recommended classes did not include solar-PV projects of less than 10 kW and only included one 1.5 MW class for wind, leaving the possibility of only one wind project. TEC-RI also disliked the fact that OER proposed more solar than wind classes, particularly where wind is

¹⁰² Id.

¹⁰³ Id., p. 8.

more cost-effective than solar.¹⁰⁴ In response to the Division's concern over the lack of a small (10kW) solar-PV classes, the OER replied that smaller scale projects are less cost effective.¹⁰⁵ The OER also replied that solar-PV projects of less than 10kW were appropriately excluded from the classes/prices because owners of these projects typically consume the energy produced on site, rather than re-sell it in the market.¹⁰⁶ To TEC-RI's concern over the greater representation of solar-PV, the OER also said that the "difficulty and lead time in locating wind turbine projects" made it necessary for the OER to include more solar-PV classes, in order to meet the statutory enrollment requirements for 2011.¹⁰⁷

The Division also recommended, after concluding that "the major assumptions underlying the prices are reasonable," that the following modeling assumptions used by the OER should nonetheless be reviewed: 1) no tax benefits, other than 50% bonus depreciation; 2) lease payments (as opposed to customer sited projects); and, 3) no state grants.¹⁰⁸ In response to the Division's October 26 comments, the Commission issued two sets of data requests to the Division seeking further review of the modeling assumptions. The Commission asked the Division to estimate the impact of the OER's model assumptions on the Ceiling Prices, as well as the rate impact, in the event that the assumptions were revised to include full federal and state tax benefits and no required lease payments. The Division revealed in data responses that if the OER had assumed full tax benefits, state grants and no lease payments, the Ceiling Prices would be lower by 2.10 to 4.90 cents/kwh.¹⁰⁹ The Division also stated that including these assumptions in the ceiling prices would reduce 2011 ratepayer costs by approximately \$319,540.¹¹⁰ The

¹⁰⁴ TEC-RI 1, p. 2.

¹⁰⁵ OER 4, p. 15.

¹⁰⁶ OER's Response to Commission 2-13.

¹⁰⁷ OER 4, p. 11.

¹⁰⁸ Division 1, p. 2.

¹⁰⁹ Division 1, p. 1.

¹¹⁰ Division 1, p. 3.

Division further stated that not only is it appropriate for the full potential value of tax incentives to be included in ceiling prices, it is required by the Act.¹¹¹ However, the Division also noted that the average estimated monthly bill impact of including the Division's recommended assumptions and reducing ratepayers costs by \$319,540 would be \$0.02, \$0.15 and \$126.79 for residential, commercial/industrial and large TOU customers, respectively.¹¹² Given this information, the Division recommended two options for the Commission to consider. It recommended that the Commission either 1) approve two sets of ceiling prices, one for third party developers which includes lease payments, and one for customer sited projects which excludes lease payments; or, 2) approve the Ceiling Prices for 2011 only, given the small rate impact.¹¹³ When asked to respond to the Division's concerns about the ceiling price assumptions, the OER maintained that the assumptions used in developing the ceiling prices were appropriate.¹¹⁴ Specifically, the OER maintained in data responses that the assumptions used in developing the Ceiling Prices were appropriate because they took into consideration the practical realities of state incentives.¹¹⁵ The OER pointed out a flaw in the Division's analysis to the extent that it assumed all projects take advantage of available tax benefits.¹¹⁶ On the contrary, the OER maintained that independent power producers are often unable to monetize the full value of any state tax benefits due to existing tax liabilities.¹¹⁷ The CREST Model, the OER said, reflects an appropriate balance between two practical scenarios, one in which the project owner takes full advantage of the tax benefits in the year they are generated and one in which net operating losses are carried forward until tax benefits can be taken, when the project has positive

¹¹¹ Commission 6 (Division's Response to Commission 2-4), p. 4.

¹¹² Commission 6, p. 6. (Division's Response to Commission 2-5).

¹¹³ Id. (Division's Response to Commission 2-4), pgs. 4-5.

¹¹⁴ OER's Response to Commission 2-14, 2-15, 2-17, 2-18.

¹¹⁵ OER's Response to Commission 2-14, 2-15, 2-17, 2-18.

¹¹⁶ Id.

¹¹⁷ OER's Response to Commission 2-14.

taxable earnings to offset.¹¹⁸ The OER firmly defended its collaborative decision not to include state grants and other incentives by pointing out other realities surrounding the administration of such benefits. The OER noted a substantial lack of uniformity in the distribution of state incentives which made it inappropriate to include these incentives in the development of the ceiling prices. If these state incentives had been included in the development of the ceiling prices, the OER contended that this lack of uniformity in the availability of benefits could create practical problem in the implementation of the Act. According to the OER, if it had elected to include a particular state incentive in the CREST Model, as suggested by the Division, even though it is available to only a small minority of project owners, this would indeed serve to reduce the ceiling price. It would also, however, create the undesirable result of preventing the majority of project owners who did not avail themselves of the benefit from being competitive, potentially affecting the Company's ability to meet its enrollment targets and thwarting the legislative intent of the Act.¹¹⁹ Furthermore, the various types of different state incentives each carried different benefits and risks which did not necessarily equate to a dollar value.¹²⁰

The OER explained the reasoning behind its assumption of lease payments in the CREST Model once again alluding to the practical realities of the renewable energy development sector. It explained that lease assumptions were deliberately included in the CREST Model to reflect the increasingly common third party model in renewable development. In the third party model, a private third party developer bears the upfront cost of developing and financing a customer sited project. The third party developer enters a longterm purchase power agreement with the utility and agrees to sell power to the utility which the utility in turn sells back to the customer. In this

¹¹⁸ Id.

¹¹⁹ Commission 3, OER's Response to Commission 2-15.

¹²⁰ Id.

arrangement, the developer will make lease payments to the customer, or site host.¹²¹ Because of the prevalence of this arrangement, particularly in the solar industry, the OER assumed lease payments for all projects.

In written comments to the Commission, parties expressed concern that the Ceiling Prices did not reflect unreasonable burdens that the standard contract placed on the developer; however by the time the first technical session occurred on November 9, the standard contract had already been revised to eliminate many of the provisions thought to be onerous on small developers, and therefore, the parties expressed widespread approval of the ceiling prices.¹²²

Seth Handy, representing the Washington County Regional Planning Council and Alteris Renewables, Inc., requested that the ceiling prices approved by the Commission be officially established as the avoided cost of energy for the sources referenced in the pricing. Karina Lutz of Peoples Power & Light echoed the same request in her November comments.¹²³ In comments filed with the Commission, Mr. Benjamin Riggs, Jr. also made cursory reference to avoided costs. He claimed that the ceiling prices could not be set on a case by case basis in a standard fifteen year contract; that such pricing would violate 16 U.S.C §2621; and that the standard contract would violate the U.S. Commerce Clause.¹²⁴ Mr. Handy's argument is driven by a provision in the Public Utility Regulatory Policies Act ("PURPA") which restricts the price at which a qualifying cogeneration or small power production facility may sell power to a utility.¹²⁵

¹²¹ Commission 3, OER's Response to Commission 2-17.

¹²² November 9, 2011 Transcript, p.22, 25, 33, 37.

¹²³ WCRPC 1, p. 2; Alteris 1, p.2; PPL 1, p. 1.

¹²⁴ Benjamin Riggs 1, p.1. In a very brief letter to the Commission, dated October 25, 2011, Mr. Riggs claimed the standard contract would violate federal law; however, his argument centers on the pricing, compensation and avoided cost of power which would lead one to reasonably conclude that the ceiling prices, and not the standard contract, is the basis of his argument.

¹²⁵ PURPA's avoided cost provisions are codified at 16 USCA §824(a)-(d). The so called "avoided cost" definition is a colloquialism arising out of the definition in PURPA of "incremental cost of alternative electric energy" which states, "For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric

According to PURPA, the price of power sold from one of these facilities to an electric utility cannot exceed the cost of electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source, otherwise known as the utility's avoided costs.¹²⁶ Mr. Handy declared that unless Rhode Island adopts the ceiling prices as the PURPA-defined avoided costs, "it could be unclear how Rhode Island defines avoided cost for these generating sources [and] such lack of clarity can give rise to confusion in the market that could threaten to impede achievement of our shared policy goals."¹²⁷ The Division, National Grid and CLF strongly disagreed with Mr. Handy's argument. The Division and National both contended that extending the Ceiling Prices to all technology sources that are the subject of the pricing would exceed the intent of the Distributed Generation Standard Contracts Act.¹²⁸ After the November 10 technical session, Jerry Elmer, Esquire of CLF also agreed that the Ceiling Prices should not be adopted as the avoided costs.

VI. Technical Sessions

Following public notice, technical sessions were held at the Commission's offices located at 89 Jefferson Boulevard, Warwick, Rhode Island on November 9 and 10, 2011. At the November 9 session, the Commission heard discussion concerning the OER's Report and Recommendation Regarding Ceiling Prices, Classes and Targets as well as OER's proposed standard contract.¹²⁹ At both hearings, the following appearances were entered:¹³⁰

FOR NATIONAL GRID:

Thomas Teehan, Esq.

utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source. 16 U.S.C.A. §824 (d). This definition, by virtue of its meaning, became recognized as simply the utility's "avoided costs", and so the term was popularized.

¹²⁶ Id.

¹²⁷ WCRPC 1, p.3.

¹²⁸ National Grid 2, pgs. 1-2; Division 2, p. 2.

¹²⁹ As previously noted, the standard contract which was the subject of the November 9 technical session, was a previous draft of the Standard Contract that was ultimately considered for review at the November 30, 2011 Open Meeting.

¹³⁰ Jerry Elmer, Esquire did not enter an appearance at the November 10 technical session.

FOR THE DIVISION: John Hagopian, Esq.
FOR THE OFFICE OF ENERGY RESOURCES: Peter Lacouture, Esq.
CONSERVATION LAW FOUNDATION: Jerry Elmer, Esq.
FOR THE COMMISSION: Amy K. D'Alessandro, Esq.
CME ENERGY AND OCI SOLAR POWER: Alan Shoer, Esq.
WASHINGTON COUNTY REGIONAL PLANNING COUNCIL: Seth H. Handy, Esq.

The following individuals were present at the November 9 technical session:

Alan Nault, Rate Analyst, PUC
Nicholas Ucci, Principal Policy Analyst, PUC
Dilip Shah, PUC
Kenneth Payne, OER
Corinne Abrams, National Grid
Madison Milhous, National Grid
Karina Lutz, PPL
William Ferguson, TEC-RI
Julian Dash, REF
Alvaro E. Pereira, Division Consultant
Steve Scialabba, Division
Michael McElroy, Esquire

At the November 9 session, Mr. Lacouture discussed a revised draft of the standard contract originally filed on October 12, 2011.¹³¹ OER had revised the original contract to address issues raised by various parties during the comment period.¹³² None of the parties expressed disagreement over the Ceiling Prices, Classes and Targets proposed by OER; however, a tangential issue raised by Seth Handy in his October 26, 2011 pertaining to avoided costs was addressed at the technical session and is discussed herein below. Most of the individuals who filed comments in Docket 4288 were present at the technical session and had an opportunity to respond to the revisions proposed by OER. The Commission addressed the particular language

¹³¹ OER had filed the revised contract with the Commission on November 8, 2011.

¹³² OER filed this revised standard contract with the Commission on November 8, 2011.

in the Distributed Generation Standard Contracts Act which calls for multiple contracts, in the plural, to be developed based on size and technology. The Commission asked Mr. Lacouture whether it would be feasible to develop separate contracts for small and large projects. Mr. Lacouture acknowledged the statutory mandate for more than one standard contract and agreed that it would be feasible to develop a second contract for smaller projects.¹³³ The Commission asked the OER to respond to the concern that the standard contract should not have precedent value going forward and should only be used temporarily until the Working Group can develop a better, more balanced contract. The OER reiterated the belief, expressed in its initial Report, that the Orbit Energy contract was a good starting point for the standard contract, and should be the basis of any contract going forward.¹³⁴ The OER had stated in its initial Report to the Commission that the Orbit Energy contract was an appropriate basis for a distributed generation standard contract since it contained terms typically used in the wholesale power industry, consistent with the Act, and it had been approved by the Commission albeit under separate circumstances.¹³⁵ Mr. Milhous of National Grid echoed this sentiment at the hearing and said that the Orbit Energy contract provided continuity from the Company's perspective because of its similarity to the contract used in Massachusetts, pursuant to the Green Communities Act, and also because of the short time frame for the 2011 enrollment.¹³⁶ Mr. Teehan noted that the contract had resulted in financing for at least one facility, presumably referring to Orbit Energy of RI, LLC.¹³⁷ Mr. Handy qualified his concern by saying that he was not rejecting the contract

¹³³ November 9 Transcript, pgs. 7-8.

¹³⁴ Id., p. 8, 53, 56.

¹³⁵ OER 1, pgs.3-4 and 6.

¹³⁶ November 9 Transcript, pgs. 40-41.

¹³⁷ Id., p. 59.

in its entirety; he just wanted the ability to review the contract in the future, if necessary, to adapt or adjust it based on experience.¹³⁸

At the November 9 technical session, Mr. Lacouture, assisted by Kenneth Payne and National Grid, discussed the revisions to the standard contract, and parties were given an opportunity to express their opinion regarding the same. During the comment period, some of the parties had expressed concern over an assignment clause in the contract. The assignment clause prohibited the developer's right to assign the contract.¹³⁹ Some of the parties felt this was an unfair prohibition that would have an adverse impact on small developers.¹⁴⁰ Mr. Teehan noted at the hearing that the Commission had wanted this clause in the Deepwater PPA.¹⁴¹ Mr. Lacouture represented at the hearing that OER was willing to allow the developer the right to assign the contract for financing purposes, and the contract was later revised after the technical session to provide that assurance to developers.¹⁴²

Most of the parties agreed that a standard contract had to be approved, in some form, in order to ensure that the Company could begin its statutorily mandated enrollment for 2011. Mr. Unger (Heartwood Group, Inc.) disagreed and urged the Commission to postpone approval of the standard contract to allow the stakeholders additional opportunity to refine the contract.¹⁴³ Others parties felt strongly that a timely approval was crucial in light of existing beneficial financial conditions. Mr. Payne, Ms. Lutz of PPL and Mr. Martin of CME noted that current tax advantages and the current low cost of money and capital goods create an ideal atmosphere for renewable development.¹⁴⁴

¹³⁸ Id., p. 57.

¹³⁹ OER 1, Sec.11.4, pg.32 of the standard contract filed October 12, 2011.

¹⁴⁰ Alteris 1, p; Heartwood Group 1; Nexamp 1.

¹⁴¹ November 9 Transcript, p. 11.

¹⁴² November 9 Transcript, p. 81; see also OER 5, Standard Contract, Section 11.3.

¹⁴³ November 9 Transcript, pgs. 61-62.

¹⁴⁴ Id., p. 37, 62-65.

The standard contract proposed by OER contained a capacity demonstration clause which generated some objection from the parties at the hearing. The clause was driven by a statutory mandate within the DG-SCA which requires the standard contract to include a provision which renders the contract automatically void if the developer has not generated the output proposed in its enrollment application within 18 months of executing the contract.¹⁴⁵ The original standard contract required the developer to perform a “capacity demonstration test” to demonstrate the facility’s ability to generate the “contract maximum amount” referenced in the cover sheet within 18 months of executing the contract.¹⁴⁶ The test was to be performed over the course of 4 hours which need not be consecutive.¹⁴⁷ Fred Unger and Julian Dash were among those who felt that this clause would have a chilling effect on the developer’s ability to finance. Responding to this concern, the Company and the OER felt that the reference to “capacity” within the contract was causing some unnecessary confusion and conflict. The term capacity had been a holdover from the Orbit Energy contract, which was designed to be applicable to a much larger facility than any of the distributed generation projects envisioned by the DG-SCA in this docket.¹⁴⁸ Adding to this discrepancy was the language of the Act which refers specifically to the output of the contract, not capacity.¹⁴⁹ This further discrepancy was the crux of the conflict, according to the OER, since the term “capacity”, as explained by Mr. Payne, refers to power that can theoretically be produced, whereas output is power actually produced.¹⁵⁰ Mr. Payne felt that replacing the word capacity with output would help clarify that the contract required only that the developer demonstrate the output of the facility, as claimed in the contract, for 4 non-

¹⁴⁵ R.I.G.L. §39-26.2-7(2)(iv).

¹⁴⁶ OER 1, p.10.

¹⁴⁷ Id.

¹⁴⁸ November 9 Transcript, pgs. 85-87.

¹⁴⁹ Id., p. 86; R.I.G.L. §39-26.2-7(s)(iv).

¹⁵⁰ November 9 Transcript, pgs. 86-87.

consecutive hours, and not the capacity of the facility.¹⁵¹ Mr. Milhous also clarified an important distinction in the Act that may have also contributed to some of the concern generated by this capacity demonstration provision. The concern that stakeholders had with the capacity demonstration test centered on the fact that the contract could be voided if the developer failed to pass the test, putting the developer at risk of losing financing or being unable to obtain financing. At the hearing, in objecting to the capacity demonstration test, Mr. Dash and Mr. Unger, referred to the performance of the test on an “annual basis” or “annual output”.¹⁵² Mr. Milhous pointed out that this reference was misplaced, since the Act allows the contract to be voided if it cannot demonstrate the facility’s output, as claimed in the contract, within 18 months of execution.¹⁵³ According to the Act, there is only one test that could feasibly result in the contract being void, and that test occurs only once, 18 months after the contract is executed. Thus, the capacity demonstration test is not an annual test, as implied by some of the parties. In light of this distinction, as well as the language discrepancy between the contract and the Act (“capacity” versus “output”), the Company and OER proposed to address stakeholders’ concerns about this test by changing the name of the test to “output demonstration test” and making the contract even more flexible in allowing reasonable factors to be considered in determining the outcome of the test. Mr. Milhous stated the Company was willing, for example, to take into considerations things like weather, burner efficiency and mechanics or “anything that’s reasonable” in evaluating the output of the facility.¹⁵⁴

Mr. Lacouture addressed the concern that at least one of the parties had previously raised with regard to the treatment of test energy in the contract. Specifically, the original contract filed

¹⁵¹ Id., pgs. 87-88.

¹⁵² Id., p. 99,104.

¹⁵³ Id., p. 88, 102,

¹⁵⁴ Id., p. 90, 95.

with the Commission did not require the buyer (National Grid) to pay for energy produced by the facility prior to commercial operation or during the test period.¹⁵⁵ Seth Handy felt this provision allowed a “windfall” to National Grid.¹⁵⁶ At the hearing, the Company argued that it would not be appropriate to pay more than market rates for any power produced outside the contract term.¹⁵⁷ The Division also noted that any payments made by National Grid to the developer for test energy would be passed on to ratepayers.¹⁵⁸ Ultimately, the Company expressed a willingness to address the concern raised over test energy but stated that any payment for energy prior to commercial operation should be limited to one month at the real time price determined by the ISO-NE.¹⁵⁹

Addressing concerns raised prior to the hearing over the alleged administrative burdens imposed by the contract on small developers, Mr. Milhous explained the reason that the contract requires the developer to register their RECs in other states, if requested by National Grid, is simply to maximize the value of this commodity that the Company is purchasing ultimately for resale in the market.¹⁶⁰ Mr. Milhous said this provision was standard in all of the Company’s PPAs and added that the process of registering RECs is fairly simple and straightforward and should not pose a burden on developers.¹⁶¹ Mr. Elmer of CLF and Karina Lutz of PPL echoed Mr. Milhous’ sentiments regarding registering RECs in other states, but CME and the Heartwood Group, Inc. disagreed.

Mr. Lacouture and Mr. Milhous addressed the issue of invoicing raised by certain parties during the comment period. The concern raised in comments filed with the Commission was

¹⁵⁵ OER 1, original standard contract, Sec.3.3(a), p.11.

¹⁵⁶ WCRPC 1, p. 6,

¹⁵⁷ November 9 Transcript, p. 115.

¹⁵⁸ Id., pgs. 119-120.

¹⁵⁹ November 9 Transcript, pgs. 113-115.

¹⁶⁰ Id., pgs. 116-117.

¹⁶¹ Id., pgs. 117-120.

that the standard contract requires the developer to submit an invoice to the Company for energy delivered in the preceding month. Certain individuals took the position that the standard contract covers a simple metered transaction that does not require issuance of an invoice.¹⁶² Responding to this concern at the hearing, Mr. Milhous explained that an invoice was required for accounting reasons but said that the Company would consider metering in the future subject to conformance with the Company's business requirements.¹⁶³

At the hearing, Seth Handy recommended three revisions to the contract which the Company said it would consider. Mr. Handy recommended deleting the term "market based rates" from the seller's authorization to sell energy claiming this provision raised issues regarding FERC's rules about avoided costs.¹⁶⁴ He also recommended the deletion of two other provisions which he claimed were unnecessary, a seller indemnification clause and standard of review clause. These requests received minimal discussion at the hearing, however the final draft that OER filed with the Commission on November 21, 2011, which excluded the reference to market based rates and the two clauses, revealed that all three requests had been granted. It is important to note that while each and every point raised by stakeholders may not have been accepted by OER and/or the Company and incorporated into the standard contract, ultimately the final standard contract that was submitted to the Commission on November 21, 2011 was a document that all of the parties supported for purposes of the 2011 enrollment.

Mr. Lacouture raised the issue of avoided costs previously referenced in Mr. Handy and others' comments. The Division, National Grid, the OER and CLF disagreed with Mr. Handy's assertion that the Commission should accept the ceiling prices proposed in this docket as the avoided costs pursuant to PURPA. Questioning the overall relevance of the avoided cost issue

¹⁶² NESEA 1; WCRPC 1; Heartwood Group 1.

¹⁶³ November 9 Transcript, p. 124.

¹⁶⁴ Id., p. 125.

to this docket, Mr. Teehan stated, “the avoided cost issue is not one that is rightfully in this docket and just injects issues that don’t belong here.”¹⁶⁵ Likewise, CLF said, “I don’t agree in this docket the Commission needs to address the avoided cost issue.”¹⁶⁶

Mr. Payne reviewed the OER’s Report and Recommendations regarding Distributed Generation Classes and Ceiling Prices. He explained the collaborative process of developing the Report, the input received from stakeholders and the methodologies used in developing the Report. He said that the idea of using the CREST Model for developing the ceiling prices was offered to the community group for their feedback, and everyone approved of its use.¹⁶⁷ The assumptions that the OER ultimately selected for inputs into the CREST Model were the subject of substantial review and consideration among the individual members of the group. Some of the assumptions initially proposed by the OER were revised at the request of certain stakeholders prior to their being accepted for use in the CREST Model.¹⁶⁸

Mr. Payne explained that although solar and wind were the only two renewable classes recommended in the Report, there was potential for more diversity in the types of classes to be included in enrollments in future years.¹⁶⁹ The time constraint posed by the mandatory 2011 enrollment prevented the OER from proposing other technologies that would take longer to develop.¹⁷⁰ William Ferguson of TEC-RI reiterated his concern that the Report should have included more wind enrollment since wind is less expensive than solar.¹⁷¹ Mr. Elmer noted that the Board established under the Act was authorized to review the ceiling prices and would

¹⁶⁵ Id., p. 70.

¹⁶⁶ Id., p. 77.

¹⁶⁷ November 9 Transcript, p. 13.

¹⁶⁸ Id., pgs. 13-14.

¹⁶⁹ Id., p. 21, 32. Mr. Milhous reiterated this at p.49.

¹⁷⁰ Id., p. 19.

¹⁷¹ Id., p. 43.

recommend revisions if necessary.¹⁷² He said the underlying statutory goals of the ceiling prices are to allow the developer a reasonable rate of return and “low enough to be fair and reasonable to ratepayers.”¹⁷³

At the hearing, most of the parties spoke in favor of the ceiling prices.¹⁷⁴ No one voiced an objection to the ceiling prices proposed by the OER. The Division briefly referred to the issues raised previously raised in comments to the Commission concerning the assumptions used in the CREST model but said that these concerns were not “deal breakers” and that the ceiling prices were indeed reasonable.¹⁷⁵

The November 10 technical session was devoted primarily to a discussion of National Grid’s distributed generation enrollment application and process rules and how they had been modified to reflect comments and concerns raised by the parties. Corinne Abrams and Madison Milhous from National Grid; Karina Lutz from Peoples Power and Light; and Steve Scialabba from the Division were present at this hearing, as well as the same Commission staff members who were present at the November 9 session. The Company noted that the DG enrollment application had been revised to reflect that the feasibility study would not be required if an impact study was obtained.¹⁷⁶ National Grid discussed the output demonstration test and the scoring system described in the distributed generation enrollment application. The Company made it clear that there were two tests that the project developer would be required to undergo. The first test would occur 18 months after executing the contract and would be a 4 non-consecutive hour demonstration that the project could produce the amount of power stated in the contract. If the power generated in this 4 hour test did not match the level of power cited in the

¹⁷² Id., pgs. 22-23.

¹⁷³ Id., p. 24.

¹⁷⁴ Id., p. 22, 26.

¹⁷⁵ Id., pgs. 27- 30.

¹⁷⁶ November 10 Transcript, pgs. 34-35.

contract, with all reasonable adjustments allowed by the Company, then the contract would be voided pursuant to R.I.G.L. §39-26.2-7(2)(iv). The other test would occur during the first year of the contract and would test the actual output of the contract.¹⁷⁷ This latter test would enable the project developer to receive a prorated refund of the performance guarantee for every renewable energy credit actually delivered to the Company in the first year of the contract.¹⁷⁸

The Company felt this distinction was important in light of the developers concerns about pulling the plug on a project midstream because of bad weather or a fleeting mechanical or technological flaw and the resulting impact such an event would have on the projects financing. The Company pointed out that the contract could not be voided midstream since the capacity demonstration test would occur before commercial operation and also that the output demonstration test would not be applied with absolute rigidity but would allow reasonable deviations caused by reasonable variables.¹⁷⁹

The Company explained the scoring system set forth in the DG enrollment application with particular emphasis on the fact that projects would be evaluated only against other projects of like size. Mr. Milhous reiterated that small projects would not be compared with large projects in the evaluation process.¹⁸⁰ Changes were made to the DG enrollment application to reflect the Company's expectation that smaller projects would not necessarily provide the same information as large projects.¹⁸¹ The Company explained the need for the scoring system which consisted of a both price and nonprice scores. There would be two nonprice scores for small projects, one score for the deployment date (the closer the deployment, the higher the score) and

¹⁷⁷ Id., pgs. 64-68.

¹⁷⁸ November 10 Transcript, pgs. 66-67. The project developer is required to pay National Grid a performance guarantee at the time of executing the contract. The amount of the deposit depends on the project size. Small project developers are required to pay \$15.00 per RECs estimated to be generated per year. Large project developers are required to pay \$25.00 per RECs estimated per year. R.I.G.L. §39-26.2-7(2)(ii).

¹⁷⁹ November 10 Transcript, 65-67, 70.

¹⁸⁰ Id., p.19, 34, 49-50.

¹⁸¹ Id., p. 35.

the second for the likelihood of achieving the designated deployment.¹⁸² The Company would evaluate large projects based on a nonprice score, pertaining to the project's permitting, financial feasibility and ability to build, and a price score.¹⁸³ Responding to comments that the evaluation process was too complicated, Mr. Milhous explained the reasoning behind the twofold scoring system which was mainly to enable the Company to select the project most likely to deploy within the statutory 18 months where multiple projects of comparable size were likely to bid at the same time.¹⁸⁴ The Company noted that this scoring system is also fundamentally similar to the evaluation system used in the Company's prior longterm contract solicitations in both R.I. and M.A and thus reflected a known and approved methodology.¹⁸⁵

VII. OER's Final Standard Contract

The OER filed the final draft of the Standard Contract on November 21, 2011. Parties were asked to file final comments stating whether the final draft resolved issues that had been previously raised. The final Standard Contract contained several revisions addressing issues which had been raised in comments and at the two technical sessions. Contract revisions included new references to output demonstration test; new language to allow for metering in the future; language to permit the seller to assign the contract for financing purposes; a new provision requiring the seller to purchase test energy at the real time LMP (locational marginal price) for a period not exceeding two months; the deletion of the phrase "market based rates"; and the deletion of the standard of review language.¹⁸⁶ All of the parties filed a formal approval of the final standard contract. Karina Lutz of PPL and Fred Unger of Heartwood Group approved of the final contract but asked that separate contracts be developed for smaller projects

¹⁸² Id., pgs. 18-19

¹⁸³ Id., p. 18.

¹⁸⁴ Id., pgs. 17-19.

¹⁸⁵ Id., p. 18.

¹⁸⁶ OER 5.

in 2012.¹⁸⁷ Prior to filing his final approval of the contract, Mr. Elmer addressed the avoided cost argument one last time. In an email addressed to the service list, Mr. Elmer stated that the DG-SCA is not subject to PURPA's avoided cost restriction since the DG-SCA promotes the sale of a bundled product, i.e. energy, capacity and RECs, whereas the avoided cost restriction has been interpreted to apply only to the sale of energy and capacity.¹⁸⁸

VIII. Commission Findings

At open meeting on November 30, 2011, the Commission decided whether to approve the Company's Distributed Generation Enrollment Application and Process Rules filed with the Commission on November 21, 2011. The Commission also decided whether to approve the Distributed Generation Standard Contract proposed by the OER on November 21, 2011 and the Report and Recommendations Regarding Classes and Ceiling Prices proposed by the OER on September 27, 2011.

The Commission is required by law to "approve standard *forms* of contract" within 60 days of filing.¹⁸⁹ The Distributed Generation Standard Contracts Act requires the Commission to "review the standard *contracts* for conformance with the standards set forth" in the Act.¹⁹⁰ Thus, the Standard Contract filed by the OER must contain the following provisions:

1. hold the DG owner liable for the cost of connecting to the grid;
2. require the DG owner to make a specified performance guarantee deposit;
3. require the Company to refund the performance guarantee deposit on a pro-rated basis for RECS delivered in the first year;
4. automatically void the contract if the DG owner has not generated the proposed output; within 18 months of contract execution;

¹⁸⁷ PPL 3; Heartwood Group 3.

¹⁸⁸ November 17, 2011 email of Jerry Elmer, Esquire to Docket 4288 and 4277 service lists.

¹⁸⁹ R.I.G.L. §39-26.2-7(3) (emphasis added).

¹⁹⁰ *Id.* (emphasis added).

5. provide for flexible payment schedules; and,
6. require meter installation and system for demonstrating creation of RECS, at the DG owner's expense.¹⁹¹

According to the Act, the Commission's only apparent authority regarding the OER's proposed Standard Contract is to resolve any disputes over the terms of the standard contracts.¹⁹² The Commission finds that at the present time, there are no outstanding disputes over the terms of the Standard Contract, as the parties have all filed written approval of the OER's DG Standard Contract. That said, with the exception of item no. 5, all of the above items are contained within the Standard Contract proposed by the OER on November 21, 2011.¹⁹³ With regard to item no. 5, a flexible payment schedule, the Standard Contract, Section 5.2(a) page 11, calls for a 45 day payment schedule. Whether this constitutes a flexible payment schedule is outside the Commission's discretion since the Act requires the Commission to approve standard forms of contract. Nonetheless, in its initial filing, OER claims that the standard contract contains the provisions listed in 1 through 4 and 6.¹⁹⁴ It is silent with respect to item 5, and there is no other evidence in the record regarding this issue.

According to the Act, the Standard Contract must also meet the following requirements:

1. be applicable for various technologies for both small and large distributed generation projects;
2. balance the need for the project to obtain financing against the need for the Company to protect itself and its distribution customers against unreasonable risk;

¹⁹¹ R.I.G.L. 39-26.2-7(2)(i) through (vi).

¹⁹² R.I.G.L. §39-26.2-7(3)

¹⁹³ OER 5, sections 3.1(a)(iv) and (d), 3.5 and 6.2 of the Standard Contract.

¹⁹⁴ OER 1, pgs. 5-6.

3. be developed from contracting terms typically utilized in the wholesale power industry, taking into account the size of each project and the technology.

Regarding item 1, the OER filed one Standard Contract applicable to all project sizes and technologies; however, the Act specifically requires OER to “develop standard *contracts* that would be applicable *for various technologies for both small and large distributed generation projects.*”¹⁹⁵ Furthermore, the Act refers in several instances to contracts in the plural form. Given this language, the Act could reasonably be construed to require OER to develop separate contracts for small and large distribution generation projects. This was one of the concerns raised by PPL, Heartwood Group and other stakeholders. OER maintained in its original filing on October 12 that separate contracts were not necessary because “differences in project size can be accommodated within a single contract and through the application/enrollment process”; however, it later conceded that the working group did not have time to develop specialized contracts.¹⁹⁶ OER also indicated in writing and at the technical session, that it might be appropriate to consider a specialized contract for smaller projects for future years.¹⁹⁷

Regarding items 2 and 3, the OER claims that the Standard Contract fulfills these requirements, and while many of the stakeholders previously felt that prior drafts of the DG Standard Contract did not satisfy these two requirements, these parties have since withdrawn their complaints.¹⁹⁸ The Standard Contract contains terms that are typically used in the wholesale power industry. That is evident from the fact that it is a revised version of the Orbit

¹⁹⁵ RIGL§ 39-26.2-7(2) (emphasis added).

¹⁹⁶ OER 1, p. 4; OER 4, p. 9.

¹⁹⁷ OER 4, p. 8: “OER is nevertheless responsive to the possibility that a specific contract for very small projects might be developed for use in the future.” See also OER 4, p. 9, “The OER believes that this statutory provision would clearly allow for addenda to be developed ... to accommodate technologies other than wind turbines and solar PV, and possibly a somewhat simpler agreement that would only be available for very small projects.” Transcript of November 9, 2011 Transcript, p. 7.

¹⁹⁸ PPL and Heartwood, who are not parties to this docket, maintain their request that the Contract have limited application to 2011 and that OER develop separate contracts for small distributed generation projects for years 2012 through 2014.

Energy contract which was drafted by the Company and approved by the Commission. The significance of this point, however, is diminished in this context where the contract is supposed to apply to projects of all technologies and sizes. The fairness of this Standard Contract, or any contract, and its ability to balance the needs of the parties, consistent with the Act, must necessarily depend upon the identity of the contracting parties. The Commission is being asked to determine whether this Standard Contract should have universal application to projects of all types and sizes in all future program years through 2014, without further review by the Commission. A reasonable person should struggle with the notion of any one contract that is fair and appropriate for projects of all types and sizes especially where the legislature called upon the OER to make separate contracts “for various technologies for *both small and large* distributed generation projects.” This Standard Contract, as revised, still contains an economic benefits test and other provisions that would seem inappropriate for small distributed generation projects.¹⁹⁹ As previously noted, the record reflects that the OER recognized these limitations of the Standard Contract and was indeed willing to address them. In addition to OER’s previously noted representation at the technical session, the OER wrote in a data response to the Commission, “The DG Standard Contract reflects an awareness that the transactional burdens of participating in the forward capacity market (FCM) may be greater for small distributed

¹⁹⁹ Whether the economic benefits test set forth in the Long-term Contracting Act (“LTCA”) applies to the DG-SCA (and whether it is even appropriate to include an economic benefits test in the distributed generation standard contract or enrollment rules) is not entirely clear from the general laws, due to conflicting provisions between the LTCA and DG-SCA. Despite the DG-SCA’s language defining standard contracts as long-term contracts (RIGL §39-26.2-9), it is still unclear whether the economic benefits test from the LTCA should apply to distributed generation projects. This ambiguity is particularly apparent where the DG-SCA prescribes a distinct selection process for small distributed generation projects (first-come, first-served basis), which would seem to be completely at odds with the commercially reasonable and economic benefits standards set forth in the LTCA. This is one example of conflicting provisions between the LTCA and DG-SCA, but there are others. The most glaring example is the very notion of a DG standard contract which does not require Commission approval on a per project basis, as permitted in the DG-SCA (RIGL §39-26.2-6(f)), directly conflicting with the commercially reasonable standard established in the LTCA. Unfortunately, the current language of the DG-SCA does not address or resolve these conflicts, since it does not designate which statute supersedes (DG-SCA or LTCA) when there are conflicting provisions between the two statutes. Such a provision, if included in the DG-SCA, would reconcile statutory differences between the LTCA and DG-SCA and facilitate interpretation of the two statutes.

generation facilities that are intermittent supply than the amount of revenue generated from such participation... ”.²⁰⁰ The OER also commented on November 4, “...OER is responsive to the possibility that a specific contract for very small projects might be developed for use in the future”²⁰¹ The OER added that “...this statutory provision would clearly allow for addenda to be developed for the DG-SCA to accommodate technologies other than wind turbines and solar-PV, and possibly a somewhat simpler agreement that would only be available for very small projects.”²⁰²

As previously noted, the Act requires the Commission to approve of the Standard Contract after verifying conformance with the above referenced standards. This statutory mandate necessarily leads one to query the Commission’s role in the event that the Commission were to find nonconformance of the Contract with one of the standards. Apparently, the only context in which the Commission could reject this Contract would be in the event of a working group disagreement over the terms of the Contract. In that case, however, the Commission’s task would be to issue an order resolving the disagreement since the Act requires that if there are any “disagreements” or “disputes” regarding the terms of the Standard Contract, the Commission must issue an order resolving them.²⁰³ Finding no disputes that currently exist among the parties regarding the terms of the Standard Contract filed by OER on November 21, 2011, the Commission will approve this Standard Contract. However, the Commission also finds that the Act required the OER to develop separate contracts for small and large distributed generation projects, and in light of the number of comments received from stakeholders requesting separate contracts, and the OER’s concessions regarding these comments, the Commission shall approve

²⁰⁰ Commission 3, OER’s Response to Commission 2-7.

²⁰¹ OER 4, p. 7.

²⁰² Id., p. 9.

²⁰³ R.I.G.L. §39-26.2-7(3).

the Standard Contract for 2011 only and require the Contract Working Group to develop separate contracts for small and large distributed generation projects for enrollment years 2012 through 2014, consistent with the Act. Accordingly, the Contract Working Group is ordered to develop separate contracts for small and large DG projects no later than February 1, 2012.

The Act requires the Commission to “approve” the Company’s Distributed Generation Enrollment Rules within 60 days of filing.²⁰⁴ The Commission finds that it has no discretion with respect to the Distributed Generation Enrollment Application and Process Rules other than to approve them. That said, the Commission finds that the Rules have been revised to accommodate many of the concerns raised by stakeholders and are therefore reasonable. The Commission is also mindful that its decision with respect to the DG Standard Contract should be consistent with the decision regarding the Rules, since the DG Standard Contract and the Rules are inextricably woven. Accordingly, the Commission finds that since it has approved the DG Standard Contract for 2011 only, and ordered the Contract Working Group to develop separate contracts for small and large distributed generation projects for years 2012 through 2014, the Commission shall order National Grid to draft separate DG enrollment applications and process rules for small and large DG projects, to be consistent with the standard contracts to be filed by the Contract Working Group for years 2012 through 2014. The Company shall have until February 1, 2012 to file separate DG enrollment applications and rules. This deadline should allow the Company sufficient time to meet its statutory enrollment obligations for 2012.

The Commission must decide whether to approve the OER’s recommended DG Classes, Ceiling Prices and Targets contained in its Report filed with the Commission on September 27, 2011. The Act requires the OER to set ceiling prices and annual targets for *each* renewable

²⁰⁴ R.I.G.L. 39-26.2-6(b).

energy class of distributed generation for years 2011 through 2014.²⁰⁵ The Act defines “renewable energy classes” as the categories of renewable energy technologies using eligible renewable energy resources defined in RIGL §39-26-5 (The Renewable Energy Standard).²⁰⁶ The Renewable Energy Standard lists 8 eligible renewable energy resources.²⁰⁷ The OER recommended classes, targets and ceiling prices for solar and wind only, and an alternative proposal including just solar targets, in the event of no wind enrollment in 2011. The Division noted that OER’s recommended classes did not include solar projects of less than 10 kW and only included one 1.5 MW of wind, leaving the possibility of only one wind project. TEC-RI also disliked the fact that OER proposed more solar than wind classes, particularly where wind is more cost-effective than solar.²⁰⁸ In response to the Division’s concern over the lack of a small (10kW) solar class, the OER replied that smaller scale projects are less cost effective.²⁰⁹ The OER also replied that solar projects of less than 10kW were appropriately excluded from the classes/prices because owners of these projects typically consume the energy produced on site, rather than re-sell it in the market.²¹⁰ To TEC-RI’s concern over the greater representation of solar, the OER said that the “difficulty and lead time in locating wind turbine projects” made it necessary for OER to include more solar classes, in order to meet the statutory enrollment requirements for 2011.²¹¹ The Commission finds the DG Classes recommended by OER to be reasonable in light of the testimony presented by the OER, National Grid and CLF, including in

²⁰⁵ R.I.G.L. §39-26.2-5(a)(emphasis added). The OER is the entity responsible for developing ceiling prices, classes and targets until the Distributed Generation Standard Contract Board (“Board”) is constituted. R.I.G.L. §39-26.2-3(3).

²⁰⁶ R.I.G.L. §39-26.2-3(10).

²⁰⁷ The 8 eligible renewable energy resources listed in RIGL §39-26-5 are 1) direct solar radiation 2) wind 3) movement or latent heat of the ocean 4) heat of the earth 5) small hydro facilities 6) biomass facilities 7) fuel cells using renewable resources 8) waste to energy combustion for certain biomass fuels.

²⁰⁸ TEC-RI 1, pgs. 2, 3, 4.

²⁰⁹ OER 4, p. 15.

²¹⁰ OER’s Response to Commission 2-13.

²¹¹ OER 4, p. 11.

particular the shared consensus expressed by these parties that the very small time frame within which to complete the 2011 statutory enrollment left little room for much variation in the classes selected for this first enrollment. The Commission is also persuaded by their testimony that more classes would likely be added in future program years. The Commission also finds this reasoning persuasive with respect to the Targets proposed by the OER and approves the same, along with OER's Distributed Generation Classes.

Regarding the Ceiling Prices, the Commission has carefully reviewed the observations and recommendations of the Division and finds that the OER's assumptions used in populating the CREST model were the result of a collaborative process which included representatives highly knowledgeable in the renewable energy industry. The Commission finds the OER's rationale in support of these modeling assumptions to be reasonable in light of the realities of the industry, as explained in the written and oral testimony and discovery of the parties, and also in light of the minimal bill impact associated with these assumptions. The Commission accepts the OER's assertion that the Ceiling Prices reflect a balance between opposing circumstances in which tax benefits are fully realized in the year they are generated and in which operating losses are carried forward until tax benefits can be realized. The Commission finds that the OER's basis and rationale for all of its modeling inputs to be based on practical knowledge of the financing of distributed generation projects and therefore reasonable and appropriate. In so finding, the Commission accepts the OER's explanation that the federal investment tax credit is the only incentive widely available to wind and solar installation and that the variability and unpredictability of the other federal and state incentives prevented the OER from including them in the CREST Model.²¹² The Commission also finds the OER's decision to treat all projects as lease payments reasonable and appropriate in light of the prevalence of the third party model in

²¹² OER Response to Commission 2-15.

solar-PV systems explained by Mr. Payne in his discovery response. The Commission finds Mr. Payne's explanation reasonable, especially where solar-PV makes up the majority of the targets proposed by the OER in this filing. The Commission further notes that the Act requires the inclusion of state and federal incentives in the ceiling prices "*where applicable*".²¹³

Accordingly, the Commission finds that the OER has complied with this mandate and assessed the availability and/or applicability of the state and federal incentives associated with the development of distributed generation projects, as required in the Act, and found that including each and every existing incentive in the CREST Model, regardless of the availability or applicability of the incentive, would, as the OER noted, negatively skew the Ceiling Prices creating undesirable results in the overall scheme of the Act. The Commission will not disturb the OER's decision to include only federal tax investment incentives in the Ceiling Prices, nor will it doubt the rationale for this decision, particularly where the legislature has specifically endowed the OER with the authority to make this decision in developing the Ceiling Prices and required the Commission to defer to the OER in this regard. The Commission furthermore finds it persuasive that although the inclusion of the assumptions recommended by the Division would lower the Ceiling Prices, it would also have the effect of inhibiting competition since the majority of developers would not be entitled to reap the benefit of these incentives, which would frustrate the purpose and intent of the Act. The Commission is ever mindful of the purposes of the Act to promote distributed renewable energy generation systems and of the Act's mandate to give due consideration to the recommendations of the OER.

The Commission recognizes that in light of the extremely short time frame in which the Company must complete its 2011 distributed generation enrollment, holding any further hearings regarding the ceiling prices would be impractical and only serve to delay and possibly prevent

²¹³ R.I.G.L. 39-26.2-5(a)(emphasis added).

the Company from fulfilling its statutorily mandated enrollment for 2011. Even in the unlikely event that the new prices could be approved within such a short time frame, it still would be highly doubtful in that scenario that the Company would have sufficient time to complete its 2011 enrollment. Thus, electing the Division's option 2 and approving the Ceiling Prices for 2011 only, is the only option recommended by the Division that would ensure the Company's ability to complete its 2011 enrollment, consistent with the Act.²¹⁴ The Commission, however, finds it unnecessary to adopt the Division's recommendation since the methodology that the OER used to develop the Ceiling Prices is fully supported by the evidence. The evidence reflects that the CREST Model is a credible analytical tool for developing the Ceiling Prices, having been authored by the federal Department of Energy, in collaboration with industry consultants, and widely accepted in the renewable energy sector across multiple jurisdictions. The Commission finds that the OER applied the CREST Model in a reasonable fashion with substantial input and consent of interested stakeholders, and the OER has established a firm, rational basis for all of the modeling assumptions that it selected, with stakeholder collaboration, in the development of the Ceiling Prices. The Commission further finds that the OER's proposed Ceiling Prices comply with the Act's stated intent to allow a private owner to invest in a given project at a reasonable rate of return. They are furthermore reasonable and appropriate in light of the practical limitations posed by certain renewable technologies and the statutory time frame provided in the Act. In light of these circumstances and the legislative mandate to give due consideration to the OER in this matter, the Commission shall approve the OER's Distributed Generation Ceiling Prices and attaches the same by reference as Appendix A, along with the approved DG Classes and Targets.

²¹⁴ The Division's Option 2 is described in Paragraph V(C) of this Order, p. 23.

The Commission agrees with the reasoning of the Division, National Grid and Conservation Law Foundation with regard to avoided cost and shall not designate the Ceiling Prices approved in this matter as the avoided cost of power as defined in the Public Utility Regulatory Policies Act (“PURPA”). The Ceiling Prices established in this docket refer specifically to a bundled product as evident from the express language of the Act which defines the standard contract as a contract with a term of fifteen (15) years at a fixed rate *for the purchase of all capacity, energy and attributes* generated by a distributed generation facility.²¹⁵ The express purpose of the Distributed Generation Standard Contracts Act is “to facilitate and promote installation of grid-connected generation of renewable energy; support and encourage development of distributed renewable energy generation systems” and to provide other environmental and economic benefits.²¹⁶ The Commission is not inclined to view this Act as a vehicle for carrying out the provisions of PURPA or the legislative policies established therein. The Ceiling Prices were specifically designed to achieve the aforementioned purposes of the Distributed Generation Standards Contract Act and shall not be viewed as falling within the purview of PURPA. PURPA regulates a utility’s purchase of energy only, not energy and capacity, from qualifying facilities. The Commission views the argument proffered by certain stakeholders that the Ceiling Prices should be defined as the avoided cost of power as conflicting with the aforementioned purpose of the DG-SCA , and more specifically, with the legislature’s express requirement to ensure that the Ceiling Prices are sufficiently high to enable the developer “to invest in a given project at a reasonable rate of return, based on recent reported and forecast information on the cost of capital, and the cost of generation equipment.”²¹⁷ This purpose is clearly at odds with the purpose of PURPA, and the avoided cost definition, which is to ensure

²¹⁵ R.I.G.L. §39-26.2-3(13) (emphasis added).

²¹⁶ R.I.G.L. §39-26.2-2.

²¹⁷ R.I.G.L. §39-26.2-5(a)

the price of power (not power and RECs) is not so high as to discriminate against qualifying cogenerators or qualifying small power producers or be unjust and unreasonable to ratepayers.²¹⁸ Enacted in 1978, PURPA was intended to encourage renewable energy by facilitating the purchase of power from cogeneration facilities. Since PURPA was enacted, the states have long since surpassed the goals of PURPA with the onset of deregulation and renewable energy portfolios. In enacting the Distributed Generation Standard Contracts Act, the legislature has taken a proactive role in the promotion of renewable energy and, more specifically, distributed generation systems. The Act, and the very specific mandates of the Act designed to achieve this goal, clearly fall outside the purview of PURPA.

Accordingly, it is hereby

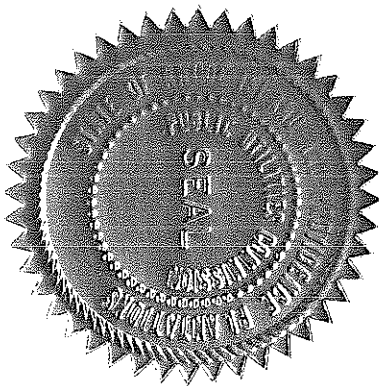
(20676) ORDERED:

1. The Standard Contract proposed by the R.I. Office of Energy Resources is approved for year 2011 only;
2. The Working Group is ordered to develop separate standard contracts for small and large projects, as defined in the Distributed Generation Standard Contracts Act, no later than Feb. 1, 2012;
3. Narragansett Electric Company d/b/a National Grid's Distributed Generation Enrollment Process Application and Enrollment Process Rules, filed on November 21, 2011, are approved for 2011 only. National Grid is ordered to file separate enrollment applications and enrollment process rules for small and large projects, as defined in the Distributed Generation Standard Contracts Act, no later than February 1, 2012;

²¹⁸ 16 U.S.C.A. §824(b)-(d).

4. The Ceiling Prices proposed by the R.I. Office of Energy Resources on September 27, 2011 are approved, as filed and set forth in Appendix A, for 2011 and 2012. The approved Ceiling Prices in Appendix A shall remain in effect until new ceiling prices are proposed by OER and approved by the Commission;
5. The Commission shall hereby refrain from adopting the Ceiling Prices approved in this matter as the avoided cost of power as defined in the Public Utility Regulatory Policies Act.
6. The Distributed Generation Classes and Targets proposed by OER on September 27, 2011 are approved, as filed and set forth in Appendix A, for 2011 and 2012. The approved Classes and Targets set forth in Appendix A shall remain in effect until new classes and targets are proposed by OER and approved by the Commission.

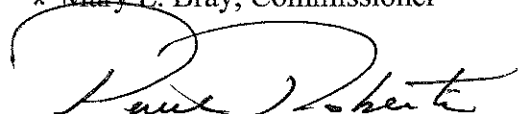
EFFECTIVE AT WARWICK, RHODE ISLAND ON NOVEMBER 30, 2011
PURSUANT TO AN OPEN MEETING DECISION ON NOVEMBER 30, 2011. WRITTEN
ORDER ISSUED MARCH 15, 2012.



PUBLIC UTILITIES COMMISSION


Elia Germani, Chairman

* Mary E. Bray, Commissioner


Paul J. Roberti, Commissioner

*Commissioner Bray concurs but is unavailable for signature.

Appendix A

<u>Technology</u>	<u>Size/Class</u>	<u>Ceiling Price (cents/KWh)</u>	<u>Target</u>
Solar-PV	10-150 KW	33.35	0.5 MW
Solar-PV	151-500 KW	31.60	1.0 MW
Solar-PV	501-5000 KW	28.95	2.0 MW
Wind Turbine	1.5 MW	13.35	1.5 MW

In the event of no wind turbine enrollments in 2011:

<u>Technology</u>	<u>Size/Class</u>	<u>Ceiling Price (cents/KWh)</u>	<u>Target</u>
Solar-PV	10-150 KW	33.35	1.0 MW
Solar-PV	151-500 KW	31.60	1.5 MW
Solar-PV	501-5000 KW	28.95	2.5 MW