BCR **Benjamin C. Riggs, Jr.**

January 2, 2014

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

Re: Docket No. 4288 – Objection of Wind Energy Development, LLC dated 12/31/2013

Dear Members of the Commission:

My comments on the above referenced Objection are as follows:

1. Failure to Comply with the Act: Wind Energy Development, LLC ("WED") argues that the purposes of the Distributed Generation Standard Contract Act ("the Act") to facilitate the use of renewable energy, reduce carbon emissions, reduce environmental impacts, and diversify energy sources are not being met by the Board's proposed contract targets and ceiling prices for large wind projects. In fact, this is not the case at all, for several reasons:
   a) National Grid is free to contract for a wide variety of less expensive and available renewable energy through ISO New England that is produced in Maine and Massachusetts, along with hydroelectric power from Quebec.
   b) There is no evidence that wind turbines in Rhode Island (or anywhere else) will contribute to the environmental benefits called for in the Act. In fact the only comprehensive study I can find on the impact of wind turbines on an electrical grid is the study done by the Electric Reliability Council of Texas ("ERCOT"), which concludes that the net result of connecting wind turbines to the grid in that state has been the burning of more fossil fuel and the emission of more carbon, not less. (See **Exhibit A** attached.) That is because the requirement for conventional natural gas plants to ramp up and down to compensate for the intermittency of wind results in less efficient operation, similar to what happens when you drive your car in stop and go traffic.
   c) It also happens that selecting a more expensive venue such as Rhode Island results in higher costs than for the same power being sourced from elsewhere in the Grid. This ultimately drives more jobs overseas to countries like China and India, which emit 5 times as much carbon as the U.S. on a GDP basis. This hardly contributes to slowing global warming. (See **Exhibit B** attached.)

2. WED's interpretation of the Act's requirements would violate Federal law. WED refers to the need to compensate for higher costs in Rhode Island by setting higher prices and requiring the non-competitive purchase of power from Rhode Island sources at those prices. (See WED's Exhibit D.) This appears to ask for a

violation of the Federal Power Act, to include 16 U.S.C. § 791, *et seq*., and the Public Utility Regulatory Policies Act ("PURPA"), 16 U.S.C. § 824. Because ISO New England is an interstate grid, mandating sole in-state sources at prices that are not commercially reasonable or in the public interest would be in violation of the Commerce Clause of the U.S. Constitution. In addition, the PUC cannot lawfully comply with state legislation that circumvents the authority of the PUC, thereby violating the State's separation of powers, along with the Supremacy Clause of the U.S. Constitution. This is not a problem unique to Rhode Island. (See **Exhibit C** attached.) And this issue has been analyzed a number of times in comprehensive reports. These would include the Clean Energy States Alliance report funded (in part) by the Department of Energy (see **Exhibit D** attached), along with another by the Suffolk University Law School (see **Exhibit E** attached), plus another from a member of the Maryland Law Review (see **Exhibit F** attached). And since these papers were written, the matter has been tested in U.S. District Court for the State of Maryland in the case of PPL EnergyPlus v. Nazarian. (See a short summary attached as **Exhibit G**.) This Commission would be well advised to study the many similarities in that case, and the points raised in the papers that have been referenced above, before participating in any scheme that sets prices for a utility that is connected to an interstate grid and that mandates the purchase of power from an in-state source.

3. The Act does not require a 60 day notice. In this case, there is no change being proposed to a class, but rather to an allotment. And as noted above, allotments such as this in general may not be lawful anyway if they apply only to in-state sources.

In conclusion, I recommend that no increases be considered to the Distributed Generation target and ceiling prices as requested by WED, and that the overall structure of this program be reviewed for compliance with Federal law.

Very truly yours,

Benj C Riggs

Benjamin C. Riggs, Jr.

Attachments: Exhibits A-G

15D Harrington Street, Newport, RI 02840
Tel. 401/846-2540 Fax. 846-1032
rmcriggs@earthlink.net